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**BEFORE THE GOVERNOR OF THE STATE OF TEXAS  
AND  
THE TEXAS BOARD OF PARDONS AND PAROLE**

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In re:

**Jeffery Lee Wood,**

Petitioner.

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**SUPERSEDING APPLICATION FOR COMMUTATION OF SENTENCE,**

**REQUEST FOR HEARING PURSUANT TO**

37 Texas Administrative Code § 143.43(f)(3) and  
Administrative Procedures Act § 2001.001 et seq.,

**REQUEST FOR COMPLIANCE WITH**

Texas Open Meetings Act  
Texas Government Code § 551.001 et seq.,

**AND**

**REQUEST FOR COMPLIANCE WITH**

Texas Constitution  
Article 4, § 1.

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*“Proceedings must not only be fair, they must appear fair to all who observe them.”*

--*Indiana v. Edwards*, 554 U.S. \_\_\_, 128 S.Ct. 2379 (Jun. 19, 2008) (quoting *Wheat v. United States*, 486 U. S. 153, 160 (1988)) (internal quotation marks omitted).

Daniel Reneau, who coldly murdered Kriss Keeran in the early morning hours of January 2, 1996, has already been executed by the State of Texas for his senseless act. Nevertheless, on August 21, 2008, the State seeks to execute Jeffery Wood for the same crime, even though the State does not contend that Mr. Wood shot Keeran.<sup>1</sup> In fact, Mr. Wood was not even in the building when Reneau shot and killed Keeran.

Mr. Jeffery Lee Wood was convicted and sentenced to death as a party for the death of Kriss Keeran by the 216th Judicial District Court of Kerr County, Texas. Keeran’s unfortunate death was the result of a reckless scheme devised to steal the money that had accumulated in a Kerrville convenience store over a holiday weekend. It was supposed to have been an inside job. Reneau and Mr. Wood visited the convenience store often. William (“Bill”) Bunker, the assistant manager of the store, was involved in discussions of the plan, in which Bunker would allow Reneau and Wood to take the store’s safe and security recording in exchange for some of the spoils. As it turned out, Keeran—whom, evidence suggested, also had been privy to prior discussions about the scheme—was working on the morning after the holiday weekend when the robbery was to occur, but he did not cooperate. Reneau—the only person inside the store and who carried a weapon—alone made the decision to take Keeran’s life. Mr. Wood was outside the store in his brother’s truck.

Mr. Wood’s culpability for Kriss Keeran’s death lies somewhere between Daniel Reneau’s and Bill Bunker’s. Reneau has already been executed for deciding to take Kriss Keeran’s life. Bill Bunker—despite being a co-conspirator without whose agreement and encouragement the crime never would have occurred—was never charged with any crime. Mr. Wood was not tried jointly with Daniel Reneau, but the two were nevertheless conflated throughout Mr. Wood’s trial. Indeed, in the punishment phase of Mr. Wood’s trial, the State presented evidence of a robbery that Reneau committed but did not present any evidence Mr. Wood had participated in it.

Mr. Wood—for all the fault he does bear for Keeran’s untimely death—does not deserve to die. He has never taken a human life by his own hands. He sits on death row today because his emotional and psychological impairments—the same impairments that had been identified by

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<sup>1</sup> Mr. Wood’s first name has been spelled in various places as both “Jeffery” and “Jeffrey.” This is likely due to Mr. Wood’s educational deficits which frequently results in his transposing letters. The undersigned will use “Jeffery,” because that is how the petitioner’s name was spelled in the indictment, as given by the Texas Department of Criminal Justice on its official website, and in his federal proceedings.

school psychologists since he was a child and for which a jury had found him incompetent to stand trial—caused him to make what his nominal trial attorneys called a “gesture of suicide” after he was found guilty of capital murder as a party. Mr. Wood’s attorneys made no cross-examination of any of the State’s witnesses. They presented no evidence or witnesses on Mr. Wood’s behalf. And they offered no reasons or arguments why the twelve people sitting on Mr. Wood’s jury should extend mercy to him and spare his life. Despite Mr. Wood’s gesture, the State nevertheless pressed forward.

A death sentence is not just or appropriate merely because a jury answered special issues in a manner that required a court to impose it. An undeniable and complete breakdown of the adversarial process occurred in Mr. Wood’s case in which all that was required for the government to secure a death sentence was a defendant who, as a result of longstanding psychological and emotional impairments, declined to defend himself. This state of affairs demeans the lawyers and judge participating in the proceeding, demeans notions of criminal justice in Texas, and demeans the State—the representative of the Texan people—itsself.

Because human life has never been taken at Mr. Wood’s hands and because no defense to deathworthiness was presented by Mr. Wood’s nominal lawyers at trial, this Board should not rely on the verdict as a reliable determination that death was the appropriate punishment in this case. Although the lack of adversarial proceedings left Mr. Wood’s jury with no choice but to answer the special issues in the manner it did, Mr. Wood’s clean prison record demonstrates the reality that he is not dangerous and is not a threat either to other inmates or to prison officers. Finally, Mr. Wood is potentially incompetent to be executed for the same reasons a jury initially found him incompetent to stand trial. The undersigned believe that Mr. Wood lacks a rational understanding of his death sentence.

This Board has not only the power, but also the responsibility, to prevent the execution of Mr. Wood under the circumstances this case presents. For the reasons discussed below, Mr. Wood respectfully requests that this Board recommend to the Governor that Mr. Wood be granted a commutation of his death sentence to a sentence less than death.

## **I. Course of Proceedings**

In 1996, and following an investigation by the Kerrville Police Department and Department of Public Safety, Mr. Wood was charged with capital murder for the January 2, 1996 death of Kriss Keeran. Before his trial, Mr. Wood was found by a jury to be incompetent to stand trial. The evidence from the hearing reflected that Mr. Wood lacked sufficient ability to communicate with his lawyers about his case with a reasonable degree of rational understanding.

Mr. Wood had been evaluated at his defense lawyer’s request by a clinical neuropsychologist, Dr. Michael A. Roman, who administered a battery of psychological tests to Mr. Wood. An intelligence test revealed an IQ approximately one standard deviation below the

mean—a substantial cognitive impairment—and achievement testing revealed reading, spelling and math abilities ranging from the fourth to the eighth grade levels.

Dr. Roman told the jury at Mr. Wood’s competency hearing that, because of Mr. Wood’s personality organization, his history of emotional difficulties as documented through his school records, his prior pattern of responses to other circumstances in which he has been threatened, and his cognitive ability, Mr. Wood “ha[d] a delusional system, an inability to grasp the reality surrounding the issues specific to this case, his role in it, in the crime, as well as other things that present a direct threat to his own well-being, his own sense of self.” According to Dr. Roman, this condition manifested itself in “extremely paranoid thinking” in which even persons who sought to assist him were considered as part of a conspiracy against him.<sup>2</sup> Indeed, Mr. Wood had believed himself competent and it was never his desire to be found incompetent.<sup>3</sup> Dr. Roman testified that he believed medication could be prescribed to Mr. Wood that would allow him to become competent.<sup>4</sup> A jury found Mr. Wood incompetent based on Dr. Roman’s testimony, and Mr. Wood was thereafter placed in the Vernon State Hospital for treatment.

