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**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**FEBRUARY 7, 2006**

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**Volume 4**

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**Attorneys for MICHAEL A. MORALES**

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**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 40: District Attorney's Position Sheet on Bruce Samuelson**



1/18/83 Samuelson on probation  
Burglary, Felony # 32310

VICKIE WETHERELL  
PROBATION OFFICER  
SAN JOAQUIN COUNTY  
COURTHOUSE-222 E. WEBER  
STOCKTON, CA. 95202

JUVENILE  
5TH FLOOR - ROOM 607  
209-944-2641

ADULT  
5TH FLOOR - ROOM 501  
209-944-2610  
444-3571

TRIC ATTORNEY'S POSITION SHEET

DEFENSE ATTY

Recommend local - D is a key witness  
in prob Michael Morale 187 w/ spouse 12  
SU BL re 1/22/83

II. INITIAL SUPERIOR COURT EVALUATION: DATE INFO FILED: 12-24-82  
5-2-4-83

V. PRE-TRIAL CONFERENCE: DATE \_\_\_\_\_ JUDGE Sims D.A. 189 DEF Shaw  
D.A. POSITION 10851 + 470 - local + National - AM  
to no testimony against Michael Morale

DEFENSE POSITION

COURT'S POSITION Local

SUBSEQUENT NEGOTIATIONS OR CHANGE IN POSITION

PLEA: DATE 4-10-85 D.A. Willitt  
INDICATED JUDGMENT V.O.P. Recommend 30 days comm. to into  
D says he can pay rest in 2 mt. b/c  
boss will co-sign note.  
D.A. CONCURRED: YES \_\_\_\_\_ NO \_\_\_\_\_ COMMENT \_\_\_\_\_

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 41: Letter from Bruce Samuelson Handed to Prosecutor  
Bernard Garber on December 6, 1982**

Mr. Barber:

In exchange for my testimony  
in the Mosher case, which will  
guarantee a ~~max~~ @ conviction in special  
circumstances, I feel the following is a  
fair ~~and~~ agreement;

- ① Immediate placement on the Witness Protection Program
- ② Release on O.R. until <sup>case</sup> goes to trial & I testify. Upon completion of my testimony all current, pending charges be dropped w/ no further prosecution.
- ③ Place to stay w/ phone for 3-4 mos.
- ④ Job placement & money to support during 3-4 mos or until I ~~am~~ start getting reg. pay from Job.
- ⑤ Car/Automobile
- ⑥ New Identification
- ⑦ Eye Exam & Glasses

In addition to testimony, I have further testimony  
in the James Mahoney case, and I believe

that I can assist you in getting  
Dreyfus's indictments, against some of North  
Stalton's more large volume dealers.  
What I have to tell you in regards to  
Morales will be quite a bit more than you  
expected.

ADULT IN CUSTODY	<b>STOCKTON POLICE DEPARTMENT</b> SUBSEQUENT REPORT	4 CRIME REPORT NO
JUVENILE IN CUSTODY		81-732
TRIAL PREPARATION REPORT	DEC 17 1982	5 PAGE 1 OF
SECTION	7 <input type="checkbox"/> JUVENILE INVOLVED	9 <input type="checkbox"/> CLEARED BY ARREST
7 261 PC	8 <input type="checkbox"/> RECLASSIFIED	10 <input type="checkbox"/> EXCEPTIONAL CLEARANCE
NAME	11 <input type="checkbox"/> UNFOUNDED	

13 ADDRESS	<i>Holmes</i>
------------	---------------

15 RACE	16 SEX	17 AGE	18 DATE OF BIRTH	19 HT.	20 WT.	21 HAIR	22 EYES	23 BUILD
15	16	17	18	19	20	21	22	23

25 STOCKTON NO.	26 ARREST NO.	27 CHARGE
25	26	27

29 RACE	30 SEX	31 AGE	32 DATE OF BIRTH	33 HT.	34 WT.	35 HAIR	36 EYES	37 BUILD
29	30	31	32	33	34	35	36	37

39 STOCKTON NO.	40 ARREST NO.	41 CHARGE
39	40	41

43 MAKE	44 MODEL	45 BODY STYLE	46 COLOR/COLOR	47 LICENSE NO.	48 STATE	49 EXP. DA
43	44	45	46	47	48	49

51 VEHICLE YES <input type="checkbox"/>	52 VEH DISPOSITION
HOLD NO <input type="checkbox"/>	

ARRATIVE

*MAILED COPY*

On 12-6-82 Bruce Allan SAMUELSON W/M/DOB 12-17-60, contacted Deputy DA GARBER. He advised that he was in the County Jail and had some information on the Terri WINCHELL case. SAMUELSON was arrested in Kingman, Ariz. in possession of a veh. stolen from Stockton. It apparently contained a check protector and checks from a recent burglary in Stockton.

... was returned to Stockton from Kingman, Ariz. on 11-10-82 on charges of 10851 VC, 496 PC, and three (3) counts of 470 PC. He appeared in Muni Ct. for arraignment on 11-12-82, at which time he indicated to the Court that he was going to represent himself on these criminal charges.

On 11-19-82 a Probation Violation Hold was placed against him at the County Jail by San Joaquin County Probation.

On 12-9-82, R/O went to San Joaquin County Jail at 1920 HRS and talked briefly with Bruce SAMUELSON. He advised that he is housed in the Control Cell area at the Jail, Cell #12. That in this same Control Cell area was housed, Michael MORALES. He advised that he and MORALES have talked, that MORALES has been asking him legal questions since he is defending himself. He advised that he and MORALES have talked and MORALES has told him about how that he (MORALES) had killed Terri WINCHELL. Stated MORALES told him about the entire incident, fact about ORTEGA picking up Terri, going to the place MORALES was staying where he picked up MORALES and then drove WINCHELL about 20 miles from Stockton, where he strangled her with a belt, hit her in the head with the hammer, then drug her into the grapevineyard, where he raped her and then stabbed her with a kitchen knife he had brought from the house.

DATE/TIME OF REPORT	55 PROPERTY CARD NO	56 REPORTING OFFICER	57 APPROVED BY
12-10-82 2100		Sgt. Sanford	<i>(Signature)</i>

ADULT IN CUSTODY

JUVENILE IN CUSTODY

TRIAL PREPARATION REPORT

SECTION

# STOCKTON POLICE DEPARTMENT SUBSEQUENT REPORT

81-732

JAN 25 1983

PAGE 1 OF

JUVENILE INVOLVED       CLEARED BY ARREST       UNFOUNDED  
 RECLASSIFIED       EXCEPTIONAL CLEARANCE

7-261 PC  
S NAME

13 ADDRESS

Terri WINCHELL

*Clay Holman*

15 RACE	16 SEX	17 AGE	18. DATE OF BIRTH	19. HT.	20. WT	21 HAIR	22 EYES	23 BUILD
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RICK ORTEGA

ADDRESS

25 STOCKTON NO

26 ARREST NO

27. CHARGE

SUSPECT #2: NAME (FIRST, MIDDLE, LAST)

29 RACE	30. SEX	31 AGE	32. DATE OF BIRTH	33. HT.	34. WT.	35 HAIR	36 EYES	37 BUILD
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MICHAEL MORALES

ADDRESS

39. STOCKTON NO.

40. ARREST NO

41 CHARGE

42. YEAR	43 MAKE	44. MODEL	45 BODY STYLE	46 COLOR/COLOR	47. LICENSE NO	48 STATE	49 EXP DATE
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ADDITIONAL VEHICLE IDENTIFIERS (DAMAGE, CHROME WHEELS, ETC)

51 VEHICLE YES   
HOLD. NO

52. VEH. DISPOSITION

NARRATIVE

1-5-83

**D.A. COPY**

Deputy DA GARBNER turned over to R/O an envelope, addressed to B. GARBNER. It was handed to Mr. GARBNER by Bruce SAMUELSON on an appearance in Huni Ct. Copy of this letter has already been supplied to the defense by Mr. GARBNER. Same booked into Ev. on PR A29474.

DATE/TIME OF REPORT  
1-5-83 1215

55 PROPERTY CARD NO  
A29474

56 REPORTING OFFICER  
Sgt. Sanford

57 APPROVED BY

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 42: Declaration of John C. Schick, Esq.**



1 Garber had cut with Mr. Samuelson, and Mr. Garber had to push very hard with the judge to gain  
2 approval for the deal. He was not pulling any punches or holding back how strongly he felt that he  
3 had to have the deal. Mr. Garber was literally begging for the deal. He told the judge he had to have  
4 the deal he negotiated because he needed Mr. Samuelson's testimony to get a capital conviction  
5 against Mr. Morales and Samuelson would only testify with a deal. I will never forget Judge Saiers'  
6 very colorful comment after he finally approved the deal. He told Mr. Garber that "the next time" he  
7 would not care if Mr. Samuelson "turned in Attila the Hun," he would not agree to give Mr.  
8 Samuelson any more deals.

9 6. When Judge Saiers finally approved the deal, there was a clear understanding that Mr.  
10 Samuelson's sentence would be limited to a year in the County Jail, rather than exposing him to any  
11 time in state prison. After the deal was approved, Mr. Samuelson testified at Mr. Morales's trial.

12 7. Neither Mr. Samuelson nor Mr. Garber nor anyone else involved in the Morales trial  
13 requested that I be present for Mr. Samuelson's testimony. Lawyers often attend the court  
14 proceeding in which their client is testifying should any issues arise concerning the client's  
15 constitutional rights. Because Mr. Garber was essentially acting as Mr. Samuelson's attorney, I did  
16 not attend Mr. Morales's trial or observe Mr. Samuelson during his testimony.

17 8. When Mr. Samuelson was arrested and housed in the county jail in late 1982, the jail  
18 was extremely crowded. The cells were so overcrowded that when inmates were first placed into  
19 custody they had to sleep on the floor. They competed first for mattresses and floor-space, and then  
20 for bunks. An inmate's living conditions could gradually improve as he gained "seniority" the longer  
21 he was confined. There was not enough space to allow for single-celling of prisoners, and such  
22 accommodations would not have been routine for a pre-trial detainee charged with non-violent  
23 property offenses.

24 9. I have recently been provided with and reviewed an investigation report by Lee  
25 Copeland, a former San Joaquin District Attorney investigator, which indicates that on February 7,  
26 1983, Mr. Garber requested that one of his investigators administer a polygraph test to Mr.

1 Samuelson. According to the report, on February 8, 1983, at 9:30 a.m., Mr. Samuelson was brought  
2 to the District Attorney's Office where Copeland administered a polygraph. We appeared in Superior  
3 Court on Mr. Samuelson's two cases on that same date. I was not informed about the polygraph  
4 examination of my client and was not present for it. My knowledge of it comes from the report I  
5 reviewed.

6 10. On Friday, January 27, 2006, I received a telephone message from a reporter for CBS  
7 News about the Morales case. The return telephone number was cut off and I could not return the  
8 call. The following day, an article appeared in the local newspaper about Mr. Morales's clemency  
9 petition. The phone call and article made me think back on and recall my representation of Bruce  
10 Samuelson, the details of which are set forth above. On Monday, January 30, 2006, I contacted a  
11 colleague at the Habeas Corpus Resource Center and related these details in summary fashion. The  
12 following day, a representative for Mr. Morales's current counsel, David Senior, got in contact with  
13 me and we met a couple of days later.

14 The foregoing is true and correct and executed under penalty of perjury under the laws of the  
15 United States and the State of California on February 5, 2006.

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19 \_\_\_\_\_  
20 JOHN C. SCHICK  
21  
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27

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 43: Transcript of Municipal Court Proceedings of December 14,  
1982 in *People v. Samuelson*.**

12-40

**ORIGINAL**

FILED  
1982 DEC 21 PM 4:36  
BY *Nancy [unclear]*  
DEPUTY

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IN THE MUNICIPAL COURT FOR THE STOCKTON JUDICIAL DISTRICT  
COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA

---o0o---

The People of the  
State of California,

vs.

BRUCE ALLEN SAMUELSON,

Defendant.

33852

Department A

---o0o---

The above-entitled matter came on to waive preliminary  
examination on the 14th day of December, 1982, at the hour of  
2:55 O'clock P.M., thereof, before HONORABLE THOMAS B. TEAFORD,  
Judge of the Municipal Court for the Stockton Judicial District  
Stockton, San Joaquin County, California; the People being  
represented by BERNARD GARBER, Deputy District Attorney, County  
Courthouse, Stockton, California; and the Defendant being  
personally present upon the court, but not represented by  
counsel.

---

THE CLERK: Bruce Allen Samuelson to waive  
preliminary examination. The defendant is in pro per.

MR. GARBER: May we approach the bench, Your  
Honor?

*J. [unclear]*

1 THE COURT: Yes.

2 (Discussion at bench outside the hearing of the Reporter.)

3 THE COURT: Mr. Samuelson, you're representing  
4 yourself in this case, is that correct, you don't have a lawyer?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you think you understand what  
7 was discussed at the bench?

8 THE DEFENDANT: Yes.

9 —  
10 THE COURT: Okay. Mr. Samuelson, I want to make  
11 sure that you understand what I'm telling you now. If it isn't,  
12 you stop me and I'll explain it to you again, try to use other  
13 words.

14 You're charged with several charges here, six, to be exact,  
15 several different felonies. What we discussed at the bench  
16 was that you were willing to waive your right to have a  
17 preliminary examination and be held to answer in Superior Court,  
18 then in exchange for your doing that you've agreed to enter  
19 a plea in the Superior Court to one count of forgery and one  
20 count of auto theft, and that if they file all these charges  
21 against you in Superior Court, you would only be required to  
22 plead to one count of forgery and one count of auto theft.

23 The Judge in Superior Court would place you on probation  
24 for a number of years; and that you would receive no more than  
25 one year in the county jail as a condition of that felony  
26 probation.

27 THE DEFENDANT: (Affirmative nod.)

28 THE COURT: If the Superior Court Judge in  
Superior Court decides after reading the probation report that

1 he doesn't wish to give you a year in the county jail, but wanted  
2 to send you to state prison or give you some harsher treatment  
3 than that, you would have a right to return here to this court  
4 and to have a preliminary examination on these charges, so you  
5 would be right back in the position you're in right now.

6 You also understand that once you do whatever time the  
7 Judge in Superior Court tells you to do as a condition of  
8 probation, if you violate that probation, nobody is making any  
9 promises to you that you wouldn't be required possibly to go  
10 to state prison if you violated that probation.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. The other thing that I want  
14 you to understand is that the preliminary examination that  
15 you're waiving or giving up is your right to have me determine  
16 after listening to witnesses that you're entitled to cross-  
17 examine and to see and hear here in court, for me to determine  
18 whether or not there's probable cause to believe that these  
19 crimes were committed and whether or not there's probable cause  
20 to believe that you committed them.

21 It's an important right you shouldn't give up lightly,  
22 it's your chance to see the witnesses up here on the witness  
23 stand, for you to question those witnesses, and you should  
24 understand exactly what you're giving up.

25 Do you think you do?

26 THE DEFENDANT: Yes.

27 THE COURT: Okay. Now, it's also very important  
28 that I understand whether or not there have been any other

1 promises made to you whatsoever.

2 Have there been any promises made to you other than what I  
3 have discussed right here?

4 THE DEFENDANT: No.

5 THE COURT: Nobody has made any threats to you  
6 in order to get you to waive this preliminary examination, have  
7 they?

8 THE DEFENDANT: No.

9 —  
10 THE COURT: All right. Is that the state of the  
11 negotiations, Mr. Garber?

12 MR. GARBER: Yes, Your Honor.

13 THE COURT: Okay. So then, Mr. Samuelson, do  
14 you wish to at this time waive your right to a preliminary  
15 examination on these charges that we have discussed here that  
16 is in this complaint, that is the amended complaint against you?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. Then the defendant--and the  
19 bail, the other thing that was discussed at the bench was that  
20 bail would remain the same. The bail schedule is set at \$10,000  
21 and it will remain that, and you are to appear in Superior Court,  
22 to be held to answer to the Superior Court for December 28th  
23 at 8:45.

24 If at any time you wish to have an attorney appointed to  
25 represent you, all you need to do is request that in whatever  
26 court you're in. Do you understand that?

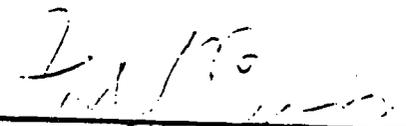
27 THE DEFENDANT: Yes.

28 THE COURT: Okay. That will be the date that  
you appear in Superior Court, two weeks from today. Okay.

1 STATE OF CALIFORNIA, )  
2 COUNTY OF SAN JOAQUIN.) SS.

3 I, FRED S. BERRY, Official Reporter for the Municipal Court  
4 for the Stockton Judicial District, County of San Joaquin, State  
5 of California, do hereby certify:

6 That I was present in court at the time of the hearing  
7 of the foregoing matter which was heard at the time and place  
8 set forth above; that I took down in stenograph shorthand notes  
9 all of the proceedings had; that I thereafter transcribed the  
10 said notes into longhand typewriting, the above and foregoing  
11 being a full, true and correct transcription thereof.

12  
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14 \_\_\_\_\_  
15 Official Reporter

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**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 44: Probation Officer's Supplemental Report for Bruce  
Samuelson, filed December 1982**

FILED

1982 DEC -2 PM 4:14

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

PEOPLE OF THE STATE OF CALIFORNIA

vs.

NO. 32310  
A-28286

BRUCE ALAN SAMUELSON  
Defendant

PROBATION OFFICER'S  
SUPPLEMENTAL REPORT

The Court's attention respectfully is directed to the information on file in this matter. On July 29, 1981, the defendant entered pleas to two counts of a violation of Section 459 of the Penal Code, Second Degree Burglary, a felony. Two other counts of a violation of Section 459 of the Penal Code were dismissed at that time.

