
BEFORE THE GOVERNOR OF THE STATE OF TEXAS
AND
THE TEXAS BOARD OF PARDONS AND PAROLES

In re

SCOTT LOUIS PANETTI,

Petitioner.

**PETITION FOR A RECOMMENDATION OF A REPRIEVE
FROM EXECUTION AND FOR COMMUTATION
OF DEATH SENTENCE TO LIFE IMPRISONMENT**

**A PUBLIC HEARING IS REQUESTED.
37 Tex. Admin. Code § 143.43(f)**

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INTRODUCTION

No trial can be fair that leaves the defense to a man who is insane, unaided by counsel, and who by reason of his mental condition stands helpless and alone before the court.

– *Massey v. Moore*, 348 U.S. 105, 108 (1954).

[T]he integrity of and public confidence in the system are undermined when an easy conviction is obtained due to the defendant’s ill-advised decision to waive counsel.

– *Faretta v. California*, 422 U.S. 806, 839 (1975) (Burger, C.J., dissenting).

[A] defendant who is utterly incapable of conducting his own defense cannot be considered “competent” to make such a decision, any more than a person who chooses to leap out of a window in the belief that he can fly can be considered competent to make such a choice.

– *Godinez v. Moran*, 509 U.S. 389, 416 (1993) (Blackmun, J., dissenting).

How in the world can our legal system allow an insane man to defend himself?

– Dr. F.E. Seale, treating physician for Scott Louis Panetti (quoted in *Indiana v. Edwards*, 128 S.Ct. 2379, 2387 (2008)).

The case of Scott Louis Panetti is a judicial disaster that has attracted national and international outrage – and for good reason. Evidence of his incompetency runs like a fissure through every proceeding in his case – from arraignment to execution. A Texas district court judge allowed Mr. Panetti, a floridly psychotic individual, to represent himself at his death penalty trial while

wearing a cowboy outfit and after having attempted to subpoena Jesus Christ, the Pope, and John F. Kennedy. In the two decades since that trial, the State has sought relentlessly to uphold the death sentence and carry out the execution of a man whose mental deterioration has continued unabated on death row. The execution of Scott Panetti would cross a moral line. Scott Panetti's case cries out for mercy.

Mr. Panetti has been seriously ill with schizophrenia since 1978. Like an insidious malignancy, his mental illness has pervaded his life, preventing him from becoming a productive member of society and requiring more than 14 hospitalizations before he was 34 years old. His illness also produced the psychotic break during which he murdered his in-laws, Amanda and Joseph Alvarado, in 1992. A second jury trial on the issue of Mr. Panetti's competency to stand trial had to be held after the first jury hung. The paranoia accompanying Mr. Panetti's schizophrenia led him to reject a plea offer of a life sentence and to insist on representing himself at trial – despite the vehement objections of both the District Attorney and the trial judge. Horrified observers described Mr. Panetti's ensuing trial as a bizarre circus that contravened justice.

Over a decade after Mr. Panetti's trial, the United States Supreme Court held that trial judges may force counsel on severely mentally ill defendants who demand to represent themselves. The Supreme Court expressly referred to Mr. Panetti's case as a stark example of the injustice that can result when a psychotic individual insists on exercising his right to self-representation. For the first time,

the Supreme Court held that a defendant's right to autonomy must yield in exceptional cases when the defendant's lack of capacity "undercuts the most basic of the Constitution's criminal law objectives, providing a fair trial." *Indiana v. Edwards*, 554 U.S. 164, 176-77 (2008). Mr. Panetti's is that exceptional case. Unfortunately, a procedural technicality prevented Mr. Panetti from prevailing on this claim. Neither the Texas state courts nor the federal courts considered the *Edwards* claim on the merits, because the Supreme Court decided the case long after Mr. Panetti's conviction and sentence had been upheld on direct appeal.

To this day, Mr. Panetti hears voices and experiences delusions. Chief among his delusions is the belief that the State of Texas seeks to kill him to prevent him from preaching the Gospel to his fellow inmates on Texas death row and from exposing rampant corruption at the Texas Department of Criminal Justice. He cannot rationally understand that he is being executed for the murder of his wife's parents.

Mr. Panetti has faced one execution date already, on February 5, 2004. That effort was stayed so that Mr. Panetti's competence to be executed could be evaluated. His case went all the way to the United States Supreme Court, resulting in a ground-breaking decision that required condemned inmates to possess a rational understanding of the connection between their crime and their punishment, before the State could carry out the execution. *Panetti v. Quarterman*, 551 U.S. 930 (2007). On remand from the Supreme Court, the federal district court found that Mr. Panetti: (1) has suffered from severe mental illness and paranoid

delusions since well before the crime; (2) was under the influence of this severe mental illness when he committed the crime, and when he represented himself at trial; and (3) his severe mental illness continues to this day. Despite these findings, the court concluded that Mr. Panetti was competent for execution.

Seven years have now elapsed since mental health experts last evaluated Mr. Panetti. During that time, no cure has been discovered for schizophrenia, and Mr. Panetti's mental condition continues to decline. Texas' rush to execute Mr. Panetti is unseemly. Undersigned counsel, who have represented Mr. Panetti for nearly a decade, became aware of Mr. Panetti's current execution date only after a newspaper article appeared in the Houston Chronicle on October 30, 2014. Only then did counsel discover that the State had issued the Execution Warrant two weeks earlier, on October 16, 2014. The State's failure to provide counsel with any notice in a case of this magnitude, where compelling questions of sanity and competency remain at issue, is unconscionable.

Mr. Panetti's counsel now petition the Texas Board of Pardons and Paroles to recommend to the Honorable Rick Perry, Governor of the State of Texas, that he:

- (a) Commute Mr. Panetti's death sentence to life in prison; or
- (b) Grant a reprieve of Mr. Panetti's execution for 180 days to permit a full and fair inquiry into Mr. Panetti's competence to be executed.

MR. PANETTI'S PRESENT STATUS

Mr. Panetti is an indigent, 56-year-old man on death row, Polunsky Unit, Livingston, Texas, TDCJ # 999164, who was convicted of capital murder and

sentenced to death on September 22, 1995. The indictment, judgment, verdict, and sentence are attached at Exhibit 1. The state official responsible for confining and executing Mr. Panetti is William Stephens, Director of the Texas Department of Criminal Justice, Institutional Division. By order of the 216th District Court, Kerr County, Texas, **Mr. Panetti's execution is set for December 3, 2014, after the hour of 6:00 p.m.** See Exhibit 2.

PRIOR PROCEEDINGS

On September 18, 1992, Mr. Panetti was indicted for capital murder for killing his parents-in-law in Gillespie County, Texas. In 1995, a jury found him guilty of capital murder, and he was sentenced to death.

The Court of Criminal Appeals (CCA) affirmed the conviction and sentence. *Panetti v. State*, No. 72,230 (Tex. Crim. App. Dec. 3, 1997) (unpublished). The U.S. Supreme Court denied Mr. Panetti's petition for writ of certiorari. *Panetti v. Texas*, 525 U.S. 848 (1998). He then sought state post-conviction relief, which the CCA denied. *Ex parte Panetti*, Writ No. 37,145-01 (Tex. Crim. App. May 20, 1998) (unpublished).

Mr. Panetti filed his federal habeas corpus petition on September 7, 1999. The District Court denied relief. *Panetti v. Johnson*, No. A-99-CA-260-SS (W.D. Tex. Mar. 9, 2001) (unpublished). The Fifth Circuit affirmed. *Panetti v. Cockrell*, No. 01-50347 (5th Cir. July 19, 2003) (unpublished). The Supreme Court denied Mr. Panetti's petition for writ of certiorari. *Panetti v. Dretke*, 540 U.S. 1052 (2003).

The trial court set Mr. Panetti's execution for February 5, 2004. Counsel then raised the issue that Mr. Panetti was incompetent to be executed. After the conclusion of state-court proceedings, the federal district court held a *Ford* hearing in September 2004. The court denied Mr. Panetti's claim that he was incompetent to be executed. *Panetti v. Dretke*, 401 F. Supp.2d 702 (W.D. Tex. 2004). The Fifth Circuit affirmed. *Panetti v. Dretke*, 448 F.3d 815 (5th Cir. 2006). The Supreme granted review, and reversed and remanded the case for further proceedings. *Panetti v. Quarterman*, 551 U.S. 930 (2007). In February 2008, the federal district court held a second *Ford* hearing. On March 26, 2008, the court found Mr. Panetti competent to be executed. *Panetti v. Quarterman*, 2008 WL 2338498 (W.D. Tex. Mar. 26, 2008) (unpublished).

Counsel for Mr. Panetti appealed the district court's decision, filing the opening brief in the Fifth Circuit on December 10, 2008. One week later, the Fifth Circuit stayed and abated the proceedings on the *Ford* claim so that Mr. Panetti could return to state court to raise an *Edwards* claim. *Panetti v. Quarterman*, No. 08-70015 (5th Cir. Dec. 17, 2008) (unpublished). Mr. Panetti filed his successive state habeas petition on June 16, 2009. On October 21, 2009, the CCA dismissed the *Edwards* claim for failing to meet the requirements of Section 5 of Article 11.071. *Ex parte Panetti*, WR-37,145-02 (Tex. Crim. App. Oct. 21, 2009) (unpublished).

Mr. Panetti returned to federal court, seeking permission to raise an *Edwards* claim in a successive habeas petition. The Fifth Circuit granted

authorization on January 6, 2010. On March 26, 2010, Mr. Panetti filed his amended successive petition in the district court. He filed a corrected copy of the petition on April 15, 2010. While Mr. Panetti's petition was pending in the district court, the CCA decided *Chadwick v. State*, 309 S.W.3d 558 (Tex. Crim. App. 2010), the first case in which the CCA applied *Edwards*. Based on *Chadwick*, Mr. Panetti asked the district court to stay the federal proceedings and hold them in abeyance so that he could return to state court. On July 1, 2010, the district court granted the motion.

On December 15, 2010, the CCA, with two judges dissenting, dismissed the *Edwards* claim for failing to meet the requirements of Section 5 of Article 11.071. *Ex parte Panetti*, 326 S.W.3d 615 (Tex. Crim. App. 2010). Mr. Panetti sought certiorari review. On June 20, 2011, the Supreme Court denied the petition for writ of certiorari. *Panetti v. Texas*, 131 S.Ct. 3027 (2011).

Returning to federal court, Mr. Panetti responded to the State's motion for summary judgment. The district court granted the State's motion and denied habeas relief on January 31, 2012. The district court denied Mr. Panetti's motion to amend the judgment on March 13, 2012, and amended its order three days later. On April 10, 2012, Mr. Panetti filed a Notice of Appeal.

On August 21, 2013, after oral argument, the Fifth Circuit denied Mr. Panetti's claim that the State should have forced counsel on him under *Edwards*, and his claim that he was incompetent to be executed under *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Panetti v. Quarterman*, 551 U.S. 930 (2007). *Panetti v.*

Stephens, 727 F.3d 398 (5th Cir. 2013). The Court of Appeals denied Mr. Panetti's timely petition for rehearing en banc on October 29, 2013.

Mr. Panetti sought writ of certiorari from the United States Supreme Court. His petition was denied on October 6, 2014. *Panetti v. Stephens*, Cause No. 13-8453 (U.S. Sup. Ct. Oct. 6, 2013).

His bases for seeking mercy from this body follow.

I.

MR. PANETTI'S LONG HISTORY OF SEVERE MENTAL ILLNESS RENDERED HIM INCAPABLE OF EFFECTIVELY REPRESENTING HIMSELF AT TRIAL AND MERITS MERCY IN THE FORM OF EXECUTIVE CLEMENCY.

A. Mr. Panetti's History of Mental Illness

Fourteen years before Mr. Panetti killed his wife's parents, doctors at Brook Army Medical Center (BAMC), who were treating Mr. Panetti for severe burns, concluded that he might be suffering from "early schizophrenia." BAMC records at 4, attached as Exh. 3. Mr. Panetti was only twenty years old at the time. *Id.* at 2. In the decade preceding the crime, Mr. Panetti was involuntarily committed for psychiatric problems over a dozen times in hospitals in Texas and Wisconsin. Treatment professionals repeatedly found him to be paranoid, grandiose, delusional, and hallucinating. He exhibited tangential and circumstantial thinking, severely impaired judgment, and excessive religiosity. These profound disturbances in his thinking and perception consistently led to diagnoses of chronic undifferentiated schizophrenia and schizoaffective disorder. The doctors frequently prescribed

antipsychotic medication to alleviate some of his psychotic symptoms. Auditory and visual hallucinations exacerbated his delusions of persecution and grandiosity.

