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Members

Texas Board of Pardons and Paroles
Attn: Executive Clemency Section
8610 Shoal Creek Blvd.
Austin, Texas 78757

Honorable Members of the Texas Board of Pardons and Paroles,

My name is Walter C. Long. I represent Napoleon Beazley, a young African American man who is scheduled to be executed by our state in 15 days, on August 15, 2001, for an offense committed in Smith County, Texas, on April 19, 1994. **This is Napoleon's amended and supplemented clemency petition, augmenting and supplanting the petition that was filed at the Board of Pardons and Paroles on July 25, 2001.** It is intended to be an entreaty to each of you, and thus, I am submitting it to you in the form of a personal letter, rather than in the legal format with which I and you are probably accustomed. I ask you to spare the life of my client, Napoleon. I ask you not only for his sake, but on behalf of myself, my family, Napoleon's family, and Napoleon's community, the small town of Grapeland, Texas. In hopes that I will not be misunderstood, I also include in this request that you also consider sparing Napoleon's life for the sake of the surviving family of John Luttig.

I confess that I come to you with little faith in our system. I have been working on capital habeas appeals for the last seven years. During that time, I have seen a number of persons executed whom I did not believe should have been legally executed. You and I both have seen a lot of killing by our state, much more than any other state in the Union and more than the vast majority of countries in the world. I am a fourth generation Texan, and this does not sit well with me. When I was growing up, my grandfather, who was the manager of the Austin Chamber of Commerce for decades, put his grandkids through Sunday School drills, and the verse that he gave us over and over was, "Where there is no vision, the people perish." From my perspective, we are perishing, we are killing ourselves with the death penalty.

Yet, I have read some of your comments, trying to get a glimmer of an idea about what you think and what criteria you might use to judge the cases that come before you, and I have heard a number of you cite the Bible. In *George Magazine*, sometime just before it folded, one of you said that you felt good about what you did when denying a death row commutation, because the offender would have another chance in the hereafter: "When someone is executed, I pray for the soul. To die in Christ is gain. I think I'm doing something good. I know I am." A number of you made similar comments that conveyed to me the sense that the disproportionate number of "no" votes by Board members in death row commutation decisions might be attributable to moral or religious belief that executions are a social good. I trust that our ex-Governor and President George W. Bush believed that. He talked about leaving judgments about the heart and soul to a Higher Power when he passed over commuting our client, Karla Faye Tucker, and he repeated the same sort of pronouncements, if I recall correctly, in other high profile cases.

The death penalty is not a social good. When I was growing up in Austin, prior to *Furman v. Georgia*, which briefly abolished the death penalty in the United States in 1972, there was a moratorium on executions. Even though I have childhood memories of Vietnam and, especially, of JFK and MLK being assassinated, I otherwise recall an untroubled time when, as a child, the idea of the state killing its own citizens under color of law would have been incomprehensible to me. I now have three children. They live in a different world, and it is my task as a father to try to guide them through that world. The death penalty makes that hard. How do I explain to them why a life like Karla's was taken? How would I explain to them the killing of Napoleon Beazley? Napoleon, who has become a household word. You went to the prison, Dad? How is Napoleon? Napoleon is okay, I tell them, he maintains a steady resolve, he has good humor, and he is kindly to those around him. When I see Napoleon, he cheers me up.

I am well acquainted with grief. I have seen my clients in boxes. I have buried my own father. Apart from my wife, who is in a category of her own, my father was the closest friend I have ever had. He was the person to whom I could tell anything and he had an answer to almost every question. His death, after nearly a dozen crisis visits to the hospital with congestive heart failure, was an immeasurable loss for me. I also have a history of working with victims of violent offenses, persons fleeing from the wars in Central America whom I assisted to achieve a safe haven in Canada. Many of those persons were victims of torture or other forms of human cruelty and, while in transit, they lived with me in my house. One teenaged Salvadoran soldier had post-traumatic stress disorder and was burdened with nightmares, reliving an incident in which he had panicked and stood up in combat. His friend hopped up, pulled him to safety, and was shot in the head. At night this young man involuntarily reviewed the scene, over and over. I went to help his family leave the country and, before I could get there, his brother was killed in the street by a grenade. While there, I survived a small bomb that took out the eye of a child standing next to our car. I have experienced some violence and I certainly am acquainted with its aftermath, the residue of trauma, guilt, and grief.

To the surviving family members of John Luttig, I would say that I know what it is like to lose an esteemed father and mentor. To Bobbie Luttig in particular, I would say that, vicariously, through others whom I have known intimately, I know something about what it is like to have survived an attack that took a loved one. I am dreadfully sorry for what happened to John Luttig.

I have re-encountered the attack that occurred on April 19, 1994, many times in the course of investigating and pleading Napoleon's case. It is incomprehensible to me, a sorrowful event that resists interpretation like other senseless acts of violence that I have known.

Statement of the Offense

On April 19, 1994. John Luttig and his wife, Bobbie, drove up to their Tyler home late that night after returning from Dallas, where Bobbie was studying for a Master of Divinity degree at Southern Methodist University. As the Luttigs emerged from their Mercedes at their garage, they became the victims of a badly botched carjacking. Through the testimony of Napoleon's codefendants, brothers Cedric and Donald Coleman, the State alleged that Napoleon, followed by Donald, approached the Luttigs in their driveway demanding the keys to the Mercedes. According to Donald, a quick struggle ensued between Napoleon and John Luttig, with the result that John Luttig was killed with two pistol shots to the head, the second shot fired after John Luttig was on the ground. Donald alleged that Napoleon also shot at Bobbie Luttig after she had slipped to the ground on the other side of the Mercedes in an attempt to avoid harm. Donald alleged that Napoleon told him to shoot her with the shotgun he was carrying, but that he responded that she was dead. Bobbie Luttig rolled free of the car as Napoleon and Donald recklessly drove it out of the driveway, damaging it against a retaining wall. Bobbie's husband lay dead, and she fled to a neighbor's house to call for help. Cedric Coleman followed Napoleon and Donald in Napoleon's mother's car, a Red Ford Probe, which had carried the youths to the crime scene. A short distance down the road, the youths abandoned the injured Mercedes, got in the car with Cedric, and returned seventy miles to Grapeland. Following a massive F.B.I. manhunt, the three were arrested a few months later.

