
**REPLY TO OPPOSITION TO PETITION FOR
EXECUTIVE CLEMENCY**

MICHAEL A. MORALES

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HEARING REQUESTED

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**REPLY TO DISTRICT ATTORNEY'S OPPOSITION TO THE
PETITION FOR EXECUTIVE CLEMENCY**

**Michael Angelo Morales
February 6, 2006**

TO THE HONORABLE ARNOLD SCHWARZENEGGER:

In an extraordinary turn of events, the trial judge and all of the jurors who have elected to address you respectfully, but emphatically, urge that you exercise your lawful authority to spare Michael Morales from execution. These are the same citizens and trial judge who carefully and painstakingly examined all of the graphic, horrific, and sorrowful evidence of this tragic case. They are the ones who were presented with wrenching crime scene photographs, sat in the presence of distraught witnesses, and heard the prosecutor's forceful summary of the evidence. They are the ones who understand most clearly the impact of Bruce Samuelson's testimony on their decision. And they are united in their appeal: They do not want their death verdict and sentence to be carried out.

Contrary to the District Attorney's Opposition to Clemency (hereafter "Opp."), the genuineness of Michael's consistent admission, and profound remorse, for the crime he actually committed is in no way undermined by his desire to correct false evidence of a "special circumstance." (Opp. at 1 and 3.) It is the existence of a "special circumstance" that marks the difference between the capital murders committed by several hundred people on Death Row and the non-capital murders committed by over 21,000 life-sentenced prisoners in California. In this regard Michael, the judge, and the jurors are also united: They agree he should spend his life in prison, but he does not deserve to be executed at the hands of the Executive Branch.

The District Attorney cannot dispute that Bruce Samuelson is a liar. Instead, the prosecution now attempts to obfuscate the significance of Samuelson's mendacity by arguing that he was only marginally significant to the prosecution's case. The facts show otherwise:

- **Samuelson claimed that *all* discussions about the case were in fluent Spanish, not in "Ghetto Spanish." (Opp. at 11.)**
- **The prosecutor's penalty phase argument *repeatedly* named and quoted Samuelson as the source of the most aggravating facts supporting the death penalty. (RT 3093.)**

- The prosecutor’s file notes identified Bruce Samuelson as “*a key witness*” to prove both the homicide *and special circumstances*, and the prosecutor “begged[ed] for the deal” to obtain Samuelson’s testimony. (Exhibit 40, District Attorney’s Position Sheet on Bruce Samuelson; Exhibit 42, Declaration of John C. Schick. Esq.)
- Samuelson was the *only* witness to claim that, *two years after the crimes*, Mr. Morales tried to eliminate witnesses and made incendiary, remorseless remarks about the victim. (RT 2341; RT 2338-2339.)
- The Honorable Charles R. McGrath and the jurors confirm that because of Samuelson’s lies they have no confidence in the death verdict. (Exhibit 1, Declaration of Honorable Charles R. McGrath, at 1-3; Exhibits 34-39, Declarations of Juror #1-6.)
- The state continues to proffer demonstrably false evidence and to suppress favorable evidence in an attempt salvage the tainted death judgment. (Exhibit 56, Declaration of Kathleen Culhane.)

The District Attorney Mischaracterizes the Extent to which Samuelson Claimed He Discussed the Case with Mr. Morales In Spanish.

Because Samuelson’s *entire* testimony describing Mr. Morales’s purported confession is discredited by Samuelson’s false claim that he discussed the case with Mr. Morales in Spanish, the District Attorney now attempts to suggest that the two men only occasionally spoke “‘Spanglish,’ or ‘ghetto Spanish.’” (Opp. at 11.) The transcript from which the District Attorney excerpts Samuelson’s statement proves otherwise: “I was *very fluent* in it, reading, writing and speaking, *both formal* and informal, or ‘Spanglish,’ ‘ghetto Spanish’ *and in educated Spanish.*” In response to the question whether “Mike Morales is fluent in Spanish,” Samuelson answered unequivocally “Yes.” (District Attorney’s Exhibit 74 at 24; emphasis added.)

Samuelson’s statement is also unequivocal in claiming that Mr. Morales’s alleged incriminating statements were conveyed *exclusively* in Spanish: “[I]f we weren’t talking about his case, we would speak in English. *And the rest of the time we would talk in Spanish*” (*Id.* at 24-25; emphasis added.); “[a]nd that’s when the conversation stuck *strictly to Spanish, at all times*, in terms of his case *period.*” (*Id.* at 27; emphasis added.)