On October 1, 1981, the defendant was committed to the California Youth Authority for two years as to Count II. As to Count I, a California State Prison commitment of three years was suspended for five years on the condition that the defendant obey all laws and pay restitution.

By letter from the Department of the Youth Authority dated October 22, 1981, the Court was advised the Department of the Youth Authority was unable to accept the defendant's case because, "Mr. Samuelson has an extensive history of delinquent and criminal behavior dating back to 1972,...."

On November 4, 1981, Samuelson was placed on formal probation for a period of five years for both counts to which he had entered pleas, under specific terms and conditions which include the following:

"You are to obey all laws that apply to your personal conduct."

It is alleged Samuelson is in violation of the above condition of his probation grant in the following manner.

Samuelson currently is in custody in the San Joaquin County Jail on a Complaint filed November 12, 1982, alleging one count of a violation of Section 10851 of the Vehicle Code, The Theft and Unlawful Driving or Taking of a Vehicle, a felony, two counts of a violation of Section 496 of the Penal Code, Receiving Stolen Property, a felony, and three counts of a violation of Section 470 of the Penal Code, a Forgery a felony.

24

BRUCE ALAN SAMUELSON

The circumstances giving rise to the above charges, according to Stockton Police Department Crime Reports, indicate the defendant was arrested in Kingman, Arizona, in a vehicle that had been reported as stolen from Classic's Limited Used Cars in Stockton. To authorities, Samuelson acknowledged knowing the car's stolen status but denied responsibility for the original theft.

He also denied any involvement in the burglaries during which checks and a check protector were taken but admitted obtaining these items from a friend and subsequently passing a minimum of 13 to 14 checks with none of them issued for less than \$300.

SUMMARY AND EVALUATION

The defendant has been supervised by the undersigned since June of the current year when he was released from custody. Total restitution owing is \$1,711.78, with monthly payments of \$50. Samuelson has failed to effect any payments on his financial obligation. He failed to report to the Probation Department in the months of July and August. When he reported in September he indicated he had failed to report out of neglect.

The aforementioned letter to the Court from the Department of the Youth Authority dated October 22, 1981, made it obvious that Samuelson was a poor risk for a grant of supervised probation within the community. By all of the defendant's actions as aforementioned, he has indeed proved them to have judged him correctly. Unfortunately, citizens within the community have again suffered a large dollar loss at the hands of the defendant while he continued to come into conflict with the law, just as he has done for the past ten years.

RECOMMENDATION

It is respectfully recommended the defendant be brought before the Court to show cause, if any he has, why he should not be found in violation of probation and committed to the Department of Corrections.

BRUCE ALAN SAMUELSON

I certify under the penalty of perjury that I prepared this report and that the same is true of my own knowledge, except as to those matters therein stated on information or belief.

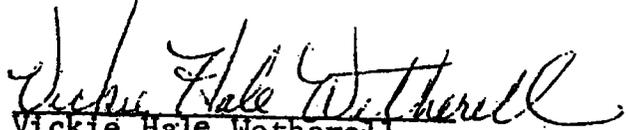
DATED: November 23, 1982 at Stockton, California.

Respectfully submitted,

WILLIAM L. JONES  
CHIEF PROBATION OFFICER

Approved by:

  
Karl H. Hurst  
Probation Officer III  
Adult Division

  
Vickie Hale Wetherell  
Probation Officer II  
Adult Division

as

November 23, 1982

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 45: Probation Officer's Report for Bruce Samuelson,  
filed May 26, 1983**

RECEIVED  
MAY 23 1983

RALPH W. EPPERSON, CLERK  
*Bund...*  
Deputy Clerk

FILED

1983 JUN -3 PM 4:48  
RALPH W. EPPERSON, CLERK

BY DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN  
HON. K. PETER SAITERS Judge

PEOPLE OF THE STATE OF CALIFORNIA  
vs.

PROBATION OFFICER'S REPORT

No. 33960  
A-28286

BRUCE ALLEN SAMUELSON Defendant

~~AKN~~ TN Same as above Ethnic White

Sex Male DOB 12-17-60 Age 22 Birthplace Glendale, Ca. Citizen Yes

Address 1029 N. Hunter St., #6, Stockton, Ca.

Marital Single No. of Dep. 0 Occupation Laborer

Employer N/A Income 0 Source N/A

D.L. No. N8875080 S.S. No. 560-25-3468 C.I.I. No. A06157119

FBI No. 0772536W1 No. Stockton #140385

Prior Convictions 3 Misdemeanors 1 Felony 2 Prob/Parole Viol. 0

Offense(s) Violation of Section 10851 CVC, Vehicle Theft; violation of Section 470 PC, Forgery, both felonies

Offense Date 11-3-82 Arresting Agency Arizona H.P.  
10-22-82 T.O.T. SPD Date Arrested 11-3-82

How Convicted Plea of Guilty Accomplices None

Days in Jail Awaiting Disposition 205 OR N/A Bail N/A

Referral Date 4-11-83 P&J Date 5-26-83 Attorney John Schick

RECOMMENDATION:  
Informal Probation

REPORT SUBMITTED BY:  
Vickie Hale Wetherell  
Probation Officer II  
Adult Division

*4*

Preface: The present offense section of this presentence report was written utilizing information contained in San Joaquin County District Attorney's file F-1629-82.

#### PRESENT OFFENSE

Between the dates of October 22, 1982 and October 24, 1982, the offices of Paul E. Hermann, 5404 North Pershing Avenue, Stockton, California, were burglarized. Among items taken were a number of blank checks, a check protector and a typewriter.

On November 3, 1982, the defendant, Bruce Allen Samuelson, was arrested in Kingman, Arizona, when it was determined the vehicle he was driving had been stolen from Classics Limited in Stockton, California, on October 23, 1982. Inside of the vehicle were items that had been taken when the offices of Paul E. Hermann had been burglarized.

Subsequently, a number of the checks taken during the burglary surfaced and were determined to have been forged. The checks were made payable to the defendant.

Samuelson was extradited to California. During questioning, he denied any involvement in the burglary which checks and a check protector were taken but admitted obtaining these items from a friend and subsequently passing a minimum of 13 to 14 checks with none of them issued for less than \$300.

#### COLLATERAL INFORMATION

On November 12, 1982, an Amended Complaint was filed in the Stockton Judicial District charging the defendant with one count of a violation of Section 10851 of the Vehicle Code, The Theft and Unlawful Driving or Taking of a Vehicle, a felony, (victim Classics Limited); Count II, a violation of Section 496 of the Penal Code, Receiving Stolen Property, a felony, (victim Classics Limited); Count III, a violation of Section 496 of the Penal Code, Receiving Stolen Property, a felony, (victim Paul Hermann); Count IV, a violation of Section 470 of the Penal Code, Forgery, a felony, (victim Bank of Stockton, Paul Hermann and Fry's); Count V, a violation of Section 470 of the Penal Code, Forgery, a felony, (victim Bank of Stockton, Paul Hermann and Food Bank); Count VI, a violation of Section 470 of the Penal Code, Forgery, a felony, (victim Bank of Stockton, Paul Hermann and Fry's).

On February 2, 1983, a preliminary examination was held. Thereafter, an Information was filed charging the defendant with one count of a violation of Section 10851 of the California Vehicle Code, The Theft

and Unlawful Driving or Taking of a Vehicle, two counts of a violation of Section 496 of the Penal Code, Receiving Stolen Property, and two counts of a violation of Section 470 of the Penal Code, Forgery, all felonies.

On April 11, 1983, the defendant pled guilty to one count of a violation of Section 10851 of the California Vehicle Code and one count of a violation of Section 470 of the Penal Code.

Pending Matters: According to the defendant, due to other forged checks he cashed during the time span issue of this presentence report, warrants have been issued for him out of Roseville, Sacramento and Modesto.

Indicated Judgment: The Minute Order in this matter dated April 11, 1983, reflects an indicated Judgment of three years, eight months in state prison stayed for five years; formal probation; one year county jail; restitution on all counts.

Time in Custody:

<u>Facility</u>	<u>From</u>	<u>To</u>	<u>Total</u>
San Joaquin County Jail	11-3-82	5-26-83	205 Days

DEFENDANT'S VERSION

The defendant was interviewed by the undersigned in the San Joaquin County Jail on May 10, 1983. At that time, it was decided he would prepare a written statement which now has been received by the undersigned and is appended for the Court's perusal.

The defendant has declined to supply the name of this family in order that they may be contacted for verification that funds really were given to them by the defendant. The Court may also wish to take note that nowhere in Samuelson's three page statement setting forth he committed his crimes only in the name of charity to a family befallen with financial hardships, does he indicate any compassion for the various human beings whom he victimized by his acts, leaving them with large financial losses.

BACKGROUND

This twenty-two-year-old defendant is a native of Glendale, California and the second oldest of four issue born to the marriage of Adrian Samuelson and the former Evelyn Bushor. The marriage remained intact from 1959 to 1964. About the time of Mrs. Samuelson's separation from the defendant's father, she committed herself to Camarillo State Hospital for 90 days, due to her inability to cope with reality at

that point. She then left the family. According to the defendant, he last saw his mother in 1963. To his knowledge, she currently lives in Appleton, Wisconsin, and is engaged in her fourth marriage.

After the defendant's parents divorced, his father took custody of the children. He was obliged to place them in a foster home for over a year, when he contracted a serious case of hepatitis. From 1969 to 1973, Samuelson's father was married to Angela Lynch. During the marriage, she was involved in an automobile accident which left her debilitated and unable to care for the children in the family, including her own two children. Shortly after this, she divorced the defendant's father.

Probation Department records reflect that the defendant's father abused alcohol and placed high expectations on the children, although he frequently was not around to supervise their activities. He currently is on probation to the undersigned for a violation of Section 242 of the Penal Code, Battery, a misdemeanor, (two counts).

Education: The defendant withdrew from Lincoln High School in Stockton, California, in 1977. He acquired a high school diploma which bears the school's name after completing the balance of his credits through O.H. Close School for Boys at the California Youth Authority. According to Samuelson, he received A's and B's while a student.

Samuelson also reported completing 48 units at San Joaquin Delta College locally, earning a 3.8 grade point average. While detained with the California Youth Authority, he reportedly earned a certificate in volume cooking.

Employment: Previous employment undertaken by the defendant was as a landscaper for Bill Laughlin, as a tractor driver for his father, as assistant head cook for Smorgy Boys in Stockton, as a laborer for Centurian Glass and he has been self employed in a glass business.

Financial: Samuelson did not report any assets. As debts, he indicated an amount owing for prescription glasses and financial obligations for the checks he has written.

Marital: The defendant did not report any marriages, common-law relationships, or children.

Military: Samuelson has had no previous military service.

BRUCE ALLEN SAMUELSON

Health: The defendant underwent elbow surgery in 1978 after an automobile accident and was re-injured several years later while playing basketball. He stated at the present time he is being given tylenol for back pain.

Psychological: Samuelson recalled that in 1976, he participated in family counseling for an approximate time span of two months with a counselor whose name he could not recall.

While involved with the Juvenile Justice System, the defendant indicated he was directed to attend counseling with Mary Sue Ittner.

Samuelson related he is desirous of engaging counseling services upon his next release. Jail Social Worker Jerry Heller will assist him with a referral.

Prior Probation Information: On November 4, 1981, after having entered guilty pleas to two counts of a violation of Section 459 of the Penal Code, Burglary In the Second Degree, a felony, Samuelson was placed on five years formal probation, after being rejected by the California Youth Authority. Both counts involved victim Paul Hermann, who is also a victim in the present offense.

The undersigned supervised Samuelson commencing in June 1982 upon his release from local incarceration. He was to report to the undersigned monthly in person and effect restitution in the amount of \$1,711.78. Samuelson failed to report in the months of July and August. He reported in September in response to a come-in letter. In October he telephoned and claimed he was going to be admitted to Stanford Medical Center for chemotherapy on two tumors. The following month, the defendant was in custody for the present matters. He failed to effect even one payment toward his restitution obligation.

Prior Parole Information: The defendant was placed on parole through the California Youth Authority October 2, 1979. At the time he committed the offenses for which he currently is being supervised by the San Joaquin County Probation Department, he was still on California Youth Authority parole. When the present report was prepared in his previous conviction, parole agent James Pickering had expressed the opinion Samuelson should be recommitted to the California Youth Authority as he may have a chance to avoid prison if he was cooperative with the programs offered by that agency. It was Pickering's opinion Samuelson was amenable to treatment.

As aforementioned, the California Youth Authority rejected Samuelson as a commitment. Their reason was an "extensive history of delinquent and criminal behavior dating back to 1972."

BRUCE ALLEN SAMUELSON

Statement of Victim: A reply received from Classics Limited reflected the following information. Their insurance company paid \$3,822.50, and Classics Limited suffered a loss of \$200. Further, the insurance company cancelled the policy. The cost to replace the policy with a new company because of the loss and three other losses increased the premium in the amount of \$8,000.

Victim Paul Hermann agreed to submit an itemized list of his losses on April 21, 1983. To date, it has not been received.

Remarking on the event, he noted this to be the third time Samuelson had victimized his establishment. The numerous checks recovered (from various business firms) were clients in the family of his management firm. He spoke adamantly of the trauma experienced in dealing with the victims in the forgeries and the banks. Check replacement was time-consuming, and stop payment orders caused endless problems with the banks.

In a contained and reasonable demeanor, Mr. Hermann suggested that society should be protected from this person by whatever means necessary.

Drug/Alcohol Use: The defendant reported no involvement with alcohol or illegal narcotics.

Prior Juvenile Record: Records of the San Joaquin County Probation Department reveal the defendant to be known to them as a juvenile offender as reflected on the appended sheet.

Prior Adult Record: Records of the California Bureau of Criminal Identification and Investigation and the San Joaquin County Probation Department reveal the defendant to be known to them as reflected on the attached sheet.

SUMMARY

The defendant was arrested in Kingman, Arizona, on November 3, 1982, in a vehicle that was determined to have been stolen from Classics Limited in Stockton, California. He had in his possession property taken from a recent burglary of a Stockton office building owned by Paul Hermann. Samuelson later forged numerous checks taken from the Hermann business.

EVALUATION

Samuelson has come into conflict with the law for the past ten years. Juvenile Court wardship, a commitment to the California Youth Authority and a grant of formal probation as an adult had no positive effect on his behavior, as he has continued to involve himself in criminality.

Although the Court has entered into a plea bargain and stated its intentions to place the defendant on formal probation, a grant of informal probation with a suspended state prison sentence will be recommended. 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.

Circumstances in Aggravation:

Facts Relating to the Crime:

1. Multiple victims are involved;
2. By the defendant's own admission, the crime was planned.

Facts Relating to the Defendant:

1. The defendant's prior convictions as an adult total three, two of which are felonies, and his adjudications of commissions of crimes as a juvenile were numerous and of increasing seriousness;
2. The defendant was on probation when he committed the crime;
3. The defendant's prior performance on probation was unsatisfactory, as he failed to report on a regular basis and failed to effect restitution.

Circumstances in Mitigation:

Facts Relating to the Crime: None.

Facts Relating to the Defendant:

1. The defendant acknowledges his wrongdoing.

RECOMMENDATION

It is respectfully recommended the Court pronounce and suspend a state prison sentence and place the defendant on informal probation for a period of five years under the following terms and conditions:

1. That the defendant serve a period of incarceration in the San Joaquin County Jail commensurate with the Court's determination of the seriousness of this matter;
2. That the defendant effect restitution to the San Joaquin County Treasurer's Office in an amount and manner to be determined by the District Attorney's Office;
3. That the defendant submit to the following kinds of search and seizure, at any time of the day or night, by any peace officer or probation officer, without the requirement of probable cause or defendant's consent or a search warrant:
  - a. Of his person;
  - b. His place of residence or temporary abode;
  - c. Vehicle registered to him or which he is driving at the time;
  - d. His personal effects;

*John Carlson*

4. That during the term of his probation, the defendant will not possess any blank checks or maintain a checking account, *without prior approval of Probation Office*

Respectfully submitted,

WILLIAM L. JONES  
CHIEF PROBATION OFFICER

Approved by:

*R. H. Hurst*  
K. H. Hurst  
Probation Officer III  
Adult Division

*Vickie Hale Wetherell*  
Vickie Hale Wetherell  
Probation Officer II  
Adult Division

ah

May 20, 1983

Read and considered:

DATED:

JUDGE OF THE SUPERIOR COURT

SAN JOAQUIN COUNTY PROBATION DEPARTMENT

PRIOR RECORD

BRUCE ALLEN SAMUELSON

DATE CT. #	ARRESTING AGENCY	CHARGE	DISPOSITION
3-22-81 M-89623	PD STOCKTON	484 PC 459 PC 459 PC 272 PC 272 PC	4-17-81: NO CONTEST, 484 PC, MISD., 180 DS/150 DS JL SS 3 YRS W/O SUPERV; OAK (1ST MISD.)

Defendant Samuelson, aged twenty, was in the company of a thirteen-year-old male and a seventeen-year-old male. Together, they entered the New Deal Market at 5757 North Pacific Avenue in Stockton and placed a variety of items, including four condoms, into several shopping bags. Upon leaving the store without paying for the items, they were apprehended by security personnel. Defendant Samuelson told Stockton Police that he lost his job and was feeling bored. He was living at a half-way house of the California Youth Authority in Stockton and was a "foster brother" to the thirteen-year-old male.

5-28-81 32310	PD STOCKTON	459 PC 4 CTS.	7-29-81: PG TWO CTS. 459 PC, SEC. DEG, TWO CTS. DISM IN VIEW OF PLEA; 11-4-81: FIVE YRS FORM. PROB. 365 DS JL, RSTN. (1ST AND 2ND FELONIES)
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During the weekends prior to May 18, 1981 and May 25, 1981, the defendant admittedly burglarized the businesses of Paul Hermann, taking blank checks which he forged and cashed at several super-markets.