Effect of the Crime on the Victim's Family

John Luttig's son, Michael Luttig, is a federal appellate judge on the Fourth Circuit Court of Appeals in Virginia. He has had a distinguished career which began with clerkships for Justice Antonin Scalia (then at the District of Columbia Court of Appeals) and Chief Justice Warren Burger of the United States Supreme Court. Judge Luttig, his wife Elizabeth Luttig, and his sister Suzanne Luttig Easterling testified at Napoleon's trial in Tyler about the sterling character of John Luttig, and Judge Luttig's testimony at the punishment phase eloquently summarized his father's fundamental decency and his own pain. Elizabeth Luttig described her husband as **Adevastated by what happened to his father,@as having Alost his best friend and his closest confidant.@** She also talked about having slept with Bobbie Luttig for the first six weeks after the offense, **Abecause she was afraid, and she would shake at night.@** Suzanne Luttig Easterling also described her mother as sleepless and burdened with flashbacks.

From what I know from various observers in Tyler and news accounts, Judge Luttig tirelessly participated in the trials of the three codefendants. The Coleman brothers were tried and convicted first in federal court in Tyler on carjacking charges. Napoleon was not tried in federal court, because of his age, seventeen at the time of the offense. However, Texas law automatically allows for adult prosecution of seventeen year olds and for them to be tried for the death penalty. The Coleman brothers have told us that the Smith County prosecutors pressured them into testifying against Napoleon by threatening them with the death penalty if they did not. They have said that prosecutors

told them the Luttig family and, in particular, Judge Luttig, was pressuring the prosecutors to get the death penalty against all of the codefendants. At one point in the record for Napoleon's trial, Assistant District Attorney David Dobbs had an off-record conversation with the trial judge, Hon. Cynthia Kent, by all appearances about the appropriateness of the death penalty in the case, and explained, when back on the record, that the surviving family wanted it. At another point in the record, Dobbs confirmed Judge Luttig's close participation in Napoleon's trial by asking Judge Kent for an over-night break because Judge Luttig wanted to review juror questionnaires with the prosecutors to help them make their peremptory challenges.

It is my belief that Napoleon, who had no prior criminal record, received the death penalty in large part because the surviving family sought it. It appears to me that Napoleon's parents worry that they are to blame. They are concerned that, unlike the Colemans' mother, they did not reach out effectively for their juvenile son to the surviving members of the Luttig family.

Appellate History

The issues concerning the fairness of Napoleon's sentence that will be set out below have not been allowed development in any courtroom evidentiary hearing, in part because of the inadequacy of the Texas Court of Criminal Appeals' indigent appointment system for inmates seeking state habeas relief. None of the claims was raised in state court, because appointed counsel and his co-counsel were ordered to file ten (10) state habeas petitions in six months. Napoleon's attorney and his partner were starting a law practice with these cases. Both had been briefing attorneys at the Court of Criminal Appeals, but they had little experience practicing law with clients. The partner had never appeared in court on behalf of a client. Napoleon's appointed counsel opined that spending a month on each case would be "doable," which alarmed experienced criminal defense attorneys who found the Court's appointment of so many cases at once to two attorneys incomprehensible. The Court of Criminal Appeals denied Napoleon's attorney's motion for more time and accepted a four-claim petition, which repeated two claims from direct appeal and raised two other claims based on the trial record. A weekend of investigation was done, and Napoleon was launched toward federal court with an execution date and very little he could carry with him. The federal courts have denied us any hearing on the issues, because they were not presented to the state courts.

Napoleon's direct appeal process, prior to the appointment of state habeas counsel, also was deficient, although not with such dire consequences, assuming that the Covenant claim could have been raised in state habeas as well as on direct appeal. After Napoleon was found guilty of capital murder and sentenced to death, the trial court appointed E. Carl Moore on March 30, 1995, to do the direct appeal. Mr. Moore produced an inadequate brief in May 1996, and was jailed for contempt of court. Don Killingsworth filed an amended brief in September 1996. Most of the points of error raised by Killingsworth had been presented in a prior case he filed on behalf of Stacey Lawton. In its unpublished opinion in Napoleon's case, the Court of Criminal Appeals overruled these claims, noting that Killingsworth neglected to make any new arguments for them. *Beazley v. State*, No. 72,101 (Tex. Crim. App. Feb. 26, 1997). State habeas counsel, Robin Norris, was appointed in December 1996. In an unpublished order dated January 21, 1998, the Court of Criminal Appeals denied Napoleon relief on his four-claim state writ. We took Napoleon's case to federal court and have shepherded it to its current location, on petition for writ of certiorari from the Fifth Circuit's denial of relief in *Beazley v. Johnson*, 242 F.3d 248 (5th Cir. 2001).

Legal Issue: No Evidence to Support Future Dangerousness

Once the prosecutors had decided, for whatever reason, to seek the death penalty against Napoleon, they faced a challenge. They would have to prove that the defendant would always pose a risk of danger to others. One of the chief ways in which the State usually meets this burden is by producing the prior criminal record of the defendant. Napoleon had no record of any prior contact with police. In fact, the prosecutors were unable to turn up any complaint or instance of physical aggression instigated by Napoleon against anyone. A senior in Grapeland High School, he was runner up in the contest for "Mr. Grapeland," the boy annually voted most popular in the school. He was president of his class. Before the crime, by all appearances, Napoleon was in command of his future. He had a good academic record and was a school athlete, playing football and attending state power lifting competitions. His codefendants, Cedric and Donald, also had relatively clean records. The small community of Grapeland was shocked with disbelief that these kids could have been involved in such an offense, and numerous witnesses testified at the punishment phase of Napoleon's trial about their prior perceptions of his goodness and their belief that he was redeemable, even in light of the crime. Among these witnesses was Cindy Garner, who remains the elected District Attorney of Houston County, where Grapeland is located. She continues to believe that the prosecutors should not have sought the death penalty against Napoleon. Ms. Garner is a strong advocate for the death penalty, but she has written you stating, "Based upon my knowledge of Napoleon Beazley as a person, as well as my knowledge of the facts of his criminal offense, I would not have sought the death penalty had this case been filed in Houston County." Ms. Garner explains in her letter that she has known the Beazley family for her entire life and that Napoleon was raised with a focus on honesty, respect, hard work and being a contributing member of society. He was a good son and loved by his family who had high hopes for his future. He was well respected by his teachers and fellow students I . . . believe he should be punished, but I do not believe he should suffer the ultimate punishment as his prior record is without blemish and there is no indication he would be a continuing threat to society." (Appendix 1; Letter from Cindy Maria Garner to the Members of the Texas Board of Pardons and Paroles, July 23, 2001)

Legal Issue: Manufacturing Future Dangerousness

Almost every bit of the evidence that materially aided the prosecutors to get the death penalty against Napoleon came from Cedric and Donald Coleman, whose testimony as accomplice witnesses is deemed presumptively unreliable under the law. Napoleon is scheduled to die on the basis of the Colemans' accounts of words he is alleged to have uttered, some of which they have now recanted. For example, they testified at trial that Napoleon was remorseless following the offense. They now state that Napoleon cried all the way from Tyler back to Grapeland and that, immediately after Napoleon and Donald got back into the Probe to make the return trip, Cedric had to take Napoleon's pistol from him because he was threatening suicide. Cedric and Donald testified at trial that Napoleon said, *prior to the crime*, that he simply wanted to see what it was like to kill or hurt someone. The State's forensic psychologist and other experts found this comment a significant indicator of future dangerousness. On appeal, the Court of Criminal Appeals agreed. The psychologist also testified, however, that the jury might have doubt about his prediction of dangerousness if the reliability of the Coleman brothers' testimony were questioned. They have recanted that testimony. They both now say that Napoleon made no such statement before the crime, and that they felt pressed to introduce such statements out of fear that if they did not cooperate with

the prosecutors to make Napoleon look bad, Donald at the very least would be exposed to the death penalty.