Thus, the District Attorney cannot avoid this central fact: Because Samuelson could not have obtained the incriminating statements in the manner he claimed, it is indisputable that he did not obtain incriminating information from Mr. Morales at all. His entire testimony at the trial was a lie.

Bruce Samuelson's Importance to the State's Penalty Phase Presentation

The District Attorney overplays his hand to make the patently false assertion that "the prosecutor did not even rely on Samuelson's testimony during the penalty phase." (Opp. at 20.) The penalty phase transcript is precisely to the contrary:

And then finally we have *Bruce Samuelson* out in the jail and he is telling *Bruce Samuelson* the belt broke, she fell forward unconscious, he grabbed her hair, pulled her back, started beating her over the head and so on and so forth.

And then finally after all this he drags her out in the vineyard, and he tells *Bruce Samuelson* she was just too good to pass up so he had sex with her. And then as he walks away he turns and calls her a name.

It's almost as though he is bragging to everybody. He is proud of it.

(RT 3093; emphasis added.)

The prosecutor's penalty phase closing argument was virtually a direct quote from the most incendiary remarks attributed to Mr. Morales by Samuelson's guilt phase testimony, (RT 2337, 2338, 2339), and the jurors were directed to consider testimony from the guilt phase in selecting the appropriate punishment. (Exhibit 1, at p. 2; see also RT 3142-43, 3145.)

But in choosing death as the appropriate penalty, the jurors considered more than these quotations from Samuelson's testimony. Several of the jurors were struck by Michael Morales's purported bragging in the jail – nearly two years after the crime – as recounted by Samuelson. That testimony created a factor in favor of death and extinguished one in favor of life -- remorse and regret -- that Mr. Morales deeply felt. (Exhibit 1, at p. 2; Exhibit 34, Declaration of Juror #1, at 6; Exhibit 35, Declaration of Juror #2, at p. 2; Exhibit 36, Declaration of Juror #3, at p. 1; Exhibit 39, Declaration of Juror #6, at p. 1.) It was the only

evidence that long after the effects of drugs and alcohol no longer pickled his brain, Mr. Morales was not tormented by his conduct that fateful day in January 1981.

Other jurors were motivated to vote for death because of testimony, which came from Samuelson alone, (RT 2341), that Mr. Morales wanted to kill Pat Flores and Raquel Cardenas and solicited Samuelson to do the deed. (Exhibit 1, at p. 2; Exhibit 37, Declaration of Juror #4, at p. 3; Exhibit 38, Declaration of Juror #5, at p. 1.)

In the present clemency proceeding, after grossly misrepresenting the prosecutor's plea for death as forsaking reliance on Bruce Samuelson, the state seeks to avoid the force of Samuelson's false testimony by asserting that Mr. Morales offered no "proof of genuine contrition." (Opp. at 20.) Here the state runs afoul of Judge McGrath's contrary conclusion at the trial itself. Judge McGrath expressly found Mr. Morales's remorse to be a mitigating factor. (RT 3194.) There is no reason to retreat from the deference afforded a trial judge whose opinion is rooted in the evidence he saw and heard.

Remarkably, the District Attorney also seeks refuge in a declaration under oath from Michael Eugene Platt, the former San Joaquin County Deputy District Attorney who claims Mr. Morales did not express remorse when he was first arrested. (See District Attorney's Exhibit 125.) Mr. Platt is a curious choice for proffering observations about remorse, and doing so under oath. Having taken an oath to uphold the law as a superior court judge, Mr. Platt was removed from the bench after committing several acts of unethical conduct, for which he showed no remorse. His ability to abide by oaths, adhere to professional norms and respect the law then fared no better as an attorney. On February 19, 2003, Mr. Platt was suspended from practicing law.

Now, Mr. Platt purports to offer a new oath attesting to a 25-year-old recollection that transcends his judicial violations for misconduct. Platt's actions speak louder than his words, and his observations are wholly untrustworthy.

What Bruce Samuelson Meant to the Prosecutor in Guilt Phase

In a stunning about-face, the District Attorney's Office today tries to minimize Bruce Samuelson's importance to the prosecutor's success in securing a capital murder conviction and death sentence. This revisionist history utterly fails, for the prosecutor's own tell-tale words sabotage this effort to imagine the past. The prosecutor's own handwritten file notations on an internal office document describe Samuelson as "a key witness in prov[ing] Michael Morales 187

w/specials.” (Exhibit 40, District Attorney’s Position Sheet on Bruce Samuelson; emphasis added.)