Mr. Wood was admitted to the hospital on May 27, 1997. He was discharged 22 days later, without having received any medication or treatment. The discharge decision was based on his mastery of competency training materials that did not test Mr. Wood’s ability to communicate with his lawyer with a reasonable degree of rational understanding about his case.<sup>5</sup> Indeed, the records from Vernon State Hospital reflect that the professionals routinely noted difficulty with Mr. Wood’s ability to communicate rationally, particularly with respect to his case.<sup>6</sup> After a second competency hearing, at which Mr. Wood’s counsel were prevented from evaluating or cross-examining the raw data from evaluations performed by Vernon staff, Mr. Wood was found to be competent to stand trial.<sup>7</sup>

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<sup>2</sup> See S.F. Vol. 5: 137-39. Dr. Roman’s evaluation was consistent with a school psychologist’s evaluation of Mr. Wood at age 12 in which it was noted that “excessive anxiety and fear create tension, and lead to faulty reasoning and reality testing” by Mr. Wood. See Part II, *infra*.

<sup>3</sup> S.F. Vol. 5: 188.

<sup>4</sup> S.F. Vol. 5: 148.

<sup>5</sup> S.F. Vol. 7: 126-29, 132-36. Mr. Wood’s counsel had never contested Mr. Wood’s factual understanding of the legal proceedings.

<sup>6</sup> The psychiatrist who deemed Mr. Wood competent wrote in his report that Mr. Wood “was very insistent in repeating this story” regarding Mr. Wood’s charged offense, the very thing that in Dr. Roman’s estimation and the jury’s determination rendered Mr. Wood incompetent to stand trial.

<sup>7</sup> Mr. Wood’s counsel had subpoenaed all the records from the Vernon State Hospital, but it had failed to provide the raw data from the psychological testing performed there. When the Court suggested having the hospital fax the data, the State’s expert protested that it would be “difficult for them to find” and “almost impossible to get it.” Mr. Wood’s counsel then moved for a mistrial and to reset the hearing

Evidence introduced at the trial reflected that Daniel Reneau, Mr. Wood, and assistant manager Bill Bunker conspired to steal the convenience store's safe; the evidence further established that, after the clerk on duty on the morning of January 2<sup>nd</sup>, Kriss Keeran, refused to cooperate with the scheme, Reneau entered the store by himself and shot Keeran. A jury found Mr. Wood, who had been outside in his brother's truck at the time, guilty as a party. Evidence reflected that Mr. Wood had entered the store after Reneau shot Mr. Keeran and then drove Mr. Reneau, along with the stolen goods, to Mr. Wood's parents' house.<sup>8</sup>

After Mr. Wood was found guilty, the precise scenario feared by Mr. Wood's counsel—and the reason he was found incompetent by a jury—came to fruition. Mr. Wood moved to discharge his attorneys and proceed *pro se*, a request that was denied by the judge “[b]ased on the testimony I’ve heard about your educational background and your experience with the criminal justice system ... [to] make sure that ... you’re not taken advantage of by this proceeding.”<sup>9</sup> While the court's power to prevent a person who has been found competent to stand trial from representing himself was not necessarily clear at the time, the Supreme Court has recently endorsed the view that persons may be competent to stand trial, yet incompetent to represent themselves when they “suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.”<sup>10</sup>

In this case, despite having been required to keep his counsel, the punishment phase nevertheless proceeded as if Mr. Wood *were* representing himself. Bowing to Mr. Wood's emotional and irrational insistence, Mr. Wood's appointed lawyers declined to cross-examine any witnesses or present any evidence on Mr. Wood's behalf. Mr. Wood's trial attorneys called Mr. Wood's actions a “gesture of suicide” and objected on moral grounds to participating in the arrangement ordered by the trial court—effectively as legal vessels assisting Mr. Wood's suicidal ends.<sup>11</sup> In this way, a complete breakdown in the adversarial process occurred as a

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to allow them to procure the raw data so they could effectively cross-examine the State's expert, but they were disallowed that opportunity. *See* S.F. Vol. 7: 114-20.

<sup>8</sup> The State did not take entirely consistent positions between Reneau's trial and Mr. Wood's. *See* Part II, *infra*.

<sup>9</sup> S.F. Vol. 30: 10. The judge who presided over Mr. Wood's trial was the same judge who presided over Scott Panetti's trial and his more recent proceedings to determine competence to be executed. Panetti's case recently came before the Supreme Court on the issue of competency for execution. *See Panetti v Quaterman*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 2842 (2007) (holding, *inter alia*, that trial court proceedings failed to provide due process). Panetti, a schizophrenic, had been allowed to represent himself at trial and did so while wearing a purple cowboy outfit and subpoenaing Jesus Christ and John F. Kennedy.

<sup>10</sup> *Indiana v. Edwards*, 554 U.S. \_\_\_, 128 S.Ct. 2379, 2388 (Jun. 19, 2008).

<sup>11</sup> S.F. Vol. 30: 11 (“We feel like ... it goes against our morals to assist Mr. Wood in basically what we consider to be a gesture of suicide. We understand what the case law says and we will do as the

direct result of the psychological and emotional impairments identified by Dr. Roman during Mr. Wood's competency proceeding.

The State, pressing on, presented evidence during the penalty phase of a second convenience store robbery committed by Reneau and also evidence of some of Mr. Wood's pre-trial conduct in jail. The centerpiece of its punishment case, however, was testimony from Dr. James Grigson—nicknamed “Dr. Death” because of the number of times he has testified for the State that a defendant would be dangerous—who testified that Mr. Wood would “most certainly” commit “future acts of violence.”<sup>12</sup> Because only the State presented evidence and because all of the State's evidence went entirely unchallenged, the jury had little choice but to answer the punishment phase special issues in a manner that required the court to impose a sentence of death.

## **II. This Board Should Have No Confidence that Death Was the Appropriate Sentence in This Case**

Generally, this Board should not be in the business of second-guessing death sentences imposed after a jury has considered all the aggravating and mitigating evidence and answered the special issues according to what it concluded the evidence showed. This is not one of those cases. There are weighty reasons why this Board and the Governor should not have confidence in the death verdict in Mr. Wood's case.

The purpose of the sentencing phase in a capital murder trial is for a jury to reliably determine the individual moral culpability of the actors based on the circumstances of the offense and the accused's background and character. Fundamental failures—including a failure of the adversarial process as a whole—rendered the jury's determination of Mr. Wood's deathworthiness unreliable and his death sentence fundamentally unfair. Although not well suited as legal claims for courts of law, they are imminently proper considerations for this Board. We therefore respectfully ask the Board to consider the following as reasons to extend mercy to and to spare Mr. Wood's life.

