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VIA EMAIL

Gwen Marcus, Esq.  
General Counsel  
Showtime Networks, Inc.  
1633 Broadway  
New York City, New York 10019

Dear Gwen:

I hope you are healthy -- I hope you are sane and I hope for all of us that “normalcy” will be better in the coming months -- and a better “normalcy” than before.

I am writing to you on behalf of Michael Morton. A couple of years ago, Michael retained me to negotiate entertainment matters that arose after Mr. Morton was exonerated in Texas. As you may know, Mr. Morton was wrongly convicted in 1987 of the 1986 murder of his wife, Christine Morton, who was bludgeoned to death in the couple’s home in Williamson County while Mr. Morton was at work. He was exonerated and set free in 2011 after serving nearly twenty-five years in prison, and after a team of lawyers led by the Innocence Project engaged in a long court battle over the District Attorney’s objection to obtain DNA testing on key evidence from the original investigation. That testing not only cleared Mr. Morton of his wife’s murder – it also identified Mark Norwood, the man who had actually murdered Christine Morton. In the process, the Morton team’s DNA testing also identified Norwood as the perpetrator of another, previously-unsolved murder of a young wife and mother in an adjacent county, which took place two years after Mr. Morton went to prison.

Moreover, while investigating Mr. Morton’s claim of innocence, his legal team also discovered documents in the District Attorney’s files which revealed that former D.A. Ken Anderson – who had gone on to become a senior Williamson County district judge – had intentionally withheld powerful evidence of Mr. Morton’s innocence at the time of his 1987 trial. These revelations led to unprecedented accountability and reform in Williamson County and statewide, including (1) the resignation and disbarment of Judge Anderson; (2) Judge Anderson’s

criminal prosecution for contempt of court – which culminated in a plea agreement for which the former Judge served four days in jail, to date making him the *only* prosecutor in the entire nation who has ever served a day of jail time for misconduct that led to a wrongful conviction; (3) the 2012 electoral defeat of then-District Attorney John Bradley, who was Anderson’s protegee and fought to keep Mr. Morton from obtaining DNA testing, and even tried to block his release from prison *after* the DNA match to Norwood, the real killer; and (4) statewide reform of Texas’s criminal procedure laws, through a landmark piece of legislation called the Michael Morton Act. For these reasons and others, Mr. Morton’s case remains one of the best-known exonerations of a wrongly convicted person in the United States, and it has been my honor to represent him in telling the story of his family’s indescribably tragic ordeal to the world.

I’m writing you now to raise two serious concerns on my client’s behalf about a Showtime documentary film series called “Outcry” (“the Series”). The Series centers on the story of a young man named Greg Kelley, who was convicted of aggravated child sexual abuse in 2014 in Williamson County, and exonerated in 2019 after his conviction was overturned and the charges dismissed. According to Showtime’s website and promotional materials, the Series is currently scheduled to stream on Showtime beginning on July 5, 2020, with advance reviews coming out beginning on June 29, 2020, and I gather the network has been heavily promoting the Series in recent weeks.

My client and I have reviewed an advance copy of the Series and wanted to bring these concerns to your attention immediately. Knowing you Gwen, I suspect this may be the first time you are hearing about the Series because it doesn’t measure up to standard vetting practices for a series such as this one.

First, in Episode One of the Series there is an extensive discussion of Mr. Morton’s wrongful conviction, prosecution, and exoneration. This lengthy segment on my client’s life story is offered to show the history of Williamson County’s disregard for the rights of the accused and resistance to correcting wrongful convictions. The Series (in Episode One and throughout) then purports to contrast the County’s past indifference to Mr. Morton’s claim of innocence with the very different approach allegedly taken by the current District Attorney, Shawn Dick, and his assistant district attorneys when Mr. Kelley’s case was presented to them.