The recollections of the fact-finders – judge and jurors – confirm the prosecutor’s assessment at trial that Samuelson was a key witness whose testimony the prosecutor had to have. (Exhibit 1, Letter from the Honorable Charles R. McGrath, at p. 1; Exhibit 35, Declaration of Juror #2 at p. 1; Exhibit 36, Declaration of Juror #3, at p. 1; Exhibit 38, Declaration of Juror #5, at p. 1; Exhibit 39, Declaration of Juror #6, at p. 1.)

Consistent with this brief, but crystal clear contemporaneous concession of Samuelson’s importance to the capital prosecution, the prosecutor “begged” a “reluctant” Judge to approve the deal he cut with Samuelson. Prosecutor Garber had to “push very hard” to gain that approval:

“He was not pulling any punches or holding back how strongly he felt that he had to have the deal. Mr. Garber was literally begging for the deal. He told the judge he *had to have the deal* he negotiated because he needed Mr. Samuelson’s testimony to get a capital conviction against Mr. Morales and Samuelson would only testify with a deal. I will never forget Judge Saiers’ very colorful comment after he finally approved the deal. He told Mr. Garber that ‘the next time’ he would not care if Mr. Samuelson ‘turned in Attila the Hun,’ he would not agree to give Mr. Samuelson any more deals.”

(Exhibit 42, Declaration of John C. Schick, Esq., at pp. 1-2; emphasis added.)

Mr. Garber’s presence at Samuelson’s Municipal Court proceedings was not serendipitous, nor was his vigilant attention to Samuelson’s case virtually simultaneous with Mr. Morales’s trial in Ventura in any sense routine: “As the Deputy District Attorney assigned to try the Morales case, Bernie Garber would not have been simultaneously assigned to the capital case in Ventura and to municipal court to handle routine car thefts, forgeries, and probation violations.” (Exhibit 42, at p. 1.)

Aside from these subjective indicia from the prosecutor of the centrality of Bruce Samuelson to the case, the substance of the testimony and its effect on the fact-finders bespeak its importance. There is no dispute between the parties that Samuelson testified to receiving a full confession from Mr. Morales. It was the linchpin of the special circumstance allegation. And, as for its practical impact at trial, Mr. Morales’s purported bragging had a profound effect on the fact-finders.

(Exhibit 1, Letter from the Honorable Charles R. McGrath, at p. 1; Exhibit 35, Declaration of Juror #2 at p. 1; Exhibit 36, Declaration of Juror #3, at p. 1; Exhibit 39, Declaration of Juror #6, at p. 1.)

Not only did Bruce Samuelson proffer false testimony, he did so as a state agent. The prosecutor belittles Mr. Morales's evidence that by December 1982, Bruce Samuelson was a planted state agent. However, the prosecution has never offered a plausible explanation for the opening and closing paragraphs of the letter Samuelson handed to Garber on December 6, 1982, in municipal court. Together, they prove a pre-existing relationship and the prosecutor's expectation that Samuelson would be providing information:

"Mr. Garber:

In exchange for my testimony in the Morales case, which will guarantee a murder 1 conviction w/special circumstances, I feel the following is a fair agreement. . . .

. . . .

What I have to tell you in regards to Morales will be quite a bit *more than you expected.*"

(Exhibit 41, Letter from Bruce Samuelson Handed to Prosecutor Bernard Garber on December 6, 1982; emphasis added.)

Unbeknownst to the jury, Bruce Samuelson's explanation at trial for his placement in a single cell in the maximum security section where Mr. Morales was housed – that he had protective custody needs – was implausible. The crowded conditions in the jail made a mattress on the floor and then a mattress on a bunk a luxury to be achieved with seniority in the jail. Samuelson, a newcomer, had a single cell. Moreover, the inmates classified for housing in the maximum security section were suspected gang members or inmates with violent felony charges. Samuelson was neither. (Exhibit 42 at p. 2; Exhibit 51, Declaration of Ruben Serna; Exhibit 52, Declaration of Frank Moppins.)

Bruce Samuelson was a state agent. He delivered on his promise. And, for his macabre work, this serial felon was handsomely rewarded for his role as "a key witness" in proving the special circumstances, capital murder case against Mr. Morales.

The Role of the Judge and Jury in Mr. Morales's Plea for Clemency

Mr. Morales's case is one in which granting clemency will prevent a miscarriage of justice and honor the considered judgment of the people. There is congruence in this case between a grant of clemency and respecting the opinions of the trial judge and a majority of the living jurors who sat in judgment on Michael Morales.