### **Mr. Wood's Personal Moral Culpability Has Not Been Reliably Determined**

At Mr. Wood's trial, the State expressly stated it was proceeding on a conspiracy theory of parties liability.<sup>13</sup> That is, that there was a conspiracy to commit a felony (theft), and the participants of that conspiracy—co-conspirators—were responsible for any other felonies

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case law has instructed us and as the Court has instructed us, but we want the Court to understand that we do not condone this and just wanted to state that for the record.”); *see also* S.F. Vol. 26: 50-56.

<sup>12</sup> S.F. Vol. 30: 68. As it turns out, Grigson's prediction was wrong. *See* Part II, *infra*.

<sup>13</sup> S.F. Vol. 26: 42 (“...we're proceeding under a conspiracy theory”).

(capital murder) committed in furtherance of the agreed upon felony.<sup>14</sup> The attachment of criminal liability for the acts of another person is known as the “law of parties.” Daniel Reneau, the person who armed himself, entered the store, and made the decision to shoot Kriss Keeran, was tried first by the State and, following his conviction, sentenced to death. Mr. Wood, although he was not present when Reneau shot and killed Keeran, was likewise convicted and, following a severely flawed sentencing proceeding, sentenced to death. One participant in the conspiracy, however, was never punished or even charged for his role in the offense, even though he had substantial moral culpability for the murder of Kriss Keeran.

Then-32-year-old Bill Bunker was the assistant manager of the convenience store in which Mr. Keeran worked and which Reneau robbed. Bunker often violated company policy by allowing Reneau and Mr. Wood into the store office, including while Bunker counted out the day’s money. He participated in discussions with them about a plan to commit theft in which he would leave the back door unlocked and walk outside while Reneau and Mr. Wood would slip in and remove the store’s safe and security recording. He showed Reneau and Mr. Wood where the safe and the recording equipment in the office were located. He told Reneau and Mr. Wood approximately how much money would be in the safe after a holiday weekend when the banks were closed for an extended period of time. He was to be given a cut of the money. And never did he abandon the conspiracy.<sup>15</sup> When the police approached Bunker to question him about Mr. Keeran’s death, Bunker lied and said he did not know anything about it and did not know anybody who was talking about it.<sup>16</sup> According to the report made by Kerrville Police Department Detective Harry Fleming, who investigated the case:

Det. Fleming and Buckaloo summoned William “Bill” Bunker to the Kerrville Police Department. ...

Bunker had been interviewed by Det. Petty on the day of the murder. ... Det. Fleming wanted the clerks questioned as to whether they may have seen anyone or anything unusual around the store in the preceding days or weeks. Additionally, if any clerk had any personal knowledge of any one who may have been asking questions about the place.

When Det. Petty asked these questions of Bunker, Bunker lied and stated that he did not know anything. Bunker claimed that Keeran was a friend and that he was shocked over the whole episode. ...

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<sup>14</sup> Tex. Penal Code § 7.02.

<sup>15</sup> See S.F. Vol. 24: 86, 88-91. Bunker claimed that no promises to refrain from prosecuting him were made to him in exchange for his testimony. *Id.* at 93.

<sup>16</sup> S.F. Vol. 24: 84-85 (Bunker testimony that he lied to law enforcement); S.F. Vol. 25: 43-45 (law enforcement officer testified Bunker lied to police about what he knew).

Det. Fleming asked Bunker if Bunker had any knowledge of the Texaco murder/robbery plan or the actors involved. Bunker again lied to Det. Fleming. Det. Fleming advised Bunker that Fleming knew that Bunker did have personal knowledge of the crime prior to the commission of the crime and that Bunker knew the identity of the actors.

Det. Fleming continued to tell Bunker the information that Fleming and Buckaloo had developed during the investigation. Det. Fleming advised Bunker that if Bunker chose to keep lying about his involvement that was fine, but that it did not change the facts. Bunker lied, he could have prevented the death of his friend and further that after the murder of Keeran, that when Bunker could have assisted in the apprehension and identify the actors, Bunker did not help or even be honest.

Bunker broke down and told the officers about his involvement.<sup>17</sup>

By all appearances, Bunker was liable as a party for capital murder.<sup>18</sup>

Although there was no evidence Bunker intended for Mr. Keeran or anybody else to be killed, Bunker was the assistant manager of his store to which he owed fiduciary duties.<sup>19</sup> As assistant manager, he was also obligated not to subject his own employees to risks of robbery or worse. Absent Bunker's participation in the conspiracy and his encouragement of Reneau and Mr. Wood, it is highly unlikely that Keeran would have been killed, or even that the store would have been robbed at all. The State acknowledged as much during Daniel Reneau's trial, telling the jury of Bunker, "Had he told somebody, this thing probably never would have happened, but he didn't."<sup>20</sup>

While the undersigned do not contend that Bunker's moral culpability is as great as Mr. Wood's, the undersigned do submit that Bunker's moral culpability is nevertheless substantial. Without doubt, Bunker's and Mr. Wood's punishments, when compared with their respective culpabilities, are wildly disproportionate. At the time of Mr. Wood's trial, his jury did not know that Bunker would never face charges for his role in Kriss Keeran's death.

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<sup>17</sup> Kerrville Police Department Office Report, at 38.

<sup>18</sup> Detective Fleming wrote in his report that "the officers do not think that Bunker was involved past the point of talking about it and giving them information." Kerrville Police Department Office Report, at 38. Bunker's agreement, however, was sufficient to bring him within the ambit of the law of parties on the precise theory (conspiracy) upon which the State was proceeding.

<sup>19</sup> It is arguable that Bunker could have anticipated it. Nevertheless, there is also no evidence that Mr. Wood intended for Mr. Keeran to be killed, whether or not he could have anticipated it.

<sup>20</sup> Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 20: 41.

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The evidence of the extent to which Mr. Wood could have anticipated Kriss Keeran's death was never clear. Although the State insisted in Mr. Wood's trial that Mr. Wood deserved death because he had gotten Reneau to "do his dirty work," the State pleaded confusion in Reneau's trial about which participant, if any, was a leader, telling the jury, "We don't know exactly what their relationship [Bill Bunker, Jeffery Wood, Daniel Reneau] and who's the lead guy in this deal . . . ." <sup>21</sup>

Moreover, testimony from Nadia Mireles elicited during Reneau's trial—but not Mr. Wood's—indicated that Reneau made the decision to arm himself and contemplate murder, and that Mr. Wood was unaware of this decision. Ms. Mireles was present when Reneau and Mr. Wood briefly returned to the trailer just prior to the robbery attempt; her report of what happened was highly relevant to the moral culpability of the respective parties. Mireles related:

They had told me they were going to stop at the Texaco and go to Devine, and Danny was going to take the gun with him and *Jeff told him to leave it there*, and Danny put it under the couch and *Jeff walked out* and Danny picked up the gun and stuck it in his pants and said he was going to get the money, one way or the other, if he had to kill him. <sup>22</sup>