Included in this episode are several personal family photographs of Mr. Morton, his late wife, and their son Eric. These photographs are owned by my client. At no point did the Series’ producer Pat Kondelis, nor any other person connected with the Series or with Showtime, ask my client for permission to use these photographs. Nor did they contact him about any aspect of the Series as it was being made or edited. Mr. Morton did not – and does not – consent to have these photographs used in the Series.

Second, the young man featured in the Series, Greg Kelley, was also represented at his 2014 trial by Patricia Cummings. To put it mildly, the Series presents a highly derogatory portrayal of Ms. Cummings and her alleged lack of diligence and ethics as an attorney. The Series then contrasts Ms. Cummings’s purported failings and alleged responsibility for Mr. Kelley’s wrongful conviction and continued incarceration with what it portrays as the laudable efforts of the current District Attorney and his assistant district attorneys to seek “the truth” and

clear Mr. Kelley's name. Throughout, the film uses Mr. Morton's case as a backdrop for this narrative, purportedly to show the changes the current leadership has made to "Williamson County justice" as a direct result of the lessons learned from Michael Morton's ordeal.

Mr. Morton was truly alarmed by this narrative and the "facts" upon which the Series relied, because of the key details omitted from these contrasting portrayals of the attorneys in question. Remarkably, nowhere in the Series is it once mentioned that Patricia Cummings was not just Greg Kelley's trial lawyer – she was *a key member of Mr. Morton's post-conviction legal team for seven years* (from 2004-2011) and was instrumental in securing his DNA testing and his hard-fought exoneration. At potential great risk to her own career -- given then-Judge Anderson and D.A. Bradley's power in the community, and Mr. Morton's status at that time as an incarcerated pariah, whom the State contended had brutally murdered his own wife in their marital bed – Ms. Cummings devoted hundreds of hours of her time to assist the Innocence Project and Houston attorney John Raley with the investigation and litigation that ultimately freed Mr. Morton from prison and solved his wife's murder. Indeed, she was the *only* lawyer in Williamson County with the necessary integrity and skill who was willing to play that key role. Further, when the evidence of Judge Anderson's egregious misconduct emerged, Ms. Cummings remained on Mr. Morton's legal team to demand accountability for the officials who had robbed him of a quarter-century of his life and separated him from his only child. In so doing, she risked serious personal and professional retaliation given that she continued to make her livelihood as a defense attorney based in Williamson County. Yet despite the fact that footage of Ms. Cummings appears in every episode of this five-part Series, it wholly erases her from the Morton case narrative that the Series uses as a backdrop for Mr. Kelley's story.

Equally troubling, at no point does the Series mention the role that its purported "truth-seeking" officials in Williamson County's current prosecutorial leadership played in seeking to *obstruct* the truth and deny justice in Mr. Morton's case. Most notably, the Series prominently features Lindsey Roberts, the current First Assistant District Attorney under D.A. Shawn Dick, who helped lead a purported "reinvestigation" of Mr. Kelley's claim of innocence, and whom the Series shows cross-examining Ms. Cummings on camera about her alleged failings as Mr. Kelley's trial counsel. Yet at no point does the Series mention that Mr. Roberts (1) was also First Assistant District Attorney under John Bradley, whose administration fought for years to deny Mr. Morton the DNA testing that ultimately freed him, and (2) was personally tapped by Mr. Bradley to *oppose* Mr. Morton's release from prison, which he did *even after* DNA testing identified Mark Norwood as the real killer. Mr. Roberts undertook that mission with vigor for months, filing legal papers and appearing in court to argue against Mr. Morton's release – refusing to concede Mr. Morton's innocence even in late September 2011, after it was revealed that Norwood's DNA was also found at the scene of the unsolved Debra Baker murder in Travis County. (A few days later, Mr. Roberts was overruled by District Attorney Bradley, who finally changed course and agreed to throw out Mr. Morton's conviction on October 4, 2011). When Bradley lost his reelection bid the following year, Mr. Roberts was forced to resign his position in the DA's Office. But four years later, he was rehired by Shawn Dick to the same senior position at the D.A.'s office he had held when he so vigorously opposed freedom for Mr. Morton. To date, Mr. Roberts has never apologized to Mr. Morton for the role he played in prolonging his wrongful conviction and imprisonment even after the DNA testing was completed.