There can be no question, no dispute that denying clemency will nullify the wishes of a majority of the jurors and the trial judge. They are another set of Bruce Samuelson's victims. Their misgivings today are palpable. Succinctly stated by one juror,

"I do not want my vote to be used as a reason to give Mr. Morales the death penalty now." (Exhibit 38, at p. 2.)

Other jurors echo that sentiment:

"I cannot honestly say today that my vote for Mr. Morales to receive the death penalty was right or wrong, because I no longer know what the truth is. I can say with certainty that if I could, I would take back the decisions I made in Mr. Morales' case." (Exhibit 34, at p. 1.)

"I do not believe that Mr. Morales, or anyone else, should die based on faulty evidence. Under these circumstances, I do not want to stand by my vote to sentence Mr. Morales to death and I hope the court and Governor can do something to change the death sentence. I would respectfully ask the court and the governor to consider my opinion in this situation." (Exhibit 35, at p. 3.)

"I hope Mr. Morales can be given another trial where the truth can be heard, and reevaluated by another jury." (Exhibit 39, at p. 2.)

"As a juror on the case, it is my hope that our decision to give Mr. Morales the death penalty will not stand." (Exhibit 36, at p. 2.)

"I have no objection to Governor Schwarzenegger commuting Mr. Morales' sentence to life without parole at this time." (Exhibit 37, at p. 2.)

The jurors' comments about the importance of Samuelson's testimony to their verdicts stand in stark contrast to the state's confident, but factually unfounded assertion that "there is no reason to doubt that Morales would have

been convicted and sentenced to death even in the absence of Bruce Samuelson's testimony." (Opp. at p. 21.) If the jury is to be a "lie detector," (Opp. at p. 14), it must be given the tools to perform that task. As explained in this Reply, the jury knew little of Mr. Samuelson's criminal background and nothing of his reputation for dishonesty; they were misinformed about his deal with the prosecutor and his dismal performance on probation.

The state is hard-pressed to attack the trial judge who with the jurors, and unlike the author of the Opposition, are the only individuals who speak with first hand knowledge of the trial. The state resorts to a suggestion that the trial judge "has apparently forgotten" the evidence produced at trial and criticizes the judge for failing to "contact the San Joaquin County District Attorneys' Office or the California Attorney General before signing his declaration."

The state does not explain why or how contacting either prosecuting agency would have benefited the judge, who clearly read the state's then most recent pleading in the case. Judge McGrath did not "sign a declaration," he wrote a sober letter expressing grave misgivings about the death sentence he handed down. Judges whose opinions are solicited pursuant to Penal Code section 4803 are not required to check-in or even provide advance notice to any party.

The state alludes to post-trial "hearings" containing voluminous information not available to the trial judge. (Opp. at 9-10, 13-14.) Mr. Morales, however, has consistently *been denied* an evidentiary hearing in the state and federal courts. Sadly, the state's fidelity to the facts is no greater now than it was at the time of trial.

Jailhouse Informants Like Samuelson Are Presumed Liars

The contamination of our judicial system by professional liars such as Samuelson is an evil well known to the courts, and carefully avoided by ethical prosecutors.

Appellate courts have cautioned for over 50 years that "[t]he use of informers, . . . which are 'dirty business' may raise serious questions of credibility." *On Lee v. United States*, 343 U.S. 747, 757 (1952). "[C]riminal informants are cut from untrustworthy cloth and must be managed and carefully watched by the government and the courts to prevent them from . . . manufacturing evidence against those under suspicion of crime, and from lying under oath in the courtroom." *United States v. Bernal-Obeso*, 989 F.2d 331, 333 (9th Cir. 1993). "Never has it been more true than it is now that a criminal

charged with a serious crime understands that a fast and easy way out of trouble with the law is . . . to purchase leniency from the government by offering testimony in return for . . . reduced incarceration.” *N. Mariana Islands v. Bowie*, 243 F.3d 1109, 1123 (9th Cir. 2001).