The State relied heavily on Mireles's testimony during Reneau's trial to persuade the jury to find Reneau guilty and sentence him to death, arguing, "[Reneau] was frustrated, because this planning had been going on for at least a couple of weeks, maybe longer, and *he* was just tired of all this planning and all of these plans falling through, so *he* decided that one way or another, even if *he* had to kill someone, *he* was going to get that money." <sup>23</sup> The State repeatedly vouched

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<sup>21</sup> Compare S.F. Vol. 30: 81-82 with Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 20: 42. According to a recent news article, Assistant Kerr County District Attorney Lucy Wilke, formerly Lucy Cavazos—who prosecuted both Mr. Wood and Daniel Reneau—wrote a letter to this Board stating, "Mr. Wood was the mastermind of this senseless murder. It was Wood who showed his teenage brother the surveillance video tape depicting the murder, while laughing, and then ordered his brother to destroy the tape." See Mariana Quevedo, *Inmate's Supporters Appeal to Governor*, SAN ANTONIO NEWS-EXPRESS, Aug. 3, 2008, available at [http://www.mysanantonio.com/news/politics/Inmates\\_supporters\\_appeal\\_to\\_governor.html](http://www.mysanantonio.com/news/politics/Inmates_supporters_appeal_to_governor.html) (last visited Aug. 4, 2008). This statement cannot be reconciled with the position taken by the State during Reneau's trial. Moreover, Ms. Wilke's inferences go well beyond what the evidence will rationally allow. The evidence did not reflect that Mr. Wood laughed while viewing the videotape, nor did it remotely establish Mr. Wood to be the "mastermind" of any "murder." See Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 20: 42.

<sup>22</sup> Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 19: 139 (emphasis supplied).

<sup>23</sup> See Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 20: 11-12 (emphasis supplied); see also Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 22: 33, 48.

for Mireles's credibility, telling Reneau's jury that "she told the truth. She told exactly what happened."<sup>24</sup>

In Mr. Wood's trial, despite having earlier vouched for its veracity at Reneau's trial, the State fought to exclude Mireles's testimony and won.<sup>25</sup> Thus, whereas Reneau's jury sentenced him to death in part on the basis of Ms. Mireles's recollection, the State did not allow Mr. Wood's jury to hear this important testimony.

Similarly, there was evidence of threats made by Daniel Reneau against the lives of Mr. Wood's wife and child (as well as against the lives of other people with whom Reneau committed crimes), but this, too, never got before Mr. Wood's jury.<sup>26</sup> Although the State sought exclusion of this evidence at Mr. Wood's trial, it welcomed and elicited such testimony during Reneau's trial.<sup>27</sup> Indeed, during closing argument at Reneau's punishment trial, the State told the jury, "[Reneau] knows right from wrong and he knew the consequences of his actions. That's why he threatened several people. He threatened to kill them if they ever turned him into the police."<sup>28</sup>

Before Reneau's jury, the prosecution lambasted the notion that Wood's moral culpability was as great as Reneau's:

And then to blame Jeff Wood. He made [Reneau] do it. Jeff Wood, go, go, go, Jeff Wood. He's the one that made him do it. If it hadn't have been for Jeff Wood, it never would have happened. Well, whose finger was on the trigger? Who pointed it right between his eyes? Didn't point it at his chest, if that made any difference, but right between the eyes. Who pointed up there? Who walked in there? Who took the gun? Nadia says [Reneau] said "I'm going to get that money whether I have to kill or not." Who did that? Jeff?<sup>29</sup>

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<sup>24</sup> Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 20: 44; *see also* Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 22: 34 ("She's telling the truth under oath and she has told the truth ....").

<sup>25</sup> *See* S.F. Vol. 25: 87-89.

<sup>26</sup> *See* S.F. Vol. 25: 100 (testimony outside the jury's presence by Linette Esensee that Mr. Wood had told her that Danny had threatened to kill his wife and daughter). The State objected and the court excluded the evidence.

<sup>27</sup> *See, e.g.*, Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 19: 154 (testimony by Nadia Mireles, Mr. Wood's wife, that Reneau had threatened to kill her and her daughter if she ever told anybody what he was doing).

<sup>28</sup> Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 22: 11.

<sup>29</sup> Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 20: 47.

Again at the penalty phase of Reneau’s trial, which included testimony about burglaries Reneau, Mr. Wood, and others had committed, the State expressed amazement that the blame could be placed on Mr. Wood:

It’s amazing to me that Jeff Wood [is being blamed for all this stuff, and yet you heard the witnesses. You have seen the time frame. ... When did all this criminal conduct begin? It just happens to begin when Daniel Earl Reneau enters the picture. ... They drag [Reneau] in and did it, but none of these crimes were happening. You heard Toledo say, “I don’t remember anyone doing all this stuff until Reneau shows up,” and then the little crime wave begins. ... Wood apparently was [not] doing that stuff until Reneau shows up and after that two months of Reneau coming into the picture, bam, bam, bam, burglary, burglary, burglary, robbery, murder. What’s the common equation?<sup>30</sup>

None of this was before the jury that deliberated Mr. Wood’s moral culpability.

During Mr. Wood’s trial, the State relied most heavily on Mr. Wood’s statements to law enforcement to show that he “anticipated” that Reneau would shoot and kill Kriss Keeran. Evidence never known to Mr. Wood’s jury, however—including school records reflecting Mr. Wood’s borderline IQ, his diagnosis of severe overanxious disorder and attention deficit hyperactive disorder, his distorted perceptions of reality, his inability to plan and organize, and his noted desire to please other people—gives substantial reason to doubt that Wood in fact ever anticipated that Reneau would murder Keeran as well as the reliability of answers Mr. Wood gave to leading and highly suggestive questions posed to him during his custodial interrogation. Those answers sharply contradicted other important testimony, such as Nadia Mireles’s, asserted to be credible by the State.

As early as elementary school, Mr. Wood was identified by the East Central Independent School District in San Antonio as being in need of additional services. He was tested and determined to be hyperactive. Although the school suggested that Mr. Wood be put on Ritalin, his parents did not do so. In sixth grade, after a change of school districts, Mr. Wood at the age of 12 was again immediately identified as requiring additional attention and services. Assessed by a psychologist, he was described as “hyperactive,” “highly impulsive,” and having a “short attention span.” The psychologist reported, “Hygiene and grooming are also often poor. During an observation, Jeff was very fidgety. He was seldom on task but did volunteer to answer questions and offered to loan another student a pencil. He seemed to want attention from his math teacher, asking her for help on the testing activity. The observer’s opinion was that Jeff seemed to want to have his teacher all to himself.”