Mr. Panetti was involuntarily committed to the Kerrville State Hospital in 1981. He was diagnosed as paranoid and hostile toward his family. In April 1986, he was admitted to the Starlite Village Hospital and diagnosed with schizophrenia. He spoke incoherently and was actively hallucinating: He claimed he killed the devil and exorcized his home. He was transferred to the Kerrville State Hospital for further evaluation and was diagnosed with paranoia and schizophrenia. He had nailed shut the curtains in his home and buried some of his furniture in the backyard because he believed that the devil had possessed it.¹ He was transferred to the Waco Veteran's Hospital in May 1986, diagnosed with chronic undifferentiated schizophrenia, and treated with antipsychotic medications.

¹ Mr. Panetti's first wife provided an affidavit in support of her request to have Mr. Panetti involuntarily committed:

My husband . . . has over the last two months been experiencing hallucinations and has been generally out of touch with reality. He became very paranoid and was always thinking that someone was watching him from the creek in our backyard. He would sit on the porch all day to keep watch. The paranoia has continued to the present. After our baby was born in March, he became obsessed with the idea that the devil was in our house. He finally had a ceremony to get rid of the devil during what he called the "devil's birthday." He buried many valuables next to the house and stacked other furnishings and valuables above the ground which he washed with water. He would stay up during the night and "make magic with the lights." He claims that he saw the devil on a wall and cut the devil with a knife and that blood had run out on him.

Affidavit of Jane Irene Panetti at 1-2, attached as Exh. 4.

Mr. Panetti moved to Wisconsin and was admitted to Tomah Veteran's Hospital in July 1986 after failing to comply with his medication regimen. He was again diagnosed with schizophrenia. He was transferred to Cumberland Memorial Hospital and was diagnosed with depression, brain dysfunction, delusions, auditory hallucinations, and homicidal ideation toward his family. He was then transferred to Northern Pines Unified Services Center in August 1986 and diagnosed with depression and suicidal ideation. Mr. Panetti experienced hallucinations, seeing the devil on the wall. He believed he saw blood coming out of the walls. He washed the walls and his house to get rid of the devil. Mr. Panetti appeared to be on the edge of a psychotic break. He was concerned that he might hurt his family.

Upon his return to Texas, Mr. Panetti was again hospitalized at Starlite Village Hospital in October 1986 and again diagnosed with schizophrenia. He was transferred to the Kerrville Veterans Hospital in November 1986 and diagnosed with schizoaffective disorder.

In 1986, due to his severe mental illness, Mr. Panetti qualified for a monthly disability benefit from the Social Security Administration (SSA). *See* SSA records at 2-9, attached as Exh. 5. A doctor working for the SSA concluded that Mr. Panetti suffered from schizophrenia and was incompetent to manage his own affairs:

In summary, this patient's major problem is a schizophrenic process. He has severe thought disturbance, restricted affect and what appears to be a significant isolation and inability to live except in a very marginal supported structure. This examiner feels that he is unable to care for himself, unable to sustain any type of significant interpersonal relationships, interests or activity levels and his pace and concentration is [sic] severely disturbed by his psychotic thought

processes. His prognosis would appear quite poor for the future due to the longevity of his psychosis with little improvement.

Id. at 22.

In 1990, two years before the crime, Mr. Panetti was involuntarily committed to the Kerrville State Hospital for homicidal behavior after he began swinging a sword around the house and threatening to kill his wife, baby, father-in-law, and himself. He thought the local citizens were plotting against him. In July 1991, he was hospitalized and found to be suffering from delusions of grandiosity and psychotic religiosity. The possible presence of three alternative personalities was noted.

In the midst of these severe mental health problems, Mr. Panetti and his wife Sonja separated. She took their three-year-old daughter and began living with her parents. 31 RR 60.² Sonja testified that Mr. Panetti had threatened and hit her. 31 RR 62. At that time, Mr. Panetti had not been taking his antipsychotic medication regularly or continuing his follow-up care at the Kerrville V.A. Medical Center. *See* 37 RR 1552.

On September 8, 1992, Mr. Panetti shaved his head, dressed in camouflage combat fatigues, armed himself with a sawed-off shotgun and a deer rifle, and went to the home of his parents-in-law, Joe and Amanda Alvarado. He shot them at close range in front of his wife and daughter. 37 RR 1544-46. He then took his wife and

² Citations to the reporter's record of the capital murder trial and the competency-to-stand-trial proceedings are noted as “__ RR __.” Citations to the clerk's record of the capital murder trial and competency-to-stand-trial proceedings are noted as “__ CR __.”

daughter to a bunkhouse where he had been living. 37 RR 1547. He eventually released them unharmed and, after a lengthy standoff with the police, Mr. Panetti changed into a suit and surrendered to the police. 37 RR 1548-51.

B. The Competency to Stand Trial Proceedings

Based on Mr. Panetti's lengthy history of mental health problems and his behavior in court,³ the judge ordered a psychiatrist to determine his competency to stand trial. Dr. E. Lee Simes reported that Mr. Panetti did not know what year it was or who the President was; had some looseness and tangentiality in his thought processes; admitted to both auditory and visual hallucinations, including seeing Jesus in his jail cell; related chronic delusions marked by religiosity; appeared to have "an odd fragmentation of his personality in describing himself as several different people;" and suffered from "obvious mental difficulties." 37 RR 1429, 1430. Nonetheless, Dr. Simes concluded that Mr. Panetti was competent to stand trial.

A competency trial was held on July 28-29, 1994. After the jury deliberated for nearly twelve hours, the judge declared a mistrial. 10 RR 371, 379. After the trial court ordered a change of venue, a new jury heard nearly identical evidence

³ The trial court first became aware of Mr. Panetti's bizarre conduct at the arraignment:

THE COURT: Mr. Panetti, are you the same Scott Louis Panetti that is named in this indictment?

DEFENDANT: I don't know. I'm Will James.

THE COURT: And is your name spelled correctly?

DEFENDANT: Mr. Panetti is not here.

about Mr. Panetti's competency to stand trial. At the second competency trial, Mr. Panetti's appointed counsel testified that Mr. Panetti would become delusional and unresponsive to his questions under stress. 13 RR 27. During conversations, Mr. Panetti often said that he felt possessed by demons and had been visited by angels and Jesus in his jail cell. 13 RR 29-31. Defense counsel testified that he had never had a meaningful and rational conversation with Mr. Panetti about the legal issues in the case. 13 RR 34-36, 46.

Dr. Richard Coons, a forensic psychiatrist, found that Mr. Panetti suffers from schizophrenia. 13 RR 60. Dr. Coons testified that Mr. Panetti decompensates when under stress, causing his thinking to become tangential, circumstantial, and inefficient. 13 RR 61-64. As an example, during one of their meetings, Mr. Panetti:

began to talk about scripture and then he began, with no prompting from me, no interjection from me whatsoever, he went from scripture to being in jail in Bell County to the way prisoners look, to the Waco Veterans Administration Hospital. He described patients. He talked about lightning, talked about having been drowned a couple of times, the Lord wants me to help a person, talked about the meaning of life, suicidal thoughts, his mother's prayers, so much to be thankful for, problem marriages, women he's dated, rodeo, drinking, tequila in old Mexico, the YO Ranch, his battle with the bottle, a mescal dream of a bottle with worms in it, dope dealer sitting in the courtroom, Luke, Chapter 13 Verse 33, new saddle, boots, boot maker is dead, hobbles for a horse, an old piece of cotton rope and riding with a lead shank.

13 RR 63-64. According to Dr. Coons, Mr. Panetti had other distractions besides his inefficient thinking: He hears voices that may have "particular religious significance" and others that are "more precise and commanding." 13 RR 65.

Although Mr. Panetti was then taking antipsychotic medication that diminished

some of the symptoms of his schizophrenia, 13 RR 69-70, Dr. Coons said that Mr. Panetti still suffered from the disorganized thought processes that characterize schizophrenia. 13 RR 75, 77. He said that Mr. Panetti's mind "saddles up and rides off in all directions." 13 RR 85. Mr. Panetti was not malingering, Dr. Coons testified, because his symptoms were consistent with the psychiatric records beginning in the 1980's. 13 RR 82.

Dr. Simes testified that Mr. Panetti is clearly mentally ill, that his thought processes are tangential, and that he most likely suffers from schizophrenia. 13 RR 144-45, 158. Although he concluded that Mr. Panetti was competent to stand trial, 13 RR 146, Dr. Simes admitted that he recalled Mr. Panetti's delusional, irrational thinking about "gold dust coming down and spiritually filling him," "the demons Dagon and Beelzebub," and "the tinglies." 13 RR 153-54. He also recalled Mr. Panetti's discussion about the four personalities inside him and his belief that the purpose of the competency trial was to provide him with the proper medication. 13 RR 154-56. Because stress exacerbates the symptoms of schizophrenia, Dr. Simes testified that, as the capital murder trial progressed and the stress increased, Mr. Panetti could decompensate and his delusions could render him incapable of assisting his attorneys. 13 RR 163, 172, 174. The jury found Mr. Panetti competent to stand trial. 13 RR 206-07.

C. Mr. Panetti's Refusal to Take Antipsychotic Medication

Seven months after being found competent to stand trial, Mr. Panetti experienced his "April Fool's Day revelation" that God had cured his schizophrenia.

15 RR 9.⁴ He refused to take any more antipsychotic medication. At the time experts evaluated Mr. Panetti's competency to stand trial, he was taking antipsychotic medicine. The undisputed evidence presented at the competency-to-stand-trial proceedings showed that his schizophrenic symptoms (delusions, hallucinations, tangentiality, and circumstantial thinking) markedly diminished when he was taking his medication. 13 RR 67-70 (testimony of Dr. Richard Coons); *see id.* at 74 (testifying that medication and hospitalization have had a "positive influence" on Mr. Panetti); *id.* at 80 (testifying that Mr. Panetti "gets better" when he is treated). Dr. Coons stated that Mr. Panetti was currently being treated with such a heavy dosage of Trilafon that it would render somebody without a severe mental illness dysfunctional. *Id.* at 69, 71. Without any medication, according to Dr. Coons, Mr. Panetti would be "very psychotic," "tremendously paranoid," and "more delusional." *Id.* at 71. Dr. Coons believed, however, that Mr. Panetti's condition would improve with better treatment and more potent medication than Trilafon. *Id.* at 76-77; *see id.* at 80 (testifying that Mr. Panetti "is not being treated

⁴ Mr. Panetti described this religious experience in his opening statement to the jury at the guilt-innocence phase of his capital murder trial:

In my year in the Waco Branch Davidian expert's cell in Bell County, I didn't hear from my previous law firm, and I got paranoid that I wasn't being told or lost a chance to appeal the decision of the illegal evidence that was found illegal and then found legal, and I came to the conclusion after my medicine was taken from me and I went into the paranoia and the thought disorder that it depended on me, the April fool, as I consider myself the born again April fool, not saying being born again bars someone from being able to sin, but I depended on the Lord to do for me what the medicine wasn't doing.

31 RR 31-32.

with the heavy-duty meds that I think he should be”).⁵ Dr. Simes, the State’s expert who testified at the 1994 competency hearings, agreed with Dr. Coons that Mr. Panetti’s condition would worsen if he were not taking any antipsychotic medication. 9 RR 279.⁶

D. The Self-Representation Hearing

Three months after Mr. Panetti stopped taking his medication, he asked the judge to allow him to represent himself. At the *Faretta* hearing, the judge made his position clear: “I want you to understand that I do not want you to represent yourself. I would feel more comfortable if you had an attorney representing you” 15 RR 10. The judge insisted that Mr. Panetti meet in private with his appointed counsel to discuss his desire that they withdraw. 15 RR 11-12. His attorneys

⁵ Dr. Coons’s testimony at the first competency proceeding was substantially similar. He testified that Trilafon is “a medium range, medium intensity antipsychotic medication” that is not one of the “more powerful, more potent agents” for treating someone in Mr. Panetti’s condition. 10 RR 226. He believed that Mr. Panetti needed to be treated with medication “much stronger than Trilafon.” *Id.* at 228. Nevertheless, Dr. Coons testified that without the strong dosages of Trilafon, Mr. Panetti “would hear more voices, he’d become more delusional, he would have more strange ideas. His thinking would be even more fragmented and less intense. He would have even less control over his thoughts and behavior.” *Id.* at 234-35. Dr. Coons also noted that Mr. Panetti’s condition usually improves when he has been hospitalized and properly medicated. *Id.* at 228, 247.

Dr. Lennhoff, who testified only at the first competency proceeding, also recommended that Mr. Panetti be treated with newer, more powerful medication to determine if his condition would improve. 9 RR 257.

⁶ Dr. Arambula stated in the report he prepared for state habeas counsel that Mr. Panetti’s refusal to take any medication in the months leading up to his trial, coupled with “the stress of a trial upon any defendant, much less one representing himself,” would lead any clinician to “reasonably foresee that Mr. Panetti’s symptoms would worsen.” Report of Michael Arambula, M.D., R.Ph., at 5-6 (Exh. 6). In this unmedicated state, Mr. Panetti “deteriorate[d] to such a level that he was subject to persecutory delusions and severe disturbances in his thinking (and ability to communicate with others). *Id.* at 7.

believed that Mr. Panetti did not understand the process and was not capable of representing himself. 15 RR 13. When the judge asked why he wanted to represent himself, Mr. Panetti answered:

Sir, the reason I want to represent myself is because under the laws of the State of Texas and under the United States Constitution I have the right to do so.