As a required safeguard, special instructions are used to warn jurors that the testimony of informants should be viewed with “caution,” “greater caution”, and “close scrutiny.” Cal. Penal Code § 1127a; Ninth Circuit Model Criminal Jury Instruction 4.9 (2005). No such instruction was provided to Mr. Morales’s jury. *People v. Morales*, 48 Cal.3d 527, 553 (1989). Such failures typically “require[] reversal when the informant or accomplice’s testimony is ‘important to the case,’ i.e., it supplies the only strong evidence of guilt.” *United States v. Patterson*, 648 F.2d 625, 631 (9th Cir. 1981)(quoting *Guam v. Dela Bosa*, 644 F.2d 1257, 1260 (9th Cir. 1981)). Samuelson was described in prosecutor Bernie Garber’s own handwriting, in his own file, as “a key witness in prov[ing] Michael Morales 187 w/ specials.” (Emphasis added.)

For years, San Joaquin County prosecutors have knowingly proceeded in the face of the dangers associated with informant testimony, and at times in complete disregard for the truth. *Hayes v. Brown*, 399 F.3d 972 (9th Cir. 2005) (en banc) (granting new trial based on San Joaquin County prosecutor’s elicitation of false testimony from an informant during 1981 capital trial); *Belmontes v. Brown*, 414 F.3d 1094, 1115 (9th Cir. 2005) (San Joaquin County prosecutor violated obligation to “correct the false testimony and elicit the truth” regarding government favors to informant in capital trial arising out of 1981 homicide).

As a threshold matter in this case, prosecutor Garber knew that Samuelson was needed to make this a death penalty case. And Garber in fact knew that Samuelson was lying to the jury when he testified that his only reward was a “recommendation” for leniency. In fact, Garber had “begged” for a deal that Samuelson insisted he have *before* he testified. (See Ex. 42.)

The Courts Have Not Meaningfully Examined This Case

Bruce Samuelson is a life-long liar, a career criminal, and a rapist. Though the District Attorney asserts that “Samuelson’s credibility would have been readily demonstrated” through further post-conviction inquiry, the reality is that no fact-finder confronted with the full extent of Samuelson’s criminal record would have found him an adequate witness on which to base a death sentence.

While the District Attorney asserts that post-conviction courts have spent years pouring over Mr. Morales's claims based upon an enormous and complete record, nothing could be further from the actual truth. The California Supreme Court denied all of Mr. Morales's claims as untimely filed, even though it never appointed habeas corpus counsel on his behalf. The federal district court then dismissed all of Mr. Morales's claims based upon the state court's untimeliness finding. When ordered by the United States Court of Appeals to review the claims on the merits, the district court denied relief based on Judge McGrath's finding 23 years ago that Samuelson was "credible and believable." (Exhibit 58 at 13, quoting RT 1391-92.) Had the federal district court authorized investigative funds for Mr. Morales's habeas counsel to investigate Samuelson's credibility or held an evidentiary hearing on the matter, Mr. Morales conclusively would have demonstrated the falsity of Samuelson's testimony. Instead, the district court dismissed all claims on the merits without a single evidentiary hearing, after denying every request for funds made by Mr. Morales to allow him to investigate and present evidence to support his claims.

This petition for executive clemency uniquely involves *the first* California inmate condemned since the death penalty was restored in 1978 who has not received an evidentiary hearing in any court, state or federal, on a single habeas corpus claim. See *Harris v. Vasquez*, 949 F.2d 1497, 1510 (9th Cir. 1990); *Bonin v. Vasquez*, 807 F. Supp. 589, 595 (C.D. Cal. 1992); *Williams v. Vasquez*, 817 F. Supp. 1443, 1452 (E.D. Cal. 1993); *Thompson v. Calderon*, 120 F.3d 1045, 1050 (9th Cir. 1997); *Siripongs v. Calderon*, 167 F.3d 1225, 1226 (9th Cir. 1999); *Anderson v. Calderon*, 232 F.3d 1053, 1061 (9th Cir. 2000); *Cooper v. Calderon*, 255 F.3d 1104, 1108 (9th Cir. 2001); *Beardslee v. Woodford*, 327 F.3d 799, 806 (9th Cir. 2003); *Williams v. Calderon*, 41 F. Supp. 2d 1043, 1046 (C.D. Cal. 1998); *Allen v. Woodford*, 366 F.3d 823, 835 (9th Cir. 2004); see also *Babbitt v. Calderon*, 151 F.3d 1170, 1174 (9th Cir. 1998).¹

¹ Darrell Rich was "given more than five months to investigate and prepare as well as a full day of argument to identify claims that might colorably entitle him to relief," but failed to do so. *Rich v. Calderon*, 187 F.3d 1064, 1067 (9th Cir. 1999). David Mason and Robert Lee Massie volunteered for execution, had evidentiary hearings regarding their competency, and presumably did not petition for clemency. *Mason v. Vasquez*, 5 F.3d 1220, 1221 (9th Cir. 1993); *Massie v. Woodford*, 244 F.3d 1192, 1194 (9th Cir. 2001).