Testing reflected that Mr. Wood’s IQ is approximately one standard deviation below the mean, significantly below average. His achievement at the time was, accordingly, below sixth

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<sup>30</sup> Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 22: 31-32.

grade expectations, ranging from a second grade level to the sixth, but averaging fourth. Testing additionally revealed psychomotor problems. At age 12, Mr. Wood obtained a visual-motor age score of 7 years, 3 months. The psychologist concluded in her report,

Jeff demonstrates the impulsivity and disorganization often noted in youngsters with some form of a visual-motor deficit. Additionally, excessive anxiety and fear create tension, and lead to faulty reasoning and reality testing. The result is a youngster who exercises exceptionally poor judgement which, along with achievement failures, further results in negative consequences. This, in turn, fosters self-doubt and recrimination. Jeff is not able currently to pull himself out of this dilemma by using productive problem solving strategies since self-introspection is so painful, and an objective wholistic [sic] picture of reality is so difficult for him to attain. His subjective perceptions seem to be fragmented and filled with morbid, threatening elements. He seems to feel a strong drive to retreat from emotional stimuli and emotionally laden thoughts; if unable to do so, perceptions of reality become even more distorted. ...

Identity issues also seem to be at stake here. Jeff seems to be struggling between a good, smart and a bad, dumb self-image. There is a drive to please others, but he is unsure how this is done without risk to his emotional self. ...

Mr. Wood was diagnosed with severe overanxious disorder with avoidant features and was deemed to meet the disability criteria for the category of emotionally disturbed. He was, accordingly, placed in special education.<sup>31</sup>

Mr. Wood was assessed by a different school psychologist in 1990 at age 15, who observed that teachers found Mr. Wood to be “easily distracted” and “restless.” The psychologist further reported about Jeff’s behavior,

This examiner observed that Jeff looked his age but acted like a middle school boy. ... During both test sessions Jeff chewed gum so vigorously that his ears wiggled. His facial and body movements were loose. Sometimes he mumbled or distorted his speech. Jeff was anxious about his test performance and frequently he asked how he was doing. He worded it negatively, though, as, “I flunked, didn’t I?” On the Rorschach Jeff nervously rotated the cards and took a long time to respond. He was reluctant to risk an initial answer on the Rorschach. Rather, after a minute he asked the examiner, “What do you think it looks like?”<sup>32</sup>

Mr. Wood’s emotional and psychological impairments—including his intellectual limitations—diminished his capacity to anticipate what Reneau would do inside the convenience

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<sup>31</sup> See Exhibit 1 (Multidisciplinary Team Comprehensive Psychological Evaluation, Apr. 29, 1987).

<sup>32</sup> See Exhibit 2 (Comprehensive Individual Assessment and Psychological Evaluation, May 14, 1990).

store. Combined with the State’s acknowledgment that Daniel Reneau’s presence was the spark behind the criminal behavior and Nadia Mireles’s testimony, credited by the State, that Reneau’s decision to take a firearm was made by himself and against Mr. Wood’s expressed wishes—and that Reneau in fact secreted the weapon in his pants that Mr. Wood had asked him to leave behind in Mr. Wood’s absence—it is anything but clear that Mr. Wood ever anticipated Kriss Keeran losing his life.

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Although Reneau and Mr. Wood were not tried together, Mr. Wood’s jury was nonetheless presented with evidence and argument that asked them to judge Mr. Wood by Daniel Reneau’s acts. Indeed, during closing argument in both the guilt-innocence and punishment phases, the prosecutor repeatedly referenced what “they”—not Mr. Wood—had done.

At guilt-innocence, the jury heard the prosecutor argue:

Though having no intent to commit it; although, I doubt that the Defendant had no intent. I mean, **they** knew it was going to have to happen, if the offense was committed in furtherance of the unlawful purpose, and it was. That’s why **they** had to shoot Kriss, so that **they** could get that safe, so **they** could rob him. And was one that should have been anticipated as a result of carrying out of the conspiracy. Not only in this case should it have been anticipated, it was anticipated. That’s why **they** had to go back and get a gun that wasn’t so loud. **They** didn’t think **they** were going to need it? It won’t matter how loud it was. If **they** weren’t going to need it, **they** wouldn’t need a loaded gun, so it was anticipated. Not only should have been anticipated, it was. It should have been anticipated and was anticipated that Kriss would have to be murdered, because **they** knew that Kriss had backed out of any previous plans to help them out. Nadia, herself, told you that. Yeah, **they** knew. **They** knew that he had backed out, so **they** knew that Kriss was not going to cooperate and their plan was if Kriss doesn’t cooperate, then **we’ll** shoot him. **They** knew that. **They** already knew that he wasn’t going to cooperate. **They** went in without masks, you know. **They** both knew Kriss. Kriss was going to know who it was that robbed him.

Ladies and gentlemen, that’s why **the Defendant** has been proved guilty beyond a reasonable doubt of capital murder. Thank you for your attention.<sup>33</sup>

Even Grigson, in opining about Mr. Wood’s purported future dangerousness in the punishment phase, conflated Mr. Wood and Reneau. When asked by the prosecutor whether the “fact” that the individual in the hypothetical returned home to get a quieter gun—despite the fact that the evidence reflected *Reneau*, not Wood, had done this—factored into his opinion, Grigson responded, “Well, it only adds to the fact that **they** knew **they** were going to be shooting the gun

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<sup>33</sup> S.F. Vol. 26: 43-44.

and that the clerk was going to be dead, so, you know, *they* didn't want to draw attention by a loud gun going off, apparently.”<sup>34</sup> Even in sentencing phase arguments—the phase of the trial in which Mr. Wood's individual moral culpability is to be judged—the shooter, Reneau, was ever present. The State concluded its closing:

You know, if someone can kill a friend, you know, I submit to you *they* can kill anyone. If *they* can plan the murder of a friend, *they* can kill someone else just spur of the moment.

And this is a heinous crime, because it involved premeditated, planned-out murder of a good friend. You know, one minute he's taking drinks from him and the next he's laughing, the fact that *they* have killed him.<sup>35</sup>

Now, ladies and gentlemen, if that's not a future danger, then I don't know what is, and you don't need a medical degree or any other kind of degree to figure that out. All you need is common sense. Thank you very much.<sup>36</sup>

No similar collective arguments were made by the State during Daniel Reneau's trial.<sup>37</sup> It is highly likely Mr. Wood's jury contemplated holding Mr. Wood morally culpable for what *Daniel Reneau* had done. The reliance on Daniel Reneau's acts to judge Mr. Wood's moral culpability must seriously undermine confidence that death was the appropriate punishment for Mr. Wood.

In sum, the jury that determined Mr. Wood's fate was deprived of relevant and available information that would have allowed it to make a reliable judgment about Mr. Wood's personal moral culpability. In the punishment phase of Daniel Reneau's trial, the State told the jury, “There is a distinct personal choice made by an individual when they become an adult ... to go in and take a gun and stick it in a man's face and shoot him between the eyes...”<sup>38</sup> The undersigned agree. It was, as the State argued, *Reneau's* individual distinct personal choice to shoot Kriss Keeran: “[Reneau], not the jury and not the Court *and not anyone else*, chose to walk into that gas station on January 2nd of 1996 ... and pull a gun on Kriss Keeran and intentionally murder him...”<sup>39</sup> While Mr. Wood bears responsibility for what happened, it was

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<sup>34</sup> S.F. Vol. 30: 70.