## Defendant's Version:

That between 10-20-82 & 11-03-82, I went to various stores, financial institutions, etc. throughout Stockton, Modesto, Sacramento, Roseville, Reno, Lake Tahoe, & Carson City, cashing forged checks ranging from \$175<sup>00</sup> - \$9800<sup>00</sup>, using different reasons for; escalating amounts; work/residence difference of location; type of work done by Co.'s.

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) & lack of business set in.

During this period, there was also a family who I am very close to, that was denied welfare, even though the man of the house had been laid off, & his wife was only making \$125<sup>00</sup> every two weeks. They have 3 children who are more like sisters & a brother, than my own sisters & brother.

I did not like the decision given them from Soc. Sec. (welfare) because it was not fair. If he (the father) had never worked, or was a criminal, I could understand it, maybe. But to deprive the whole family, was immoral & unnecessary.

So, I took it upon myself to obtain money for groceries, & bills. I don't feel that it's right to let someone continually borrow money from her employer, so she can buy milk, ground beef, bread, & eggs, when other's get fat welfare checks that pay for their drug/alcohol habits. This family is a very Christian oriented / life styled, family. They knew nothing of where or how I was securing the money & groceries. When asked, I lied & told them it was from working on cars, for friends. If I had told the truth, they would still be fighting a losing battle. I helped paint another house (managed by the same Co., as theirs) so they would not be evicted.

Since the bureaucrats of S.I.Co. & the State of California, decided that, prior to unemployment of the

husband, the family was doing "ok", therefore justifying the denial of Welfare, Medi-Cal, or any assistance to a family that was in need, I took it upon myself to do it.

After 4 months of incarceration, I told this family what I had done. Even though it was wrong, they understood we've talked about it, and I know I should have, if I wanted to help so much, gone to the bank & got a loan.

My last conviction was from basically the same crime (burg, but forgeries from within) but nobody ever knew why I did that. Well, it was for the same family, the same reasons, almost, as follows.

I love  
them all,  
very much,  
would do  
anything for  
them!

One thing. This family helped me tremendously upon my release from C.P.A., & I felt somewhat responsible to help them out, since ~~no~~ no one else would. I let my emotions control my anger & chose to act irrational, so to speak, legally, I was wrong, morally, I strongly believe I was right!

Given the same situation, I would choose a more appropriate alternative in lieu of stealing/forging checks. I will be involved in psychological counseling during my stay in jail, & after my release. I feel this is essential to my remaining a free man. I have some very deep-rooted emotional problems that I am finally releasing through counseling sessions. I never have trusted any "mental-professional" until I met the Social Worker at the S.I. Jail. We can talk in a way that is beneficial, instead of degrading, to me.

No psychologist, sociologist, etc. can tell any person more about himself, than that person allows the counselor to know. That's why I never trusted any "professional" until I met Terry. Everyone else was talking me what was wrong, on very limited information, using the excuse-reasoning that they are experts. That is bull shit, & will always remain that.

way to me. Jerry listens to everything and makes suggestions, constructive criticisms, & solid advice. No man can or ever will, be able to "tell" another person anything, & really expect them to understand & respond in a positive manner, especially classifying or stereotyping him.

As one expert classified me, I'm "above average intelligence, with a lack of impulse control" That could very well be true, and most likely is, but that is for me to look at and decide how can a man who has "only" "known" me for less than two hours, tell me what kind or type of person I am? That's like me walking up to someone in a classroom, watch them & talk to them for awhile, and tell them "you're smart, but you can't be a base ball player!" How do I know? Because I've been given a piece of paper saying I'm a doctor? No, I can't tell anybody anything about what they are, and neither can any one else. If they think they can because another person said they can, because they're an expert, they're full of shit, plain & simple.

I know what's wrong with me and I've decided to change that. With my choice, I will not return to the custody of anyone. Giving someone custody of another means they are responsible for that person's care, mental & physical. No institution cares about anyone, except for a few of the staff members. Why should I turn my life over to the custody/care of someone who doesn't care? This is a question I've looked at & answered.

Bruce  
Semenov  
11, May 1943

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 46: Excerpts of Court Files in *People v. Bruce Samuelson*, San  
Joaquin County Superior Court Nos. 32310, 33852, 33960**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

Dec 28, 1982

#5

HON.

K. PETER SAIIERS

Date: J. NADOTTI

Dept. No.

Court Met At: Stockton, California

JUDGE

Bailiff

Reporter: *Blanca Repton*

LENA TERRAZAS

Deputy Clerk

People of the State of California

Counsel for People

vs.

Deputy/Assistant District Attorney

BRUCE ALLEN SAMUELSON

C

PRO PER *John Schick*

01

Defendant

Counsel for Defendant

MINUTE ORDER

A&P

Action No. 33852

Felony

To Wit: 10851 VC, Ct. I

470 PC, Ct. IV

Misdemeanor

496 PC, Ct. II

470 PC, Ct. V

496 PC, Ct. III

470 PC, Ct. VI

PEOPLE REPRESENTED AS ABOVE, AND DEFENDANT PRESENT WITH COUNSEL.

- 30501 Defendant not appearing as ordered.
- Copy Information/\_\_\_\_\_ to Deft/Counsel.
- 30504 Court appoints  30505 relieves Public Defender
- 30506 Court appoints counsel through L.R.S.
- 30507 Court informs defendant of legal rights.
- 30509 Defendant states true name

Information is read  Reading waived.

30514 Defendant withdraws plea of \_\_\_\_\_

30515 On People's motion/P.C. 17/information count amended Section \_\_\_\_\_

30516 Defendant pleads Guilty  30437 Nolo Contendere as charged in count(s) \_\_\_\_\_

30517 Defendant pleads Not Guilty as to count(s) \_\_\_\_\_

30518 Defendant pleads Guilty of the lesser included offense of *Waiver*

30519 Defendant pleads Not Guilty and Not Guilty by reason of insanity

30520 Defendant Admits  30521 Denies use of weapon.

30522 Defendant admits prior convictions of felony

30523 Defendant denies prior convictions of felony

30524 Court fixes degree of the offense as \_\_\_\_\_

30525 People move to dismiss count(s) \_\_\_\_\_

and the

motion is by the Court granted

30540 P.T.C.  30541 Trial setting  30542 Jury Trial set *Jan 7, 1983 8:45 #5*

30547 P&J is set for \_\_\_\_\_

30444 Defendant is remanded back to \_\_\_\_\_

Defendant is remanded to the custody of the  30549 Sheriff  30446 D.V.I.

30447 Defendant is permitted to remain at liberty

30452 on bail heretofore posted.

30452 Bail is fixed in the amount of \$ \_\_\_\_\_ cash or surety or double if personal bond.

Bail Bond No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ is  30453 forfeited  30454 exonerated.

Reduction in  30554 bail  30555 O.R. release \_\_\_\_\_

Dated: \_\_\_\_\_

30526 Proceedings are/have been heretofore suspended for the purpose of determining whether or not defendant is: \_\_\_\_\_

30527 Court appoints Drs. \_\_\_\_\_ to examine the defendant.

30529 C.C. Afft. & MO will be served on Defendant within 24 Hours.

30530 Deft. waives personal service Ptn. & MO.

Defendant waives statutory time/procedural defects.

Waiver personal appearance executed in open Court.

30533 Referred  30534 Waiver to Probation Officer for presentence report.

30535 Defendant report to P.O. for interview on \_\_\_\_\_

\_\_\_\_\_  30536 Motion Granted  30537 Denied

THE ANNEXED INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE. CLERK SEAL MUST BE IN PLACE.

SEP 19 1991

JEANNE WILLIAMS Clerk of the Superior Court in and for the County of San Joaquin, State of California

30538 Bench warrant is issued for arrest of defendant.  30539 Bench warrant issued \_\_\_\_\_ is recalled.

By \_\_\_\_\_

Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

12/28/82 5  
Date Dept. No.

HON: K. PETER SAERS  
JUDGE

J. Nadotti  
Bailiff

Court Met At: Stockton, California  
Dennis Repton  
Reporter

Lena Terrazas  
Deputy Clerk

People of the State of California  
vs.

Counsel for People  
Richard Eschenberger / Bernard Garb  
Deputy/Assistant District Attorney  
John Schick  
Counsel for Defendant

BRUCE ALAN SAMUELSON C  
01 Defendant

MINUTE ORDER - NATURE OF PROCEEDINGS: SETTING OF VIOL OF PROBATION No. 32310

Felony To Wit: 459 PC, CT. I (2nd deg)  
 Misdemeanor 459 PC, CT. II (2nd deg)

PEOPLE REPRESENTED AS ABOVE, AND DEFENDANT PRESENT WITH COUNSEL.

- 30501 Defendant not appearing as ordered.
- 30404 Defendant returned from CRC Per Sec. 3050/3051 W&I.
- Defendant from Diagnostic (1203.03 PC).
- Defendant returned from \_\_\_\_\_ per Sec. \_\_\_\_\_
- 30405 Civil Commitment to CRC revoked.
- 30406 Criminal proceedings reinstated.
- Defendant waives formal hearing/procedural defects.
- The matter is submitted on the separate written medical reports of the doctors heretofore appointed \_\_\_\_\_  
and the Court finds said person is/is not \_\_\_\_\_
- 30468 The matter is submitted on P.O. Report.
- Defendant waives statutory time for \_\_\_\_\_
- Waiver personal appearance for \_\_\_\_\_
- 30533 Referred  30534 Waiver to Probation Officer for presentence report.
- Defendant not accepted by California Youth Authority. \_\_\_\_\_ Report/Chrono memo of the Probation Officer is received and considered.
- Defendant waives time for Pronouncement of Judgment.
- Defendant is arraigned/waives arraignment for pronouncement of judgment.
- Defendant states there is no legal cause why judgment should not be pronounced.

IT IS ORDERED:

- Probation is  30418 denied  30419 revoked
- 30420 reinstated  30421 granted
- 30422 modified
- 30423 Imposition sentence suspended \_\_\_\_\_ years.
- 30424 Informal probation \_\_\_\_\_ years granted.  
Conditions \_\_\_\_\_
- 30426 Conditions as announced in court.
- 30427 Defendant is committed to the California Youth Authority for the term prescribed by law.
- Defendant is  30428 committed  30429 sentenced
- 30430 Criminal proceedings suspended and defendant committed to \_\_\_\_\_ for care and treatment.
- 30431 Execution of sentence is stayed \_\_\_\_\_
- 30432 Defendant is sentenced to State Prison for the term prescribed by law. C/T/S \_\_\_\_\_
- 30433 Sentences shall be served in respect to one another as follows: \_\_\_\_\_
- 30434 And in respect to any prior incompleated sentence(s) as follows: \_\_\_\_\_
- 30435 Court informs defendant of legal rights to Appeal.
- 30436 Criminal proceedings are adjourned and defendant is referred for acceptance for a 90-day period of diagnostic evaluation and report, pursuant to Section 1203.03 P.C.

- Hearing on  30440 doctor's reports  30547 P&J  Viol Prot motion is set for/cont'd to Jan 7, 1983
- 30444 Defendant is remanded back to \_\_\_\_\_ for further hearing on 8:45 AM
- Defendant is remanded to the custody of the  30549 Sheriff  30446 D.V.I.
- 30447 Defendant is permitted to remain at liberty \_\_\_\_\_ on  30555 own recognizance \_\_\_\_\_  
on  30452 bail heretofore posted.
- 30538 Bench warrant issued for arrest of defendant.  30539 Bench warrant issued \_\_\_\_\_ is recalled.
- 30452 Bail is fixed in the amount of \$ \_\_\_\_\_.
- Bail Bond No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ is  30453 forfeited  30454 exonerated.  30554 Reduction in bail  30555 O.R. release \_\_\_\_\_.
- The Sheriff of San Joaquin County is hereby ordered to deliver the defendant to \_\_\_\_\_
- 30455 Reception Guidance Center at \_\_\_\_\_  30456 California Institution for Women at \_\_\_\_\_
- 30457 A place and time as directed by the California Youth Authority \_\_\_\_\_

Dated: \_\_\_\_\_

Judge of the Superior Court

60  
© C.S. 116 (10/77)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

HON.

K. PETER SATERS JUDGE

Date 1/7/83

Dept. No. 5

Court Met. At: Stockton, California

D. Navone

Reporter *Dianne Rafter*

Deputy Clerk Lena Terraaas

Bailiff

People of the State of California

Counsel for People

*Bernard Garber*

Deputy/Assistant District Attorney

John Schick

Counsel for Defendant

BRUCE ALLEN SAMUELSON C  
Defendant

MINUTE ORDER

HRG RE PLEA

Action No. 33852

Felony

To Wit: 10851 VC, CT. I 470 PC, CT. IV

Misdemeanor

496 PC, CT. II 470 PC, CT. V

496 PC, CT. III 470 PC, CT. VI

PEOPLE REPRESENTED AS ABOVE, AND DEFENDANT PRESENT WITH COUNSEL.

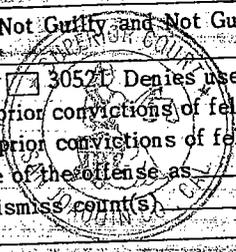
- 30501 Defendant not appearing as ordered.
- Copy Information/\_\_\_\_\_ to Deft/Counsel.
- 30504 Court appoints  30505 relieves Public Defender
- 30506 Court appoints counsel through L.R.S.
- 30507 Court informs defendant of legal rights.
- 30509 Defendant states true name \_\_\_\_\_
- Information is read.  Reading waived.
- 30514 Defendant withdraws plea of \_\_\_\_\_
- 30515 On People's motion/P.C.17/information count \_\_\_\_\_ amended Section \_\_\_\_\_
- 30516 Defendant pleads Guilty  30437 Nolo Contendere as charged in count(s) \_\_\_\_\_
- 30517 Defendant pleads Not Guilty as to count(s) \_\_\_\_\_
- 30518 Defendant pleads Guilty of the lesser included offense of \_\_\_\_\_
- 30519 Defendant pleads Not Guilty and Not Guilty by reason of insanity \_\_\_\_\_
- 30520 Defendant Admits  30521 Denies use of weapon.
- 30522 Defendant admits prior convictions of felony \_\_\_\_\_
- 30523 Defendant denies prior convictions of felony \_\_\_\_\_
- 30524 Court fixes degree of the offense as \_\_\_\_\_
- 30525 People move to dismiss count(s) \_\_\_\_\_

- 30526 Proceedings are/have been heretofore suspended for the purpose of determining whether or not defendant is: \_\_\_\_\_
- 30527 Court appoints Drs. \_\_\_\_\_ to examine the defendant.
- 30529 C.C. Afft. & MO will be served on Defendant within 24 Hours.
- 30530 Deft. waives personal service Ptn. & MO.
- Defendant waives statutory time/procedural defects.
- Waiver-personal appearance executed in open Court.
- 30533 Referred  30534 Waiver to Probation Officer for presentence report.
- 30535 Defendant report to P.O. for interview on \_\_\_\_\_
- \_\_\_\_\_  30536 Motion Granted  30537 Denied

THE ANNEXED INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE

30538 Bench warrant is issued for arrest of defendant.

30539 Bench warrant issued \_\_\_\_\_ is recalled.



*CHRISTINA R. JONES*  
Clerk of the Superior Court  
in and for the County of  
San Joaquin, State of California

- 30540 P.T.C.  30541 Trial setting  30542 Jury  30543 Hearing  30544 Ruling on motion is set for/cont'd to \_\_\_\_\_
- 30547 P&J is set for \_\_\_\_\_  Hearing on doctors' reports is continued  30440 set for  30441
- 30444 Defendant is remanded back to *Muni Court* for further hearing on *Complaint 1*
- Defendant is remanded to the custody of the  30549 Sheriff  30446 D.V.I.
- 30447 Defendant is permitted to remain at liberty  30552 on own recognizance \_\_\_\_\_
- 30452 on bail heretofore posted. \_\_\_\_\_ cash or surety or double if personal bond.
- 30452 Bail is fixed in the amount of \$ \_\_\_\_\_ is  30453 forfeited  30454 exonerated.
- Bail Bond No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_
- Reduction in  30554 bail  30555 O.R. release \_\_\_\_\_

Dated: \_\_\_\_\_

Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

HON:

1/7/83 5  
Date Dept. No.

D. Navone  
Bailliff

Court Met At: Stockton, California  
*Shirley Ruffin*  
Reporter

K. PETER SATERS  
JUDGE

*Lena Terrazas*  
Deputy Clerk

People of the State of California  
vs.

Counsel for People  
*Bernard Garber*  
Deputy/Assistant District Attorney

BRUCE ALAN SAMUELSON C  
01 Defendant

John Schick  
Counsel for Defendant

MINUTE ORDER - NATURE OF PROCEEDINGS: VIOL OF PROB Action No. 32310

Felony To Wit: 459 PC, CT. I (2nd deg)  
 Misdemeanor 459 PC, CT. II (2nd deg)

PEOPLE REPRESENTED AS ABOVE, AND DEFENDANT PRESENT WITH COUNSEL.

- 30501 Defendant not appearing as ordered.
- 30404 Defendant returned from CRC Per Sec. 3050/3051 W&I.
- Defendant from Diagnostic (1203.03 PC).
- Defendant returned from \_\_\_\_\_ per Sec. \_\_\_\_\_
- 30405 Civil Commitment to CRC revoked.
- 30406 Criminal proceedings reinstated.
- Defendant waives formal hearing/procedural defects.
- The matter is submitted on the separate written medical reports of the doctors heretofore appointed \_\_\_\_\_  
and the Court finds said person is/is not \_\_\_\_\_
- 30468 The matter is submitted on P.O. Report.
- Defendant waives statutory time for \_\_\_\_\_
- Waiver personal appearance for \_\_\_\_\_
- 30533 Referred  30534 Waiver to Probation Officer for presentence report.
- Defendant not accepted by California Youth Authority. \_\_\_\_\_ Report/Chrono memo of the Probation Officer is received and considered.
- Defendant waives time for Pronouncement of judgment.
- Defendant is arraigned/waives arraignment for pronouncement of judgment.
- Defendant states there is no legal cause why judgment should not be pronounced.