Had he been afforded the opportunity to investigate and present evidence regarding Samuelson's baleful history of deceit, fraud, and violence, Mr. Morales would have produced documentation showing that Samuelson raped his sister several times when they were teenagers. The first time was in retaliation for her telling their father that Bruce had stolen the father's wallet, money, and driver's license. Bruce's sister demonstrated this by showing her father that his missing items were in the bottom of Bruce's duffle bag. (Exhibit 48, Declaration of Bruce Samuelson's Sister, Paragraph 11.)

Given the opportunity to investigate and present evidence in habeas corpus proceedings, Mr. Morales would have demonstrated that Bruce Samuelson was an opportunistic, mendacious deviant from long before he testified at Mr. Morales's trial until well afterwards:

Samuelson before trial

Bruce Samuelson's pattern of lying to avoid the negative consequence of his behavior began in childhood. "He lied against anyone to get himself out of trouble." (Exhibit 48, Paragraph 10.)

As a teenager, Samuelson stole from his father and falsely told his father that his sister was the thief. As a result of Bruce's lie, his sister was "walloped. . . across the face" by their father, who bloodied her face and broke her nose. (*Id.*, Paragraph 10.)

Samuelson and his father got into a drunken fight when Bruce was a teenager. During the fight, Samuelson slashed his father with a knife. Too drunk to remember the genesis of the wound, Bruce's father was convinced by Bruce that he had inflicted the wound on himself. (*Id.*, Paragraph 8.)

Samuelson lied repeatedly to neighbors, family, and law enforcement as a teen-ager to avoid punishment for his criminal behavior – increasingly more serious vandalisms, burglaries, and thefts. (Exhibit 48; Exhibit 45, Probation Officer's Report for Bruce Samuelson, filed May 26, 1983.)

Before Bruce Samuelson was 21 years old, he had compiled "an extensive history of delinquent behavior dating back to 1972." (Exhibit 44, Probation Officer's Supplemental Report for Bruce Samuelson, quoting letter from the Department of Youth Authority dated 10/22/81.) The most serious offenses in his "extensive" delinquent history were of course the violent rapes of his sister. "I had nightmares about what he did to me," she recently recounted. "Sometimes,

my dreams were so real that I felt the same pain and fear again. For years, I woke up crying and sweating.” (Exhibit 48.)

Samuelson already was on Youth Authority parole when he was arrested in 1981 on felony charges. He eventually pled guilty. After the Youth Authority rejected him for a recommitment, Samuelson was put on formal probation for five years and served local time until June 1982. (Exhibit 59, Declaration of Vicki Wetherell.)

Following his release, Samuelson was supposed to pay \$1,711.78 in restitution, and report to his probation officer monthly. He made no restitution payments and did not report as required in July or August 1982. In October, Samuelson telephoned his probation officer and “claimed he was going to be admitted to Stanford Medical Center for chemotherapy on two tumors.” (Exhibit 45, Probation Officer’s Report for Bruce Samuelson, filed May 26, 1983, at 5.) This was patently false. In fact, Samuelson was busy burglarizing Paul Hermann’s real estate office and stealing a car from Classics Ltd., a car dealership in Stockton. (Id.)

In October and November of 1982, Samuelson victimized Mr. Hermann and others in committing a string of offenses; five of these crimes led to the filing of a six-count complaint against Samuelson for vehicle theft, receiving stolen property, and forgery. (Exhibit 45, Probation Officer’s Report for Bruce Samuelson, filed May 26, 1983.) Samuelson burglarized Mr. Hermann’s office, stole checks, and used the office typewriter to write checks to himself, in amounts small enough that the checks could be cashed without arousing suspicion. (Exhibit 49, Declaration of Paul Hermann.) After he pled guilty, Samuelson apologized to Mr. Hermann, asked him for a job (Mr. Hermann declined), then subsequently broke into the office two more times. (Id.)

These charges were the subject of the deal negotiated by Samuelson and prosecutor Garber in late 1982, an exchange of leniency for damning false testimony against Michael Morales. (Exhibit 44, Supplemental Probation Report for Bruce Samuelson, filed December 1982.)