I am fully aware of the penalty for charges that I have been charged, what I have been charged with. I do, however, feel that in the press in the place of venue where I'm not being looked upon quite possibly as United States Navy Seal swim and scuba team, Your Honor, and I don't want to be confused here, sir, but I also must ask that my sanity and that my competency be taken seriously, sir, as decided by a jury in the State of Texas, and I find while being advised I will be treated fairly and the same, that I am, in fact, not, and I would hope that from now on that I would be looked upon as sane, not without mental illness, but sane and competent to defend myself in the court of law in the great State of Texas, Your Honor.

15 RR 18-19. The judge then asked Mr. Panetti to sign a waiver of counsel form. A colloquy occurred between the court and Mr. Panetti about his signature:

MR. PANETTI: Well, Your Honor, I'm a member of the Native American Church and under the laws and my religious beliefs, my signature – my legal signature has changed to where it is as Scott Louis Panetti. My Native American name is Wounded Sunbird, formerly He Who Never Cries. I will spare you the history of that, but I must ask permission to sign as that, sir.

THE COURT: I'm going to require you to sign it in the name Scott Louis Panetti. If you want to put underneath that what you're also known as, AKA, feel free to put in there your – the name you also go by, but in this case we have already had arraignment and you are known as Scott Louis Panetti and you told me on the record that that's what you were known as and then you told me that you were known as, I think, Will James back at the time that we did this.

MR. PANETTI: Your Honor, Will James I and II. Will James, the Montana Will James, the artist and the poet; the Texas Will James, the preacher, Wounded Sunbird, Sergeant Iron Horse, but that's all.

15 RR 20-21.

The District Attorney objected to allowing defense counsel to withdraw and Mr. Panetti to represent himself:

[W]hat I'm a little concerned with, obviously the State has a concern here because of the nature of the case and any time we get into this issue I think it presents concerns for the Court and the State and everyone else, but from what the Defendant has stated today, the State has a concern. I wasn't expecting quite this. I haven't really heard anything that counsel has done wrong or that the complaint about counsel and I'm not sure he has to have one if he just wants to represent himself, but the State does have an interest in protecting his rights and State's rights, and for that reason, I guess at this point, I would technically or officially lodge an opposition to this motion to withdraw. I wasn't certain what position we would take coming in, but actually, after hearing this, I'm not sure it would be appropriate. I think counsel has done a good job in the case to this point and unless there's something else, I don't think the State could agree to this, if that's an issue with the Court, but I did want to put that on record. We are concerned about protecting the Defendant's rights. I think they would be best served by leaving counsel in based on the record we have heard today.

15 RR 23-24.

The judge told Mr. Panetti he had a constitutional right to represent himself "and I cannot take that right away from you[.]" 15 RR 25. In response to the judge's question if he was making his waiver of counsel voluntarily, Mr. Panetti said:

Your Honor, I can't help but bring up – I will not go on with a chronology in a sense, but I cannot help but bring up the newspapers, hearsay, scuttlebutt, everything that goes along with a case of this seriousness and magnitude. I find it perplexing, to use a proper word,

that in certain decisions I have been informed of in the Court I find however legally – however legal and proper, that I find quite unorthodox. I must reiterate my confidence in myself and my Lord and Savior, Jesus Christ, and he lets me know in my heart and in my mind, with all due respect, Your Honor, that this is in the best interest of Scott L. Ranahan Panetti, AKA Wounded Sunbird, formerly He Who Never Cries. The other names, Your Honor, will be brought up after I have had this expert let me know if I have, indeed, any telltale signs of other personalities, for the Court’s benefit, the jury’s benefit, my family’s benefit, but in the sincerity of my healing in my heart is sincere, sir, and I believe in it, I’m not asking you to notice the physical changes, the mental changes. I’m just asking, as I did before, with a bit of patience, because I’m not afraid and I’m not intimidated by a bunch of law books. The law is simple common sense and just like in this book, by some it’s made complicated. I think it gets right down to common sense, Your Honor, and I have confidence in my studies and I will be able to properly litigate. Thank you, sir.

15 RR 25-26.

When the court asked Mr. Panetti to confirm that he was asking not only to remove his attorneys but also to allow him to represent himself, Mr. Panetti replied: “Yes, sir, that’s correct, but I must reiterate that I’m not alone, sir. I have the power of the Holy Spirit.” 15 RR 27. The court then asked if he understood the gravity of his waiver. Mr. Panetti answered:

Sir, my understanding is finine [sic]. I cannot begin to explain or understand with my finite mind the infinite power of the God that gave me the healing, the courage, the confidence, the bold, and in First (sic) Peter 55, the humble – To answer your question with a simple three-letter word –

15 RR 27. The judge found that “Mr. Panetti has a constitutional right to represent himself and he has made a voluntary and intelligent decision to exercise that

constitutional right to represent himself, knowing full well the consequences of his act.” 15 RR 29.⁷

E. Appointment of Standby Counsel

The judge insisted on appointing standby counsel, but emphasized that Mr. Panetti would not have to use such counsel if he did not want to. 15 RR 29-30. Mr. Panetti asked the judge that “when you pick this individual to help me, as a God-fearing man, I would respect if you could pray about it and a total package would be nice, looks and intelligence, Your Honor.” 15 RR 30-31. To assuage Mr. Panetti’s concerns, the judge placed numerous restrictions on standby counsel, Scott Monroe:

1. Unless otherwise requested by the Defendant, standby counsel is to be seen and not heard.
2. Standby counsel is not to sit at the counsel table with Defendant unless Defendant asks him to do so.
3. Standby counsel, when requested by the Defendant, may advise Defendant on ***procedural matters only***. Standby counsel shall not, at any time, advise Defendant on any substantive matters, even if requested to do so by the Defendant.
4. Standby counsel shall not participate in ***any*** part of the trial process unless specifically requested to do so by the Defendant,

⁷ The judge later told prospective jurors during voir dire:

Mr. Panetti has elected to represent himself and you can’t make a person use a lawyer. If a person wants to represent themselves, they have the right to represent themselves and he has voluntarily elected to represent himself in this case.

and, then only on procedural matters by way of giving advice to the Defendant.

5. Standby counsel shall not question any prospective jurors nor make any suggestions or offer advice as to which prospective jurors might be favorable to the Defendant or Prosecution.
6. Standby counsel shall not exercise any preemptory [sic] challenges or challenges for cause on any prospective jurors.
7. Standby counsel shall not advise Defendant as to any particular areas of inquiry during voir dire.
8. Standby counsel shall not make any objections unless requested to do so by the Defendant.
9. Standby counsel shall not make any motions for mistrial unless requested to do so by the Defendant.
10. Standby counsel shall not advise Defendant of any procedural irregularities, either by the State or by the Defendant, unless requested to do so by the Defendant.
11. Standby counsel shall **not** volunteer any procedural assistance to Defendant.
12. Standby counsel shall not do any other act or take any other action, which in the opinion of either standby counsel or the Defendant, would in any way interfere with or affect the right of the Defendant to represent himself.

See Instructions Regarding Standby Counsel (emphases in original) (attached as appendix to Affidavit of Scott Monroe, Exh. 7.⁸

Monroe concluded that Mr. Panetti's incompetence "prevented him from asking for or using my assistance as his standby." *Id.* at 6. Monroe explained his attempts to help Mr. Panetti:

⁸ Despite standby counsel's narrowly circumscribed role, on two occasions, Mr. Panetti attempted to have him dismissed. 18 RR 5-26; 19 RR 6.

I made copies of all relevant sections of the Code of Criminal Procedure on voir dire of the capital venire, challenges for cause, pre-trial motions, evidence and punishment special issues. Scott did not use the information I prepared for him. I tried to outline the theory of the defense, but Scott was only interested in his own show. I tried to discuss defense witnesses, but Scott only wanted to visit with old friends, not prepare for trial. I tried to advise Scott areas not to ask about with State's witnesses, especially Sonja Alvarado [the victims' daughter]. Scott was unable to use any advice I gave him. Nothing I told him made any difference. He did not understand the reasons for my advice and did not realize the effect of his decisions and actions.

* * * *

In another jail meeting, Scott insisted in rehashing old stories and expositions of events that he had told me numerous times. I could not get him to focus on the actual trial of the case other than for brief moments at a time.

* * * *

On many occasions, Scott told the Judge he needed to talk to me about the case. Judge Ables would grant a recess and Scott and I would go to the back courtroom to talk. Scott called it a "Pow-Wow." I knew how long the "Pow-Wow" was going to be by the size and length of the cigar he had to smoke. Scott was allowed to smoke during the recess in the back courtroom. Scott never talked about the case. He talked about something he wanted that was completely irrelevant. At times, Scott would have a basic conversation and other times [] it was paranoid delusions. The Court gave Scott breaks every day and I would try to discuss his case to answer his questions or offer help. I was not able to give Scott any assistance because he was not mentally able to focus on his case. We never discussed anything relevant to his case at the breaks.

Id. at 2-5.

Jessica McBride, a friend of Mr. Panetti's younger sister, corroborated Monroe's conclusion that he could do nothing to assist Mr. Panetti:

Scott Monroe sat in the front row of the spectator seats with the Panetti family. I noticed that Scott would not ask for Mr. Monroe's

help. Scott really tried to ignore Mr. Monroe and was rude to him. Scott did not know what to ask and was too wrapped up in his show to ask. When Scott did talk to Mr. Monroe it was about something irrelevant to the case. Scott would talk about his cowboy and Indian stuff like he was trying to impress Mr. Monroe. He would not talk about his case. At the breaks, he would smoke his cigar or just sit.

Affidavit of Jessica McBride at 4, attached as Exh. 8.

F. Bizarre Behavior and Incoherence at Trial

Evidence of Mr. Panetti's incompetency to defend himself runs like a fissure through this case. The examples cited below, although numerous, are far from exhaustive. One could randomly select nearly any page of the record and discover a stark example of Mr. Panetti's decidedly bizarre behavior, from the indictment to the closing argument at sentencing.

Wearing a cowboy costume,⁹ Mr. Panetti raised a defense of not guilty by reason of insanity. He told the jury in his opening statement that only an insane person could prove insanity. 31 RR 29. Mr. Panetti made bizarre and inappropriate statements to the jury; went on irrelevant, irrational, and illogical reveries; exhibited sudden flights of ideas; asked questions that were

⁹ Standby counsel described Mr. Panetti's appearance:

Scott dressed in a "Tom Mix" style costume like an old TV western. Scott wore his hat in Court. He had pants that looked like leather suede tucked into his cowboy boots. He wore a cowboy style shirt with a bandana. The shirt was the double fold over type western shirt. One shirt was green, the other was burgundy. Scott wore a big cowboy hat that hung on a string over his back. It was a joke. It was like out of a dime store novel.

Affidavit of Scott Monroe at 5 (Exh. 7); *see* Affidavit of Jessica McBride at 2 (Exh. 8) ("Scott dressed in a 1920s era cowboy style. It looked idiotic. He wore a large hat and a huge bandana. He wore weird boots with stirrups, the pants were tucked in at the calf. . . . He looked like a clown. I had a feeling that Scott had no perception how he was coming across. He was very narcissistic. He was totally unable to see the effect.").

incomprehensible or burdened with excessive and extraneous detail; rambled incessantly; perseverated; recited senseless, fragmented aphorisms and anecdotes; badgered the judge, the prosecuting attorney, and witnesses; and was unable to control his behavior despite the judge's repeated efforts.

1. Issuing Subpoenas

Mr. Panetti applied for over 200 subpoenas, including John F. Kennedy, the Pope, and Jesus. *See* 36 RR 1207 (“I didn’t want to go subpoena crazy and I turned the Pope loose and J.F.K. and I never subpoenaed them, but Jesus Christ, he doesn’t need a subpoena. He’s right here with me, and we’ll get into that.”); Exh. 9 (Subpoena of Jesus); Ralph Winingham, *Jesus Subpoena Dropped at Trial*, San Antonio Express News, Aug. 24, 1995) (“Panetti had originally wanted to subpoena ‘Jesus’ in Heaven to testify, but he dropped the name from the final list of witnesses, which he shortened at the court’s urging.”).¹⁰

At a pretrial hearing, Mr. Panetti could not provide logical explanations about the relevance of numerous witnesses he wanted to subpoena:

THE COURT: Jim Quigly, why do you need Jim Quigly?