Ms. Cummings' and Mr. Roberts's respective roles in supporting/opposing Mr. Morton's efforts to win his freedom are well known in Williamson County and statewide – as well as nationally. For example, I have attached here a copy of the second part of Texas Monthly's series "The Innocent Man," detailing Mr. Morton's quest to win his freedom – which won the National Magazine Award for feature writing in 2013, and which discusses the roles that both Ms. Cummings and Mr. Roberts in those proceedings. It begs the question: did the filmmakers ever do any research or were they driven by other unknown factors?

Were that not enough, the Series also does not mention that (1) Shawn Dick began his career in the Williamson District Attorney's Office under the "old guard" – first hired as an ADA by Ken Anderson, and proceeding to work for John Bradley for four more years, and (2) when the revelations of prosecutorial misconduct came to light in Mr. Morton's case in 2011, Mr. Dick (then in private practice) signed on to represent Mike Davis, the other prosecutor from Mr. Morton's trial. As Mr. Davis's counsel, he unsuccessfully fought to block Mr. Davis's deposition in the legal inquiry that Mr. Morton's legal team (including Ms. Cummings) had sought to conduct. Moreover, after Mr. Dick took office as District Attorney, *he hired his former client Mike Davis* – one of the two men who prosecuted Mr. Morton and sent him to prison for a crime he didn't commit for 25 years – as an Assistant District Attorney. Mr. Davis remains on District Attorney Dick's staff to this day.

Remarkably, despite all of this history, the Series presents Mr. Dick as the narrator of my client's ordeal – the person who serves as the viewer's "guide" to Michael Morton's exoneration and what he claims was its transformative impact on the justice system in Williamson County.

No one connected with "Outcry" or the Showtime network ever contacted my client to seek his perspective on the issues concerning his deeply personal life story that are featured throughout. Nor did they request any information on his longstanding relationship with Ms. Cummings. Had they done so, they would have learned that he is and will always remain profoundly grateful for the essential role she played in securing his freedom and solving his wife's murder. They would have learned that she hosted his exoneration celebration at her Austin home in 2011, attended his wedding to his current wife Cynthia, and to this day remains one of his closest friends and honorary family members. They also would have learned that he could attest first-hand to the dedication she also showed to Greg Kelley, having told Mr. Morton repeatedly that she believed in Mr. Kelley's innocence and devoting herself to preparing his defense in the year that preceded trial. Ms. Cummings even went so far as to retain Mr. Morton as a pro bono consultant after the Kelley jury verdict, so that he could travel to Williamson County and go with her to meet Mr. Kelley privately at the jail and help prepare this 19-year-old for what he might face in prison and how to survive inside.

My client was gratified to learn that Mr. Kelley ultimately won his freedom and obtained an "actual innocence" finding and wishes him all the best. But he is profoundly disturbed by the way in which the Series gives such a biased and misleading portrayal of the individuals who played key roles in Mr. Morton's own case, including its unauthorized use of his personal family photographs (particularly those of his murdered wife) to further that false narrative.

The Series is factually illiterate and misuses Mr. Morton as a shill for the Series which is a challenge to the ethics of documentary filmmaking. As someone who believes that “truth” ultimately saved Mr. Morton, the Series has not been properly vetted to achieve any kind of truth, I suggest that before airing the Series, Showtime has the responsibility to get the facts straight and of course to delete the photos improperly used in the Series.

This letter is written without prejudice to all of my client’s remedies, all of which are respectfully reserved hereunder.

Sincerely,

RL/s

Rosalind Lichter

RL/mmi

cc: Michael Morton (via email)