Samuelson during trial

As conclusively demonstrated by the Attorney General in 1993, Bruce Samuelson did not get a jailhouse confession from Michael Morales. Instead, every fact that Bruce Samuelson attributed to Mr. Morales was reported in the *Stockton Record*, on television, or in the documents from Mr. Morales’s cell that

Samuelson reviewed. (Exhibit 51, Declaration of Ruben Serna; Exhibit 52, Declaration of Frank Moppins; RT 2355-58.)

In March 1983, during Mr. Morales's trial, Samuelson further falsely testified under oath that he only was receiving a recommendation and not a deal. (RT 2341.) Instead, as we stated earlier, the prosecutor in Mr. Morales's case "was literally begging for the deal. He told the judge he had to have the deal he negotiated because he needed Mr. Samuelson's testimony to get a capital conviction against Mr. Morales and Samuelson would only testify with a deal. . . . [The judge] told Mr. Garber that "the next time" he would not care if Mr. Samuelson "turned in Attila the Hun," he would not agree to give Mr. Samuelson any more deals." (Exhibit 42, Declaration of John C. Schick, Esq., Paragraph 5.)

Samuelson after trial

Samuelson testified against Mr. Morales and was compensated as agreed: He pled guilty to two of the six counts filed against him and was put on formal probation, on condition that he serve one year in county jail. By the time he was sentenced, Samuelson already had been in custody for 205 days.

In a May 10, 1983 letter to the probation department, Samuelson provided elaborate fantasies to explain his 1981 and 1982 crime sprees:

1. "At the time, I was laid off by my employer, and as a result formed my own Co. to retaliate against him for his unfair labor practices. As with any new business, struggle (financial) and lack of business set in."

2. "During this period, there was also a family who I am very close to, that was denied welfare" in a decision that Samuelson deemed "not fair." As a result he "took it upon" himself "to obtain money for groceries and bills." This need to right a wrong, with Mr. Samuelson portraying himself as a 20th-century Robin Hood, was offered to account for his crimes in the Spring of 1981 and Fall 1982. Samuelson declined to provide any information about the identity of this needy family.

The probation officer who read these tales was bound by the court's acceptance of a plea bargain that allowed Samuelson to avoid state prison. However, she recommended that Samuelson be placed on informal rather than formal probation, because the department lacked the resources to supervise a career criminal like Samuelson: "With recent budget cuts within the Probation Department and the resulting loss of staff, it is felt formal supervision should be

afforded to individuals who have not already proven themselves to have the established pattern of criminality that Samuelson does.”

The large favor Samuelson received -- having four of six felony charges against him dismissed -- had no reformative effect on his behavior. In December 1983, the San Joaquin Superior Court ordered Samuelson’s probation revoked and issued a bench warrant. Proceedings on the bench warrant and probation revocation occurred in the mid-eighties with his probation extended until November 1988. The reason: the incorrigible Bruce Samuelson had failed to make any of the required restitution.

Samuelson moved on to commit felony grand theft in Idaho in 1993. (Exhibit 50, Excerpt of Court File in *State v. Samuelson*.) He was sentenced to 10 years probation, but violated his probation a year later, when he was convicted of spousal abuse. (Id.) Samuelson further violated the terms of his probation when he headed towards California without notifying authorities, leaving “a trail of \$1,000.00 in bounced checks prior to his departure from Vancouver, Washington.” (Id.)

During the course of the criminal proceedings in 1993 and 1994, Samuelson testified under oath that he was in a neuropsychiatric institution between 1972 and 1974. (Id.) He was instead a frequent guest of the California Youth Authority at the time. (Exhibit 44, Probation Officer’s Supplemental Report for Bruce Samuelson, quoting letter from the Department of Youth Authority dated 10/22/81.) When Samuelson returned to Idaho and was arrested in 1995, he convinced the court to reinstate his probation by claiming that he had “graduated from Columbia University” and “majored in Microcomputer Applications.” (Id.) These were lies.

When interviewed by the Attorney General’s Office in 1993, Samuelson said that he and Michael Morales conversed fluently in Spanish at times when they were together. Michael Morales cannot speak even a sentence in Spanish. Bruce Samuelson cannot speak Spanish either.

Bruce Samuelson’s life story presents an enduring narrative of deception, opportunism, and deviancy. Because the federal district court relied on Judge McGrath’s 1983 perception that Samuelson was “credible and believable,” Mr. Morales never had the chance to develop and present this evidence in post-conviction proceedings. Now, the Chief Executive of this State has available a body of evidence denied to the judiciary—a complete picture of the career criminal whose words condemned Michael Morales to death is available.