MR. PANETTI: Oh, he run all the slush funds on the destroyer I was on, a converted frigit, and he put a massive quantity of LSD in my beer and he could be very well a born-again Christian now. He could very well be dead or in prison, but it’s documented in the Navy that he’d been busted many times for drugs and what not and he was a real culprit and I just thought being that in those records of my medical summary, Dr. Click, who, by the way, I may not find it necessary to subpoena Dr. Click, but he made a remark that I was like an LSD patient and I don’t deny, so he OD-d me.

¹⁰ The judge later joked, “I did not have to quash (a subpoena for) Jesus.” *Id.*

22 RR 36-37.

Mr. Panetti attempted to explain why he wanted to subpoena Elmer Seybold:

He taught me the farrier's art. He taught me how to be a blacksmith. If you called him up and said, "Tell me about Scott Panetti," he wouldn't know. If you called him up and said, "John Wayne, Jr.," it was the handle he put on me, good friends with John Wayne. He was the only one that the Duke would let shoe Dollar. Although, Elmer Seybold is weird. He asked me – I had – when I went to the farrier's college I had my wife Jani with me and I had the only woman and he kept offering me to sell me his opium bed. He has a dude ranch that half of it is abandoned and it's filled with – what he would do is go to foreign countries that were being – or like he taught the Shah of Iran shoers how to – for all I know the guy's a witch, but so I don't think we need him, Your Honor, but, you know –

22 RR 152.

2. Questioning Prospective Jurors

Mr. Panetti made unintelligible comments to the panel of prospective jurors during general voir dire:

The death penalty doesn't scare me, sure but not much. Be killed, power line, when I was a kid. I've got my Injun beliefs as a shaman. I sent the buffalo horn to my sister. Adjustment, Jesus wrote. I was born in the North woods in a reservation hospital and my granddad was a justice of the peace and he sobered up the doctor and the doctor was half sobered and they delivered me and my mom had a bad sickness in her milk and they wondered why I wasn't dead, and a lot of beatings I took from the kids that show me had prejudice, which I don't have any prejudice, and they said this about me in the newspapers in the beginning, but I don't love Injuns and Mexicano, and Mexicano know, but I suffered a lot of reverse prejudice from Colored people, which is rare, darn rare, but I was named "He who doesn't cry" because I didn't cry when I should have, and I must admit, though, in Gillespie County Jail when I was in my little suicide box where there was an old boy committed suicide, I went through about a week of pretty much scuba diver's tears; although, I don't scuba.

21 RR 87-88.

He asked incoherent questions of prospective jurors:

MR. PANETTI: Do you have any Indian blood in you?

JUROR: Not that I know of. I'm not sure.

MR. PANETTI: Well, let's say another hypothetical situation. There's a cavalry officer and in his zeal to do his duty at Wounded Elbow, he shot down some armed, but a lot of unarmed Injuns. I use the word Injun no derogatory, just because India is India and some Injun people I know like Injun better than Indian. In other words, he was a bad hombre, this cavalry officer, and killed a lot of women and kids, and well, because you said you don't know, let me put – could you feel in your mind that you could acquit the Ayatollah Khomeini after killing a lot of American citizens because they found him insane?

JUROR: I don't understand where – what you're trying to get to.

MR. PANETTI: Well, I'm asking you a pretty simple straight-up, simple question and I didn't want to go into this. I just wanted to read your questionnaire, but it seems like you're kind of sidestepping some pretty simple questions.

JUROR: Not that I'm sidestepping. I'm just not understanding what you're trying to ask me.

29 RR 1250.

On one occasion, Mr. Panetti flipped a coin to decide whether to strike a prospective juror. 23 RR 241. The District Attorney said afterward, "I think the coin flip was just for show. He didn't let the coin drop so we could see if it was heads or tails. I started to stand up on the next juror to flip a coin, just for show, but I decided against it." Ralph Winingham, *In-Law Slaying Trial Opens Tuesday*, San Antonio Express News, Sept. 11, 1995.

3. Delivering Opening Statement at Guilt-Innocence Stage

Mr. Panetti's opening statement was unfocused and nonsensical:

Demons, demons, evil spirits. A demon affects mental stability. There is a few words that I learned, “hypothetical” and “mitigating,” the “mitigating circumstances,” the “hearsay,” and you’re going to hear some things on me. You’re going to hear some lies, and it’s not going to come from me, not that I’ve ever lied, because I haven’t had papers to prove that I lied in my past, but it’s important for us 20 or so million alcoholics in treatment to take an inventory of honesty, to keep from building up for an excuse of feeling feelings that make you take another drink; so it did rile my feathers to find this meticulous honesty was looked upon and reversed and looked upon as dishonesty.

31 RR 37.

4. Questioning Witnesses

Mr. Panetti had to be repeatedly reminded by the judge to ask questions – rather than make statements – in his lengthy cross-examination of Sonja Alvarado, his ex-wife and the daughter of the victims:

MR. PANETTI: This is going to be very time consuming. Well, we’re going to have to – do you remember the day we met? Sonja, I’m going to cue from the District Attorney, who helped me choose the jury, because he knew, and I’m going to have to ask you some questions, Sonja, because what you said is not square with the facts and the jury is going to have to find out and I’m going to have to ask blunt questions, because –

THE COURT: Mr. Panetti, don’t give a lecture to a witness; just ask a question.

* * * *

MR. PANETTI: Sonja, just to make it easy for me and the Court, which you don’t have – can you just answer the questions because I’m going to have to give the jury how we met, first separation, when you committed me to the State Hospital, where Mr. Braeutigan, the deer hunting, to find out the truth, and I don’t want to be defensive, but I know it’s a strange situation where an attorney is not asking you these questions, which you can answer easier –

THE COURT: Let’s ask a question.

31 RR 109-10.

MR. PANETTI: Sonja, when I tapped on the window and it shattered, you got up and screamed, and you ran and Birdie was there. I picked up Birdie and ran after you and I didn't know you cut your hand, and there's a lot of things I remember, because I wasn't drunk out of my mind, but you have to remember this is the person. This is Sarge, so when I say "I," I'm saying Sarge, and not make it confusing, and for the benefit of the jury and the truth, I'm just trying to go through what happened.

DISTRICT ATTORNEY: Your Honor, again I ask that he ask questions. This is long.

THE COURT: Mr. Panetti, you've got to ask a question.

31 RR 124-25.

The judge eventually had to dismiss the jury and admonish Mr. Panetti for arguing with Ms. Alvarado:

THE COURT: Mr. Panetti, it's not appropriate for you to argue with the witness. . . .

MR. PANETTI: It – it is a unique situation to be the lawyer, to ask the questions, but I do feel my former wife is not coming right out and telling the truth and it's making me have to ask these uncomfortable questions, Your Honor, and I don't want to have to, and then also with the jury out of the room, they are – I'm – I mean I'm not going to go back into a cell and plan out a whole bunch of questions. I had nothing planned, but to build up to honestly present the whole situation to the jury. I find that I have to ask certain questions, and I will try to get to the point, but she's fighting me, Your Honor.

THE COURT: If you don't quit with your dialogs, I'm going to have to cut off the questioning. . . .

MR. PANETTI: Your Honor, I will not use my untreated thought disorder for an excuse, but my thoughts do run a gambit and when I have to go far enough into the case is the tragedy and then go back to where we first met, it's difficult, and the reason I elaborated or added any details is to get to the point and the memory, and to get to the

facts, and to get to the truth and I will confer with Scott Monroe [standby counsel]. I will be more blunt and question more precisely, but in this very uncomfortable situation I'm going to have to have some answers, and I don't wish to take a whole lot of time, but then again this is going to take what it is going to have to take to have the truth and present all of the evidence to the jury, and it is sort of a unique situation where the defendant is the lawyer, and the witnesses would be more comfortable with an attorney, but then again it brings up to light the case we are proving insanity, if I cannot show the court the details of what causes the insanity, which – well, let's say you open –

THE COURT: Mr. Panetti, stop. . . .

31 RR 128-29.

He fixated on immaterial details, relentlessly questioning his ex-wife:

MR. PANETTI: And it was a step, so after I shot, instead of the boom-boom, there was a move into the room, other, and then a boom?

WITNESS: Just one step.

MR. PANETTI: From here to your dad?

WITNESS: No, you weren't over there. You were in front of my dad. This is –

MR. PANETTI: Well, instead of boom, boom, it was a boom, a verbal exchange?

WITNESS: It didn't take you long to say what you had to say.

MR. PANETTI: I stepped in the other room.

DISTRICT ATTORNEY: Your Honor, I object. It is just badgering. We have heard this fifteen times.

THE COURT: I'm going to sustain the objection. Let's move on to something else, Mr. Panetti. We've covered this enough.

* * * *

MR. PANETTI: So you don't remember where Birdie was exactly, but that I didn't have her in my arms or she was standing right by me?

WITNESS: She was standing by me –

THE COURT: Mr. Panetti –

WITNESS: – sitting by me.

THE COURT: Mr. Panetti, do you have some questions about another subject? I don't want to hear anymore about where she thinks everybody was standing in the house. We've covered that, and if you don't have anything new we haven't covered yet, then we need to go to another witness. Do you have something else to ask this witness that we haven't covered already?

MR. PANETTI: Your Honor, beg your pardon, but about Birdie sitting down, about Birdie, where everybody was, the pictures and later on in the case, all that will – so I don't mean to be – but I just wanted the jury to see what happened, not that I'm saying what I'm saying what happened, but what – when I find discrepancies of not knowing where Birdie is, but then knowing where Birdie is or that she's sitting or standing or that in recoil or that splatterings or it just don't add up.

31 RR 207, 211-12.

In questioning other witnesses, Mr. Panetti made rambling, irrational statements:

MR. PANETTI: Canteen where – I was expecting the whole list to question, Donna Stanley, educated, expert.

THE COURT: You need to ask a question, Mr. Panetti.

MR. PANETTI: I hope you don't find any more – well, Dr. Bayardo, he didn't find any offense when I mentioned "Quincy." We didn't say whether we liked the show, but we mentioned about the beginning where the cops got sick, and I asked him that naturally for a reason, but I didn't ask him if it made the job popular or anything, but when it comes to dealing with blood, his autopsy, and the crime scene, your expert evidence, autopsy, crime scene. I'm thinking out loud, so I don't ask you questions that you're – well, it would be like asking a rodeo hand what cutting a horse means. They might know it all, but I just – have you got those pictures of the glow-in-the-dark?

32 RR 443.

MR. PANETTI: If you were going to follow the scripture like Samson, you'd let your hair grow, but if you come around any people who are dead, then you have to shave your head or avoid – does it say anything about avoiding certain people's sacraments, because in my file from my previous law firm was this information about a Nazarite, and it says in there the vow of a Nazarite, and you read something about it and this is interesting, because it helps me figure out – what a lot of these figures I'm figuring out what Sarge did, because I – I want to know, too. Now Paul was a Nazarite, and they had –

THE COURT: You need to ask a question, Mr. Panetti.

36 RR 1246-47.

The judge repeatedly warned Mr. Panetti to ask relevant questions:

THE COURT: Well, can you tell me how it's going to be relevant, Mr. Panetti? I'm not sure how your belt buckle is relevant to this issue.

MR. PANETTI: Your Honor, I beg the pardon of the Court, but if I was to – not a gambler, but I found in the jury selection and whatnot that it was compared, legal business was. In other words, if I go ahead, or if I would have requested this buckle brought out earlier, or if I would have requested it later, in light of the fact that it may not be brought in, I would have been telling the District Attorney, such as subpoena list that had to change because some of his witnesses weren't called that I had to recall.

THE COURT: Mr. Panetti, at this time I don't see how the belt buckle is relevant to any issue this jury is going to determine and so if you can't explain the relevance to me, I'm going to sustain the objection. Can you explain to me how the belt buckle is relevant to any issue in this case?

MR. PANETTI: Yes, I can, Your Honor. It has to do with jailhouse religion. It has to do what some men would do for a belt buckle. It has to do with the difference between a rodeo hand and a buckaroo poet. It has to do with my whole outlook and this will come up, God forbid, in the punishment stage.

Before religion, when you got religion, prior religion, church member, I'm going to have witnesses from the church come in and Chaplain Bob got on his knees and read that buckle, Ranger Cummings, read this buckle and people go out of their way. At rodeos cowboys make sure they look at your buckle without you looking at it.

33 RR 755-56.

Mr. Panetti called a veterinarian:

MR. PANETTI: Doc, briefly describe when you put down Little Blue. Remember we had to put down my little blue heeler?

DR. O'NEAL: Yes, I do. It was about the first time after you had moved in across the street that I had any dealings with you. You presented your dog for subtle symptoms of depression, drunkenness and over about a day's time, she became comatose and we put her to sleep.

MR. PANETTI: My dog was drunk?

DR. O'NEAL: Yes.

MR. PANETTI: My dog Blue was drunk?

DR. O'NEAL: Yes, on the first occasion, the dog I'm referring to.

MR. PANETTI: Little Blue was a drinker?

DR. O'NEAL: No, it was my opinion that –

MR. PANETTI: I was drunk?

DR. O'NEAL: No, you weren't drunk.

