Defending Liberty
Pursuing Justice

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The Honorable Rick Perry
Office of the Governor
State Capitol
P.O. Box 12428
Austin, Texas 78711-2428

By Fax 512/463-1849

Chairman Gerald Garrett
Texas Board of Pardons and Paroles
Executive Clemency Unit
Capital Section
P.O. Box 13401
Austin, Texas 78711

By Fax 512/463-8120

Re: Javier Suarez Medina

Dear Governor Perry and Chairman Garrett:

As President of the American Bar Association, I write to record the American Bar Association's opposition to the execution of Javier Suarez Medina, a Mexican national who is scheduled to be executed on August 14, 2002. Our objection arises from the fact that Mr. Medina was sentenced to death in reliance on unadjudicated offenses. Such reliance is inconsistent with the law of several states, international law instruments that have been ratified by the United States and the state of Texas, and longstanding ABA policy.

In seeking a death sentence for Mr. Medina, the prosecutor argued that Mr. Medina was responsible for shooting and gravely injuring a man and his wife two years earlier. The prosecution introduced surprise testimony about this shooting after both parties had completed their sentencing phase presentations, leaving Mr. Medina and his lawyers little time to investigate the allegation. Mr. Medina denied any involvement in the shooting but all he was able to do given the short time frame was present time cards that proved he was at work at the time the shooting occurred. The prosecution argued persuasively to the jury at trial that it should consider the shooting as a prior criminal act by Mr. Medina and as an aggravating factor supporting a death sentence.

Mr. Medina was never identified as a suspect in, charged with or convicted of the other shooting, but he was sentenced to death in reliance upon it. In effect, he was sentenced to death for two crimes – the one he was convicted of in a Texas court of law, and another that he was never even charged with committing.

American Bar Association policy prohibits the use of unadjudicated crimes to enhance a defendant's sentence. The *ABA Standards for Criminal Justice: Sentencing* acknowledge that more severe sentences are appropriate for convicted offenders with prior criminal conviction. The Standards specifically state, however:

> **The Standard does not contemplate sentence enhancement for alleged past criminality that has not resulted in conviction**.[1]

Several states prohibit the introduction of unadjudicated offenses entirely because they recognize the unfairness of asking a defendant to defend himself against unproven criminal charges before a jury that has already found him guilty of criminal misconduct. While Texas does not have such a prohibition, it should be concerned with ensuring that any death sentence it carries out is the consequence of a crime the defendant actually committed.

Additionally, the Inter-American Commission on Human Rights has held that the use of unadjudicated offenses to obtain a death sentence is a violation of Articles XVIII and XXVI of the American Declaration of the Rights and Duties of Man (providing for fair trial and due process).[2]

Unadjudicated crimes are inherently unreliable. The consequences of arguing them to a jury in support of a death sentence are extremely prejudicial and, we think, unacceptable. We believe carrying out an execution obtained with such unreliable evidence is inconsistent with principles of fundamental fairness and due process.

We urge you to commute Mr. Medina's death sentence to life imprisonment.

Respectfully yours,

Robert E. Hirshon

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[1] Standard 18-3.5, ABA Standards for Criminal Justice: Sentencing, 3rd Edition, p.60, fn.2, 1994.

[2] American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948). The State of Texas is a member of the Organization of American States and ratified the OAS Charter on June 19, 1951. See, e.g., Garza v. United States, Case No. 12.243, Report No. 52/01, April 4, 2001, Inter-Am. C.H.R.