In the Houston Chronicle, one of the trial prosecutors recently boasted about the Smith County District Attorney's Office practice of under-the-table deal making with codefendants: "We don't like to price the groceries before we get to the checkout stand." The Coleman brothers now say that such a deal was cut in this case. An informal agreement was made that, in return for their testimony against Napoleon, the prosecutors would not seek the death penalty at their trials. The deal was not formalized on paper prior to Napoleon's trial. The prosecutors, the Colemans, and their attorneys interpreted this informality to allow them to manifest to the trial court that there was no deal. It seems clear to me that the deal occurred in January 1995 after the Colemans were convicted in federal court and immediately prior to Napoleon's trial. The brothers, who say they were vigorously pursued by the prosecutors, broke down upon realizing post-conviction that their future prospects were not bright. They submitted sworn statements to the FBI at the end of January that were full of unverifiable accounts of things they alleged Napoleon had said and done in their presence. These statements attributed to Napoleon were obviously designed to enable the State to secure a death sentence through "proof" of premeditation, post-offense lack of remorse, and post-offense threatening behavior. The Coleman brothers' undisclosed deal and their false testimony, based upon their January 1995 sworn statements, violated Napoleon's constitutional rights to a fair trial. Although we pressed these issues in federal court, no hearing has yet been afforded to Napoleon to prove them because they were not presented in state court by Napoleon's state habeas counsel. (**Appendix 2**; Affidavits of Cedric and Donald Coleman)

Legal Issue: Death Due To Racial Bias

I believe that race was another biasing factor in Napoleon's trial. The State exercised its peremptory challenges to create the all-white jury that made findings leading to the death penalty against Napoleon. The prosecutors exercised one of their challenges against an African American prospective juror, who belonged to the local branch of the NAACP, while choosing a white female juror, Maxine Herbst, who was (and currently is) President of the local branch of the United Daughters of the Confederacy and flies the national flag of the Confederacy from her house. The March 1995 newsletter for the Tyler branch, in fact, notes Ms. Herbst's service at Napoleon's trial, remarking, "[W]e are all truly blest to be in a country where we will be judged by a jury of our peers." Napoleon Beazley was not judged by a jury of *his peers*. The prosecutors, furthermore, stirred the non-representative jury to think about Napoleon in terms of race. The prosecutors repeatedly exhorted the jurors to recognize that the trial was "about" the white, upper-class victim, John Luttig, who was described as an exemplary human being and, at the same time, one of them repeatedly described Napoleon in closing argument at the punishment phase as an animal lurking about, looking for someone to devour. The prosecution seasoned this Southern racist image of the young black man as animal with stories about inner-city influence on the defendant, raising fears in the white audience of penetration of their bucolic world by gangs, drugs, and ghetto culture. Following the trial, one of the jurors commented, "The nigger got what he deserved." His then-current wife gave us an affidavit in which she attested that he harbored racist bias and that she thought it would have been difficult for him to lay aside his bias when deliberating on punishment. A co-employee told us that the juror, a small appliance repairman, would refuse to work on the appliances brought in by African American customers. The seating and participation of this juror

violated Napoleon's constitutional rights to a fair trial and a representative and impartial jury. No hearing has been afforded to Napoleon to prove this issue, because it was not presented in state court by Napoleon's state habeas counsel. (**Appendix 3**; Affidavit of Jonathan Wayne Smith; Affidavit of Lynda Jenkins)

Legal Issue: Death Due To Personal Bias

I also believe that the aforementioned juror, Maxine Herbst, was unfit to serve on Napoleon's jury, because she would have harbored unfair bias. We discovered that she worked as a long-time secretary for the co-incorporator of John Luttig's principal business, Clemco Inc., by doing a search of the Texas Secretary of State's incorporation records and comparing those records to the juror's voir dire testimony. The District Attorney made known during questioning of the juror (at that time *prospective* juror) that he had seen her in the office of her employer when he made visits there. The prosecutors have not denied that the juror worked for the business partner. In federal court, we asserted that the trial record suggested the District Attorney knew of the relationship between the juror's employer and Luttig (and possibly between the juror and Luttig), because of the manner in which he questioned the juror. In addition to making known that he had some prior contact with her, he seemed to avoid asking her whether she herself had any prior contact with the Luttig family, asking her instead if she knew anyone in Napoleon's family, some 70 miles away. The prosecutors have denied that they might have known at the time of voir dire that the juror's employer and Luttig were business partners. I am not satisfied by the prosecutors' response on this matter. In my opinion as a defense attorney, Ms. Herbst's role as President of the United Daughters of the Confederacy also should have disqualified her from service as a juror in the death penalty trial of a young black man. No hearing has been afforded to Napoleon to prove that his constitutional rights to a fair trial and impartial jury were violated by the seating and deliberation of this juror in his case, because the issue was not presented in state court by state habeas counsel.