MR. PANETTI: The dog was drunk?

DR. O'NEAL: The dog was narcosed (sic). It was my opinion that, and I asked you, did you think this dog had consumed marijuana and you said "no," but it was my opinion that that was the case.

MR. PANETTI: Well, Doc, you're flat blowing my cookies. In light of the situation of everything that has happened, have you formed an

opinion of me or a dislike or has it consolidated your fear in – or have you changed your ideas? In other words, you didn't tell me nothing about, if – and correct me – about marijuana, dog being drunk and we're going to get into this a bit right here and nip it in the bud, sir.

36 RR 1220-21.

Mr. Panetti's confusion manifested itself repeatedly and, at times, even Mr. Panetti himself realized it:

THE COURT: Do you want to call Dr. Lenhoff?

MR. PANETTI: Yes. Dr. Simes said that he was happy to stay in the hill country and that I did get plenty of notification that Dr. Lenhoff – in other words, and also my son, Chase. I wasn't aware of what my – when my mother, when I was emotional – my mother became emotionally distraught when we called a recess. I wasn't aware of her. She said that my son said – and if it affected him, but I think you mentioned he wasn't a quashed; an agreement that he got the cowboy Bible and the T-shirt, and I guess I didn't want to have it end up in the dumpster on the way back, so I put his name, Chase Perry, you know, because I acknowledge the fact that they changed their names in light of this tragedy, but –

THE COURT: Hang on a second

MR. PANETTI: Your Honor, I'm having a little bit – I'm confused and I'm having a little bit of trouble, and I want to get this trial over with and I'm not throwing up a flag, but –

37 RR 1394.¹¹

Mr. Panetti was unable to obey the judge's repeated admonitions to avoid testifying about certain topics:

¹¹ On the first day of the trial, Mr. Panetti requested a continuance. He expressed his concerns about getting a non-drowsy medication so that he would be able to think clearly, because "I had problems with certain jurors that I couldn't think clearly enough to ask them a certain question and I declined to ask those questions." He argued that he needed to have medicine and see a psychiatrist so that he would "be prepared to cross-examine, to think clearly, to cross-examine witnesses clearly." 31 RR 13-17. The judge denied Mr. Panetti's request for a continuance.

THE COURT: Mr. Panetti, get to the LSD incident.

MR. PANETTI: And –

THE COURT: Right now.

MR. PANETTI: Right now. I went – now, my military records, sir, this is thick, and I'm going to make it that thick, but I'm just going to briefly move to the LSD incident.

THE COURT: Go straight to it right now.

MR. PANETTI: Okay. They – they said, "You're so highly qualified."

THE COURT: No, straight to the LSD incident.

MR. PANETTI: Well, sir –

THE COURT: Go straight to the LSD incident.

MR. PANETTI: That was my third and final duty station, but right in the middle I'll just quickly touch a short stint.

THE COURT: No, don't touch on the short stint. Go straight to the LSD incident.

MR. PANETTI: First time I requested to see a psychiatrist, I thought that I might be disciplinarily, and they – I didn't know how to go about that. Straight to, okay, straight to. Your Honor, may I just briefly touch on the brief situation of – briefly to that incident?

THE COURT: No.

MR. PANETTI: It has relevance, sir.

THE COURT: No.

MR. PANETTI: It does have relevance, sir.

THE COURT: Go straight to the LSD incident.

MR. PANETTI: They said –

(At which time there was a long pause.)

MR. PANETTI: They said – they said, “What do you want to do?” I said, “Just let me run heavy equipment,” and they said, “No, you can’t. That’s full up. You can’t be in HCB.”

THE COURT: Mr. Panetti –

MR. PANETTI: And I’m coming right up to my first taste of LSD.

THE COURT: Stop. Ladies and gentlemen, we’re going to recess –

37 RR 1476-77.

Mr. Panetti made ludicrous objections to the admission of evidence:

MR. PANETTI: Your Honor, I object.

THE COURT: What is the basis of your objection?

MR. PANETTI: I object to the garbage. This evidence could have been brought in the courtroom in a neat and orderly fashion. The rifle is sitting there with a ragtag paper, paraphernalia. Already testimony has been made like the bunkhouse was a hippie shack. I don’t think that this, that the paper or the necessity for the jury to see us going through paper bags when this evidence could have been presented in a neat and orderly fashion. I just don’t think this is acceptable, and I also don’t think the jury should have or we have to go through the time. As a matter of fact, I would like to relieve myself, Your Honor, and this is taking time where I could have done so.

THE COURT: Objection overruled.

31 RR 244-45.

5. Testifying in His Own Defense

Mr. Panetti took the stand in his own defense at the guilt-innocence stage of the trial and proceeded to tell his life story in excessive detail, including: his birth, his mother’s milk sickness, his parents fighting, his near-drowning, his clothes and

haircut, his tattoo, a horse flipping over on him and his castrating that horse later, working with his father, farming, receiving military fatigues after his uncle returned from Vietnam, a school play, a girlfriend who got him into rodeo, his sexual experiences, his job as an artificial insemination technician for cattle, drinking, smoking marijuana, horses his family owned when he was growing up, riding a minibike, watching his friend who was a diabetic injecting insulin, his girlfriend's abortion, being a cowboy and bull rider, an automobile accident he was in, going into the Navy, intelligence training, being drugged with LSD and PCP in the Navy by a fellow soldier, his brother's wedding, taking cocaine with a nurse after leaving the Navy, talking with a man who worked for Frederick's of Hollywood who wanted him to model lingerie, his marriages, his near- electrocution, killing a rattlesnake, being an extra in a movie, attending cosmetology school and cutting his sister's hair, accidentally being shot in the leg, and seeing the devil. 37 RR

1447-1556. The judge admonished Mr. Panetti about the relevance of this testimony:

Mr. Panetti, for the last 35 minutes we have been listening to Navy stories that I do not deem relevant. I am not going to let you ramble and tell the jury your life story. I wouldn't let the State have a witness on and just ramble and tell his life story. I'm going to insist that you get to issues that you think this jury can use in making their determination of whether or not you're guilty or innocent of the charges against you.

37 RR 1478.

After a "long pause" noted in the record, Mr. Panetti assumed the personality of "Sarge" when he testified about the crime:

MR. PANETTI: Sarge, I'm Sarge and I woke up. I'm Sarge and I woke up and I looked in that mirror. I didn't like what I seen and I needed a haircut and that ain't a rag haircut. You need a haircut, and get it all off. Put on your uniform. Put on your web gear. There is a shotgun; knock the barrel off it. Get your web gear, your boots and grab Scott's 30.06. Scott – Sarge, you – why are you cutting your hair? Get it all off. Put on your web gear. Scott, what did Sarge do? Sarge did. Boots, jeans, unorthodox, special forces, not a Seal, a Navy commando. Sarge, Navy commando, web gear, no machete. Why the 30.06? It's Scott's. Comfortable, arms, shotgun, Ernie's, Ernie's.

I'm not going to explain from Scott's viewpoint what Sarge did. This is what Sarge did, Sarge woke up, cut off Scott's hair. Sarge suited up. Shells, canteen, pouch, 30.06, tropical hat, tropical top, bunkhouse, fast, haircut fast, suited up fast, boom, ready fast, fast, haircut, web gear, top, bush hat, boots, out the door, in the Jeep, driving, wife, the bridge. Why is it taking so long? In front of Joe and Amanda's house. Why? Canteen, canteen. Back of the house. Scott, 30.06, left hand, shotgun right hand, canteen right arm, tap, tap, tap. Shotgun comes apart. Shotgun, why?

Set down canteen, set down shotgun 30.06, can't drop it. What do you have guns for? What are you doing there?

Sarge, everything fast. Everything fast. Everything slow. Tapped on the window, shattered window. Sonja screams, runs, follow her. She runs out, out the front, knife, Birdie, Birdie. Where is Birdie? Pick her up. She's in bed.

Sarge, Sonja ran in the house, locked the door. Sarge shot the lock off the door, walked in. Birdie? Where's Birdie? Sonja, Joe, Amanda side by side. Where's Birdie? Clutching me, my leg? Where's Birdie? Asleep? No.

Joe, Joe, Amanda, no talking, no words, knife, Sarge knife, threatened, scared, fight, no. Sarge shoots, CC. Sarge turns, shoots, boom, boom. Where is Amanda? Mom is dead. Joe look up. No. Where's Birdie? Sonja bedroom. Birdie. Joe. Where's Amanda? Sarge, Sarge, left a bullet. Scott, what? Scott, what did you see Sarge do?

Fall. Sonja, Joe, Amanda, kitchen. Joe bayonet, not attacking. Sarge not afraid, not threatened. Sarge not angry, not mad. Sarge, boom, boom. Sarge, boom, boom, boom, boom. Sarge, boom, boom.

Sarge is gone. No more Sarge. Sonja and Birdie. Birdie and Sonja. Joe, Amanda lying kitchen, here, there, blood. No, leave. Scott, remember exactly what Sarge did. Shot the lock. Walked in the kitchen. Sonja, where's Birdie? Sonja here. Joe, bayonet, door, Amanda. Boom, boom, blood, blood.

Demons. Ha, ha, ha, ha, oh, Lord, oh, you.

THE COURT: Mr. Panetti, let's stop.

MR. PANETTI: You puppet.

THE COURT: Mr. Panetti, we're going to take about a five-minute recess.

MR. PANETTI: Your Honor –

THE COURT: We're going to take a recess, Mr. Panetti.

(At which time, the jury left the courtroom.)

MR. PANETTI: Your Honor, Scott was fixing to tell what Sarge did, Your Honor.

37 RR 1544-46.

6. Delivering Closing Argument at Guilt-Innocence Stage

Mr. Panetti delivered an incoherent guilt-innocence phase closing argument:

Ladies and gentlemen of the jury, I think that State will have more than a few comments, judging by the time allowed to respond to mine. Briefly, in 45 minutes you might wonder a little bit about when I testified, and Scott and Sarge and who talked and who talked about who and who talked about what and in light of Dr. Simes not being here, he did leave this letter and it will explain that and it has something to do about me showing you the tattoo and introduce you to Will, and I don't tell you Texas Will and Chaplain or Montana Will and go into that, and the evidence will, if you read that, look over that, might explain that. I wish you not to mistake charisma for sanity. Charisma is by definition a spiritual gift.

Briefly touching on just a few of the – demon dabbling is my understanding just a nonphysical being hostile to humans and God, caused by bad influences and disease, mental distress on human beings.

38 RR 1645-46.

7. Delivering Opening Statement at Punishment Stage

Mr. Panetti's opening statement during the sentencing phase is incomprehensible:

Briefly, I respect your verdict. I don't agree with it, but I respect it. I respect you all. Now, this business with Sarge and Scott and Will are baffling, but no the State did say – make it seem like this was an exact science, and, by golly, I brought in more veterinarians and experts, but the experts I brought in were honest, but it seems like it wanted to be an exact science and which it's – psychiatric is not. I don't know.

Political comprehension and conflict with medical evidence or nonevidence, personas, personalities. The ominous auras, acts of law and reference with conflicts, with truth, truth that's overly blatant, acceptance of calder(ph), unknowingly for convenience not danger not. I depend, as you, on the same deliberation and consideration as one presumed innocent, but see I was burdened with the proof of an affliction, so debilitating as not to know, N-O, K-O.

You have heard my death experiences. That in no way gave me any idea that life wasn't safe. Sarge, me, because I had died before and had my spiritual belief that I thought life was less sacred. You know better than that.

If I was a he or she was not a she, would that have made a difference to y'all, if it would have been a she instead of a he? I think not.

You didn't do what was convenient. You didn't. Need me – remember the "Where's Birdie? Where's the guns?" Trying to figure out.

Briefly, I do feel that my family was turned into a negative, and you saw I interrogated my own family to find out truisms that I wouldn't have done with another witness.

See 39 RR 17-23.

In the punishment phase, the prosecution called only two witnesses, including Dr. James Grigson, who testified that antipsychotic medications would not reduce the likelihood that Mr. Panetti would be a future danger to society. 39 RR 54, 60. Mr. Panetti called only a single witness, his standby counsel.

8. Delivering Closing Argument at Punishment Stage

Mr. Panetti delivered an unintelligible punishment phase closing argument:

You know, just to touch on the spat and wasn't cuffed, but I was bronc and Sheriff Kaiser and I had a talk, well, of the fact that I'm no longer American citizen, and because of my buckaroo case. I believe city people love horses, too, and I don't consider myself anything above or below anyone, but I do consider myself me, and when I made my last confession at Veterans Hospital to Father De la Garza, I wasn't Catholic.

