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ABSOLUTE POWER CORRUPTS ABSOLUTELY

Hours before leaving office, Schwarzenegger commutes the sentence of a friend's son

By Julius (Jay) Wachtel. "This is wrong, that's why they did it on the last day, so they wouldn't have to answer to anybody...He [Esteban Nunez] had all the big political guns coming out in his defense...We're just regular people. Is this what justice is all about?" So said [Fred Santos](#), father of Luis Santos, a 22-year old college student stabbed to death in a late-night brawl at San Diego State University two years ago. Two Sacramento men, Ryan Jett, 24, and Esteban Nunez, 21, son of then-Assembly speaker Fabian Nunez, were arrested for murder. Both eventually pled guilty to voluntary manslaughter and received 16-year prison terms.

On December 31, 2010, during his last hours in office, [California Governor Schwarzenegger commuted](#) Esteban Nunez's sentence to seven years. Schwarzenegger, who is known to be close to Nunez's father, called the original term excessive because it was Jett, Not Nunez who plunged the knife into Luis Santos' heart. [Speaking through a press flack](#), the Governor announced that he would not comment on the matter, thus leaving two key questions unanswered: Would he have accorded the same mercy to the son of a "regular" person? And why didn't he forewarn the victim's family, which had to learn of his decision from reporters?

The *L.A. Weekly*, an alternative newspaper that occasionally runs investigative pieces has tracked the case from its inception (click [here](#) and [here](#).) According to its reporting, the tragedy unfolded on October 4, 2008 when four young men drove to San Diego to visit friends. Three were members of Sacramento's upper crust: Esteban Nunez, Ryan Jett, Nunez's friend from private school, and Rafael Garcia, the son of a well-to-do judge. They were accompanied by Leshanor Thomas, Nunez's former college roommate.

After several hours of drinking and smoking pot the four tried to crash a party at a campus frat house. Refused entry because they weren't "Greeks" they skulked off to a friend's apartment to drink some more and plot revenge. Their alcohol and drug-fueled rant about torching the frat house, which a witness overheard, was probably just talk, not so different from Facebook postings in which Nunez, Jett and Garcia bragged about their "Hazard Crew" and its "gangsta" ways.

Four angry and armed drunks – Nunez and Jett were by now packing knives – went looking for trouble. They soon found it. Although what happened is in some dispute, they got into a fight with five inebriated students – Luis Santos, Brandon Scheerer, Keith Robertson, Jason Fiori and Evan Henderson. Only difference was, they weren't armed. Within moments three were gravely wounded. Santos lay on the ground dying from a slashed heart. Robertson and Henderson had also been stabbed, Robertson in the shoulder and Henderson in the stomach, a wound that required emergency surgery to keep him from bleeding to death.

Santos' wound was reportedly inflicted by Jett. Esteban Nunez later admitted in court that he stabbed the two others.

The “Hazard Crew” didn’t stick around to render aid. Its first act was to flee. Its second, to come up with an alibi (Nunez told the others that his father would “fix” things.) Its third, to burn bloody clothing and dump Jett’s knife. Alerted by witnesses, San Diego cops were soon hot on the group’s trail. Garcia and Thomas admitted their involvement and pointed fingers at Jett and Nunez.

In his [commutation](#) message Schwarzenegger criticized Nunez’s sentence for being the same as Jett’s. Although he conceded that Nunez stabbed Robertson and Henderson, the Governor downplayed the youth’s culpability in Santos’ death. He also pointed out that Nunez had a clean background, while Jett had a lengthy arrest record and a felony conviction.

In California [the crime of voluntary manslaughter](#), to which Jett and Nunez pled guilty, is punishable by imprisonment for either three, six or eleven years (P.C. 193). Both defendants got the maximum – eleven years – plus one year for using a weapon. They also pled guilty to assaulting and gravely wounding Robertson and Henderson, drawing one year for each assault and one year for the use of a weapon, a total of four years. Schwarzenegger commuted Nunez’s sentence to the three-year minimum for voluntary manslaughter. Adding in four years for the two surviving victims brought his new term to seven years, less than half that given Santos.

As mutual aiders and abettors, Nunez and Jett pled guilty to the same crimes. But did Nunez’s less accurate use of a knife make him less culpable? The judge didn’t think so. Perhaps he was swayed by aspects that Schwarzenegger neglected to mention. Shortly after the killing, Nunez text-messaged Garcia, “Gangsta rap made us do it. LOL.” (LOL stands for “Laughing Out Loud.”) When Nunez learned that Thomas was talking he posted threatening rap lyrics on Facebook. He also sent Thomas messages essentially telling him “to keep his mouth shut.” (For other revealing tidbits about Nunez check out the stories in the *L.A. Weekly*.)

In California executive clemency is regulated by [Penal Code sections 4800-14814](#). These authorize the Governor to require that judges and prosecutors supply information about a case and make recommendations as to clemency. Governors can also order in-depth investigations by state agents. (For a full description of the process click [here](#).) Similar procedures are in use by every State and the Federal government. The reasons are obvious: to protect public safety, and to avoid claims of bias.

Schwarzenegger knew that his decision about Nunez presented a clear conflict between the duties of his office and the interests of a close and highly influential friend. Ethical rules require that judges and others who face such conundrums recuse themselves and leave decision-making to others. When that’s impossible – after all, only the Governor can commute – the only alternative is to conduct a thorough and impartial investigation, then vet the decision with experts who have no personal stake in the outcome.

Whether in this case Schwarzenegger availed himself of all available resources, and if so to what extent, is impossible to say. Considering his association with Nunez’s father he obviously should have used every fact-finding tool at his disposal. But the timing of his announcement, coming only hours before leaving office, and his inexplicable (some might say, inexcusable) failure to give advance notice to the victim’s survivors suggests that the outcome was predetermined.

[Article 5, Section 8](#) of the California Constitution gives the Governor the absolute power to pardon and commute. There is no question that Schwarzenegger had the *authority* to give Nunez a break. But was his

motive legitimate or corrupt? Until he steps forward to resolve any lingering doubts, we must assume it's the latter.