<sup>35</sup> There was no testimony or evidence that Mr. Wood laughed at the fact that Reneau had killed Kriss Keeran.

<sup>36</sup> S.F. Vol. 30: 83-84.

<sup>37</sup> Indeed, in its arguments to Reneau's jury, the State distanced Reneau from Mr. Wood and made a special effort to focus the jury's attention on the specific things Reneau had done.

<sup>38</sup> Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 22: 50.

<sup>39</sup> Statement of Facts, *State v. Reneau*, No. AP-72,812, at Vol. 22: 11.

not Mr. Wood who made the choice to shoot Kriss Keeran. The choices Mr. Wood *did* make—though he should be held accountable for them—are not deserving of death.

### **Dr. James Grigson’s Testimony Was Fraudulent and Perjurious**

The State’s use of the discredited Dr. James Grigson—nicknamed “Dr. Death”—in a non-adversarial proceeding guaranteed a death sentence for Mr. Wood. Indeed, his testimony, unopposed, compelled the jury to answer the special issues in the manner they did. His uncontested—*un-cross-examined*—testimony required the jury to find that Mr. Wood would be a future danger.

Despite having a valid license, Grigson was a medical fraud, although Mr. Wood’s jury did not know it. In 1995, three years before he testified in Mr. Wood’s trial, Grigson was expelled from the American Psychiatric Association and the Texas Society of Psychiatric Physicians for flagrant ethical violations related to his testimony purporting to predict future dangerousness.<sup>40</sup> Because he was not cross-examined, Mr. Wood’s jury was not aware of this information. Nor did the State elicit it, despite its duty to see that justice is done and to disclose impeachment evidence.

In a 2007 article appearing in *Clinical Psychiatry News*, Grigson was described as a “dramatic example” of “pretextuality,” in which a court knowingly accepts testimony that is intended to achieve a desired end.<sup>41</sup> Donald Judges, a professor at the University of Arkansas School of Law with a Ph.D. in clinical psychology, described Grigson’s “extreme forensic advocacy” as a “notorious example” of the “failures” of the mental health profession with respect to “overidentification” with an adversarial side of legal proceedings, in Grigson’s case, with the State.<sup>42</sup>

Grigson is not derided only by defense lawyers and his fellow psychiatrists. Judges on Texas’s Court of Criminal Appeals have seen through him as well. Judge Teague once wrote of him:

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<sup>40</sup> See Bruce Vincent, *Dearth of Work for “Dr. Death;” The Once Ubiquitous James Grigson Now Finds Little Demand for his Testimony in Texas Capital Murder Sentencings*, TEX. LAW., Dec. 4, 1995, at 4; Mike Tolson, *Doctor’s effect on justice lingers; Testified in many death row cases*, HOU. CHRON, June 17, 2004, at A-27.

<sup>41</sup> See Jane Salodof MacNeil, *Forensic Experts Urged to Monitor Own Bias Against Mentally Ill*, 35 CLINICAL PSYCHIATRY NEWS 40 (2007).

<sup>42</sup> Donald P. Judges, *The Role of Mental Health Professionals in Capital Punishment: An Exercise in Moral Disengagement*, 41 HOUS. L. REV. 515, 591 & n.426 (2004); see also George E. Dix, *The Death Penalty, “Dangerousness,” Psychiatric Testimony, and Professional Ethics*, 5 AM. J. CRIM. L. 151, 172 (1977) (Grigson testified at “the brink of quackery”).

This is another case in which Dr. James P. Grigson, who has earned the nickname of “Dr. Death” because of the number of times he has testified on behalf of the State at the punishment stage of a capital murder trial and the number of times the jury has returned affirmative answers to the submitted special issues, testified. . . . Dr. Grigson testified at the punishment stage of applicant’s trial and, as usual, was the State’s star witness at that stage of the trial. My favorite Dr. Grigson answer, given the question, is the following:

Q: Well, I’m asking, do you pick those people out [who are “like cancer and should be wasted”]; I mean, is it you that is charged with that responsibility, to pick out what people in our society are like cancers that make their waste not needless?

A: Yes, sir, I have been asked to do this on numerous occasions by Courts, and I have been proved to be right in my prediction of individuals continuing to kill; and so I have been asked to do that, and it has proven to be so.<sup>43</sup>

Only it has not proven to be so at all. As it turns out, Grigson has been proved wrong many times, and this was known to the State of Texas as early as 1988 when the Dallas County District Attorney’s Office created a report analyzing the behavior of death-sentenced persons from Dallas County who had been released from death row, 10 of 11 of whom had been determined by Grigson to have “certainly” been a danger in the future. The report—reflecting that many inmates had little to no disciplinary infractions—was kept confidential at the time, but was discovered in the mid-nineties, just prior to Mr. Wood’s trial.<sup>44</sup>

As but one example of Grigson’s getting it wrong, Grigson testified in the capital murder trial of Randall Dale Adams. Adams was found guilty of killing a police officer and sentenced to death. As it turned out, however, Adams had not committed the murder for which he was convicted and was subsequently released from prison. Adams’s only criminal record at the time Grigson made his prediction was a conviction for driving while intoxicated. Nevertheless, Grigson testified in his “expert” opinion about Adams, “I would place Mr. Adams at the very extreme, worse or severe end of the scale. You can’t get beyond that. . . . There is nothing known in the world today that is going to change this man; we don’t have anything.”<sup>45</sup> Adams has been out of prison now for almost two decades without any criminal record.

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<sup>43</sup> *Bennett v. State*, 766 S.W.2d 227, 231-32 (Tex. Crim. App. 1989) (Teague, J., dissenting).

<sup>44</sup> The report is attached as Exhibit 3. Mr. Wood’s trial counsel, when requesting a continuance to prepare for the State’s last-minute addition of Grigson to its witness list, brought this report to the attention of the trial court. Prior to the breakdown in adversarial proceedings, they had intended to cross-examine Grigson about it.

<sup>45</sup> Statement of Facts at 1410, *Adams v. State*, 577 S.W.2d 717 (Tex. Crim. App. 1979) (No. AP-60,037).