39 RR 85. He was sentenced to death the same day. 7 CR 1033-38.¹²

¹² Less than two months after Mr. Panetti was sentenced to death, the trial court found him incompetent to waive the appointment of state habeas counsel. 43 RR 6-9. Mr. Panetti informed the court: "As far as I can grasp with the thought disorder I suffer with untreated, as I am now, in this condition I'm in now. I am in the process of deciding whether I wish to waive my appeals." 43 RR 7. He asked the court for "time with the proper medication to make a rational decision." 43 RR 7. The court then engaged in the following colloquy with Mr. Panetti:

THE COURT: Do you feel like anybody is forcing you to represent yourself?

MR. PANETTI: Yes.

THE COURT: And who? Who is forcing you to represent yourself?

MR. PANETTI: Part of my schizophrenic condition could be termed a sense of personal warfare within one's self. At this time, making a decision of this magnitude, I find very difficult.

THE COURT: Alright, so your request is that I not appoint you an attorney for writ of habeas corpus purposes?

G. Third-Party Observers

Dr. Wolfgang Selck, a doctor who treated Mr. Panetti at the Starlite Village Hospital in 1986, watched a day-and-a-half of the trial before he testified. Mr. Panetti never discussed the case or the questions he wanted to ask Dr. Selck before calling him to the stand. Affidavit of Wolfgang Selck, Ph.D., at 2, attached as Exh.

10). Dr. Selck described Mr. Panetti's behavior in the courtroom:

Scott literally enjoyed the spectacle of the Courtroom where he was the center of attention. Scott enjoyed the trial since he was getting attention and was being allowed to act like an attorney. Scott acted like a prima donna. I recognized this behavior as inappropriate since mentally ill persons act out inappropriately. . . . Scott wanted to show off and by being allowed to represent himself he had center stage. Scott was acting out a role of an attorney as a facet of the mental illness, not a rational decision to represent himself at trial. . . . The fact that he insisted on defending himself in my opinion is the best practical demonstration of his mental illness and incompetencies.

Scott was acting as his own attorney from his paranoid fear that the attorneys were out to get him. Due to the paranoia, Scott was lead [sic] by his mental illness to demand to represent himself. Since Scott could not trust lawyers to represent him, he had to represent himself. This decision was a facet of his paranoia and severe mental illness.

The testimony of Scott and his jury argument clearly showed to me that he was mentally ill. It was obvious to me because the inappropriate behavior is a clear sign of mental illness. Scott was inappropriate in his testimony and argument because he was not

MR. PANETTI: At this time, in the untreated state that I'm in, I don't feel competent to make that choice.

43 RR 7-8. The judge agreed: "I'm going to recommend to the Court of Criminal Appeals that they appoint a writ attorney for you in light of some of your feelings about your need for medication, that a waiver would not be voluntary and intelligently made at this time." 43 RR 9. Soon thereafter, Mr. Panetti wrote to the trial court that he wished to waive his right to direct appeal. The judge denied his request and appointed an attorney to represent him on direct appeal.

relevant and did not prove any relevant point. Scott gave a rambling presentation that showed he could not think clearly nor understand what information was important in his trial. The rambling nature of his talk shows a breakdown in his thought processes.

* * * *

In my opinion Scott's mental illness had an effect on the Jury that was visible. It was obvious from the appearance of the Jury that Scott antagonized them by his verbal rambling and antics. Scott was completely unaware of the effect of his words and actions. I observed in the Jury a complete negative reaction to Scott. Members of the Jury had hostile stares and looked at Scott in disbelief while he rambled and made no sense. The Jury seemed to see Scott as putting on a show. Scott was unable to see the totally negative impact of his mental illness on the Jury. I saw Scott's ramblings and antics as a sign of his clear incompetence. I suspect that members of the Jury as lay persons saw Scott and thought he was normal and pretending to be mentally ill. . . . When I observed Scott in 1995, it was obvious that his mental illness was preventing him from representing himself and adversely affecting the Jury deciding his case.

* * * *

The trial gave Scott the opportunity to get the attention that a paranoid person so desperately needs. Scott needed to represent himself out of the delusion that he alone could defend himself. Scott wanted recognition as an attorney and got the Judge to allow him center stage. In Court, Scott did not perform as an attorney should before a Jury. Scott could not perform properly because of the mental illness. The mental illness caused Scott to fail to recognize the importance of the Jury. In his mind the Jury was not important. What was important to Scott was the recognition of the Judge, the District Attorney, witnesses and the public that Scott was an attorney in the Courtroom. By being his own attorney he would be allowed to speak directly with witnesses, the Judge and the District Attorney. By being his own attorney he would be allowed to be as important as the attorneys in the Courtroom, the Judge and the District Attorney. It was more important to Scott to act like he was an equal regardless of the consequences of his actions. Scott failed to understand that the Jury was deciding his fate and that his words and actions would affect their verdict. Scott was completely satisfied that he was the center of attention of the Judge, the District Attorney and the witnesses and

public in the Courtroom. What Scott completely failed to understand was that he needed an attorney to perform the role of his advocate for his case. What Scott wanted was to take over the Courtroom and do what he pleased and say what he wanted. The Jury was irrelevant to Scott. The Jury's decision was irrelevant to Scott.

* * * *

There is no question in my mind that Scott was incompetent at his trial. I base my opinion on my prior observations of Scott and what I saw in the Courtroom. Scott's questions and conduct were bizarre and reflected a break from reality.

Id. at 3-5.

Mr. Panetti also called Dr. F.E. Seale, a psychiatrist who treated him at the Starlite Village Hospital in 1986, to testify at the capital murder trial. Dr. Seale had an opportunity to watch Mr. Panetti in court for an entire day. Dr. Seale described his impressions of Mr. Panetti's behavior:

When I observed Scott in September 1995 at his trial, I would describe Scott as delusional.

* * * *

My main impression was why was the Judge allowing this crazy man to defend himself. I thought to myself, "My God. How in the world can our legal system allow an insane man to defend himself? How can this be just?" I not only thought Scott was incompetent, but, that it was not moral to have him stand trial. It was terribly wrong. I did not know that our legal system would allow an insane man to represent himself in his own trial.

* * * *

Scott's incompetency was obvious. He was absolutely not competent. Scott had no semblance of being rational. Scott was acting out a role that was a delusion of a specific war hero. He described the shooting in the role of Sarge. He acted out the role in the Courtroom. Scott was totally out of touch with reality. He had no knowledge of the effect of

his actions in Court. I think that Scott was enjoying playing the role of Sarge. This is a sure sign of obvious mental illness.

The main thing that I specifically remember about Scott was his manner and the grandiosity of his ideas. Scott enjoyed being an attorney describing his role in the crime. The Court allowed Scott to perform.

Affidavit of F.E. Seale, Ph.D., at 1-2, attached as Exh. 11).

Mr. Panetti called Meridel S. Solbrig, an attorney who represented him in his divorce from his first wife and acted as his payee for his Social Security mental disability benefits. Ms. Solbrig had an opportunity to watch Mr. Panetti's performance in the courtroom before she testified:

There is no question in my mind that Scott was incompetent at his trial. I base my opinion on my prior observations of Scott and what I saw in the Courtroom. Scott's questions and conduct were bizarre and reflected a break from reality. Scott asked me if we had a sexual relationship and whether we had kissed. Scott accused me of being in cahoots with the system. The specific information that I had on his inability to understand and function was not presented since he was unable to question me. I had information that showed he had a serious mental illness that had caused him to suffer a number of complete breaks from reality. Scott was unable to question me to present this information on his lack of sanity and incompetency to stand trial.

Scott's conduct was bizarre in part due to his unusual dress which I can only call a costume. Scott was more concerned with his dress and appearance than the reality of his Capital Murder trial.

The Courtroom had the atmosphere of a circus. The Judge just seemed to let Scott run free with his irrational questions and courtroom antics.

Affidavit of Meridel S. Solbrig at 2-3, attached as Exh. 12).

Mr. Panetti called S. Preston Douglass, Jr., the defense attorney whom he had fired. Douglass described the affect Mr. Panetti's behavior had on some of the jurors:

After the verdict, I spoke with a couple of jurors who had sat in Scott's case. . . . They basically told me the same thing. They said that if Scott had been represented by attorneys that he would not have received the death penalty. [One juror] told me that the goofy things Scott said and did scared the jury. They knew he had a long term mental history, but because he scared them they voted for death.

In my opinion, Scott was not competent to represent himself nor stand trial during his capital murder trial.

Affidavit of S. Preston Douglass, Jr., at 2, attached as Exh. 13).

As standby counsel, Scott Monroe had an opportunity to closely watch Mr. Panetti's performance at trial:

Scott was paranoid of a big conspiracy that everyone was out to get him. He had to represent himself to prove insanity. Scott was not on any psychotropic medication during the trial. I talked to Scott to allow attorneys to represent him. I literally begged him, but it made no difference. I had his sisters and family try to talk to him to let the attorneys handle his case. He did not understand that he could not adequately represent himself.

* * * *

Scott's incompetence affected his case. Bruce Curry, the DA, had put Scott's ex-wife Sonja Alvarado on the stand on the first day of testimony. She was [Scott's] first witness. It was her parents that Scott had killed. After Scott's bizarre questions and actions to Sonja, the Jury was ready to give him the death penalty. Scott angered the Jury by his demeanor and actions. I tried to advise Scott on the method of questioning his ex-wife, but he did not listen. I told him not to go over the shooting and other details of the family that were not relevant. It did no good to advise Scott.

Scott was repeating questions. He was splitting hairs with the witnesses on the confession. Scott was calling witnesses that had nothing to do with insanity.

* * * *

When Scott testified, it looked like he went into a trance. . . . Scott had his head down, not looking at the Jurors, although he was seated directly by them. Scott recalled, in his trance-like state, the details of the shooting, reciting what happened in the third person as a dialogue

. . . . Scott was pointing his hand out across the jury box like he was shooting as he recited “Boom, Boom, Boom.” Scott’s head was down as he spoke while he pointed at the jury with the booms. He could not see the reaction of the Jury. The Jury was visibly upset by the pointing demonstration. I had seen the Jurors who were sitting closest to Scott move away when he sat down. Now he was blindly pointing at the panel while he spoke of “Sarge shooting Joe and Amanda Alvarado.” This was a show of a mentally incompetent man and did more to give him the death penalty than any other event in trial.

* * * *

This was not a case for the death penalty. Scott’s life history and long term mental problems made an excellent case for mitigating evidence. Scott did not present any mitigating evidence because he could not understand the proceeding. He obviously thought that this courtroom “show” would be enough. Although many friends and family were available to testify, Scott only called me at punishment to rebut a statement that Dep. Gideon had made about Scott. I tried to make Scott realize what mitigation meant. I do not think that he understood the concept or how to present evidence or argue for mitigation in his own case. In my opinion, there was much to present, but he was mentally incapable of showing the evidence.

* * * *

After the trial, I spoke with a couple of Jurors who told me that Scott probably would not have received the death penalty if his case had been handled differently. . . . In short, the jury was grossly “over-exposed” to Scott. Since Scott presented no real evidence of insanity other than his own behavior, the jury had no trouble with a guilty verdict. Unfortunately, they were also scared to death of Scott and they were fearful that somehow, someday Scott might get out of prison. They gave him the death penalty to avoid this possibility.

* * * *

Scott was not able to represent himself due to his mental incompetence. His bizarre actions and words affected witnesses and the Jury. Scott was not able to rationally understand his death penalty trial. I believe that his incompetence brought him the death penalty. In simple terms, by representing himself he hung himself. . . . [H]is trial was truly a judicial farce, and a mockery of self-representation.

Affidavit of Scott Monroe at 2-6, attached as Exh. 7).

Jessica McBride, a friend of Mr. Panetti's family, watched most of the trial. She was convinced that Mr. Panetti should never have been allowed to represent himself:

The questions that Scott asked the daughter of his victims, his ex-wife, were absolutely crazy and ridiculous. The questions were totally irrelevant, totally irrational. The questions just seemed to come out of thin air.

* * * *

Scott got away with questions for five (5) hours. In all this time, nothing was gained. Scott scored no points through cross-examination. His questions were completely without thought. The questions were irrelevant. I felt like that Scott was digging his own grave. . . . By the time that Scott had finished questioning Sonja, he had made me angry. His bizarre conduct had a negative effect on anyone who listened. The questions were not made in a mean spirit by Scott. The questions were just so bizarre. No one in their right mind would have this trial strategy. It was completely inappropriate.

* * * *

The trial was a joke. It was a big fiasco. The Judge did nothing to rein in Scott.

* * * *

I believe that he received the death penalty because an insane man was allowed to be his own attorney.

Affidavit of Jessica McBride at 3-4, attached as Exh. 8.

Mr. Panetti's younger sister, Victoria, witnessed his behavior in court and found it unfathomable that he was allowed to represent himself:

I knew that Scott was out of it in court. Scott wore some special cowboy outfit from the old west. His dress was so inappropriate and costume like. Scott was narcissistic to a flaw. This was his day in the sun as his own attorney. It was sad and foolish. When he asked questions they often did not make sense. He did not ask relevant questions. It was obvious to me that he did not understand the capital murder proceeding. . . . In his opening, he was not concise. He would drift and ramble. Scott could not get to any point. He was really out there. Scott was not normal. His statements were not well thought out. He seemed totally unaware of the effect he was having on the jury. Scott did not seem to get it that no one thought he was making any sense.