Continuing Prosecutorial Misconduct

The prosecuting officials persist in their shameful efforts to coerce false testimony and suppress favorable evidence. To neutralize the clearly devastating Declaration of Patricia Felix, submitted as Exhibit 30 in support of the Clemency Petition, the authorities dispatched not one, but two investigators to accost Ms. Felix at her place of employment and “bring her in” for questioning. The show of force had the desired effect. Ms. Felix, who was distraught that the clemency declaration publicly exposed her prior drug use, denied signing the declaration and even denied having had *any* contact, including *speaking*, with anyone working on Mr. Morales’s behalf. (District Attorney’s Exhibit 136, Declaration of Patricia Felix, ¶ 2.) The entire declaration is a patent falsehood, as the prosecuting authorities had good reasons to know.

To begin with, the signatures and initials appearing on the prosecution’s Exhibit 136 are in the same handwriting as those on Felix’s declaration submitted as Exhibit 30 in support of the Clemency Petition.

Moreover, during her interview with the prosecution’s investigators, Felix actually *confirmed* the accuracy of the statements in paragraph 22 of Exhibit 30 that she “never got up to look at Rick’s car” and “never heard Mike make *any* statements about *anything* having to do with killing Teri Winchell.” (Exhibit 136, p. 8; emphasis added.) The fact that Felix “never got up” refers to her having been “so wasted” on drugs that she had passed out on the sofa. (Ex. 30 at ¶ 22.) The District Attorney, in claiming the declaration “is an outright forgery” (Opp. at 23), never explains how Mr. Morales’s attorneys could have fabricated a document that not only accurately anticipated Felix’s renunciation of her testimony regarding Mr. Morales’s purported incriminating statements, but that also accurately described her sedentary position on the sofa.

The declaration of Mr. Morales’s investigator, Kathleen Culhane, also demonstrates that the investigator interviewed Felix several times at her home, located at 844 Buena Vista in Stockton, and that she had multiple conversations with her on the telephone. (See Exhibit 56, Declaration of Kathleen Culhane, at p. 1.)

The demonstrable untruthfulness of Felix’s most recent declaration – which the prosecuting authorities should have known was false – eviscerates the centerpiece of the District Attorney’s assault on the credibility of evidence submitted in support of the petition. (See Opp., at 1, 23.)

Similarly, while touting the results of a polygraph examination as vouching for Samuelson's credibility, Deputy District Attorney Charles Schultz personally dissuaded a former District Attorney investigator from admitting that the polygraph he administered to Samuelson was one of the first he had ever conducted. (*See* Ex. 56 at p. 4.) Lee Copeland acknowledged that he had received only a rudimentary "introduction" to the operation of polygraph machines several years before he was called upon to conduct a test on Samuelson. Pressed into service at the last minute, he had no recollection of the procedures and had to follow step-by-step instructions in a training manual. (*Id.*)

By contrast, Francis M. Connolly, a certified polygraph examiner with extensive FBI experience and who had administered in excess of 2,500 examinations, concluded that Samuelson was lying when he denied getting information about the crime from a source other than Morales. (*See* Exhibit 23 in support of the Clemency Petition, Confidential Report by Francis M. Connolly, at 3.) Copeland's admitted lack of experience and training would have demonstrated that the results of the polygraph purportedly administered to Samuelson in early 1982 provided no basis for confidence in the truthfulness of Samuelson's testimony. Copeland, however, refused to sign a declaration after receiving a voicemail message from a person identifying himself as "Chuck Schultz at the San Joaquin District Attorney's Office."

The District Attorney has never questioned Francis M. Connolly's expertise or the accuracy of his conclusions that Samuelson was actually untruthful when he denied obtaining information about the case from sources other than Mr. Morales. The efforts to muzzle Copeland reflect the District Attorney's awareness that his qualifications could not withstand close scrutiny, and further reflect an effort to prevent Mr. Morales from having a fair clemency proceeding.

Conclusion

Contrary to the District Attorney's suggestion, there is no such thing as "an 'ordinary' murder." (Opp. at 1.) All homicides are uniquely extraordinary events occasioning immeasurable grief. Whether any such case compels the taking of a life in response is a question circumscribed by law. That decision is in turn reviewed at several levels, which ultimately go beyond judges constrained by a cold record, and includes the expansive power of the Executive Branch to insure justice. At the stage Mr. Morales now finds himself, there is one shining truth, and that is that the jury to which he "conceded his guilt 23 years ago" (Opp. at 1) and the judge who ultimately sentenced him to death know that he never should have been sentenced to die.

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