Grigson did not testify in Daniel Reneau’s case, but the government brought him in for Mr. Wood’s. It was a last-minute decision, apparently made by the State in view of its otherwise weak case for death against Mr. Wood.<sup>46</sup> Grigson testified, without challenge, that he had examined “close to about 500 individuals that have criminal charges against them a year;” that he had “examined over 14,000 that had criminal charges against them” in total; that he had “examined over 1,400 that was charged with murder,” that he had “examined ... either 404 or 405 that have been charged with capital murder;” that “[e]ighty-five percent of the examinations [he does] are at the request of the various judges;” that he had testified in criminal trials “probably over 4,000 times;” and that he had “testified in 163 capital murder cases.”<sup>47</sup>

One can only imagine how authoritative Dr. Grigson must have appeared to lay jurors. Indeed, Judge Teague once wrote of him, “Believe me dear reader, for jury purposes, Dr. Grigson is extremely good at persuading jurors to vote to answer the [future dangerousness] special issue in the affirmative. In fact, Judge Odom of this Court, in the dissenting opinion that he filed in *Smith v. State*, which was later withdrawn, once characterized Dr. Grigson’s testimony as being ‘prejudicial beyond belief.’ Thus, for trial purposes, Dr. Grigson closely resembles a combination of all those great major league baseball hitters who could almost hit homeruns with their eyes closed. ... [T]o even conclude that Dr. Grigson’s testimony may be harmless is ludicrous.”<sup>48</sup>

With the doctor’s experience represented to the lay jurors to be vast, the prosecutor then posed to Grigson a hypothetical it knew would go unchallenged that laid out the “facts” of the offense as perceived by the government. Following the hypothetical, the prosecutor asked, “Now, is the hypothetical I have given you thorough enough for you to form an opinion on whether or not that individual in that hypothetical would be a future danger to society because there is a probability that he will commit criminal acts of violence that would constitute a continuing threat to society?” Knowing that the scientific consensus of his profession in 1998 was that the correct answer to this question was “no,” Grigson perjured himself. He answered, simply, “Right, it’s sufficient.” When asked what his opinion was, Grigson violated his

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<sup>46</sup> The State added Grigson to its witness list well after the date by which the court had ordered them to disclose its witnesses. Mr. Wood’s attorneys complained about the late notice, but the trial court nonetheless allowed the State to call him. S.F. Vol. 24: 20-43.

<sup>47</sup> See S.F. Vol. 30: 59.

<sup>48</sup> *Bennett*, 766 S.W.2d at 232 (Teague, J., dissenting) (internal citations omitted). Judge Teague also discussed how often Grigson cases had been overturned by appellate courts. Because no objections were levied at Mr. Wood’s trial, however, Mr. Wood could not challenge Grigson’s testimony in his appeals.

profession's ethics and answered, "That the individual you described will most certainly commit future acts of violence and does represent a threat to society."<sup>49</sup>

The prosecutor then asked Grigson whether it was "necessary as an expert testifying on the issue of future dangerousness to examine a defendant personally." Grigson again committed perjury: "No, if you can get sufficient amount of information in a hypothetical, then you can make an opinion." Grigson further testified, in an effort to bolster his objectivity, that in "forty some-odd percent" of the capital defendants he had "examined," he had found them not to constitute a continuing threat. The prosecutor—with an impermissible leading question and in full knowledge that no objection or cross-examination would be forthcoming to challenge anything Grigson said—sought to buttress Grigson's credibility even further, asking "So, in other words, you state your honest opinion irrespective of, you know, whether it's going to be favorable to the State or to the defense; is that correct?" Grigson replied to the jury, "I do."

But Grigson lied. Since Mr. Wood's trial, Grigson has been found by a federal district court to have *knowingly* perjured himself about his experience, accuracy, and the number of times he has found defendants not to constitute a continuing threat. In *Summers v. Director*, United States District Judge for the Eastern District of Texas Thad Heartfield wrote:

As to the first element of the *Fuller* test, the Court finds by a preponderance of the evidence that Grigson's testimony was false in three respects: he exaggerated the number of capital murder defendants he had examined, he inflated the number of defendants he determined would not be likely to be dangerous in the future, and he exaggerated the degree of his certainty that [the defendant] would be dangerous in the future. The Court also finds that Grigson's inflating the number of defendants he determined would not likely be dangerous in the future *was a conscious attempt to mislead the jury as to his objectivity*.<sup>50</sup>

In the capital murder trial of Baby Ray Bennett in November 1985, Grigson swore that he had examined about 176 capital murder defendants.<sup>51</sup> Six months later, in Jackie Wayne Upton's capital murder trial, Grigson testified that he had examined 162 defendants charged with capital

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<sup>49</sup> S.F. Vol. 30: 68. Answering just such hypotheticals was one of the reasons Grigson had been expelled from national and state professional associations in 1995. Dr. Jonas Rapoport, at the time medical director of the American Academy of Psychiatry and the Law and who was not involved in the decision to eject Grigson, cited as one of Grigson's ethical violations that he "repeatedly answered questions in court based on hypothetical situations that did not provide enough information to form a sound professional opinion." See Laura Beil, *Groups Expel Psychiatrist Known for Murder Cases; Witness Nicknamed Dr. Death Says License to Practice Won't Be Affected by Ethics Allegations*, DALLAS MORNING NEWS, July 26, 1995, at 21A.

<sup>50</sup> Memorandum Opinion, *Summers v. Director*, No. 6:01-cv-00139-TH (E.D. Tex. Mar. 4, 2004) (Docket No. 26) (internal citations omitted & emphasis supplied).

<sup>51</sup> CCA No. AP-69,645 at 36.

murder.<sup>52</sup> In the trial of Esequel Banda, Grigson claimed to have examined about 170 persons charged with capital murder.<sup>53</sup> On May 19, 1988, Grigson testified in Hai Kein Vuong’s capital trial and claimed he had examined “156 defendants charged with capital murder.”<sup>54</sup> Thus, between Mr. Banda’s trial and Mr. Vuong’s, the total number of capital murder defendants examined mysteriously shrank by at least 14. About eighteen months after Vuong’s trial, Grigson testified in Adolph G. Hernandez’s capital murder trial. This time, he testified under oath that he had conducted no fewer than **391** examinations of persons charged with capital murder.<sup>55</sup> The total number of examinations, by Grigson’s account, increased by **235** in a span of eighteen months. When cross-examined about his inconsistent numbers in Jack Wade Clark’s trial in April 1991, Grigson tried to shed light on his cooked numbers, stating “that the majority of those exams [156] with capital murder came prior to 1981.”<sup>56</sup> In *Clark*, which took place in 1991, and 14 months after *Hernandez*, Grigson claimed to have examined 388 defendants charged with capital murder.<sup>57</sup> In Mr. Wood’s capital murder trial in 1998, Grigson was only up to “404 or 405.”<sup>58</sup>

Remarkably, in most all cases, the number of defendants Grigson testified he had found not to constitute a future danger was always 40% of the total examined. But tangled webs we weave: Grigson sometimes goofed. In Damon Richardson’s 1988 trial—the last case in which Grigson is known to have testified how many defendants he found not to constitute a future danger before boosting the total number of examinations he claimed to have conducted upwards of 300—Grigson testified he had examined 187 defendants and had found 74 of them not to be dangerous.<sup>59</sup> Unsurprisingly, this is exactly 40%. But in Adolph Hernandez’s 1991 capital murder trial—the first trial in which Grigson is known to have boosted the number of examinations he conducted to 391—Grigson testified that he had found just 70 persons not to be dangerousness, a percentage of only 18%. Apparently, Grigson simply forgot to artificially inflate *both* numbers. He corrected the omission in his next case; at the next trial in which Grigson is known to have testified in November of 1990, that of Jose Gutierrez, he appropriately

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<sup>52</sup> CCA No. AP-69,717 at 782.