IT IS ORDERED:

- Probation is  30418 denied  30419 revoked  30420 reinstated  30421 granted  30422 modified
- 30423 Imposition, sentence suspended \_\_\_\_\_ years.
- 30424 Informal probation \_\_\_\_\_ years granted. Conditions \_\_\_\_\_
- 30426 Conditions as announced in court.
- 30427 Defendant is committed to the California Youth Authority for the term prescribed by law.
- Defendant is  30428 committed  30429 sentenced
- 30430 Criminal proceedings suspended and defendant committed to \_\_\_\_\_ for care and treatment.
- 30431 Execution of sentence is stayed \_\_\_\_\_
- 30432 Defendant is sentenced to State Prison for the term prescribed by law. C/T/S \_\_\_\_\_
- 30433 Sentences shall be served in respect to one another as follows: \_\_\_\_\_
- 30434 And in respect to any prior incompleated sentence(s) as follows: \_\_\_\_\_
- 30435 Court informs defendant of legal rights to Appeal.
- 30436 Criminal proceedings are adjourned and defendant is referred for acceptance for a 90-day period of diagnostic evaluation and report, pursuant to Section 1203.03 P.C.

*San Proc. 052*

- Hearing on  30440 doctor's reports  30547 P&J  *Writ Pet* motion is set for/cont'd to *Feb. 8 1983*
- 30444 Defendant is remanded back to \_\_\_\_\_ for further hearing on *8:45*
- Defendant is remanded to the custody of the  30549 Sheriff  30446 D.V.I. *#5*
- 30447 Defendant is permitted to remain at liberty \_\_\_\_\_ on  30555 own recognizance \_\_\_\_\_ on  30452 bail heretofore posted.
- 30538 Bench warrant issued for arrest of defendant.  30539 Bench warrant issued \_\_\_\_\_ is recalled.
- 30452 Bail is fixed in the amount of \$ \_\_\_\_\_
- Bail Bond No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ is  30453 forfeited  30454 exonerated.  30554 Reduction in bail  30555 O.R. release \_\_\_\_\_
- The Sheriff of San Joaquin County is hereby ordered to deliver the defendant to \_\_\_\_\_
  - 30455 Reception Guidance Center at \_\_\_\_\_
  - 30456 California Institution for Women at \_\_\_\_\_
  - 30457 A place and time as directed by the California Youth Authority \_\_\_\_\_

Dated: \_\_\_\_\_

28  
96  
C.C. CR-116 (10/77)



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

HON:

2/8/83 5 Date Deprt. No.

Court Met At: Stockton, California

K. PETER SAIERS JUDGE

D. Navone Bailiff

Mike Hyske Reporter

Lena Terrazas Deputy Clerk

People of the State of California vs.

Counsel for People

Deputy/Assistant District Attorney

BRUCE ALAN SAMUELSON Defendant

John Schick Counsel for Defendant

MINUTE ORDER - NATURE OF PROCEEDINGS: OSC VIOL OF PROB Action No: 32310

To Wit: 459 PC, CT, I (2nd deg) 459 PC, CT, II (2nd deg)

PEOPLE REPRESENTED AS ABOVE, AND DEFENDANT PRESENT WITH COUNSEL.

- 30501 Defendant not appearing as ordered. 30404 Defendant returned from CRC Per Sec. 3050/3051 W&I. Defendant from Diagnostic (1203.03 PC). Defendant returned from per Sec. 30405 Civil Commitment to CRC revoked. 30406 Criminal proceedings reinstated. Defendant waives formal hearing/procedural defects. The matter is submitted on the separate written medical reports of the doctors heretofore appointed.

and the Court finds said person is/is not

- 30468 The matter is submitted on P.O. Report. Defendant waives statutory time for Waiver personal appearance for 30533 Referred 30534 Waiver to Probation Officer for presentence report. Defendant not accepted by California Youth Authority. Report/Chrono memo of the Probation Officer is received and considered. Defendant waives time for Pronouncement of Judgment. Defendant is arraigned/waives arraignment for pronouncement of judgment. Defendant states there is no legal cause why judgment should not be pronounced.

IT IS ORDERED:

- Probation is 30418 denied 30419 revoked 30420 reinstated 30421 granted 30422 modified 30423 Imposition sentence suspended years. 30424 Informal probation years granted. Conditions 30426 Conditions as announced in court. 30427 Defendant is committed to the California Youth Authority for the term prescribed by law. Defendant is 30428 committed 30429 sentenced 30430 Criminal proceedings suspended and defendant committed to for care and treatment. 30431 Execution of sentence is stayed 30432 Defendant is sentenced to State Prison for the term prescribed by law. C/T/S 30433 Sentences shall be served in respect to one another as follows: 30434 And in respect to any prior incompleated sentence(s) as follows: 30435 Court informs defendant of legal rights to Appeal. 30436 Criminal proceedings are adjourned and defendant is referred for acceptance for a 90-day period of diagnostic evaluation and report, pursuant to Section 1203.03 P.C.

- Hearing on 30440 doctor's reports 30547 P&J [X] OSC - Violation motion is set for/cont'd to April 11, 1983 30444 Defendant is remanded back to for further hearing on 30445 #5 [X] Defendant is remanded to the custody of the [X] 30549 Sheriff 30446 D.V.I. 30447 Defendant is permitted to remain at liberty on 30555 own recognizance on 30452 bail heretofore posted. 30538 Bench warrant issued for arrest of defendant. 30539 Bench warrant issued is recalled. 30452 Bail is fixed in the amount of \$ Bail Bond No. in the amount of \$ is 30453 forfeited 30454 exonerated. 30554 Reduction in bail 30555 O.R. release The Sheriff of San Joaquin County is hereby ordered to deliver the defendant to 30455 Reception Guidance Center at 30456 California Institution for Women at 30457 A place and time as directed by the California Youth Authority

Dated:

Judge of the Superior Court

29

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 47: District Attorney Investigation Report by Lee Copeland re  
Polygraph**

FEB 10 1983

*Craig Holmes*  
*Prov Morales* BUREAU OF  
INVESTIGATION

DETAILS  SUPPLEMENT  INFO. REC.

Bruce Alan Samuelson	TYPE OF CASE Murder (Polygraph/Witness)	FILE NO 83-55
		LEGAL NO.:

Referring to Stockton Police Department Report #81-732, wherein a White female subject by the name of Terri Winchell was murdered and left in an orchard in Lodi.

On February 7, 1983, Deputy District Attorney Bernard Garber requested a polygraph examination be conducted on above subject Bruce Alan Samuelson, who claimed that while incarcerated in the San Joaquin County Jail that one of the defendants in the murder of Terri Winchell by the name of Michael Morales had made a complete confession to him. He was willing to testify in this matter and approached the investigating officers and Deputy District Attorney Garber. Details of the investigation and Court proceedings will not be repeated in this polygraph examination report but can be obtained from the Stockton Police Department report mentioned above.

On February 8, 1983, at 9:30 a.m., the subject Samuelson was brought to the District Attorney's Office for the purpose of a polygraph examination by the Stockton Police Department. He was taken into the polygraph room and the questions were formulated that would be used on the test.

Question #33: Are you lying when you say Morales told you about killing Terri?

Answer: No.

Question #35: Did you get the information about Terri's killing from a source

DATE TYPED 2/8/83	INDEXED BY: ic	INVESTIGATOR: Lee Copeland
APPROVED BY:	PAGE 1	COPIES TO: DDA Garber, Sgt. Sanford, SPD
VIEWED BY: <i>PA 2-8-83</i>		PENDING <input type="checkbox"/> CLOSED <input checked="" type="checkbox"/>

72

DETAILS  SUPPLEMENT  INFO. REC.

Bruce Alan Samuelson	TYPE OF CASE Murder (Polygraph/Witness)	FILE NO. 83-55
		LEGAL NO.:

than Morales?

Answer: No.

The test was conducted on the District Attorney's 4-Channel Stoelting Polygraph Instrument utilizing the Backster Zone of Comparison Test Technique. The test was repeated three times and upon study of the charts from the test, it is my opinion that the subject was being truthful; that he did obtain the information that he gave in a supplement to the Stockton Police Department from Morales himself and did not get it from any other source.

Verbal report given to Sgt. Sanford, Stockton Police Department, and also Deputy District Attorney Garber.

A copy of the information given to the Stockton Police Department, the original question sheet, polygrams, and notes made at the time of the polygraph are on file in the investigative section of the District Attorney's Office.

PREP BY:	DATE TYPED: 2/8/83	INDEXED BY: jc	INVESTIGATOR: Lee Copeland
PROVED BY:	PAGE 2	COPIES TO:	
VIEWED BY: <i>[Signature]</i>		PENDING <input type="checkbox"/>	CLOSED <input checked="" type="checkbox"/> <i>[Initials]</i>

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 48: Declaration of Bruce Samuelson's Sister**

## DECLARATION OF [REDACTED]

I, [REDACTED] declare as follows:

1. Bruce Samuelson is my brother. He is someone who I know lied and stole at any opportunity. Sadly, I also knew Bruce to be a very violent abuser who terrorized me by sexually assaulting me when we were teenagers. His violent abuse of me changed my life forever. I knew him to be a thief, liar and violent abuser who terrorized and repeatedly raped me when we were teenagers.

2. Our parents had two other children together, my other brothers Lee and Jack. From the time I was very little, I was raised separately from my brothers and placed in foster homes around southern and central California. My brothers were also raised in foster homes at different points in their lives. Between placements I occasionally was brought back to my father's house for brief visits, and I would see Bruce. In total, I was in about a dozen foster homes in my life.

3. When I was sixteen years old, a social worker told me that I would be living with my father again for a while on a trial basis. When I returned to my father's house, he looked a lot older and sickly. He said he still had liver problems and wanted his children around him. My brothers Lee and Bruce, who were around the same age as I was, were also living with him.

4. The first night that I returned to my father's home, Bruce came home late and came into my room. I felt someone pushing at my shoulder. I opened my eyes and in the darkness I could see Bruce standing in front of me masturbating. I screamed and began to cry. I felt defenseless in the new house. I wanted to run away, so I grabbed my blanket and ran out the front door. I sat on the front steps and cried until my father came home. He smelled of alcohol and stumbled like he was drunk. He did not recognize who I was, and just mumbled something I could not understand, and then walked into the house and slammed the door.

5. After that, I tried to stay away from Bruce as much as I could. He came home sometimes high on drugs that he showed me and wanted me to take with him. I refused and told him to get away from me. He acted crazy when he came home on those drugs, like he was very mad at everyone and everything.

6. Bruce and I were put into different public schools. He was in a school for troubled kids, and I was in a regular school. Bruce told me he hated school because he was too smart for it. Bruce bragged a lot about himself: he told me he could fix and steal cars, and wanted to be a lawyer or an accountant because he could make anybody do anything. I never heard Bruce say he ever studied Spanish or spoke Spanish. He never spoke any words in Spanish in front of me, and no one else ever told me he spoke Spanish. I never knew of anyone in my father's house who spoke Spanish.

7. Although Bruce often used drugs and was violent, he was also very skilled at talking his way out of trouble. My father told me that I should mind Bruce because he was very, very intelligent. He called Bruce "the potential of the family." I could see that he knew how to work people to his advantage, and I tried to stay away from him.

8. One night, Bruce came home at about two o'clock in the morning and kicked a hole in the kitchen wall. I went to the kitchen to see what the noise was and saw what Bruce had done. Then my father, who had been drinking again, came in the kitchen. He took a swing at Bruce and missed. Then Bruce grabbed a knife and slashed my father across the arm. Bruce told me he would do it to me if I did not leave right away, and I ran to my room and locked my door. The next day, I saw Bruce talking with my father and convincing him that he had started the fight, grabbed the knife and accidentally slashed himself. My father bought the whole story, and told me how stupid he was to have injured himself. I was amazed that Bruce could have talked my father into believing that he had hurt himself.

9. Another time, some neighbors came over and told me that they had seen Bruce break into their house. They called the police, who later found Bruce walking

home. He just talked to the police and convinced them to let him go. Another time, a man came to the door and said Bruce had borrowed his car. According to man, and the police, Bruce had convinced the man that he was helping out some police officers because his mother was in trouble, and that the police had told him to borrow a car because it was an emergency. Somehow, Bruce had talked the man into believing this story and giving Bruce his car. The man came looking for Bruce and then went to the police, and they later caught Bruce with the car.

10. Bruce lied against anyone to get himself out of trouble. One time, my father called Lee, Bruce and me into the kitchen, and said that his wallet was stolen, along with his drivers' license and all his money. He said he thought someone in the house had taken it, and if one of us did not admit to it right away, he was going to turn all of us out onto the street. Bruce immediately said that he had seen me take it. Bruce said that I was a troublemaker and a whore. When I tried to deny it, my father yelled at me not to contradict Bruce. As I started to answer him, my father walloped me across the face with the back of his hand. I fell back and then my father hit me again right on my nose. I felt my nose crunch, and felt for a minute that I was going to faint. Blood poured out and I squatted down just to stop from falling over. My father continued to yell at me, but I could not hear what he was saying.

11. After a few moments, I got clearer headed and angry. I realized that Bruce had probably taken it, and that was why he lied about me. I stood up and rushed into Bruce's room. I tore through his things, crying and bleeding at the same time. After a few minutes I found my father's drivers license at the bottom of Bruce's duffel bag. I cried out to my father that he was wrong, and he came in the room and saw what I had found. He looked more and found his money, too. Bruce ran out of the house and slammed the door. I remember thinking, as I watched him run down the street, that he was a coward. Here I was, with a broken nose after taking the beating that Bruce could not face.

12. I went to a neighbor's to get bandaged and cleaned up. My neighbor, Gina, took me to the hospital. I went to bed that night and as usual locked my door. I hoped that Bruce was gone for good. I woke up to the sound of crunching wood. I saw Bruce coming through my door, which he had just broken open with an axe. I screamed for my father, but he did not come. Bruce swung the axe at me and pushed me down on the bed with his hands. I was still woozy and not seeing too well from my broken and swollen nose. When Bruce pushed me down he hissed at me that I was whore who was going to get her punishment right then and there. He said he was giving me my due for having snitched on him. He tore off the tee shirt that I had on. Then he punched me across the face with his fist several times. I can still feel the pain on my face. It was so bad that I felt like my head was going to explode. I tried to push him off and screamed at him.

13. Bruce kept describing what he was going to do to me, and used horrible, vulgar words. I was a virgin, and when I realized what he was trying to do with me, I began to shake and my stomach got upset. It is hard to describe how terrified and scared I was at that moment. I felt so powerless and I wanted to die. I remember begging God please to help me or let me die. I started to throw up, and that made Bruce more furious. He hit me again and again across my head. Then he ripped off my panties and pushed himself on me. Thinking today about the pain and fear I felt when Bruce did this to me still makes me shake and feel sick, powerless, and worthless.

14. After Bruce left, I could not move and I did not know what to do, although I felt like I should get myself back together. I smelt like him and I smelt like vomit and blood and sex and I wanted to get clean. I lay crying for what seemed like hours, and then I tried walking to the shower. I stood up and fell down again. I felt a searing pain in my genital area that made me cry again. I made myself get to the shower, though and I sat down and cried and let the water go over me. By the time I left the bathroom, it was light outside. I decided to tell my neighbor Gina, because we had become friendly. She

made me telephone the social worker. I left a message for the social worker, who was not there.

15. A day passed, and the social worker did not call back. I called again and again, and left messages saying what had happened. I was still so upset and could not talk about it without sobbing. After I did not hear anything back from the social worker, Gina told me to call the police, so I did. They told me to come to the police station, so Gina took me. I told them I just wanted to leave the house, and could not bear to stay there any more. They said they were in contact with the social worker and would get back to me. I asked Gina if I could stay with her, and she said I could. Later that night, though, my father came over to Gina's and ordered me home. My father twisted my arm behind my back and said that I was not to talk about private family matters with anyone, especially if it had to do with sex. He said he did not care what Bruce did to me, I was not going to shame him outside the house.

16. A few days later, Bruce came into my room and raped me again just like he did before. I tried to throw things at him and run away, but I could not. I ran into the bathroom and locked the door. When I thought it was safe, I came out again and Bruce raped me again and another time after that. He insulted me when he did this, calling me a whore. He said society would never punish me, so he had to. He said he was doling out the punishment. I cried so much and then felt numb, like I was not me. Finally he went away. I grabbed my things and ran away for good. I went to Gina's and then to another friend's home to stay.

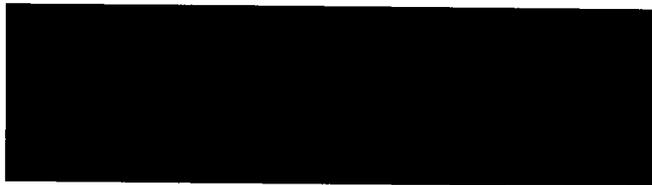
17. I called the police department and the social worker assigned to me. They had me fill out forms and they promised I would never have to see Bruce again. They arranged for me to go to counseling. Bruce also had to go to the same counselor, which made me uneasy. I think her last name began with an "T", and I told her what Bruce had done to me. About a month later, someone from the police department told me that no charges were going to be brought against Bruce for raping me, because he was charged

with some other crimes that happened at another house during that same time. I did not understand why he would not be charged for what he did to me. The social worker told me that my father told the police that Bruce should not be punished.