Legal Issue: Ineligibility For The Death Penalty Under The Law

In my opinion, all of the above issues provide strong grounds for a reprieve or commutation in this case. The strongest legal ground of all, however, is that Napoleon's sentence is simply illegal and that you and Governor Perry are bound by Articles 2, 6, and 50 of the International Covenant on Civil and Political Rights to commute Napoleon's sentence to life imprisonment. The Covenant is a treaty that has been signed and ratified by the United States and, therefore, has the status of federal law through the Supremacy Clause of the United States Constitution (Article 6(2) (a *Treaty [is] the supreme Law of the Land*)). Article 6(5) of the Covenant prohibits the death penalty for persons like Napoleon who were under 18 years old at the time of their offense. Article 50 of the Covenant states that its provisions extend to all parts of the countries that are parties to it *without any limitations or exceptions*. Article 2 requires the *competent judicial, administrative or legislative authorities* to remedy Covenant violations. The Board of Pardons and Paroles and the Governor's office fall within the category of administrative (Executive) authorities. Because the State of Texas is committing an ongoing violation of Article 6(5) in Napoleon Beazley's case, it is incumbent upon you and the Governor to stay his execution and commute his sentence to life imprisonment. (**Appendix 4**; International Covenant on Civil and Political Rights, relevant sections)

Mr. John Cornyn has fought us on this issue, which is now pending at the United States Supreme Court. I firmly believe that Mr. Cornyn's interpretation of the Covenant is erroneous. In

fact, the Attorney General's office has not so much interpreted the Covenant as cited to other states—cases that deny relief on Covenant claims without themselves conducting sufficient legal analysis of the issue. Mr. Cornyn's opinion is contrary to the position of the United Nations Human Rights Committee (the authoritative interpreter of the Covenant), our European treaty partners, all respected human rights organizations (including Amnesty International and Human Rights Watch), and essentially all respected international law jurists who have expressed an opinion on the issue. For example, the Government of Switzerland has sent you a letter in which it has stated, "I would like to draw your attention to the fact that Mr. Beazley was only 17 years old when he committed the crime for which he was convicted. The International Covenant on Civil and Political Rights (Covenant), to which the United States has been a Party since 1992, explicitly forbids the execution of people for acts committed when they were under 18 years of age. Although Switzerland is aware of the reservation related to Article 6 of the Covenant made by the United States, my Government fully shares the view of the other Parties to the Covenant that this reservation is contrary to the object and purpose of the Covenant and should therefore, in accordance with the principles of international law, have no effect and be withdrawn." The Swiss urge you to commute Napoleon's sentence to imprisonment or another penalty "compatible with international law." International law is all that the Swiss can address. I am telling you, however, that through the Supremacy Clause of our federal constitution, the Covenant is *federal* law, voiding any state statutes with which it conflicts, including the Texas statute that allowed Napoleon to be given the death sentence, Texas Penal Code 8.07(d) [now (c)]. (**Appendix 5**; Letter from Alfred Defago, Ambassador of Switzerland, to Governor Rick Perry, dated July 16, 2001; Letter from Walter Schwimmer, Secretary General, Council of Europe (43 member states) , to Gerald Garrett, dated July 23, 2001; Letter from the Presidency of the European Union to Gerald Garrett, dated July 20, 2001; Letter from Mike Bochenek, Human Rights Watch to Gerald Garrett, dated July 17, 2001; Letter from Julianne Traylor, President, Human Rights Advocates, to Governor Rick Perry, dated July 19, 2001; Letter from Susan Lee on behalf of Amnesty International to Members of the Texas Board of Pardons and Paroles, dated July 25, 2001) (**Appendix 6**; Affidavit of Prof. Jordan J. Paust, University of Houston School of Law, explaining Texas' responsibilities under the Covenant)

I am very affected by the human rights issue in this case. As a fourth-generation Texan, I am shamed by our practice of executing juveniles and persons with mental retardation. You must be informed that we and a few other states in the United States are essentially the last remaining governmental entities in the world that practice the execution of juvenile offenders. With the lone exception of the United States, every country with an organized government (191) has adopted the United Nations Convention on the Rights of the Child. That Convention like the Covenant prohibits the death penalty for juvenile offenders. You must be informed that the other nations that had offended the international norm against executing child offenders have reformed their domestic laws and/or practices. Currently, only Iran and the United States seem unable to control non-military execution of juvenile offenders within their jurisdictions. (**Appendix 7**; Amnesty International, United States of America: Too Young to Vote, Old Enough to be Executed; Texas Set to Kill Another Child Offender, July 2001 [**32 Page Report on Napoleon Beazley's Case**]; see Chart: Reported executions of child offenders worldwide, 1991-2001, at page 32 of the report).

Texans, in fact, do not favor the execution of juvenile offenders. In a poll conducted by the Houston Chronicle in February this year, the Chronicle pollsters found that only 34 percent of

Texans would support the death penalty for a guilty defendant who was a juvenile when the crime was committed. Texas law strangely exempts juveniles from all sorts of civil responsibilities, but allows 17 year olds to be subject to criminal liability and the death penalty. Under the law, a 17 year old in Texas cannot be held fully responsible for a civil tort act (he is jointly liable with his parents), but he is fully eligible for execution for a criminal act. This disjunction in the law has been present since the 1800s and its origins remain unknown to me. (**Appendix 8**; Steve Brewer, *Juvenile Cases: Just 1 in 4 in County Thinks Death Appropriate*, Houston Chronicle, February 7, 2001).

During the last legislative session, Reps. Lon Burnam, Sylvester Turner, Senfronia Thompson, and Harold Dutton joint authored House Bill 2048, which would have raised the death penalty eligibility age to 18, amending Texas Penal Code Section 8.07 (c). A hearing was held before the Texas House Criminal Jurisprudence Committee on April 17, 2001, where representatives from Human Rights Watch, the University of Texas law school, the American Bar Association, the American Academy of Child and Adolescent Psychiatry, and the survivors of victims of capital offenses committed by juveniles testified in favor of the bill. If you have time, I recommend that you listen to the testimony, which can be heard at the following website: www.house.state.tx.us/house/commit/archive/c220.htm . At the site, choose the 4/17/01 session and fast forward to about half way through the session. The testimony is riveting, and there was no testimony in opposition to the bill. The American Bar Association sent a message directly to the committee that it **Avigorously oppose[d]** the imposition of capital punishment upon any person for any offense committed while under the age of 18. In our view, this contemptible practice is unacceptable in a civilized society, irrespective of guilt or innocence.@ This language mirrors that of the United Nations Human Rights Committee which declared in 1995, in its initial report on the United States, that it **Adeplore[d]** provisions in the legislation of a number of states which allow the death penalty to be pronounced for crimes committed by persons under 18 and the actual instances where such sentences have been pronounced and executed.@

House Bill 2048 passed the House of Representatives. It would have been carried in the Senate by Senator Elliot Sharpleigh, but it encountered opposition in the Senate Criminal Justice Committee, where it was defeated for want of suspension of the rules. House Bill 2048 then was poised to go to the Senate floor as an amendment to an omnibus juvenile justice bill when the Governor's office intervened and the parties involved were told that any bill to which House Bill 2048 was attached would be vetoed. In my opinion, the bill had a chance of passing the Senate. It is my hope that you and the Governor now understand that there is a significant difference between the mental retardation and juvenile issues. In regard to the juvenile issue, there is a powerful human rights treaty whose positive terms forbid the execution of Napoleon Beazley and other similarly situated juveniles. I am unaware of a correspondingly direct treaty provision regarding mental retardation. I am not bringing you merely an issue of international human rights law. I am telling you that, from my perspective, the State of Texas currently is breaking federal law by maintaining Napoleon Beazley's death sentence and, furthermore, that it is incumbent upon you to remedy the situation.

