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## Judge Requests Clemency for a Killer He Condemned

By Henry Weinstein

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In a highly unusual development, a judge who condemned a killer to die has asked Gov. Arnold Schwarzenegger to grant clemency.

Michael A. Morales is to be executed Feb. 21 for the 1981 killing of Terri Winchell, a Lodi high school student. Ventura County Superior Court Judge Charles R. McGrath, appointed by Gov. Ronald Reagan, said in a letter to the governor that he believes the sentence was based on false testimony from a jailhouse informant.

Bruce Samuelson testified that Morales had callously boasted during a jailhouse conversation that he had planned to rape and kill the teenager. The confession supposedly took place in a crowded cellblock that Morales knew was full of informants.

Samuelson explained away Morales' willingness to talk by saying the two men spoke in Spanish. A later investigation by the state attorney general, however, showed that Morales, a fourth-generation Californian, doesn't speak Spanish, McGrath said.

The false testimony not only persuaded judge and jury that the killing was egregious, but effectively canceled out Morales' claim that he felt deep remorse for the crime, McGrath said.

Executing Morales, 46, under the circumstances would be "a grievous and freakish injustice," McGrath concluded.

His letter was included in Morales' clemency petition, which was filed with the governor Friday. The petition asks that Morales' death sentence be commuted to life in prison.

Legal experts said it was the first time since California reinstated capital punishment in 1977 that a judge had asked a governor for clemency in one of his own death penalty cases.

Schwarzenegger has rejected all four clemency petitions submitted to him by death row inmates since he became governor. Three of the four – Donald Beardslee, Stanley Tookie Williams and Clarence Ray Allen

– have been executed. Kevin Cooper got a last-minute stay of execution from the U.S. 9th Circuit Court of Appeals.

On Friday, Julie Soderlund, a spokeswoman for the governor, said Schwarzenegger would have no comment until he reviewed all the papers in the case.

The San Joaquin district attorney's office, which prosecuted Morales and is expected to oppose clemency, did not return a call seeking comment.

Winchell, 17, left her Lodi home on Jan. 8, 1981, to get food for her sick mother and never returned, according to court records. Two days later, police discovered her partially nude body, with stab wounds in the chest, a fractured skull and jaw, in a vineyard outside Lodi. Testimony was presented that she had been hit in the head 23 times, with weapons that included a claw hammer.

According to court records, Morales' cousin, Ricky Ortega, orchestrated Winchell's murder because he was jealous of her involvement with his male lover. He recruited Morales, who was drunk and high on PCP at the time, to help him "and Morales agreed out of family loyalty," the documents stated.

Morales' case was transferred from San Joaquin County to Ventura County because of heavy pretrial publicity.

Ortega subsequently received a sentence of life in prison at a separate trial.

Morales' clemency petition was prepared by attorneys David A. Senior of Los Angeles and Kenneth W. Starr, dean of the Pepperdine Law School and a former federal judge who served as a special independent counsel investigating President Clinton in the Monica Lewinsky perjury case.

Their petition describes Morales as "a deeply repentant sorrowful Christian who has accepted full responsibility for a terrible crime that will haunt him forever.

"Unlike some who express no remorse for their offenses against humanity, Michael has not fled from his responsibility for the deed committed so many years ago in his reckless and drug-saturated youth."

The filing includes a handwritten three-page letter from Morales.

"Leniency can be a difficult thing to come by these days," Morales wrote to the governor in neat block letters. "It's certainly not the normal way of dealing with someone who's crimes are as serious as mine. But hopefully yours is an administration who believes in repentance and reform. Who believes in exercising restraint motivated by compassion. And who believes in extending mercy whenever and wherever possible."

If his sentence is carried out, Morales will be the first Latino executed since California revived the death penalty. Starr and Senior contend that the decision to bring him up on capital charges was fueled by racial and ethnic concerns.

The lawyers cited six egregious murders from the same period – including the beating death of a black teenager by a white male – for which the San Joaquin district attorney did not seek the death penalty.

McGrath, however, based his recommendation for clemency solely on the false testimony from informant Samuelson, whom he described as the cornerstone of the prosecution.

Samuelson's claim that Morales "made obscene, derogatory references to the victim

Samuelson's claim of Morales' "confession was the only evidence to support the single special circumstance – lying in wait – that made Mr. Morales eligible for the death penalty," the judge added.

In exchange for Samuelson's testimony, prosecutors dropped four of six felony charges against him. He pleaded guilty to one count of forgery and one count of auto theft and was sentenced to a year in county jail.

McGrath told Schwarzenegger that California law requires judges to review the death verdicts of jurors to protect "the integrity of the judicial system, public confidence in the administration of the state's power to impose death and the rights of defendants to individualized sentencing decisions."

Had he learned of Samuelson's falsehoods, "I would not have let the death sentence stand; and the awesome decision to spare his life would not be before you at this time. Under such circumstances, executing Mr. Morales would frustrate the design of our sentencing laws."

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