18. When I heard that Bruce was not going to jail, I was petrified. I thought he would come back after me again. Years passed, but I was so overwhelmed by this that I had trouble sleeping. I had nightmares about what he did to me. Sometimes, my dreams were so real that I felt the same pain and fear again. For years, I woke up crying and sweating. Even today, although I have a wonderful family, I see and hear things that make me think of that time in my life and what Bruce did to me, and I am still afraid that Bruce will come after me. I have hoped and prayed all these years that he was somewhere behind bars so I could feel safe. Now I know he is not, and I get overwhelmed just thinking about what he will do if he ever finds out where I live.

19. I have never been subpoenaed to testify about the information above. If I had been, I would have complied, and I would have testified truthfully to the facts in this declaration.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that this declaration was executed on February 4, 2006.



**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 49: Declaration of Paul Hermann**

## **DECLARATION OF PAUL H. HERMANN, JR.**

1. I am a licensed real estate broker. Between 1974 and my retirement last year, I worked in the commercial real estate business and maintained a family business in Stockton, California, with my mother and father. It was in connection with our family business that I came into contact with Bruce Samuelson.

2. Mr. Samuelson burglarized our real estate office at least three times over the course of two years. In May of 1981, Mr. Samuelson broke into our office by breaking a window, stole between ten and fifteen checks, and used our typewriter and check protector to make checks payable to him in amounts small enough to be cashed by retail stores.

3. At the time, I noted that Mr. Samuelson was a sophisticated thief. He stole checks from the middle of the stack rather than from the top, he used the office typewriter to type his name on the stolen checks, and he wrote checks of varying amounts, never exceeding the amount retail stores cashed without verifying the validity of the check. Mr. Samuelson then cashed the checks at retail stores throughout the Stockton area. When caught, Mr. Samuelson denied breaking into our office and admitted only to accepting the stolen checks from a friend. We knew this to be a lie because my mother was able to identify Mr. Samuelson as the perpetrator when she found the evidence of his name imprinted on the type writer ribbon.

4. After he was convicted, Mr. Samuelson wrote a letter of apology. In the letter he talked about being in school. He blamed his behavior on the lack of employment opportunities for young men. He asked me to give him a job. I declined. Mr. Samuelson also came into the office to apologize and request a job. Again, I declined.

5. About a year later, Mr. Samuelson broke into our office two more times. He slid the

glass of an office window out of its frame. In addition to stealing checks, Mr. Samuelson stole our check protector. He proceeded to cash checks both in state and out of state. Eventually, Mr. Samuelson was arrested in Arizona in a car he stole from Stockton. In the car were our checks and check protector. I was asked to provide a statement regarding our losses.

6. I informed the probation officer that Mr. Samuelson had victimized our establishment three times, that the aggravation to our clients and to my family was significant, and I spoke adamantly of the trauma I experienced in dealing with the banks and the victims of the forgeries. I specifically informed the probation officer that society should be protected from Mr. Samuelson by whatever means necessary.

7. At the time I informed Mr. Samuelson's probation officer that I believed society should be protected from Mr. Samuelson, I was not aware that the San Joaquin County District Attorney cut a deal to give favors to Mr. Samuelson in exchange for his testimony against Michael Morales. I find this conduct irresponsible, and had I known, I would have protested.

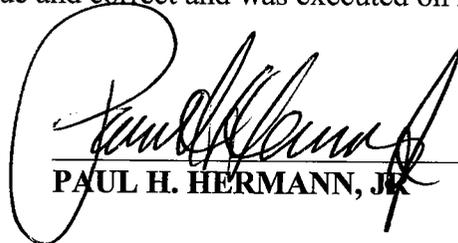
8. Had I been contacted about Mr. Samuelson, I would have been available to testify based on my family's unfortunate and extensive experience with Mr. Samuelson, that any information provided by Mr. Samuelson had no credibility and was not to be relied upon or trusted. I would have testified that my experience of Mr. Samuelson was that he was a liar and manipulator who would deceive anyone to get ahead without regard to the consequences.

9. At the time of Michael Morales's trial, my parents were alive, and were available to provide the information contained in this declaration.

10. Recently, I have been made aware that Mr. Samuelson owns a legal services company, is a licensed notary public and a registered process server. According to Mr. Samuelson's website, Mr. Samuelson performs criminal background checks and runs credit reports. That Mr.

Samuelson has access to the financial and identifying information of private individuals is in part the fault of the Office of the San Joaquin District Attorney. Both Mr. Samuelson's current conduct and the conduct of the District Attorney in this matter should be investigated.

I declare under the penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and was executed on February 6, 2006.



PAUL H. HERMANN, JR

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 50: Excerpt of Court File in *State v. Samuelson*, County of Ada,  
Fourth Judicial District Case No. HCR20074**

NO. \_\_\_\_\_ FILED  
A.M. 8:00 P.M. \_\_\_\_\_

OCT 27 1993

J. DAVID NAVARRO, CLERK  
BY Sabbatines  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BRUCE ALAN SAMUELSON, )  
DOB 12-17260 SSN 560-25-3468 )  
 )  
Defendant. )

Case No. HCR 20074  
**JUDGMENT OF CONVICTION  
AND SENTENCE**

The above-named matter came before the court for sentencing on October 25, 1993. The defendant appeared in person and with his attorney Mr. Gus Cahill. The State was represented by Ms. Jean Fisher as prosecuting attorney. The record reflects the following:

An Information was filed on April 15, 1993, charging the defendant with the crime of GRAND THEFT, FELONY, I.C. §18-2403(1), 18-2407(1). Arraignment was held on April 19, 1993, at which charging the defendant appeared in person and with counsel and was advised of the charge and the possible penalties and was further advised of the applicable constitutional and statutory rights. Thereafter the defendant entered a plea of guilty to GRAND THEFT, FELONY, I.C. §18-2403(1), 18-2407(1). The defendant's plea of guilty was accepted by the court following examination of the defendant under oath. Sentencing was continued for preparation of a presentence report which was completed and reviewed by the court and counsel.

1 Counsel for State and for the Defendant made statements and the defendant was  
2 given the opportunity to make a statement and offer evidence in mitigation. Inquiry  
3 was made by the court to determine if there was any legal cause why judgment should  
4 not be pronounced and there being none the court rendered Judgment as follows:

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED That the defendant is  
6 guilty of the crime of GRAND THEFT, FELONY, I.C. §18-2403(1). As a consequence  
7 the defendant is committed to the custody of the State Board of Correction for a term  
8 of ten (10) years consisting of a mandatory minimum term of three (3) years followed  
9 by an indeterminate term of seven (7) years. The court retains jurisdiction for 120-  
10 days. The defendant shall receive credit for 60 days served prior to sentence if  
11 probation is not granted.

12 IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this  
13 Judgment and Commitment to the said Sheriff and the State Board of Correction,  
14 which shall serve as the commitment of the defendant. The Sheriff is directed to  
15 deliver custody of the defendant to the State Board of Correction forthwith.

16 Dated this 26 day of October, 1993.

17   
18 GERALD F. SCHROEDER  
19 District Judge

NO. Alston Bailey  
FILED  
A.M. 8:42 P.M.

NO. Order Only  
FILED  
A.M. \_\_\_\_\_ P.M. 2:15

DEC 12 1994

J. DAVID NAVARRO, CLERK  
BY Melissa  
DEPUTY

DEC 13 1994

J. DAVID NAVARRO, CLERK  
BY Michelle Bissey  
DEPUTY

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Connie Vietz**  
Deputy Prosecuting Attorney  
602 West Idaho Street  
Boise, Idaho 83702-5954  
Telephone: (208) 364-2121

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 -vs.- )  
 )  
 BRUCE ALAN SAMUELSON, )  
 )  
 Defendant. )

HCR. 20074

MOTION & ORDER FOR BENCH  
WARRANT FOR PROBATION  
VIOLATION

STATE OF IDAHO )  
 ) ss:  
County of Ada )

COMES NOW, Connie Vietz, Deputy Prosecuting Attorney for Ada  
County, State of Idaho, being first duly sworn, deposes and says:

That on the 19th day of April, 1993, the Defendant was  
arraigned before this Court upon a charge(s) of GRAND THEFT,  
FELONY; that on the 9th day of August, 1993, the Defendant pled  
guilty to said crime(s); and that on the 25th day of October, 1993,  
this Court placed the Defendant on probation for a period of ten  
(10) years.

MB

MB,

This Court required, and Defendant agreed, that as a condition of probation he would respect and obey all the laws of the State of Idaho, at all times conduct himself as a good citizen, and obey the rules and regulations of probation. That the Defendant violated the above-mentioned term of his probation agreement by:

1. Being convicted of ASSAULT IN THE FOURTH DEGREE (DOMESTIC VIOLENCE) on or about the 24th day of August, 1994;
2. Failing to obtain written permission from his supervising officer before changing residences; and by
3. Absconding from supervision.

WHEREFORE, your affiant prays for an Order of this Court directing the Clerk of the Court to issue a Bench Warrant for the arrest of the Defendant requiring that he be arrested and brought before this Court on the arraignment day next following his arrest, at which time to show cause why the probation and sentence in this cause should not be revoked and sentence imposed according to law.

DATED this 9 day of Dec, 1994.

GREG H. BOWER  
Ada County Prosecuting Attorney

Connie Vietz  
By: Connie Vietz  
Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 9th day of  
December, 1994.

John B. [Signature]  
Notary Public for the State of Idaho  
Residing at Boise, Idaho  
Commission Expires : 11/10/96.

DEPARTMENT OF CORRECTIONS  
STATE OF WASHINGTON  
DIVISION OF COMMUNITY CORRECTIONS

REPORT TO:	COMPACT ADMINISTRATOR	DATE:	11-09-94
NAME:	STATE OF IDAHO SAMUELSON, BRUCE	NUMBER:	719353
CRIME:	DO: 12-17-60 THEFT IN THE SECOND DEGREE	ID:	39.822
DATE OF SENTENCE:	10-25-93	SENTENCE:	10 YEARS PROBATION
PRESENT LOCATION:	UNKNOWN	TERMINATION DATE:	10-24-2003
		STATUS:	ACTIVE
		CLASSIFICATION:	4A

*ACR 20074*

NOTICE OF VIOLATION

Bruce Samuelson has violated conditions of supervision by:

- 1: Being convicted of Assault In The Fourth Degree (Domestic Violence) on 08-24-94 in Clark County District Court.
- 2: Changing address without notifying the Department Of Corrections on/about 11-07-94 in Clark County, Washington.

Supporting Evidence/Adjustment:

1: On 11-09-94 I received a Judgement And Sentence from the District Court of Clark County. At that time it revealed that Samuelson had been convicted of Assault In The Fourth Degree on 08-24-94. Samuelson received a \$500.00 fine with \$250.00 fine suspended, 365 days jail with 362 days suspended, credit for three days served in jail and was put on a bench probation for a period of two years. Conditions of bench probation were no similars and good behavior.

2: On 11-09-94 Connie Coleman (the victim of the domestic violence) called and reported Samuelson had left her residence on 11-07-94 and has not returned. It is Connie's belief that Samuelson has left the state heading for California. Samuelson has left a trail of \$1,000.00 in bounced checks prior to his departure from Vancouver, Washington.

Recommendation: I recommend issuance of a bench warrant and if apprehended, Samuelson's probation be revoked. The State Of Washington is closing it's interest in this case with this report.

Issue Summons  
Schedule Hearing

xxx Issue Bench Warrant  
No Action Other

Submitted by,

APPROVED:

*Jeff Kasler*

*Richard Erspamer*

Jeff Kasler, CCO II  
8008 NE 4th Plain, Suite 360  
Vancouver, Washington 98662

Richard Erspamer, CCS I  
8008 NE 4th Plain, Suite 360  
Vancouver, Washington 98662

JK:ke  
11-09-94/11-15-94  
Orig: Central  
cc: ~~file~~

APPROVED:

William McHatton  
Deputy Compact Administrator

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GERALD F. SCHROEDER  
District Judge

JANUARY 24, 1995

CRIMINAL COURT MINUTES

STATE OF IDAHO, )

Plaintiff, )

vs. )

BRUCE SAMUELSON, )

Defendant. )

Case No. HCR 20074

Appearances:

Tape No. G95013 3036 thru 4070

ROGER BOURNE  
Deputy Prosecuting Attorney

Counsel for the State

ALAN TRIMMING  
Deputy Public Defender

Counsel for the Defendant

TIME SET FOR 10:00 A.M.  
CALL OF THE CASE: 3036

REVIEW  
DEFENDANT IS PRESENT/CUSTODY

3036 The Court calls the case.

3109 Mr. Trimming informs the Court that the agreement was to reinstate probation if Washington was agreeable. The State is willing to reinstate probation with 60 days in the Ada County Jail. The defendant must be accepted to supervision in the state of Washington. The defendant will admit allegation #1.

3202 Mr. Bourne agrees to terminate at such time of transfer to Washington.

3231 The defendant is sworn in and questioned by the Court.

-The defendant is 34 years old. He graduated from Columbia University. He majored in Microcomputer Applications. He has 16 years of education. He speaks English. He is single. He has children age 2½ to 10 years. Two of the children live with the defendant. He does not see a doctor. He does not take medications. He does not see a mental health counselor. His last employer was at the JC Penney Credit Department for three (3) months. Prior to that he was in school full time. He has been in jail since January 3, 1995.

3660 The Court finds the plea is given knowingly and voluntarily with a factual basis and an understanding of the possible consequences. The Court accepts the plea.

-Counsel would like to go forward with sentencing today.

3695 Mr. Bourne requests that the defendant serve 60 days in the Ada County Jail until we find out if Washington will accept him back on probation. If Washington will take him back then the defendant may be released early.

3755 Mr. Trimming comments.

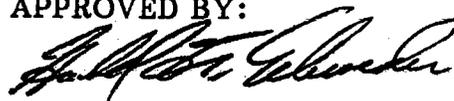
3831 The Court reviews the file. The Court notes that the PSI has been waived

-The Court reinstates probation. The defendant is to serve 60 days in the Ada County Jail with credit for 21 days served prior to sentencing. The defendant shall be released

to return to the state of Washington upon acceptance of supervision in Washington. The Court signs the Order for Temporary Custody.  
4070 End

REPORTER: John Gambee  
EST. COST: \$30.00 *4.*  
CLERK: Michelle Bissey/tj  
DATE: January 24, 1995

APPROVED BY:



GERALD F. SCHROEDER  
District Judge

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 51: Declaration of Ruben Serna**

## DECLARATION OF RUBEN SERNA

I, RUBEN SERNA, declare:

1. *RS* I was incarcerated at the San Joaquin County jail at various times during 1980, 1981, and 1982. In my experience, it was common practice at that jail for guards to attempt to get inmates to inform on other inmates. Inmates who agreed to act as informants would be planted next to or near the cell of the inmate or inmates they were told to inform on. Once the informants got the information they were supposed to get, or could pretend that they had gotten information, they would be given whatever reward they had been promised. I was once personally approached by three guards and told I could be out of jail in a matter of days if I would agree to obtain incriminating statements from a fellow inmate. I declined.

*RS* 2. It was also common practice for informants to pretend to have gotten confessions even when they really hadn't. Inmates acting as informants could often make up incriminating statements supposedly made by another inmate because it was very easy to get information about other inmates' cases, especially the high profile cases. Several of the inmates had subscriptions to various newspapers, including *The Stockton Record*. The newspapers were passed from inmate to inmate, and inmates gossiped about other inmates' cases. Nothing was a secret, it took about two hours for news to travel from one side of the jail to the other.

*RS* 3. During 1980, I was one of the trustees at the jail. Being a trustee meant that you were given special privileges and responsibilities. The trustees were allowed to wander through almost any part of the jail, except for protective custody. The television set in the

area where the trustees were housed was on twenty-four hours a day. When trustees were not doing chores or talking to the other inmates, they were watching television. Movies and the news were all that we watched on the television. Newspapers were often kept in the trustee area of the jail. Because of this, the trustees often had a lot of information about other inmates' cases.

RS 4. I learned all about Mike Morales' case at the jail. Although I knew Mike and we got along, he had a reputation for being very tight-lipped about his case and he never said anything to me about it. But because of the nature of the case, everyone knew and talked about it, and it was constantly in *The Stockton Record*. His cousin was also at the jail, on the medical side. I read in the paper and heard from the other inmates that Mike's cousin was a homosexual and wanted to kill his boyfriend's girlfriend. I also read and heard exactly how Mike and his cousin supposedly killed the girlfriend. Their case was probably the most high-profile case in the county jail.

RS 5. During the time Mike's case was getting all this publicity, I was celled with Bruce Samuelson, who was another one of the trustees. Samuelson watched television constantly, and there was no way he could have missed the reports on Mike's case. I remember Samuelson well because he was a very irritating person. When I first met him, I thought he was a nice guy. He played chess, worked out, and watched a lot of television. When he was not interested in the news program or the movie on the television, however, he spoke non-stop with authority about every topic imaginable. He constantly tried to impress me with how intelligent he was. He never shut his mouth and was a very difficult person to get away from.

RS 6. Samuleson always tried to get favors from the guards by telling on other inmates. He tried to find out who was smoking dope, who was after who, and anything else he could find out, and when he did, he always went to the guards with the information.

RS 7. I had been released from the jail by the time Mike supposedly confessed to Samuelson, but I have reviewed a copy of Samuelson's testimony at Mike's trial and have <sup>RS</sup> initialed the copy of it attached to the end of this declaration. Everything Samuelson testified that Mike supposedly told him about his case, I knew from watching television and reading the papers, and from gossip about Mike's case within the jail during the time that Samuelson was a trustee with me.