Legal Issue: Ineligibility For Execution In Fact

This is not a case that should have been tried for the death penalty, because there was no

prior record of any assaultive behavior. It is not a case in which execution should actually be imposed, because Napoleon has indicated through his actions on death row that he poses no risk of danger to others. For most of the time Napoleon was on death row at the Ellis I unit, before the whole row was moved to the Terrell Unit in Livingston, Texas, Napoleon was classified as S.S.I., which I'm sure you know means Support Service Inmate. S.S.I. status apparently comes as close to Trustee status as possible for a death row inmate. Napoleon has explained to me that, prior to 1996, there were three classifications: cell restricted, work capable, and S.S.I. Work-capable inmates were employed in the garment factory at Ellis I. After 1996, he said, a more complex classification system was instituted, with three levels corresponding to privileges allowed. Only some Level 1 inmates were allowed to be considered work-capable or S.S.I. Very few inmates were ever given S.S.I. status. As I understand it, only the S.S.I. classified inmates were allowed to continue working after the 1998 escape and the closure of the garment factory work program. (Appendix 9; TDCJ House/Job Change Notice to Napoleon Beazley, providing notice of change in S.S.I. orderly job assignment, dated April 30, 1999).

As an S.S.I. classified inmate, Napoleon worked every day, without any days off, distributing food to the other inmates, picking up the other inmates' trash which they tossed from their cells, and cleaning the row, adjacent rooms, and the recreation yard. Napoleon would be released from his cell by a guard around 2 pm. (The guard then generally remained in the same space wherever Napoleon was working during the time he was out of his cell.) Napoleon's first task was to warm up the chow cart, a steel heating table designed to keep food from the kitchen from cooling while it was being distributed to the inmates. While the cart was warming, the inmates on the row would throw trash onto the run in front of their cells. Napoleon would go along and clean up the trash on the floor. Then, when the food carrier cart arrived from the kitchen, the guard would open the door to the run and bring in the cart. The guard would undo the padlock on the cart, and Napoleon would transfer the large food containers within the carrier to the chow cart. The guard dished the food onto individual trays for each inmate. The trays were inserted into smaller food carriers, and Napoleon and the guard then went along the row delivering food. Napoleon transported the food carriers. The guard would reach into the food carrier, take out a tray, and hand it to each inmate. While the inmates ate, Napoleon would sometimes get food for himself out of the chow cart. When finished eating, the inmates slipped their trays out of their cells and Napoleon retrieved them, putting them and everything else from the kitchen back on the large food carrier, which he pushed out of the door to the run. Napoleon then cleaned the chow cart with disinfectant, cleaned the run (first sweeping, then with a mop), and then cleaned the examining room, day room, and recreation yard. Following this, he would dust windows, the television sets, wipe down cell bars, and do anything else that was requested.

Napoleon worked with a number of guards at Ellis I throughout this time, and it is my belief from talking to Napoleon that he got along well with all of them. I asked TDCJ to release to me Napoleon's classification records, but it did not choose to do so. Those records undoubtedly are available to you. The records should verify what I have alleged here about Napoleon's longtime S.S.I. status and that he had good relationships with the guards with whom he worked. Also, Napoleon has given me the names of numerous officers who knew him at Ellis I and could give an account of him. Napoleon always worked on the second (APM) shift. Initially, he was designated for the third (or night) shift, but, according to Napoleon, Sergeant Landis, upon seeing Napoleon's

name on the S.S.I. list, immediately asked that Napoleon be on his second shift. Supervising sergeants and officers who would know Napoleon include Sergeants Mims, Bakoba, Landis, Conners, Gross, Laningham, and officers (I'm not sure of rank) Keith, Sure, Scutter, and Duff. Officers with whom Napoleon worked on the second shift would include Braxton, Harper, Jerry, Scoby, Larry, O'Hara, McKnight, Espinoza, Mallet, Botcher, Willis, Jones (black female), Jones (white female), Smith, Kyles, Bush, Lopez, Vick, Oliverez, Mejia, Rodriguez, Bailey, Hicks, Brown, Williams (black male), Williams (black female), Riley, Fuqua, White, Herbage, Limbrick, Demery, and Montgomery.

I believe that if you consulted these officers, they would tell you that Napoleon never gave them any indication that they had anything to fear from him and that he was always cooperative, friendly, good-natured, amusing, and helpful. I think that those who might be courageous enough would tell you that Napoleon is not the sort of person who, under our law and practice, should be eligible for the death penalty.

Eligibility for the death penalty is a legal as well as moral issue. There are cases, such as this case, in which the jury got it wrong in making its finding on future dangerousness. The jury got it wrong in this case largely because it was fed unreliable and inaccurate information (from the Colemans) regarding Napoleon's state of mind at the time of the offense and afterwards, which information was amplified by the unreliable testimony of experts who had never examined Napoleon and by the prosecutors during closing argument. There is not a shred of really reliable evidence to support the death penalty in this case. There was no reliable evidence at trial and there continues to be no reliable evidence, as Napoleon has proven himself to have maintained a hardworking and trustworthy character on death row.

The prosecutors get unlimited access to you. They get to tell you all sorts of things I'm not allowed to know. Do not let the prosecutors tell you they had reliable evidence supporting the death sentence. They did not and they do not. Whether or not any deal was formalized or even made, the prosecutors secured the testimony they needed to get a death sentence in this case by using the threat of death against the codefendants. If they had not done that, they would have had next to nothing to give the jury. Nothing more to support execution has emerged since Napoleon went to death row. To the contrary, his life on the row indicates he is not worthy of death and is no danger to others.

This Board holds itself out as caring about the actual innocence of capital inmates. Napoleon is not actually innocent of the offense, but he is innocent of the death penalty. As long as we have a future dangerousness as a criterion for the imposition of the death sentence, you should be acting as a fail safe to prevent the execution of persons who presently do not fall into the category of the dangerous. The alternative does not take seriously the work of the prosecutors, defense counsel, and jurors at the punishment phase. What they do does not matter if the final decision maker in the case will always find the defendant set for execution dangerous. The jury's findings are unreal if the system, in fact, gives the jury no room to be mistaken.