<sup>53</sup> CCA No. AP-69,827 at 40.

<sup>54</sup> CCA No. AP-70,402 at 489.

<sup>55</sup> CCA No. AP-71,074 at 150.

<sup>56</sup> CCA No. AP-71,251 at 1532.

<sup>57</sup> *Id.* at 1524.

<sup>58</sup> S.F. Vol. 30: 60.

<sup>59</sup> 879 S.W.2d 874 (Tex. Crim. App. 1993) (Grigson’s testimony not discussed in opinion).

increased the number of persons he had examined by one to 392. This time, however, he testified he had found **158** persons not to be dangerous, a ratio of exactly 40%.

As it turns out, perhaps unsurprisingly given all of the above, Grigson's prediction that Jeffery Wood "will most certainly commit future acts of violence and does represent a threat to society" was wrong. A decade in the custody of TDCJ has produced not a single incidence of violence from Jeffery Wood.<sup>60</sup> Indeed, Mr. Wood has spent all but three months of that decade assigned to Level 1, the custodial level with the most privileges available to death row inmates and a status available only for the most well-behaved.<sup>61</sup>

After Grigson's testimony in Mr. Wood's capital murder trial, both the State and Defense rested and the jury was sent to deliberate on whether or not to sentence Mr. Wood to death. The jury's return of a death verdict under these circumstances should not garner the same deference as one returned after an adversarial proceeding and in which Grigson did not testify unchallenged. Based on the testimony and evidence presented—although false and, ultimately, incorrect—the jury had no real choice but to answer the special issues in the manner it did. It is nevertheless highly unseemly for Texas to execute a man whose death sentence was secured as a result of purportedly expert testimony from a doctor whom the State knew to have been kicked out of national and state professional organizations for doing the very thing he was asked to do in this case. This is all the more so when the "expert's" testimony went entirely unchallenged and when he was permitted to perjure himself without confrontation. Grigson's testimony, imbued with the aura of scientific infallibility, was wrong, and it affirmatively misled Mr. Wood's jury. As the sponsor of the fraudulent testimony, the State of Texas has a responsibility for that not only to Mr. Wood but also to the members of the jury who sat and listened to Grigson's false and misleading testimony.<sup>62</sup>

### **III. Mr. Wood Is Potentially Incompetent to Be Executed**

Mr. Wood suffers today from the same psychological and emotional impairments for which a jury found him incompetent to stand trial in 1997. He has never received psychiatric or

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<sup>60</sup> See TDCJ Disciplinary Records (attached as Exhibit 4). Mr. Wood has received only 6 disciplinary infractions in the decade he has been on death row. Two were for (non-violence-related) contraband, two were for inappropriate requests made to prison officers, and two for grooming. *Id.* See also Letter to Jared Tyler from Michelle Winfrey (reflecting that "[n]o Major Use of Force Report was found involving" Jeffery Wood) (attached as Exhibit 5).

<sup>61</sup> See TDCJ Classification Records (attached as Exhibit 6). Mr. Wood's demotion to Level 2 was based on one of his non-violent disciplinary infractions.

<sup>62</sup> This Board has recommended commutation before in a case in which Grigson had testified, that of Kelsey Patterson. Grigson had testified that Patterson was sane at the time he committed his crime despite the fact that Grigson himself had diagnosed Patterson with schizophrenia 12 years earlier. See Mike Tolson, *Mentally Ill Killer's Life on the Line*, HOU. CHRON., Aug. 11, 2002, at A-37.

mental health care for these impairments. The same deficiencies that prevented Mr. Wood from communicating with his trial lawyer with a reasonable degree of rational understanding prevent Mr. Wood from having a rational understanding of his death sentence and impending execution.

### **Conclusion and Request for Mercy**

The last time a person was executed in the United States who did not participate directly in killing another human being was 1996.<sup>63</sup> Mr. Wood's death sentence is unjust and must not be permitted to be carried out. It is this Board's responsibility as the representatives of the residents of Texas to see to it that a man who has never killed another person is not executed because his emotional and psychological impairments caused a breakdown in the adversarial process and his jury to rest its answer to the special issues on unchallenged and fraudulent "expert" medical testimony and lies sponsored by the State.

Mr. Wood undeniably shares responsibility for what happened to Mr. Keeran, and should be held accountable for his reckless acts, but no man ever deserves to die for another man's acts. Justice was served in this case when the State of Texas executed Daniel Reneau on June 13, 2002; the continued imprisonment of Mr. Wood will continue to serve justice.<sup>64</sup>

The Supreme Court has written, "When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint."<sup>65</sup> The undersigned, on Mr. Wood's behalf, respectfully suggest that if Mr. Wood is executed under the circumstances outlined in this petition, that risk will have come to fruition, and we all will have taken a descent into brutality unworthy of the State of Texas.

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<sup>63</sup> See Death Penalty Information Center, *Those Executed Who Did Not Directly Kill the Victim*, available at: <http://www.deathpenaltyinfo.org/article.php?&did=2555> (last visited Aug. 4, 2008). Only seven such people have been executed in the modern era. Texas has not done so in more than 15 years, since 1993. See *id.* This excludes killings for hire, in which the intent to kill is not disputed and which constitute a separate capital statute under the Texas Penal Code. Tex. Penal Code § 19.03(a)(3). The fact that our penal code expressly contemplates those situations where persons who did not directly kill another are eligible for the death penalty should itself give serious pause to going forward with an execution in a situation not expressly contemplated by the code. Indeed, in 2007 this Board recommended that the death sentence of the last person who did not kill the victim coming before this Board, Kenneth Foster, be commuted. Governor Perry commuted Foster's death sentenced on August 30, 2007.

<sup>64</sup> Kriss Keeran's father recently told a reporter, "The death penalty, to me, is the easy way out. If you had to be down there and get up every morning, as hot and humid as it is, knowing that you are going to spend the rest of your life locked up under those conditions, that's punishment. That's what I think my son would want for him." Eva Ruth Moravec, *Inmate's Supporters Appeal to Governor*, SAN ANTONIO NEWS-EXPRESS, Aug. 3, 2008, available at [http://www.mysanantonio.com/news/politics/Inmates\\_supporters\\_appeal\\_to\\_governor.html](http://www.mysanantonio.com/news/politics/Inmates_supporters_appeal_to_governor.html) (last visited Aug. 4, 2008).

<sup>65</sup> *Kennedy v. Louisiana*, 554 U.S. \_\_\_, 128 S.Ct. 2641, 2650 (2008).

Respectfully submitted,

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