RS 8. I do not believe that Mike ever talked to anyone about his case, because of the way he was, and especially not to Samuelson because it must have been so obvious that he had been planted in "the Hole" to snitch. Only violent inmates and inmates with known gang affiliations were housed in the Hole. Samuelson was never a gang member and had never committed a violent offense. It is so suspicious that Samuelson, a former trustee, would have been placed in "the Hole" with Mike that it must have been obvious to everyone in the jail that that he was there to snitch.

I declare under the penalty of perjury that the foregoing is true and correct and was executed May 19, 1994 in Vacaville.

Ruben Serma  
RUBEN SERNA

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 52: Declaration of Frank Moppins**

DECLARATION OF FRANK I. MOPPINS

I, FRANK I. MOPPINS, declare:

*J.M.* 1. I was incarcerated at the main jail of San Joaquin County from December 1980 until about 1983. While there, I was first held in the area of the jail known as

"hole." I was later moved to the medical cells. The medical cells were located next to

the trustee cells. The two areas were separated by caged bars, in the front, and a wall on *J.M.* the side. The ceiling was bars, so trustees and inmates in the medical cells could hear each other.

*J.M.2.* While I was at San Joaquin County Jail the guards regularly tried to get inmates to inform on other inmates, <sup>7</sup> both about their court cases, and about activities

that were going on inside of the jail. Informants, also known as snitches and rats, were

used against a lot of inmates at that time. *J.M.* Guards asked inmates they thought could be informants what they knew about other inmates' cases, and if you took the bait and helped the guards, you got extra phone calls, extra food, and often breaks on your time served. Although I was personally asked by guards to rat, I never did.

*J.M.3.* Inmates who agreed to act as informants were planted next to or near the cell of the inmate or inmates they were told to inform on. Once the informants got the information they were supposed to get, or could pretend that they had gotten, they were given whatever reward they had been promised. These rewards usually involved some sort of sentencing break and sometimes resulted in release or probation.

*J.M.4.* The general conditions at the jail often made it easy for snitches to fabricate "confessions" rather than actually obtain them. In fact, it was common for inmates acting as informants to make up incriminating statements supposedly made by another inmate because it was very easy to get information about other inmates' cases.

Several of the inmates, including me, had subscriptions to various newspapers, including *The Stockton Record*. The newspapers circulated throughout the jail, were passed from inmate to inmate, and inmates gossiped about other inmates' cases. Each edition of a newspaper usually circulated for an average of at least a month, until it was too ratty to read. Everyone also gossiped about everyone's cases. Nothing was a secret, rumors, no matter how seemingly small, traveled from one end of the jail to the other within hours.

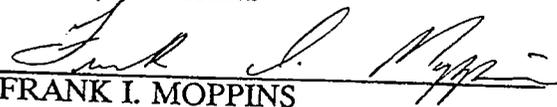
*J.M.* 5. Of all of the inmates at the jail, the trustees had the most information about all of the inmates. As trustees, they had access to just about all areas in the jail, and could talk freely with those in the mainline population. There was also a television in the trustee area which was, for the most part, going all of the time. Between their circulation and access to information, just about any trustee could tell you all about any case in the jail, especially the big cases, like the murder cases.

*J.M.* 6. The guards were another source of information used to fabricate "confessions." Guards often fed inmates police reports or newspaper stories giving details of the crime that the targeted inmate supposedly gave the snitch. Sometimes the guards simply told the snitch what to say the inmate had said. <sup>OF ALL THE GUARDS, I REMEMBER</sup> *J.M.* <sup>DOGGER WERE THE DIRTIEST, NOT ONLY did they recruit informants, they also used threats of physical violence and were the first to use it.</sup> OFFICERS LITTLE, KENNEDY, and *J.M.* Everyone in the jail knew it was common practice, so most people kept to themselves about their cases, and the newer men who came in were immediately told by the older inmates to keep quiet about their cases. Unfortunately, that was not always enough -- when the guards wanted to nail someone, they found a way.

*J.M.* 7. From what I know of the jail, I believe that confessions supposedly made in the hole are the most likely to be false. There is very little privacy down there, and

everyone in the hole knew about the two-way intercoms down there. The guards were capable of listening in on everything that was said between inmates, and inmates could not really whisper to each other because the cells were too far apart.

I declare under the penalty of perjury that the foregoing is true and correct and was executed on ~~July~~ <sup>Aug. 5</sup> \_\_\_\_\_, 1994 in Vacaville, California.  
*F.I.M.*

  
FRANK I. MOPPINS

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 53: Letter from Lisa Renee Vanni**

January 19, 2006

Dear Governor Schwarzenegger,

With respect and hope I am writing to you in regards to my brother Michael Angelo Morales who is scheduled to be executed on February 21, 2006. Please know that I am writing this letter from the heart knowing well that this is not what my brother has requested or even wants. At this time, what is the utmost importance to Michael is that he does not bring any more pain to his victim's family or his own. Because of this he has not wanted any of us to speak out on his behalf. Years ago I would have not only honored that request, but, I would have agreed with him. There is not one of us in Michael's immediate family that in some way have not taken on the shame and the guilt for the pain my brother caused his victim and her family. For that reason it took me time to forgive my brother and I was hard on him. Michael helped me find my way back to him by never making excuses for what he did. By taking responsibility, he brought healing not just for me, but our entire family.

Once I was able to forgive my brother and realize the guilt and pain he was carrying. I began my own search to try to understand what went wrong? Michael comes from a loving family. How could he have done this? I know my brother and he is not a monster. I learned that he was on drugs at the time and what those drugs do to the brain. I wanted to share my newfound information with him. I explained how the brain reacts to the drugs and how an individual could do the unthinkable under the influence. I wanted him to find his way to forgiving himself. His only response to me was that he wasn't looking to blame anyone or anything else.

At the beginning of this awful journey, I wondered what kind of life my brother would have behind bars. What value does a life behind bars have? Michael proved and showed me life has value. His life has value. It is known in our family and amongst his friends that if you're going through a hard time- write Michael. My brother is gifted in his ability to counsel, comfort and provides insight and his letters continue to reflect this gift. He has been our cousin Tina's lifeline and a safe place for her to fall. When he heard that any of his three children were making poor choices in their lives, he wrote and spoke of consequences and responsibility. He was honest about his poor choices and the effect they've had on his life. He wrote of how he wanted more for his children.

Michael is a son, a brother, a friend, a father, a grandfather and he is loved. In fact the biggest motivation for writing this letter for me is his kids. They are all three turning out to be such wonderful adults. Just setting out in their lives. His daughter Maria got married this last summer. His eldest son Isaac is going on to graduate school. His youngest son David has just started a business and has become a father himself. I can't imagine what effect it will have on them if their father is executed. They have come to count on his emotional support along with all us that love him.

Governor Schwarzenegger as I am writing this letter to you, asking that my brother's life be spared, my heart is torn. I in no way want to minimize the grief and pain felt by Terri Lynn Winchell's family. Yet, I know that my own family has been through so much as well. I know that this is a serious and difficult decision for you to make. Because I love my brother, I write to you respectfully and ask that his life be spared. I hope that you will take into consideration that my brother has always been remorseful and has taken responsibility. And that Michael Angelo Morales has and always will have the love and support of his family and to us his life continues to have value. May God be with you.

Sincerely,  
Michael's Sister

Lisa Renee

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 54: Letter from Craig Tracy**

Jan 30, 2006

Dear Governor,

My name is Craig Tracy. I am a personal friend of Michael Morales and I write you this letter to add to the voices of all his friends and family, many of whom you will not receive letters from but who cry out as I do for his life to be spared for the benefit of all who love him for the person he has worked so hard to become.

I have known Mike for over 11 years having met him through other friends of his who were visiting him in San Quentin.

The qualities as a person that he has spent his years in prison cultivating of love, peace, kindness, goodness, self control long suffering and faith are immediately noticed when you look in his eyes and hear his voice, when you watch how he interacts with his daughter and new son in law and other friends.

When you go in to see Mike to be encouraging to him, you come away knowing it was more encouraging for you to be around him. When I heard about what is planned for Feb 21st. I flew in from Chicago where I now live with my wife to spend three days with him. To think that those may be the last three days with him is unbearable to me.

I am completely aware of what happened and have deep sorrow for the victims family. However, it is who Mike has become, the person he is now, that makes it possible for myself and others to see beyond what he did in the past, and love him. Please give Mike Clemency.

Sincerely,

Craig Tracy

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 55: Letter from Aunt Ruby**

1-24-06

To Whom it may concern  
I am not trying to make light of what happened, which was really bad, but I do want to paint a different picture of Mike than what happened.

I am his aunt and have known Mike all his life. I used to baby-sit him when very young and he has always been a sweet-heart and very respectful.

What did happen was so out of character for him that <sup>it</sup> was hard to believe.

I have gone to see him and is still the sweet-heart that he has been, so I know that it was the drugs that were given him.

Mike is very sorry for what happened and is ready to face what ever happens to him.

Mike's Aunt Ruby

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 56: Declaration of Kathleen Culhane**

## DECLARATION OF KATHLEEN CULHANE

I, Kathleen Culhane, declare as follows:

1. I was retained by attorney David A. Senior in 2006 to assist in the investigation of the criminal prosecution and death sentence entered against Michael A. Morales.

2. Mr. Senior assigned me various investigative tasks on the Morales case. Among my assignments was to find and interview Patricia Santiago Felix, who had been a witness for the prosecution at Mr. Morales's capital trial. I located and met with Ms. Felix, once on January 22, 2006 for approximately two hours and a second time on January 23, 2006 for approximately three hours. My meetings with Ms. Felix took place at her home at 844 Buena Vista in Stockton, California. During our meetings, I informed Ms. Felix that I was an investigator working on behalf of Mr. Morales and his attorneys. I also informed Ms. Felix that she was free to talk with me or not talk with me. Finally, I informed Ms. Felix that the purpose of my visit was to speak with her and obtain a statement from her that would be filed with the Governor, the Courts and the Attorney General's Office involved in Mr. Morales's case.

3. During our meetings, Ms. Felix made the statements to me, the substance of which is contained in Exhibit 30 of Michael A. Morales's Petition for Clemency. Generally, her statements to me concerned, among other things, her personal history and relationship with Michael Morales, her participation in Mr. Morales's arrest, in the investigation of his case, in his conviction, and her testimony at Mr. Morales's capital trial.

4. Following consultation with Mr. Senior, I returned to Ms. Felix's residence on January 25, 2006 and presented the summary declaration to her. Ms. Felix carefully read her declaration and then told me that it was an accurate, correct, and truthful statement. Ms. Felix then signed her declaration and initialed each page in her own hand.

5. On January 26, 2006, I received a telephone call from Ms. Felix in which she stated that she wanted to consult with an attorney about some of the statements she had made in her declaration that she signed the day before. Ms. Felix said she wanted to do this because she was concerned about any repercussions her acknowledgment of drug use might have. I told Ms. Felix I could not respond to her concerns without consulting Mr. Morales's attorneys first. Ms. Felix then stated that she was going to try and find a legal aid lawyer who did not charge much.

6. On January 30, 2006 I again received a telephone call from Ms. Felix in which she stated that police or other law enforcement investigators were trying to contact her. Ms. Felix was quite upset, cried on the phone, and asked for advice as to what she should do. I told her I would need to check with Mr. Morales's attorney before responding to her request for information. I then informed Mr. Senior of this development. I subsequently received another telephone call from Ms. Felix stating that her situation was not as problematic as she had conveyed earlier that morning.

7. On February 1, 2006, I received still another telephone call from Ms. Felix. In this call, Ms. Felix expressed great anger and was upset at a recent article about the Morales case in the local Lodi paper. Ms. Felix told me she had not realized her declaration would be published in the local media, and that it was a surprise and a shock to her. She further stated that she had incurred serious problems with her family, friends, and employer as a result of the media attention on her and the subject matter in her signed declaration. I pointed out to Ms. Felix that there was in fact no mention of her in the Lodi article in question, only a link to a website where her declaration was in fact posted. Ms. Felix angrily replied that I did not inform her that her declaration would be appearing anywhere in the media, and that I misled her as to the purpose of her declaration. I then reminded Ms. Felix that I had in fact told her accurately and correctly that her declaration would be submitted in support of Mr. Morales's case before the courts and in his petition for clemency before the governor. Ms. Felix sounded

hysterical, and shouted at me that she was planning to sue me personally and possibly Mr. Morales as well for bringing media attention on her.

8. On February 2, 2006 I received another call from Ms. Felix in which she told me that I could expect a call from a local attorney who had accepted her case to sue me in civil court. I asked Ms. Felix for her attorney's name, but she refused to provide it. She repeated her threats about suing me. This was the last communication I had from Ms. Patricia Felix. At no time during any of our several telephone calls did Ms. Felix claim that any portion of the declaration was inaccurate.

9. In addition to my tasks concerning Ms. Felix, I was also assigned the task of locating and interviewing a former investigator with the Stockton Police Department and the San Joaquin County District Attorney's Office named Lee Copeland. On January 25, 2006, I met with Mr. Copeland. He informed me that in 1983 he was instructed by his then supervisor Deputy District Attorney Bernard Garber to conduct a polygraph examination of a witness in the case of *People v. Michael Morales*. Mr. Copeland said that San Joaquin Police Department Sergeant Andy Jackson explained to him that the witness in question was Bruce Samuelson, an informant who allegedly provided the police with information about Mr. Morales. Mr. Copeland said Jackson informed him he was the point person to conduct the polygraph of witness Samuelson, but Jackson was unavailable to do so. Instead, Mr. Copeland said he substituted for this task, and he carried out this task in the best way he knew how.

10. Mr. Copeland told me that at the time he administered a polygraph examination to Mr. Samuelson, he was not certified as a polygraph examiner and had only a minimum of training as a polygraph examiner. Mr. Copeland said that the extent of his experience and training in polygraph examinations consisted of one three-hour training session conducted by Department of Justice personnel in the late 1970s. Mr. Copeland also told me he was instructed to attend this training by his supervisors.

11. Mr. Copeland stated that the training was an introduction to polygraph examinations which consisted of lectures and a film. Mr. Copeland also said he was given a manual that provided instructions on how to administer a polygraph examination. Mr. Copeland said his skills in administering a polygraph were not observed or assessed during the training. Mr. Copeland additionally stated that there existed another select group of polygraphers from San Joaquin county law enforcement agencies who were slated to attend a more thorough training. However, Mr. Copeland told me that he was not one of those selected for the more advanced training.

12. Mr. Copeland informed me that Bruce Samuelson's polygraph examination was one of the first polygraphs that he administered during his tenure at the San Joaquin District Attorney's Office. Mr. Copeland said that each time he conducted a polygraph, he was in essence substituting in a pinch for a qualified examiner. Mr. Copeland said that whenever he conducted a polygraph during that time period, he followed the instruction manual fairly closely because he had quickly forgotten the training he received some time before. Mr. Copeland told me that Mr. Samuelson's entire polygraph examination lasted about forty minutes. Mr. Copeland further stated that he conducted Mr. Samuelson's polygraph examination to the best of his abilities, and in accordance with his training. Finally, Mr. Copeland stated that he could not recall or state exactly how a polygraph should be properly administered; nor did he recall or was able to identify the various forms involved or the scoring method an examiner should employ.

13. On January 28, 2006 I met with Mr. Copeland again. He immediately advised me that he had received a message from Chuck Schultz at the San Joaquin District Attorney's Office cautioning him against speaking with defense attorneys for Mr. Morales. Mr. Copeland said he would not discuss anything further with me.

14. On February 5, 2006 I again saw Mr. Copeland. He referred to Mr. Schultz again, but due to extenuating circumstances could not converse with me further.

I therefore tried to contact Mr. Copeland a final time on February 6, 2006. Mr. Copeland refused to speak with me any further.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on February 7, 2006.

  
\_\_\_\_\_  
Kathleen Culhane

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 57: Comparison of Signatures of Patricia Felix**

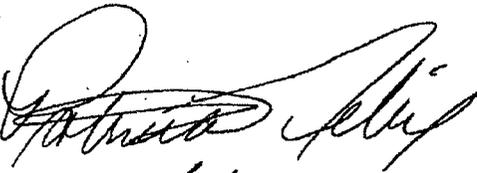
am grateful that, with my new-found faith, I can be completely honest about all of this now.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on January 25, 2006.

  
PATRICIA FELIX

Excerpt from p. 11 of Exhibit 30, Declaration of Patricia Felix – January 25, 2006.

1 TRANSCRIBED BY JONI K. FERRARI  
2 02.01.06  
3 //  
4 //  
5 //  
6 //  
7 //  
8 //  
9 //  
10 //

  
2/2/06

Excerpt from p. 16 of Exhibit 136, Attached Redacted Transcript of Taped Interview Conducted on February 1, 2006.

6. As I told the prosecution investigators on February 1, 2006, I never signed the January 25th declaration. I had never seen it before. I testified truthfully at Michael Morales's trial and I stand by my testimony. I was never coerced or threatened in any way by the police at the time of Morales's trial.

I declare under penalty of perjury of the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed this 2nd day of February 2006, in  California.

  
PATRICIA FELIX 2/2/06

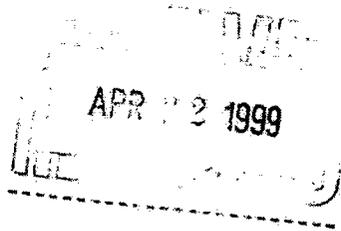
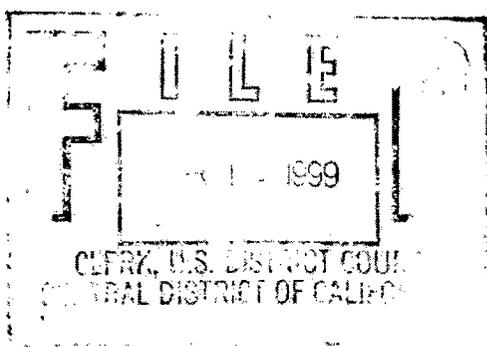
Excerpt from p. 1 of Exhibit 136, Redacted Declaration of Patricia Felix (formerly known as Patricia Flores) signed on February 2, 2006.