Equitable Issue: Inequitable Sentencing

In the early hours of May 7, 1996, a 63-year-old homeless, unemployed African American mortuary worker named Ivan Holland was gunned down with a shotgun on a street corner in Tyler,

Texas, in front of a convenience store. His assailants were three young white men, Todd Rasco, 23, Todd Locke, 23, and Chad Crowe, 21, who were described as having a Hitler fetish. At a plea hearing in Mr. Rasco's case, Rasco testified that, on the day of Holland's slaying, he had recently bought a 12-gauge shotgun and told his two friends that he was thinking of committing suicide. Locke and Crowe advised him not to kill himself, but instead to just kill a nigger. The three then drove around Tyler, shooting at signs and stuff while looking for an African American person to attack. Rasco testified that he put socks over his hands while handling the shotgun to avoid getting prints on the gun and that, at one point, the three went to a predominantly African American apartment complex in north Tyler in search of a victim. They did not shoot anyone there, because there were too many people about. Ultimately, they located Ivan Holland on a street corner and badgered him. A woman nearby tried to dissuade the young men from bothering Holland, telling them he was harmless and often talked to himself. Moments after she left the scene, she heard shots ring out. A passing police officer heard Holland moaning and found him lying on the ground. Holland died two days later in a hospital. His assailants had gone on to Dallas after the shooting. Mr. Rasco testified that, for some time after the offense, he laughed because he thought he had gotten away with it when news accounts said police were looking for three hispanic men. (Appendix 10; Lee Hancock, *2 Men Indicted in Death of Homeless Tyler Man*, Dallas Morning News, Dec. 20, 1996, at 33A; Lee Hancock, *Man Pleads Guilty in Race Killing, Friends Helped Pick Black Victim, He Says*, Dallas Morning News, April 1, 1997, at 17A; *E. Texas Man Pleads Guilty in Racial Death*, Houston Chronicle, April 2, 1997; *Whitehouse Man Gets 45-year Sentence in Plea Agreement for Murder in Tyler*, San Antonio Express-News, April 13, 1997).

I strongly dispute that Napoleon Beazley ever intended to shoot anyone before he approached John Luttig, who rushed him in an effort to defend himself and his wife, Bobbie. At the same time, even if Napoleon had committed the offense with some premeditation, his punishment is not equitable. In the senseless murder of Ivan Holland, Todd Rasco, the trigger man who admitted to having searched randomly for a black person to kill received a 45 year sentence as the result of a plea bargain. When he has served half that time, he will be eligible for parole. Chad Crowe received 37 2 years for encouraging Rasco to shoot Holland. He will be eligible for parole when he has served half of that time. Napoleon Beazley currently faces *death* for an offense no more morally repugnant than the assault on Mr. Holland's life and race. The Coleman brothers are serving stacked federal and state sentences, making them first eligible for parole consideration only after 80 years of time served. The Coleman brothers never testified that they gave any encouragement to Napoleon to shoot anyone, yet even their sentences of years are roughly *four times as harsh* as the steepest sentence in the Holland case (22 2 years before parole consideration).

Indeed, it is remarkable that, even today in the State of Texas, a black man can be executed for murder of a white man while stealing his goods, yet a white man cannot be executed for murdering a black man *because he was black*. (The James Byrd Hate Crimes Act did nothing to change that. The offense against Mr. Byrd included a kidnapping, allowing prosecution for the death penalty.) I know the Smith County prosecutors might tell you that, if it were possible to indict the three white youths with capital murder, and to seek the death penalty, they would have. With respect to this instance, the prosecutors may be able to rest upon the fact that the inequity is *in the law*, not in their discretion (although the brief detention of Mr. Holland also may have constituted a kidnapping). That only reveals the depth of the problem, which is how our Legislature defines what

crimes are to be deemed capital offenses. As long as young black men, like Napoleon, may be executed in defense of the white man's property (or any property whatsoever), and young white men are ineligible for the harshest sentence upon stealing a black man's very essence, the death penalty itself should be deemed unjustifiable from any perspective. Between the Luttig and Holland cases, you need to err on the side of life. Upon comparing the facts of the cases, even from the prosecutors' perspectives, there can be no equitable justification for allowing Napoleon Beazley's death sentence to stand, while allowing Rasco and Crowe to be considered for parole in a couple of decades. (**Appendix 11**; letter from Juan Sanchez, President, Southwest Key Program, Inc., to Members of the Board of Pardons and Paroles, dated July 20, 2001) (noted Texas authority on juvenile offenders stating, "Not only are white children [in Texas] less likely to be arrested for the same or similar crimes, but they are also far more likely to receive a more lenient sentence, assuming that they are even tried. In addition, district attorneys generally seek a plea bargain with white youth rather than taking the case to trial.")

Equitable Issue: Execution Of A Family And Community

David Botsford and I initially were hired to represent Napoleon for a relatively small fee that was raised by members of the Grapeland, Texas, community, who augmented one or two larger contributions with money from church bake sales and other such sources. Since sometime in 1998, we have been representing Napoleon pro bono. At a press conference on August 1st, leaders of the Grapeland community and others will declare a sanctuary on behalf of Napoleon and all inmates on Texas' death row who were juveniles at the time of their offense. Sanctuary is an age-old church tradition. In the middle ages, church officials would intercede with authorities on behalf of persons fleeing harsh punishments. The churchmen would negotiate a lesser punishment, at times in return for some concession on the part of the person pursued. The essence of the protection provided was not so much the physical protection of the person pursued, whom the authorities could take at any time, but the willingness of the church officials to intercede and of the authorities to listen. In the 1980s, American churches declared sanctuary for Central American refugees, interceding on their behalf with the United States Immigration and Naturalization Service, seeking to prevent their deportation to war zones, an act that contravened international human rights law. Now, the Grapeland community churches, along with the Friends Meeting of Austin, will invoke the same tradition, asking that you prevent Texas' further violation of a non-derogable human right (the right to life of a juvenile offender) by reducing the sentence of Napoleon Beazley. (**Appendix 12**; Mount Zion Missionary Baptist Church, Progressive Missionary Baptist Church, Friends Meeting of Austin, Joint Public Declaration of Sanctuary for Napoleon Beazley and All Texas Juvenile Death Row Inmates)

My sense is that Napoleon's execution would devastate the Grapeland community. Napoleon and Donald and Cedric Coleman all were prominent children from well-known families within the small town of Grapeland. The town has been in crisis since the time of the offense. The town has rallied behind its children at the same time that it has recognized the audacity of the offense they committed. I find the degree of support expressed for Napoleon in Grapeland to be extraordinary. White and black members of the community alike do not want to see Napoleon die. As many testified at his punishment phase, they know Napoleon is an essentially good young man, who committed a shockingly aberrant offense. They also know Napoleon's family to be a very good family. Having raised their own children beside the Beazley family, the citizens of Grapeland are

acutely aware, I think, that their own children might be vulnerable to the same forces that pushed Napoleon to commit the inexplicable and inexcusable offense on April 19, 1994. As members of a rural Texas community, where everyone is responsible for everyone else's children, the citizens of Grapeland think of Napoleon as their own. They have disciplined themselves to think of Napoleon at all times, many of them meeting at least once a month to pray for his survival and his family.