The questions to Sonja were terrible and awful. You could see the members of the jury cringe and get angry with Scott. The looks of frustration on their faces was obvious to everyone but Scott. He was in his own world. Scott used the sounds of the rifle firing "Boom, Boom, Boom," in a matter of fact voice. He was not yelling, but it was so strange.

* * * *

When I was on the stand, Scott did not ask me relevant questions. His questions did not seem to get to any point. I felt that it was a waste of time. I had a lot to say about Scott.

* * * *

I believe that my Brother was not competent at his capital murder trial. Scott did not understand that his actions were going to get him the death penalty. . . . Scott's words and actions were not rational. Scott was not normal and acted so bizarre. Scott could not see the present reality clearly. Scott could not see into the real future. Scott was totally absorbed in his narcissistic persona and was not able to see

reality. I think that justice broke down in my brother's trial. It was not fair to let a mentally ill man be his own attorney when he did not know what he was doing. I am sorry to say that the trial was a farce. It was a circus like atmosphere. I never expected justice to allow this.

Affidavit of Victoria Panetti at 3-4, attached as Exh. 14.

Tom Panetti, who watched most of the trial, described his younger brother's conduct:

Scott was really enjoying himself and called witnesses just to socialize with the people so that he could see all of his friends. I don't think my brother realized what he was doing at trial. This trial was a sick situation. There's no question in my mind that my brother was mental[ly] ill in his trial.

* * * *

He asked irrelevant questions. He made irrelevant statements to the judge and jury. There were questions that Scott repeated. There were words that Scott learned and then he would use the words. Scott would hear a legal word and he would use that. Scott didn't know what the word meant but he used it as he heard it. Scott tried to put legal terms on his words. Scott struggled so much to try to make sense.

* * * *

There were times when Scott would just lose it. When Scott would start getting out of hand, the Judge would call a recess and send the jury out At the recess, we would try to talk to Scott. Scott would sit in a back room and could smoke. When Scott got excited he would lose it due to the pressure of the trial.

* * * *

My family was taking notes because we could tell Scott was forgetting questions. If somebody would write a note, they would pass it to the deputy who would pass it to Scott. Scott didn't know what to ask and only used some of it. My family would send Scott questions about people we knew that he had called to remind him to ask things that we knew had happened. My mother, Yvonne, thought it was unseemly that we were passing notes to Scott. The whole trial was a circus.

Affidavit of Tom Panetti at 1-2, attached as Exh. 15.

Mr. Panetti's sister-in-law also described his bizarre appearance and antics in the courtroom:

I couldn't believe how Scott was dressed in Court. Before trial, Scott had been calling Tom to send certain clothes to him. Scott had to have a cowboy hat with a certain band that was just a certain way. The hat had to have some certain types of holes or rivets just a certain way. Scott described exactly how it was. Tom had to order it just so for Scott. Scott specified exactly what kind of shirts he would have, Scott had two shirts. Scott had to have pants, boots and a watch just a certain way. Scott's mother, Yvonne, had sent Scott a watch. It wasn't good enough for Scott. Scott sent it back. He had to get another one. There was a horseshoe ring that Tom sent Scott. It was very important for Scott. . . . It was so bizarre that he talked about his clothes. It was important to Scott the way he was dressed. His trial did not matter. He wore his pants all hiked up with the suspenders. His pants were pulled up into his crotch and stuck between his buttocks. It was very unusual to watch him walk around with his pants pulled up so high.

* * * *

When I saw him question Sonja, I thought it was just a circus. I thought that everybody could see that he was nuts. The questions he would ask, he would go over and over a point with her. Scott would just not ask one question and go on to the next question. He asked questions about how he shot her parents over and over again. Scott was dancing around the courtroom imitating his actions

Affidavit of Marcia Panetti at 1-2, attached as Exh. 16.

Yvonne Panetti, Mr. Panetti's mother, watched the entire trial. She described her son's behavior:

Scott was very ill and could not act in his own best interest. Scott was most concerned with his dress and appearance since he was allowed to be his own attorney. Scott wore different costumes of his western style dress. The trial was a circus where my mentally ill son was allowed to be the fool so the District Attorney could get the Death Penalty.

All of the witnesses were sitting in the Courtroom watching the spectacle of Scott listening to what the witnesses were saying. When Scott would need to call his next witness, he would stand and look at the spectator seats to find his next witness. I could see that Scott had no order or sense to who he called as a witness. Scott just looked for a familiar face. I think that he saw the trial as a chance to visit with old friends of his and our family. Scott could not make any sense. He had not talked to anyone that he called as a witness. Scott thought that this was important. This meant that he did not know what was going on.

Affidavit of Yvonne Panetti at 3-4, attached as Exh. 17.

H. Expert Analysis

Prior to filing the initial state habeas petition, counsel for Mr. Panetti asked Dr. Michael R. Arambula, a forensic psychiatrist, to review medical records, conduct a clinical interview, and read the trial transcript. Dr. Arambula's report contains several insights about Mr. Panetti's behavior during the trial:

Medical records reveal that Mr. Panetti stops taking his own medication in the months preceding his trial. As a result, and factoring in the stress of a trial upon any defendant much less one representing himself, any clinician can reasonably foresee that Mr. Panetti's symptoms would worsen, *i.e.*, that Mr. Panetti would become more ill. The trial record corroborates my clinical acumen. Having the opportunity to review Mr. Panetti's testimony during his trial, I can observe his underlying psychiatric disturbance – word for word. Additionally, observing his communication in court reflects upon his overall thought processes and how it has been impacted by psychiatric disease. There are numerous incidents in Mr. Panetti's trial when he exhibits flight of ideas and grandiosity (symptoms of mania), but there are even more examples of looseness of associations and tangentiality in his thought processes (symptoms of Schizophrenia). Example after example of the court repeatedly redirecting Mr. Panetti to stay on line with relevant evidence is a stark example of how he cannot think and communicate rationally because of his underlying disease. It is certainly understandable from a lay point of view how frustrating it was for the court, particularly not appreciating that Mr. Panetti's

disease was the reason for his inability to comply with the judge's requests.

* * * *

His trial testimony – word for word – shows remarkable looseness of associations and tangentiality throughout his trial. These are symptoms of his disease and he cannot reasonably control them without the aid of medications. Without medications treating these symptoms, it is understandable how Mr. Panetti would lose his ability to communicate accurately and rationally with others.

* * * *

Although the trial court accepts Mr. Panetti's waiver of counsel and allows him to represent himself, Mr. Panetti's testimony indicates that he is cognitively impaired by his own thought disorder. Even though Mr. Panetti's choice to represent himself is a personal decision, his ability to carry out this personal decision is still limited by his psychotic disease. Mr. Panetti's thought disorder renders his thinking incoherent, illogical, and goal non-directed. . . . As a result of his thinking disturbance, and whether or not Mr. Panetti expresses a personal choice to defend himself, his ability to comprehend, understand, assimilate, and finally communicate his ideas and perceptions and thoughts to others will all be limited by his psychosis. Under the constraint of such a severe thought disturbance, Mr. Panetti . . . would not retain the ability to rationally understand and communicate with his counsel, much less participate in his own self defense.

* * * *

As a result of his unmedicated state, Mr. Panetti's disease process deteriorates to such a level that he was subject to persecutory delusions, and severe disturbances in his thinking (and ability to communicate with others). His decision to waive his own counsel was under the influence of persecutory delusions, and his ability to represent himself in court was substantially impaired by disturbances in his thought processes (looseness of associations, *et cetera*).

Report of Michael R. Arambula, M.D., R.Ph., at 6-7, attached as Exh. 6.

I. The Court's Review of the Evidence

Although Mr. Panetti raised an insanity defense to the capital murder charge, the prosecution saw no need to call rebuttal witnesses: Over half of the witnesses Mr. Panetti called at the guilt-innocence stage were family members or friends; three were veterinarians. The State argued on direct appeal that “all of the medical testimony [Mr. Panetti put on] was subject to serious relevance considerations because of the time frames involved.” Appellee’s Brief at 34. The State noted that Dr. Seale had last treated Mr. Panetti more than five years before the crime; Dr. Ramsey had not seen Mr. Panetti in six years; and Dr. Waters did not see Mr. Panetti until two years *after* the crime. *Id.* at 33-34. In addition, the State was at a loss to explain Mr. Panetti’s failure to call Dr. Richard Coons, a psychiatrist who examined Mr. Panetti much closer to the time of the crime and testified on his behalf at the competency-to-stand trial proceedings. *Id.* at 34 n.5.

The Texas Court of Criminal Appeals agreed, noting that “not all of the witnesses gave testimony relevant to the issue of insanity.” *Panetti v. State*, No. 72,230 (Tex. Crim. App. Dec. 3, 1997) (unpublished), slip op. at 7 n.6. Moreover, the Court pointed out, “[Mr. Panetti] presented no evidence regarding his mental state at the time of the offense other than his own testimony and speculations by doctors who had not seen him in six years.” *Id.* at 10. The Court emphasized that the evidence Mr. Panetti did present about his previous mental health diagnoses did not address the crucial component of the insanity defense: whether he knew right from wrong at the time of the offense. *Id.*

J. Mr. Panetti Should Not Have Been Permitted to Represent

Himself at Trial.

Compelling evidence of Mr. Panetti's disorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses appears on nearly every page of the trial transcript. His utter failure to defend himself undermined the reliability of the trial and sentencing proceeding. Jurors were both skeptical and afraid of Mr. Panetti. Although mental illness is typically considered a mitigating factor, it may become an aggravating factor if the jury views the mentally incompetent defendant as dangerous. Even when a mentally impaired *pro se* defendant is not threatening, his defense may be compromised if the jurors think he is "putting on a show" instead of actually participating in a serious legal proceeding. See Ralph Blumenthal, *Insanity Issue Lingers as Texas Execution Is Set*, N.Y. Times, Feb. 4, 2004. This concern is especially acute when a *pro se* defendant like Mr. Panetti argues – and attempts to demonstrate to the jury – that he is insane. Jurors can become confused regarding the actual legal arguments presented by a *pro se* defendant who acts in an incoherent and extremely bizarre manner. In short, when a seriously mentally ill defendant like Mr. Panetti represents himself, a trial can quickly devolve into a circus, undermining the public's confidence in judicial institutions.

Had the trial judge not permitted Mr. Panetti to represent himself at trial, he might have been represented by counsel who could have made a compelling case

that his schizophrenia rendered him insane at the time of the crime or served as a potent mitigating circumstance.

Unfortunately, with Mr. Panetti at the helm, his insanity defense was abysmal. Although the crime was preceded by 14 hospitalizations over 14 years, he presented no relevant medical evidence. The prosecution did not need to call a single witness to rebut his insanity defense. And the prosecution had the sense to leave alone Mr. Panetti's train-wreck narrative on the witness stand: He was not cross-examined. Unsurprisingly, the jury rejected his insanity defense and, after he called one witness (his standby counsel) at punishment, it sentenced him to death.

The record amply reflects that Mr. Panetti's self-representation led directly to his conviction and death sentence. Allowing this severely mentally ill man to represent himself was akin to having unconscious counsel or no counsel whatsoever.

K. But for an Accident of Timing, The Supreme Court's Ruling in *Indiana v. Edwards* would have Prevented Mr. Panetti from Representing Himself at Trial.

In *Indiana v. Edwards*, 1554 U.S. 164 (2008), the Supreme Court recognized that the State's can place limits on self-representation and require counsel for severely mentally ill defendants who are competent to stand trial, but incapable of mounting a coherent defense. Practically, *Edwards* means that courts can insist that severely mentally ill defendants accept the appointment of defense counsel.

The Supreme Court clearly had Mr. Panetti in mind when it decided *Edwards*. Quoting one of the physicians who treated Mr. Panetti years before the offense, the Court explained:

[P]roceedings must not only be fair, they must appear fair to all who observe them. An amicus brief reports one psychiatrist's reaction to having observed a patient (a patient who had satisfied Dusky) try to conduct his own defense: "[H]ow in the world can our legal system allow an insane man to defend himself?"

Id. at 177 (citation and internal quotation marks omitted). That same *amicus* brief pointed to Mr. Panetti's case as an example of "national media attention [that] focuses on the most egregious cases of the mentally impaired representing themselves, shattering the public's confidence in its own justice system." Brief for State of Ohio et al. as Amici Curiae 24.

Edwards was decided on June 19, 2008, nearly 13 years after the trial judge in Kerrville allowed the floridly psychotic Mr. Panetti to represent himself at his death penalty trial. In 2008, Mr. Panetti sought to re-open his case as a result of *Edwards*. The Fifth Circuit held that the law bars the retroactive application of *Edwards* to his claim for collateral relief. *Panetti v. Stephens*, 727 F. 3d 398, 414-15 (5th Cir. 2013).