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 58: Order Denying Petitioner's Motion for Partial Summary  
Judgment on Claims 52, 53, 54, 57, and 58**

60170 met



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL ANGELO MORALES,  
Petitioner,  
v.  
ARTHUR CALDERON, Warden of  
California State Prison at  
San Quentin,  
Respondent.

CASE NO. CV 91-0682-DT  
**DEATH PENALTY CASE**

ORDER DENYING PETITIONER'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON CLAIMS 52, 53, 54,  
57, and 58

Introduction

The history of this case has been described in the Court's previous orders, and need not be repeated here. On March 12, 1999, petitioner Michael Angelo Morales moved for partial summary judgment on Claims 52, 53, 54, and 57 of his First Amended Petition, alleging various errors relating to the penalty phase of the trial, as well as on Claim 58, alleging that his first degree murder conviction is unconstitutional. Respondent filed an opposition on March 26, 1999. No reply was filed. There are no disputed factual issues that preclude resolution of the merits of these five claims as a matter of law, on the basis

1 of the state court record and the pleadings on file in this  
2 case.

3 Discussion

4 1. Claim 52

5 Morales claims he was denied a fair penalty phase trial  
6 because the jury was not instructed to view evidence of his  
7 extrajudicial statements with caution. He complains that the  
8 prosecution elicited damaging testimony from two defense  
9 witnesses at the penalty phase concerning certain extrajudicial  
10 statements allegedly reflecting Morales's willingness to exact  
11 revenge on those who hurt his friends and family. Had the jurors  
12 been instructed to regard this evidence with caution, Morales  
13 argues, they would have been more likely to reject the  
14 prosecutor's penalty phase argument that Morales did not  
15 experience genuine duress as a result of his cousin Rick Ortega's  
16 conflict with Terri Winchell, but was instead simply voluntarily  
17 helping a family member when he killed Winchell. The failure to  
18 give a cautionary instruction therefore purportedly denied  
19 Morales due process of law. (Pet. at 213-14.)

20 Petitioner's sister, Lisa Morales, testified at length at  
21 the penalty phase about her relationship with petitioner, their  
22 family history, and petitioner's loyalty to the Morales family.  
23 (13 R.T. 2920-56.) She described a letter petitioner wrote from  
24 jail promising "if I needed anything that he would be there and  
25 if anyone ever did anything to me that he would take care of it  
26 for me and that nobody better ever hurt me." (13 R.T. 2930.) In  
27 response to the prosecutor's cross-examination concerning what  
28 petitioner indicated he would do "if anyone ever does anything to

1 you," Lisa Morales testified that "he would - I guess hurt them  
2 the way that they had hurt me." (13 R.T. 2956.)

3 The defense also called petitioner's friend, Lydia Lopez  
4 who testified about her affection for Morales and about his  
5 kindness towards her three children and his willingness to help  
6 her. (13 R.T. 2885-99.) Lopez described an incident in which  
7 her husband became angry that she was talking to Morales outside  
8 the Lopez's house. She testified that Morales offered to leave  
9 in order to defuse the situation, telling her "if he is going to  
10 hurt you or anything, . . . I don't know what I will be able to  
11 do, but . . . I will be here." (13 R.T. 2895.) On cross-  
12 examination, the prosecutor suggested that Morales had "offered  
13 to take care of your husband," and inquired, "He was ready to  
14 fight your husband, wasn't he?" Lopez replied that Morales only  
15 "said he didn't know what he could do," and denied that Morales  
16 ever indicated he wanted to fight her husband. (13 R.T. 2898-  
17 99.)

18 In his closing argument, the prosecutor addressed the  
19 applicability of one of the statutory mitigating factors:  
20 "whether or not the defendant acted under extreme duress or under  
21 the substantial domination of another person." (14 R.T. 3084  
22 (quoting Cal. Penal Code § 190.3(g)). Dr. Carson had testified  
23 for the defense that Morales's protective attitude toward his  
24 younger cousin Rick Ortega made Morales feel emotional duress  
25 when Ortega asked for help in dealing with Terri Winchell. (14  
26 R.T. 3036-37.) The prosecutor argued that this was neither true  
27 duress nor the "substantial domination of another person";  
28 instead, Morales "just did it for Rick. He did it for his

1 cousin. And you can see throughout the testimony, [if Morales  
2 is] your friend, he will do anything for you." (14 R.T. 3084.)

3 The prosecutor continued:

4 We had Lydia Lopez, his friend. He was over  
5 there, and he'd never met her husband. But her  
6 husband didn't want to come out. Her husband  
7 didn't want to meet the defendant. He just didn't  
8 want to go out there for whatever reason.

9 So what does the defendant say? "Hey, I'll  
10 take care of him for you." He's ready to do a  
11 number on people for a friend. That's just what  
12 he's going to do.

13 What about his sister? His sister testified  
14 yesterday that she's talked to him about whatever,  
15 and he says something to the effect that if -  
16 "Hey, if anybody ever does anything to you, if  
17 anyone hurts you, you let me know. I'll take care  
18 of him." He's in jail at this time, and he's  
19 still going to take care of people.

20 He wasn't dominated by Rick Ortega. He  
21 wasn't under extreme duress or the domination of  
22 Rick Ortega. He is his own man. He's acting on  
23 his own.

24 (14 R.T. 3084-85.)

25 Petitioner contends that the prosecutor used these  
26 extrajudicial admissions to argue that even in jail, Morales  
27 remained a danger to society, so he should be sentenced to death.  
28 He argues that under these circumstances, due process mandated a  
cautionary instruction to the jury concerning the extrajudicial  
statements.

Because the omission of a jury instruction is generally  
"less likely to be prejudicial than a misstatement of the law," a  
habeas petitioner asserting error in the failure to give a  
particular instruction bears an "especially heavy" burden of  
demonstrating a denial of due process. Henderson v. Kibbe, 431  
U.S. 145, 155 (1977); Duckett v. Godinez, 67 F.3d 734, 745 (9th

1 Cir. 1995). To prevail on this claim, Morales must show that the  
2 failure to instruct the jurors to view the evidence of his  
3 statements to Lisa Morales and Lydia Lopez with caution so  
4 infected the penalty phase of his trial that the resulting death  
5 sentence violates due process. Kibbe, 431 U.S. at 154-57;  
6 Masoner v. Thurman, 996 F.2d 1003, 1006 (9th Cir. 1993).

7 "Whether a constitutional violation has occurred will depend upon  
8 the evidence in the case and the overall instructions given to  
9 the jury." Duckett, 67 F.3d at 745.

10 On direct appeal, Morales argued that state law required a  
11 cautionary instruction under the circumstances of this case. See  
12 People v. Romo, 14 Cal. 3d 189, 194 (1975) (instruction required  
13 at guilt phase when warranted by evidence). Rejecting this  
14 argument, the California Supreme Court explained that  
15 "defendant's remarks in these two instances cannot be  
16 characterized as 'admissions' for purposes of the rule requiring  
17 a cautionary instruction," because "[i]n neither instance was  
18 defendant acknowledging or admitting any fact particularly  
19 damaging to his position at the penalty phase . . . ." People v.  
20 Morales, 48 Cal. 3d 527, 569 (1989).

21 The question of whether the Due Process Clause of the  
22 Fourteenth Amendment requires a cautionary instruction regarding  
23 a defendant's extrajudicial statements is of course distinct from  
24 the question of whether California law requires such an  
25 instruction. Only the first question is relevant here. See  
26 Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) (on habeas review,  
27 federal court is limited to deciding whether state conviction  
28 violates federal law). Nevertheless, for the same reasons that

1 the state court concluded that the evidence at Morales's penalty  
2 phase did not warrant the instruction, the absence of the  
3 instruction did not render his penalty phase fundamentally unfair  
4 in violation of the United States Constitution. Lydia Lopez  
5 specifically denied that Morales ever indicated he wanted to  
6 fight her husband or have any form of physical confrontation with  
7 him. (13 R.T. 2898-99.) Lisa Morales testified that she thought  
8 her brother meant in his letter from jail that he would try to  
9 "hurt [anyone who hurt her] the way that they had hurt me." (13  
10 R.T. 2956.) But there was no evidence that Morales ever took any  
11 steps to commit a crime on behalf of his sister. The evidence of  
12 Morales's statement to his sister was insignificant in comparison  
13 to the evidence that Morales beat and killed Terri Winchell as a  
14 favor for Rick Ortega.

15 Moreover, the defense never attempted to cast doubt on the  
16 evidence that Morales made these statements to his sister and to  
17 Lopez. Instead, in his closing argument at the penalty phase,  
18 Morales's defense attorney cited the fact that Morales killed  
19 Winchell to "do a favor for Rick, that the reason for this was  
20 family" as evidence that Morales was "suffering from something  
21 severe as far as an emotional disturbance." (14 R.T. 3105.) He  
22 argued that Morales needed to feel that he could protect his  
23 family members in order to "prove to his friends and his family  
24 that he has some worth, . . . and that's why there's these  
25 verbalizations of, 'I'll take care of you, I'll take care of  
26 things . . .'" (14 R.T. 3113.) The defense argued that Morales  
27 experienced a form of emotional duress — arguably a mitigating  
28 circumstance — as a result of Ortega's desperate plea for help in

1 stopping Winchell's public accusations that Ortega was gay, and  
2 as a result of Morales's strong sense of family loyalty and his  
3 desire to help his younger cousin. (14 R.T. 3115-18.) Because  
4 the defense embraced the evidence of Morales's family loyalty -  
5 even to the extent that loyalty included violent criminal acts on  
6 behalf of a family member - rather than attempting to rebut the  
7 evidence, the jury was not required to resolve any factual  
8 dispute over whether Morales actually made the statement to his  
9 sister. For this additional reason, the absence of a cautionary  
10 instruction concerning this extrajudicial statement did not have  
11 a "substantial and injurious effect or influence in determining"  
12 the jury's penalty verdict. Brecht v. Abrahamson, 507 U.S. 619,  
13 637-38 (1993) (citation and internal quotation marks omitted).  
14 Morales is therefore not entitled to habeas corpus relief on the  
15 basis of this claim.

16 2. Claim 53

17 At the guilt phase of the trial, the jury was instructed not  
18 to draw any inference from the fact that Morales did not testify  
19 in his own defense, and not to "discuss this matter nor permit it  
20 to enter into your deliberations in any way." (3 C.T. 589.) The  
21 jury was also instructed to view the evidence of Morales's  
22 extrajudicial oral admissions with caution. (3 C.T. 591.)

23 Petitioner claims that his right to a fair and reliable  
24 capital sentencing procedure under the Eighth and Fourteenth  
25 Amendments to the United States Constitution was violated by the  
26 trial court's failure to repeat these two instructions at the  
27 penalty phase. He argues that the jury should have been  
28 reinstructed at the penalty phase not to draw any adverse

1 inference from Morales's failure to testify, and reminded to view  
2 the evidence of Morales's out-of-court statements with caution.  
3 Petitioner contends that the absence of these instructions from  
4 the penalty phase was prejudicial in view of the prosecutor's  
5 argument that Morales had failed to express remorse and his  
6 argument that Morales's extrajudicial statements showed Morales  
7 was proud of what he had done to Terri Winchell. (Pet. at 214-  
8 17.)

9 The Court has previously considered petitioner's closely  
10 related claim that his defense attorney was ineffective because  
11 he failed to object to the prosecutor's comments on Morales's  
12 lack of remorse, and failed to request a penalty phase  
13 instruction not to draw adverse inferences from Morales's failure  
14 to testify. (See Order, Sept. 28, 1998, at 87-89 (discussing  
15 Claim 55, which incorporates the allegations of Claim 53).) As  
16 explained in the previous order, it was the defense itself that  
17 raised the subject of Morales's remorse, by offering evidence of  
18 Morales's extrajudicial statements to his mother and to Dr.  
19 Carson, and by suggesting reasons why Morales might find it  
20 difficult to express remorse openly. The prosecutor's argument  
21 concerning Morales's failure to express remorse was made in  
22 response to this evidence, and constituted fair comment on  
23 weaknesses in the defense case. The prosecutor's statements were  
24 not of such a character that the jury would naturally take them  
25 to be a constitutionally prohibited reference to Morales's  
26 failure to testify in his own defense. Petitioner therefore  
27 suffered no prejudice from the trial court's failure to  
28 reinstruct the jury not to draw adverse inferences from Morales's

1 failure to testify.

2 Nor was it a violation of due process to fail to remind the  
3 jurors at the penalty phase that they should view the evidence of  
4 Morales's extrajudicial admissions with caution. Morales  
5 complains that in order to demonstrate lack of remorse, the  
6 prosecutor in his penalty phase argument referred to oral  
7 admissions allegedly made by Morales to Raquel Cardenas, Patricia  
8 Flores, and Bruce Samuelson, about which these three witnesses  
9 had testified at the guilt phase. (Pet. at 215; see 14 R.T.  
10 3092-93.) When the jurors first considered this evidence during  
11 their guilt phase deliberations, they were instructed to view the  
12 evidence with caution. (3 C.T. 591.) Although the trial court  
13 did not repeat at the penalty phase every one of the numerous  
14 guilt phase instructions, it did remind the jurors of their role  
15 in judging the credibility of witnesses, and repeated a  
16 comprehensive set of instructions concerning the proper weight to  
17 accord to witnesses' testimony. (3 C.T. 740-47.)

18 Petitioner argues that the California Supreme Court erred in  
19 concluding that a separate cautionary instruction at the penalty  
20 phase was not required under state law, despite the prosecutor's  
21 reliance at the penalty phase on the evidence of Morales's  
22 admissions introduced earlier at the guilt phase. See People v.  
23 Morales, 48 Cal. 3d at 569. Even if this was error under state  
24 law, however, it would not necessarily warrant relief on federal  
25 collateral review. See Jammal v. Van de Kamp, 926 F.2d 918, 919-  
26 20 (9th Cir. 1991). The issue in this federal habeas corpus  
27 proceeding is "whether the trial court committed an error which  
28 rendered the trial so arbitrary and fundamentally unfair that it

1 violated federal due process." Id. at 920 (citation and internal  
2 quotation marks omitted); see also Kibbe, 431 U.S. at 154-57  
3 (standard for evaluating habeas claim based on absence of jury  
4 instruction).

5 The penalty-phase instructions as a whole, considered in  
6 light of all the evidence in the case and the trial court's  
7 earlier admonition to the jurors at the guilt phase to view  
8 evidence of Morales's oral admissions with caution, "were  
9 sufficient to afford due process under the standard by which  
10 [federal courts] review state court convictions in habeas cases  
11 under 28 U.S.C. § 2254." Duckett, 67 F.3d at 746 (existence of  
12 constitutional violation depends upon evidence in case and  
13 overall instructions to jury). The failure to repeat this  
14 instruction at the penalty phase did not render Morales's  
15 sentencing proceeding fundamentally unfair. Cf. id. at 743-46  
16 (failure to give alibi instruction requested by defendant did not  
17 violate federal constitution).

18 3. Claim 54

19 Morales alleges that the prosecutor's argument that Morales  
20 failed to express remorse for his crimes constituted  
21 impermissible comment on Morales's invocation of his Fifth  
22 Amendment right to remain silent and not to testify at the  
23 penalty phase. (Pet. at 217-18.) Like Claim 53, this claim  
24 fails for reasons that were discussed in the Court's September  
25 28, 1998, order. At the penalty phase, the defense introduced  
26 evidence that Morales felt remorse for his crimes, and the  
27 prosecutor's argument was a legitimate commentary on the weakness  
28 of this evidence. The prosecutor did not improperly refer to

1 Morales's decision to exercise his constitutional privilege  
2 against compelled self-incrimination. (See Order, Sept. 28,  
3 1998, at 87-89 (discussing Claim 55, which incorporates the  
4 allegations of Claim 54).)

5 4. Claim 57

6 Under California law, when a jury returns a death penalty  
7 verdict, the trial court must independently determine "whether  
8 the jury's findings and verdicts that the aggravating  
9 circumstances outweigh the mitigating circumstances are contrary  
10 to law or the evidence presented," and must state the reasons for  
11 its findings on the record. Cal. Penal Code § 190.4(e); People  
12 v. Morales, 48 Cal. 3d at 572. Accordingly, after Morales's jury  
13 returned the verdict of death, the trial court considered  
14 Morales's automatic motion for modification of the sentence. (14  
15 R.T. 3163-95.) Morales's mother testified about Morales's  
16 artwork in jail and the prospects for marketing it, and Morales  
17 personally made a statement indicating regret for having taken  
18 Winchell's life. (14 R.T. 3163-81.) The court then denied  
19 Morales's motion for modification of the sentence, explaining its  
20 reasons for concluding that the jury's findings on the special  
21 circumstances and on the balance of aggravating and mitigating  
22 circumstances were supported by the weight of the evidence. (14  
23 R.T. 3191-95.)

24 In Claim 57, Morales asserts that in denying the § 190.4(e)  
25 motion, the trial court relied on inadmissible evidence and  
26 erroneous factors in aggravation, and failed to consider evidence  
27 in mitigation. In support of this claim, Morales incorporates  
28 every allegation contained in the petition. More specifically,

1 he argues that the trial court erroneously considered as factors  
2 in aggravation Morales's robbery convictions (which were entered  
3 after the Winchell murder), the torture special circumstance,  
4 Bruce Samuelson's testimony, and Rick Ortega's extrajudicial  
5 statements. Morales also contends that the trial court  
6 disregarded the defense's evidence of emotional duress based on  
7 its erroneous belief that duress cannot be a mitigating factor  
8 unless it is "extreme." (Pet. at 221-22.)