Napoleon's family is unique in some respects for a death row family. Despite the enormous pressures caused by Napoleon's circumstances, the parents are together. They both work to support the remaining child in the house, Napoleon's brother Jamal. Jamal has an e-mail address that poignantly starts out ANap4life. He attends Grapeland High School and, like Napoleon, excels in sports there. As you can imagine, the family has overcome much by surviving the shock of the accusations against Napoleon, the trial, and the waiting of the last six years. This family's hope resides in the survival of the incarcerated son and brother. As you shall see from the attached visitation passes, unlike most other death row families, this family has succeeded in maintaining intense contact with its inmate member. Ireland and Rena Beazley have visited Napoleon almost every weekend that he has been incarcerated on death row, in Huntsville and Livingston. Jamal and Maria, Napoleon's siblings, also have visited him many times. If you allow this young man to be executed, their lives and hopes will be utterly crushed. (**Appendix 13**; Letter from Ireland and Rena Beazley to the Texas Board of Pardons and Paroles) (**Appendix 14**; Sample and summary of TDCJ Visitor Passes for Napoleon's family members: Ireland and Rena Beazley, parents; Jamal and Maria Beazley, brother and sister).

The United States Supreme Court and other federal courts have issued cases finding a right to family integrity in the First Amendment of the federal constitution. Often the federal court cases pertain to the rights of parents to retain custody of their children in the face of accusations that they are bad parents. It is a violation of family integrity if the state takes a child from the parents on the basis of unreliable accusations. The imposition of the death penalty in this case on the basis of the Coleman brothers' unreliable accusations is such a violation. Mirroring the same fundamental moral concern found in our constitution, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights likewise hold that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. (Universal Declaration, art. 16; ICCPR, art. 23) The Covenant B again a ratified treaty to which you as administrative officials of Texas are bound B imposes a duty to assure that A[e]very child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. (ICCPR, art. 24). Indeed, this concern for family integrity and the related value on the lives of children and their safety undergirds (albeit in a problematic way) the Texas Legislature's decision to make the murder of a child a capital offense. It is a universal social norm reflected in the millenia-old harsh appraisal of Jesus of those who would harm children.

Our laws allow for the State to assault and kill certain capital offenders. In every case, however, there are others assaulted. In many cases, the death penalty's assault on innocent third parties B parents, children, friends of the condemned B is not so obvious, because they have been estranged from the defendant for any number of reasons. In one case for which I was a last-moment blind-author of a reprieve petition, for example, I discovered that the condemned man's family had

not been informed that he was to be executed. Contacting the postmaster with an old address, I was able to find his mother and brother to tell them of the execution two hours before it occurred. The inmate was paranoid schizophrenic and had spent the first decade of his stay on death row untreated for his illness. It is my understanding that his family had been cut off by the circumstances of the incarceration and illness and apparently had not reconnected with him when he started receiving medication. That did not diminish the intensity of the pain they felt upon being informed of his execution at the very last moment. Napoleon Beazley's family, in contrast, has maintained constant contact with him. If you allow Napoleon to be executed, the effect on the family and the Grapeland community will simply be too harsh.

Numerous Esteemed Professional Organizations Oppose Napoleon's Execution

Throughout this petition I have alluded to letters in the Appendices from respected sources (nations, human rights groups, organizations) opposing Napoleon's execution. I am supplying copies of these letters **B** and in some cases originals **B** because I presume that you do not have the time to sort through all the mail in a case such as this. I want to be sure you are acquainted with at least those letters about which I am aware and which I think should have a bearing on your decision. In addition to human rights organizations, national governments, and other entities already mentioned, there are numerous important American professional organizations and juvenile defender organizations vigorously oppose the death penalty for offenders who were under 18 at the time of offense. I know of letters written by several of them specifically requesting that you commute Napoleon's sentence, and these are attached. (**Appendix 15**; Letter from Martha W. Barnett, American Bar Association President, to Governor Rick Perry, dated July 18, 2001; letter from Marian Wright Edelman, President, Children's Defense Fund, to Governor Rick Perry, dated July 27, 2001; letter from Diann Rust-Tierney et al., American Civil Liberties Union, to Gerald Garrett, dated July 25, 2001; letter from Michael M. Faenza, President, National Mental Health Association, to Governor Rick Perry, July 25, 2001 (noting additional opposition to execution of offenders who were under 18 at the time of offense by additional organizations, including the American Psychiatric Association, the Child Welfare League of America, the Youth Law Center, the Juvenile Law Center, the Coalition for Juvenile Justice, the American Society for Adolescent Psychiatry, and the American Academy for Child and Adolescent Psychiatry)).

In addition, in late June 2001, a blue-ribbon bipartisan commission, containing the Honorable William Sessions, former Chief Judge of the U.S. District Court for the Western District of Texas and national FBI Director under the Reagan and Bush (I) administrations and the Honorable Charles Baird, former judge on the Texas Court of Criminal Appeals, issued a report urging 18 reforms to the death penalty in the United States. (**Appendix 16**; The Constitution Project, Mandatory Justice: Eighteen Reforms to the Death Penalty, prepublication version, updated July 3, 2001 (relevant excerpts)). The commission recommends that, to ensure that the death penalty is reserved for the most culpable offenders, and to effectuate the deterrent and retributive purposes of the death penalty, jurisdictions should limit the cases eligible for capital punishment to exclude those involving **A**persons under the age of 18 at the time of the crimes for which they were convicted.**@** Like this nonpartisan group, the American Bar Association has long maintained that there should be a moratorium on executions until jurisdictions stop executing juvenile offenders and persons with mental retardation. I mention the Constitution Project to demonstrate that the call for a stop to the execution of juvenile offenders comes from the political middle of our society. It is not an appeal

necessarily directed toward abolition of the death penalty, but rather it is commensurate with the penalty's retention, if unbiased observers are to be convinced that it is a punishment fairly administered.

A Personal Appeal

I have written this clemency **Apetition@** to you in the form of a personal letter because I wish to receive a personal response. As an advocate for Napoleon, I am placed at a complete disadvantage by this system which allows the prosecutors unfettered access to you and prevents me from knowing anything about their communications. The system prevents me from knowing with any degree of certainty that you actually read such **Apetitions@** on behalf of death row inmates. I am here and I want a response. I want you to courageously exercise the proper discretion with which you are allowed under the law.