9 The Court has previously considered and rejected several  
10 closely related claims arguing that the jury's penalty verdict  
11 was unconstitutional because it was based on the same allegedly  
12 erroneously admitted evidence of aggravating circumstances that  
13 petitioner now identifies in support of Claim 57. Petitioner's  
14 challenge to the trial court's ruling on the § 190.4(e) motion  
15 fails for the same reasons that his challenge to the validity of  
16 the jury's penalty verdict fails.

17 Although it was error under state law to consider the fact  
18 that Morales was convicted of two counts of robbery in connection  
19 with the convenience store robbery in October 1980, there was no  
20 error in considering the underlying facts of the robbery itself,  
21 which were admissible as proof of a circumstance in aggravation  
22 under California Penal Code § 190.3(b) (violent criminal  
23 activity). People v. Morales, 48 Cal. 3d at 56. This error did  
24 not have a "substantial and injurious effect or influence" on the  
25 penalty phase, Brecht, 507 U.S. at 638, as the evidence of the  
26 convictions themselves was inconsequential in comparison to the  
27 evidence of the underlying criminal activity during the robbery  
28 and the other evidence of aggravating factors. (See Order, March

1 8, 1999, at 9-12 (denying Claim 49).)

2 There was no error in considering the torture-murder special  
3 circumstance as a factor in aggravation at the penalty phase.  
4 (See Order, March 8, 1999, at 2-5 (denying Claim 20).) Moreover,  
5 the trial judge concluded based on his own familiarity with the  
6 evidence that had been presented in the trial that "the evidence  
7 concerning the truth of the special circumstances is  
8 overwhelming" and "there is absolutely no question as to the  
9 guilt of the defendant or as to the truth of the special  
10 circumstances." (14 R.T. 3191-92.)

11 There was no error in the jury's consideration of Bruce  
12 Samuelson's testimony concerning Morales's extrajudicial  
13 admissions, and the trial judge was equally able to make the  
14 necessary credibility determinations and weigh the significance  
15 of this evidence. (See Order, Nov. 13, 1998, at 11-14 (denying  
16 Claim 44).) The judge stated: "In terms of credibility, the  
17 Court agrees with the jury that the witnesses for the People were  
18 credible and believable." (14 R.T. 3191-92.)

19 Nor was it prejudicial error for the jury or the judge to  
20 consider the extrajudicial statements of petitioner's co-  
21 conspirator, Rick Ortega. (See Order, Nov. 13, 1998, at 2-11  
22 (denying Claim 43).)

23 Finally, it is not reasonably likely that the trial judge  
24 considered himself barred from considering Morales's evidence of  
25 "emotional duress," which was based on the defense argument that  
26 Morales felt compelled to assist Rick Ortega prevent Terri  
27 Winchell from making public accusations that Ortega was gay.  
28 (See 14 R.T. 3114-16.) The judge had "examined and reviewed all

1 the evidence that was presented to the jury" during the penalty  
2 phase. (14 R.T. 3192.) He had also instructed the jurors that  
3 the list of statutory mitigating factors was not exclusive; they  
4 could also consider "any other circumstances relating to the case  
5 or to the defendant, Mr. Morales, as a reason for not imposing  
6 the death sentence." (14 R.T. 3144-45.) Since the judge himself  
7 gave this instruction, it is unlikely that he felt constrained  
8 from considering any of the evidence that Morales offered in his  
9 defense at the penalty phase. (See Order, March 8, 1999, at 12-  
10 15 (denying Claim 51).) Instead, the judge evidently concluded  
11 that Morales's "emotional duress" evidence simply did not  
12 constitute a "circumstance[] which extenuate[s] the gravity of  
13 the crime, even though it may not be termed a legal excuse." (14  
14 R.T. 3194 (quoting the so-called "catch-all" mitigating factor of  
15 Cal. Penal Code § 190.3(k).) This was a reasonable  
16 interpretation of the evidence. Even defense counsel  
17 characterized the "emotional duress" evidence as "a much more  
18 subtle type of duress" than a direct physical threat, explaining  
19 that he was not arguing that "it's all Rick's fault," and  
20 conceding that "Mike is responsible for what he did." (14 R.T.  
21 3115-16.)

22 Thus, for the reasons discussed in the Court's prior orders  
23 addressing petitioner's claims of penalty phase error, the trial  
24 court's denial of petitioner's motion to modify the sentence was  
25 not fundamentally unfair and did not deprive petitioner of his  
26 right to due process of law in his capital sentencing proceeding.

27 5. Claim 58

28 At the guilt phase, the jury was instructed on three

1 different theories of first degree murder: (1) murder by lying  
2 in wait, (2) murder by torture, and (3) willful, deliberate, and  
3 premeditated killing. (3 C.T. 627-34.) Morales claims that his  
4 first degree murder conviction is unconstitutional because of  
5 trial errors that undermine the validity of each of these three  
6 different theories. First, Morales argues that the jury was  
7 improperly instructed concerning murder by lying in wait and that  
8 there was insufficient evidence of lying in wait. Second, he  
9 complains that the jury should not have been instructed on the  
10 torture murder theory because there was insufficient evidence of  
11 intent to inflict torture. Third, he argues that the jury should  
12 not have been told to make a special finding concerning  
13 premeditation and deliberation. In support of this claim,  
14 petitioner incorporates all the allegations in support of Claims  
15 8-12 (ineffective assistance of counsel based on failure to  
16 present evidence of petitioner's drug and alcohol use), Claim 16  
17 (insufficient evidence of torture), Claim 21 (erroneous jury  
18 instruction on lying-in-wait special circumstance), and Claim 22  
19 (insufficient evidence of lying in wait). (Pet. at 222-24.)

20 The Court has previously rejected petitioner's challenges to  
21 the sufficiency of the evidence to support the jury's implied  
22 finding of intent to torture, as well as his challenges to the  
23 validity of the lying-in-wait special circumstance and the  
24 sufficiency of the evidence to show that Morales lay in wait to  
25 kill Winchell. (See Order, Oct. 19, 1998 (denying Claims 16, 21,  
26 and 22).) The Court has also rejected petitioner's claim that  
27 his attorney was ineffective for not presenting evidence that  
28 Morales's drug and alcohol use precluded him from premeditating

1 and deliberating. (See Order, Sept. 28, 1998, at 37-43 (denying  
2 Claims 8-12.)

3 The only new argument offered by Morales in support of Claim  
4 58 is his assertion that it was error to include in the verdict  
5 forms submitted to the jury the request to make a special finding  
6 on whether the murder was "a wilful, deliberate, and premeditated  
7 killing." (3 C.T. 683-85.) Morales claims that the use of  
8 special findings except where permitted or required by statute  
9 violates the federal constitutional right to a jury trial and to  
10 due process of law. He also complains that the jury in his case  
11 was not specifically instructed that this finding must be based  
12 upon proof beyond a reasonable doubt. (Pet. at 223.)

13 On direct appeal, the California Supreme Court held that  
14 asking Morales's jury to make this special finding did not  
15 violate state law. The state court's conclusion on the propriety  
16 of special findings under state law may not be challenged in  
17 federal court. Wainwright v. Goode, 464 U.S. 78, 84 (1983) (per  
18 curiam) ("[T]he views of the State's highest court with respect  
19 to state law are binding on the federal courts."); accord  
20 Williams v. Calderon, 52 F.3d 1465, 1480-81 (9th Cir. 1995).  
21 Nevertheless, Morales alleges that special findings also violate  
22 the United States Constitution, because they allegedly "tend to  
23 lead a jury on a step-by-step basis to a guilty verdict," thereby  
24 violating the right to trial by jury and due process. (Pet. at  
25 223 (citing United States v. Spock, 416 F.2d 165, 181-82 (1st  
26 Cir. 1969).)

27 Morales cites no authority for the proposition that special  
28 findings or special verdicts are constitutionally prohibited.

1 The First Circuit made it clear that in Spock, "we were  
2 exercising our supervisory powers and, therefore, did not have to  
3 reach constitutional ground." Heald v. Mullaney, 505 F.2d 1241,  
4 1245 (1st Cir. 1974) (rejecting federal habeas challenge to  
5 special verdict form used in state criminal case); Spock, 416  
6 F.2d at 180. The Ninth Circuit has explained that "there is no  
7 per se prohibition" on special verdicts, although they are "not  
8 favored" in the federal trial courts. United States v. Reed, 147  
9 F.3d 1178, 1180 (9th Cir. 1998). Within the Ninth Circuit, the  
10 "use of a special verdict form is a matter of the district  
11 court's discretion to be determined on the facts of each case."  
12 Id. at 1181. In contrast, in this federal habeas corpus action,  
13 the Court's review of Morales's challenge to the special finding  
14 verdict form is "the narrow one of due process, and not the  
15 broad exercise of supervisory power." Darden v. Wainwright, 477  
16 U.S. 168, 181 (1986) (quoting Donnelly v. DeChristoforo, 416 U.S.  
17 637, 642 (1974)). The question therefore is whether asking  
18 Morales's jury to make this special finding deprived Morales of  
19 "that fundamental fairness essential to the very concept of  
20 justice." Donnelly, 416 U.S. at 642 (quoting Lisemba v.  
21 California, 314 U.S. 219, 236 (1941)).

22 There is no possibility that including the special finding  
23 on the verdict form for murder that was submitted to the jurors  
24 in Morales's case had an adverse effect on the jurors' guilt  
25 phase verdict. The absence of a specific additional instruction  
26 informing the jurors that the special finding required proof  
27 beyond a reasonable doubt cannot have misled the jurors into  
28 believing that any lower standard of proof applied to that

1 finding, in view of the repeated reminders throughout the  
2 instructions that this was the standard of proof applicable to  
3 the guilt verdict in its entirety, including the degree of the  
4 crimes, the truth of the special circumstances, and the findings  
5 concerning the weapons enhancements. See People v. Morales, 48  
6 Ca. 3d at 550-51; (3 C.T. 569-679 (guilt phase jury  
7 instructions).) Moreover, the jurors were specifically  
8 instructed that "each fact which is essential to complete a set  
9 of circumstances necessary to establish the defendant's guilt  
10 must be proved beyond a reasonable doubt. In other words, before  
11 an inference essential to establish guilt may be found to have  
12 been proved beyond a reasonable doubt, each fact or circumstance  
13 upon which such inference rests must be proved beyond a  
14 reasonable doubt." (3 C.T. 575.) The jurors knew that  
15 premeditation and deliberation is one of the elements of first  
16 degree murder, so they would have understood that it must be  
17 proved beyond a reasonable doubt. (See 3 C.T. 627 (premeditated  
18 murder is first degree murder)); Aguilar v. Alexander, 125 F.3d  
19 815, 820 (9th Cir. 1997) (jurors are presumed to follow  
20 instructions).

21 Morales does not explain why the inclusion of a special  
22 finding on the issue of premeditation and deliberation was  
23 fundamentally unfair in the particular context of his case.  
24 There was no "progression of questions each of which seems to  
25 require an answer unfavorable to the defendant," as condemned by  
26 the First Circuit. See Spock, 416 U.S. at 182. Instead, the  
27 verdict form first asked the jurors to state whether they found  
28 the defendant guilty of murder, and then asked a series of

1 additional questions: the degree of the murder, whether the  
2 murder was "wilful, deliberate, and premeditated," whether  
3 Winchell was "aware of extreme physical pain inflicted by said  
4 defendant," and whether Morales used a knife and a hammer in  
5 committing the murder. (3 C.T. 683-85.) Morales fails to  
6 explain how this coerced the jurors into reaching a verdict on  
7 the murder count that they might otherwise have resisted. Cf.  
8 Spock, 416 U.S. at 182. He has therefore failed to demonstrate  
9 that the procedure used at his trial was fundamentally unfair.

10 Conclusion

11 For the foregoing reasons, the Court hereby DENIES  
12 petitioner's motions for partial summary judgment, and DENIES  
13 Claims 52, 53, 54, 57, and 58 of the First Amended Petition on  
14 the merits.

15 All the claims in the First Amended Petition having been  
16 denied or dismissed, petitioner Michael Angelo Morales's petition  
17 for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is  
18 hereby DENIED. Judgment will be entered accordingly.

19 IT IS SO ORDERED.

20 APR 19 1999

DICKRAN TEVRIZIAN

21 Dated:

22 DICKRAN TEVRIZIAN  
23 United States District Judge  
24  
25  
26  
27  
28

**EXHIBITS IN SUPPORT OF PETITION FOR  
EXECUTIVE CLEMENCY**

**MICHAEL A. MORALES**

**Exhibit 59: Declaration of Vickie Hale Wetherell**

## DECLARATION OF VICKI HALE WETHERELL

I, Vickie Hale Wetherell, declare as follows:

1. I was an Adult Probation Officer employed by the County of San Joaquin from approximately <sup>1978 1989</sup> ~~1980~~ to ~~1986~~. In 1982 and 1983 I was assigned the case of Bruce Allen Samuelson. Samuelson was a 22-year-old offender who had come into repeated conflict with the law during the preceding ten years, and whose offenses even as a juvenile, were numerous and of increasing seriousness, resulting in multiple, unsuccessful placements in juvenile facilities.

2. While on parole from the California Youth Authority in 1981, Samuelson burglarized the same Stockton business establishment on two occasions, stealing check books and other property during each offense. After Samuelson pled guilty to the felony charges, the Youth Authority rejected him for re-commitment because his extensive history of serious delinquent and criminal behavior – including rape, burglaries, and car thefts – dating back to when he was twelve years old, indicated he was not amenable to treatment. He was subsequently placed on formal, adult probation for a period of five years, and assigned to me for supervision commencing with his release from local custody in June 1982.

3. From the outset, Samuelson's performance on probation was very unsatisfactory. In violation of his conditions of probation, he failed to make any restitution to the victim of his offense. He also failed to report to me on a monthly basis, as directed, and instead reported only once, during the month of September 1982, after I wrote him a letter ordering him to come to my office. He immediately failed to report the following month, October 1982, and telephoned me with the highly implausible excuse that he was going to be admitted to the Stanford Medical Center for chemotherapy on two tumors.

4. Then, sometime between October 22 and October 24, 1982, Samuelson again burglarized the same Stockton business establishment, stole a car from a Stockton car dealership, and fled to Arizona. Following Samuelson's apprehension on November 3, 1982, he was questioned by the police, and reportedly denied stealing the car or committing the burglary, and claimed "a friend" had given him the checks and check protector that were stolen during the burglary.

5. I knew from the beginning that Samuelson was a poor risk for a grant of supervised probation. Sadly for the citizens with our community, his continuing pattern of antisocial, criminal behaviors confirmed that assessment. After Samuelson was extradited from Arizona, I therefore prepared a supplemental report informing the San Joaquin County Superior Court of Samuelson's repeated violations of probation, including the fact that instead of making any restitution, he had again victimized the same victim. As a trained probation officer, I recognized that Samuelson's brazen disregard for the law or the conditions of probation, and his attempts to avoid responsibility by making up obvious lies, reflected a consistent pattern of deception and antisocial tendencies. His pattern of recidivist criminality clearly warranted an immediate commitment to state prison, and I recommended that he be required to show cause why he should not be sentenced accordingly.

6. After submitting my report to the Superior Court, I learned that the Court entered into a plea bargain with Samuelson, and had agreed to again place him on probation. In the course of preparing a new sentencing report, I obtained Samuelson's statement, which again evidenced his antisocial tendencies. A defendant's statement is a part of every Probation Report and provides the defendant an opportunity to express remorse. Samuelson, however, completely failed to acknowledge his wrongdoing, and in fact attempted to excuse and justify his criminal behavior by writing an elaborate, preposterous story about helping a family in need through his criminal behavior. Having read thousands of defendant statements, I instantly recognized both the substance of

Samuelson's story and his tone to be extremely disingenuous. When confronted, Samuelson refused and was unable to substantiate his tale with any details about the supposed family in need, including their name, address or other identifying information.

7. I also noted in my 1983 report to the Superior Court that perhaps the most disturbing aspect of Samuelson's written statement was the complete absence of any expression of compassion for the many victims of his crimes. Instead Samuelson excused himself, justified his crimes and finally angrily attacked and blamed others – psychologists, the legal system, employees of San Joaquin County, and the State of California – for his detention and trial.

8. I specifically asked Judge Saiers to take note of Samuelson's criminal history and particularly his lack of compassion for the victims of his crimes. I made such notations when I strongly believed that the Court should act on this issue by imposing appropriate punishment on the defendant. The fact that Samuelson escaped full adjudication and punishment was disconcerting. I had no doubt that without the plea bargain, such a repeated offender would have been sentenced to prison.

9. Although the plea bargain guaranteed that Samuelson would avoid a prison sentence, I recommended that the Court not waste limited resources by placing Samuelson on supervised probation. It was clear that Samuelson would not abide by any terms or conditions of probation, and our department felt that the use of our time to provide formal supervision should be reserved for individuals who have not already proven themselves to have the established pattern of criminality that Samuelson did.

10. I have been subpoenaed to testify in many criminal cases, including capital cases, about ~~probation reports~~ <sup>a parolee whom I had supervised</sup> and the individuals they concern. I was never approached by any party involved with Michael Morales's capital trial. This is despite the fact that I was acquainted with most of the public defenders, district attorneys, and judges at that time in San Joaquin County. I specifically was acquainted with Craig Holmes, Mr. Garber and Mr. Schick, whom I see from Samuelson's file were involved with his case.

If any party had ever subpoenaed me, I could and would have testified truthfully to all I have stated here.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on February 7, 2006.

A handwritten signature in cursive script that reads "Vickie Hale Wetherell". The signature is written in black ink and is positioned above a horizontal line.

Vickie Hale Wetherell

A small, handwritten mark or signature in the bottom right corner of the page, consisting of stylized, overlapping letters.