I once found myself in a similar situation to yours. I had an informal relationship with the Canadian Consulate in Dallas whereby I **Ascreened@** Central Americans applying for official refugee status from Canada. I would interview persons inquiring about assistance from Canada and would determine on the basis of the interviews and any corroborating material whether they had a valid claim of actual or potential persecution. If I believed they were credible and had anything approaching a valid claim, I would assist them to apply to the Canadian Consulate. On the other hand, if I believed on the basis of their words and actions that they were not credible or, worse, were themselves human rights offenders, I would refuse them assistance, telling them in some instances that they were not qualified for Canadian aid. Certain human rights abusers had completely credible stories that they would be at great risk if deported to Central America, but I made discretionary decisions to turn them away. I made other decisions to turn away persons who simply had no valid refugee claim, even though I knew that their deportation would send them back to an area of intense armed conflict. My role was conflicted, because at the same time I assisted persons to achieve refuge in Canada, I turned some away in order to protect Canadians, the integrity of the Canadian system, and to assure that only those who were the most qualified were enabled to obtain the limited number of refugee designations available.

In my view, your present role *should be* as conflicted as mine was. Without a doubt, you were hired to serve the State of Texas, not those who are applying for commutations. The law, however, grants you, in your offices as Board members, the ability to make discretionary decisions regarding possible commutees. When you exercise your discretion to the fullest of your ability, you simultaneously protect the integrity of the system that gave you that discretion. When you *never* grant a commutation to an inmate who requested it, the public's perception of and confidence in the system is harmed. I believe that the system itself is endangered, having lost its authenticity. The votes that result from your exercise of discretion are public. That renders the conflict that you must undergo all the more difficult. I understand that the pressure you might feel against exercising your discretion would be very strong. It would be very hard for you to weigh an appeal from the likes of me against the combined forces of Texas law enforcement that probably have a say and advocate death in almost every case. If you value the integrity of the system, you should resist this pressure.

I respectfully suggest that this is the right case for you to exercise your discretion and grant a commutation to life imprisonment. I know you have sent agents to interview Napoleon more than once. I am sure that they will have brought you their findings about Napoleon's demeanor,

credibility, and apparent remorse. Of course, I have no idea what they will have told you. They probably found a young man who was amiable but reticent about the offense and his feelings. I am sure that he did not deny his participation in the offense. At the same time, I would imagine that Napoleon did not break down and cry in front of your investigators. His manner always is to attempt to control his emotions, which otherwise are deep. As I understand it, this pattern developed soon after the offense, when Napoleon, enveloped by the high-pitched sleeplessness that I associate with grief, sought continuous physical exercise as a means to wear himself out physically and to channel the destructiveness of the chaotic and often self-destructive emotions he felt. The pattern became a discipline. Sorrow and tears are not at all easily expressed by Napoleon or his parents. For years they have emotionally girded themselves against the threat of his extinction, disciplining themselves to always think positively. You must understand that the other side of such denial is that the very thought of execution and final separation is unbearable for all of them. I assure you that Napoleon has been effectively punished for the offense. He saw his promising future go up in flames. He has been made to think every day about the prospect of having his life taken and having his family suffer permanent separation from him.

I have considerable experience at detecting when someone is not telling me the truth. I have had many meetings with Napoleon Beazley. I believe that Napoleon has told me the truth and feels great remorse for what he did. The prosecutors probably will tell you that they think Napoleon was remorseless at the time of trial. To my knowledge, they never talked to Napoleon. Their experts (a psychologist and two prison officials) never talked to Napoleon and based their opinions regarding future dangerousness almost entirely on the Coleman brothers' inherently unreliable allegations. The accompanying theme of remorselessness also was built around the Coleman brothers' statements that they made to avoid the death penalty. It will be completely unfair if Napoleon dies on the basis of the totally uncorroborated, coerced words of the co-defendants. You should ask all of the trial officials **B** the prosecutors, judge, and sheriff **B** how they can conscience the execution of Napoleon on the basis of such easily-created, flimsy evidence. You should ask them how they can support in good conscience the execution of a juvenile with a clean record at the time of offense, indeed an outstanding record of achievement indicating a bright future he forever has been forced to forsake. You should ask them how they can conscience executing Napoleon while giving the assailants of Ivan Holland the opportunity to be released in relatively few years. You should ask them how they can conscience executing Napoleon, thereby orphaning his parents and siblings and leaving an entire community that hopes for justice and equity in disbelief and pain. Finally, you should ask the trial officials how they can carry out an execution of a juvenile, contrary to the norms of civilized society as respected by every organized government in the world but our own.

Requested Relief

I respectfully request that this Board commute the sentence of Napoleon Beazley to life imprisonment. *See* 37 Tex. Admin. Code Section 143.57; Tex. Const. Art. 4, Section 11. In addition to the facts that Napoleon did not receive a fair sentencing proceeding at trial due to the biases of the jurors, the prosecutors' arguments, the unreliable and untrue testimony of his codefendants, the unreliable testimony of the State's experts who never met him, and his legal ineligibility for the

death sentence, Napoleon also is an offender who poses *no risk* of danger to others. As shown above, throughout most of the time Napoleon was on death row at Ellis I, he had S.S.I. status, which meant that he was allowed to be on the row without restraint (but in the presence of an officer), distributing food to the other inmates in their cells and carrying out trustee-type tasks, cleaning up the floors on the row and in the recreation yards. I do not think it possible that you would find an honest guard who ever perceived Napoleon to pose any threat of danger.

I also request that this Board grant a 60-day reprieve, so that evidence regarding the above legal issues can be presented in a public evidentiary hearing, including testimony about the Covenant issue, so that the fair and complete review can be had of Napoleon's case that, to date, has not occurred. *See* 37 Tex. Admin. Code Section 143.43. All information required under 37 Tex. Admin. Code Section 143.42 has been supplied in this letter. (*See Appendix 17*; containing the required original, certified documents)

In addition, pursuant to the provisions in 37 Tex. Admin. Code Sections 143.43(d) and 143.57(e), on behalf of Napoleon I respectfully request that a member of the Board of Pardons and Paroles go to the Terrell Unit in Livingston, Texas, to interview Napoleon.

Thank you for your kind attention. Please contact me directly if you would like to discuss the case or simply register an opinion. I would appreciate a personal response of some kind from each and every one of you.

Sincerely,

Walter C. Long

cc: Governor Rick Perry
Jack Skeen, Smith County District Attorney
David Dobbs, Ex-Smith County District Attorney
Hon. Cynthia Stevens Kent, 114th District Court, Smith County, Texas
J.B. Smith, Smith County Sheriff
John Cornyn, Attorney General of Texas