Had qualified capital defense counsel represented Mr. Panetti, it is likely his death sentence would have been averted. It is likely that he would have accepted the life-saving plea that he was offered (and rejected) or, alternatively, that jurors would have heard evidence from mental health professionals about his long history of mental illness and treatment and would have avoided sentencing him to death, either by finding him not guilty by reason of insanity or by voting to impose a life sentence.

It is right and proper for this body to recommend a grant of clemency where the law fails to provide an adequate remedy. Governor Perry recognized this duty when, on the recommendation of a 6-1 vote by this body, he commuted to life imprisonment the death sentence of Kenneth Foster, who was condemned under the law of parties for driving the car in which the actual shooter was riding. Said Governor Perry:

After carefully considering the facts of this case, along with the recommendations from the Board of Pardons and Paroles, I believe the right and just decision is to commute Foster's sentence from the death penalty to life imprisonment. . . . "I am concerned about Texas law that allows capital murder defendants to be tried simultaneously, and it is an issue I think the legislature should examine.

Press Release, *Perry Commutes Death Sentence* (Aug. 7, 2007), available at <http://governor.state.tx.us/news/press-release/118/> (last visited Nov. 9, 2014).

This body's duty to recommend the granting of mercy where the justice system has failed a defendant is never more exacting than it is in this case. This body is Mr. Panetti's last resort. An accident of timing has left the courts without the ability to undo the conviction and death sentence that resulted from his deluded decision to represent himself. It is for that reason that mercy is sought here.

L. Conclusion

Any objective reader of the record must reach the painfully obvious conclusion that Mr. Panetti's *pro se* performance was abysmal, his trial an abomination. Pitting a skilled prosecutor against a severely mentally ill defendant who lacks the capacity to defend himself cripples the adversarial system's search for

truth. The trial judge's decision to allow Mr. Panetti to represent himself can no longer withstand scrutiny, but there is no procedural mechanism to overturn that decision. Because Mr. Panetti's conviction and sentence were reached in a fundamentally unfair manner, and because of the uncertainty injected into the case by allowing a manifestly and profoundly mentally ill defendant to represent himself in a death penalty proceeding, this body should recommend that clemency be granted and, specifically, recommend that the Governor of the State of Texas: (a) Grant a reprieve of Mr. Panetti's execution for 180 days to permit a full and fair inquiry into Mr. Panetti's competence to be executed; and thereafter, (b) Commute Mr. Panetti's death sentence to life in prison.

II.

A REPRIEVE IS NECESSARY BECAUSE MR. PANETTI'S COUNSEL RECEIVED NO FORMAL NOTICE OF HIS EXECUTION DATE, WHICH HAS IRREPARABLY HARMED THEIR EFFORTS TO ENSURE THAT AN INCOMPETENT MAN IS NOT EXECUTED.

At the request of the office of the district attorney who prosecuted Mr. Panetti, the 216th Judicial District Court on October 16, 2014, signed an Order setting Mr. Panetti's execution date. At no time did the judge, the 216th Judicial District Attorney, or the Texas Attorney General advise Mr. Panetti's counsel – who have represented him for nearly a decade – that an Execution Warrant had been issued, let alone that they were seeking the setting of an execution date. Instead, Mr. Panetti's counsel learned of the execution date two weeks after it had been set – and barely a month before the execution was to be carried out.

Counsel for Mr. Panetti could not raise a current claim of incompetency until the federal courts resolved his previous claim of incompetency and his execution was imminent. *See Stewart v. Martinez-Villareal*, 523 U.S. 637 (1998). Mr. Panetti obtained a stay of execution in February 2004. That stay was not lifted until the United States Supreme Court denied his petition for writ of certiorari on October 6, 2014.

At the time of the setting of the execution date, Mr. Panetti had not been evaluated for execution competency in nearly seven years – and, at the time of this filing, he still has not. At the same time, the federal courts have twice made factual findings, in 2004 and again in 2008, that Mr. Panetti is severely mentally ill and suffers from paranoid delusions. These paranoid delusions center on Mr. Panetti's belief that his execution is being orchestrated by Satan, working through the State of Texas, to put an end to Mr. Panetti's preaching the Gospel of Jesus Christ to the condemned and to shut him up about corruption at the Texas Department of Criminal Justice. Despite suffering from severe mental illness, Mr. Panetti has received no mental health treatment during the time since his last evaluation for competency to be executed.

To meet the threshold standard set out in Article 46.05, the statutory procedure for determining competency for execution, counsel must have access to the materials necessary for an expert to make an objective and reliable assessment of competency. Such an assessment requires the collection of extensive social history records and documentation, including medical, psychiatric, and prison

records. See, e.g., P.A. Zapf, et. al, *Assessment of Competency for Execution: Professional Guidelines and an Evaluation Checklist*, 21 BEHAV. SCI. LAW 103 (2003); Bruce Ebert, Ph.D., J.D., ABPP, *Competency to Be Executed: A Proposed Instrument to Evaluate an Inmate's Level of Competency in Light of the Eighth Amendment Prohibition Against the Execution of the Presently Insane*, 25 LAW & PSYCHOLOGY REV. 29 (Spring 2001). Counsel must review those records to identify and interview collateral witnesses, such as TDCJ correctional and treatment staff, as well as inmates, who are familiar with Mr. Panetti's severe mental illness over the past seven years. Counsel must also identify and consult with a mental health expert who is available to conduct a preliminary evaluation of Mr. Panetti.

On November 7, 2014, the State provided counsel for Mr. Panetti with nearly 1,500 pages of records from the Texas Department of Criminal Justice. Despite the volume of records, they are incomplete. The State has failed to provide a comprehensive set of Mr. Panetti's medical and classification records from the past seven years to the present. Plainly and simply, there is not enough time before the scheduled execution date for counsel to finish all of the tasks essential to drafting a complete claim that Mr. Panetti is presently incompetent for execution.

That the federal courts previously have found Mr. Panetti competent to be executed does not preclude Mr. Panetti from now having a meritorious claim that he is currently incompetent. The Supreme Court has recognized that execution competency is not a static determination. *Ford v. Wainwright*, 477 U.S. 399, 429 (1986) (O'Connor, J., concurring in the result in part and dissenting in part). The

Eighth Amendment prohibits the execution of inmates who are *presently* incompetent. *Id.* at 409-10 (majority opinion). Mr. Panetti was last evaluated in November and December of 2007. The federal district court and the Fifth Circuit reviewed his competency based on those evaluations, now seven years old. He has not faced an execution date in nearly eleven years, when the federal district court stayed his previous execution scheduled for February 5, 2004. The records indicate that Mr. Panetti has a lengthy history of mental decompensation under times of stress. Prior competency evaluations are outdated and cannot appropriately account for the stressors in Mr. Panetti's life now that his execution is imminent. A prior determination of competency does not defeat a claim of present incompetence.

Nor would Mr. Panetti's rights be protected were counsel, due to the inordinately short time before the execution, to file an incomplete Article 46.05 motion for a determination of execution competency. An incomplete motion would have implications on Mr. Panetti's ability to obtain review of his competency claim in state court. Should counsel file an incomplete application that the trial court then denies, that denial "creates a presumption of competency and the defendant is not entitled to a hearing on [a] subsequent motion filed under this article, unless the defendant makes a *prima facie* showing of a substantial change in circumstances sufficient to raise a significant question as to the defendant's competency to be executed at the time of filing the subsequent motion under this article." Tex. Code Crim. Proc. art. 46.05(e). Accordingly, Article 46.05 imposes

additional burdens on Mr. Panetti if he fails to make a threshold showing by filing an incomplete motion.

On the other hand, if counsel do not file the motion at least 21 days in advance of the execution date, then Mr. Panetti cannot appeal the trial court's ruling to the Texas Court of Criminal Appeals, should the trial court find he has not made a substantial threshold showing of incompetence. *See* Tex. Code Crim. Proc. art. 46.05(1-1). The 21-day deadline is today, November 12, 2014. On November 6, 2014, Mr. Panetti's counsel brought all of this information to the attention of the trial court in an effort to obtain the withdrawal or modification of the execution date. The trial court denied the request. Furthermore, despite Mr. Panetti's indigency, the trial court refused to appoint and compensate undersigned counsel to represent Mr. Panetti in the Article 46.05 proceedings, or provide funds for counsel to hire an investigator or retain a mental health expert.

The United States Supreme Court held – in Mr. Panetti's own case – that the procedure for determining an inmate's competency for execution must comport with due process under the Eighth and Fourteenth Amendments. *Panetti v. Quarterman*, 551 U.S. 930 (2007). Since then, Mr. Panetti's case has attracted an enormous amount of attention among legal scholars, many of whom have expressed concern that Mr. Panetti's right to be competent when executed is inadequately

protected.¹³ Texas's refusal to provide a meaningful opportunity to raise and litigate the issue of Mr. Panetti's present competency exacerbates these concerns.

The compressed time schedule imposed by the lack of notice of Mr. Panetti's execution date, as well as the trial court's refusal to provide auxiliary defense services, has compromised counsel's ability to inquire into Mr. Panetti's competency to be executed. To ensure that the Article 46.05 proceeding is meaningful, this body should grant Mr. Panetti a 180-day reprieve from the currently scheduled execution date so that his counsel have sufficient time to obtain and review pertinent records, consult with a mental health expert who can conduct a preliminary evaluation of Mr. Panetti, and draft a complete and comprehensive Article 46.05 motion that can be reviewed by the Court of Criminal Appeals.

III.

**THERE IS A CONSENSUS THAT MR. PANETTI
SHOULD NOT BE EXECUTED AND FOR THAT REASON
HIS SENTENCE SHOULD BE COMMUTED TO LIFE.**

13 See Jacob M. Appel, *Capital Punishment, Psychiatrists and the Potential "Bottleneck" of Competence*, 24 J.L. & Health 45, 69 (2010); Paul S. Appelbaum, *Death Row Delusions: When is a Prisoner Competent to be Executed?*, Law & Psychiatry 1258-60 (Oct. 2007); Danielle N. Devens, *Competency for Execution in the Wake of Panetti: Shifting the Burden to the Government*, 82 Temp. L. Rev. 1335, 1363-65 (2010); Jonathan Greenberg, *For Every Action There Is A Reaction: The Procedural Pushback Against Panetti v. Quarterman*, 49 Am. Crim. L. Rev. 227, 248 (2012); Chris Koepke, *Panetti v. Quarterman: Exploring the Unsettled and Unsettling*, 45 Hous. L. Rev. 1383, 1395 (2008); Lauren E. Perry, *Hiding Behind Precedent: Why Panetti v. Quarterman Will Create Confusion for Incompetent Death Row Inmates*, 86 N.C. L. Rev. 1068, 1069, 1079 (2008); Robert A. Stark, *There May or May Not Be Blood: Why the Eighth Amendment Prohibition Against Executing the Insane Requires a Definitive Standard*, 41 Creighton L. Rev. 763, 786- 89 (2008); Carol S. Steiker, *Panetti v. Quarterman: Is There A "Rational Understanding" of the Supreme Court's Eighth Amendment Jurisprudence?*, 5 Ohio St. J. Crim. L. 285, 300 (2007).

The State of Texas stands nearly alone in demanding the execution of Mr. Panetti.

Sonja Alvarado Panetti, the daughter of Joe and Amanda Alvarado, went on record only four years after Mr. Panetti's trial that she did not hate him and she did not want him executed for the deaths of her parents. *See* Sonja Alvarado Affidavit, attached as Exh. 18. In her statement, Ms. Alvarado disclosed that the Gillespie County Sheriff hid from her his knowledge that Mr. Panetti had a longstanding mental illness. *Id.* at 2-6. Two weeks before the murders, after Mr. Panetti threatened her parents, Ms. Alvarado and her parents begged the police to take Mr. Panetti's guns from him, but the police refused. *Id.* at 4. Notwithstanding Mr. Panetti's actions, Ms. Alvarado concluded:

I do not hate Scott. I hate what he did. Scott was a good person except when he changed. He would go from a quiet and polite person to yelling and a bad temper. At first, I didn't think it was mental illness, but now I realize Scott was not normal. When Scott was on his medicine, he was fine and normal.

* * * *

I know now that Scott is mentally ill and should not be put to death.
Id. at 5 & 6.

Joining Sonja Alvarado in the conviction that Mr. Panetti's severe mental illness does not warrant use of the death penalty, and urging the granting of clemency in this case are:

- Several of the nation's and Texas' leading mental health organizations and more than 20 mental health professionals and/or experts on mental health issues in the law;

- More than 50 Evangelical Christian leaders from Texas and across the country;
- 30 prominent individuals, including a former Governor, former state Attorneys General, former federal and state court judges, prosecutors, U.S. attorneys, Department of Justice officials, parole board members, and legal practitioners from Texas and across the country;
- Active and retired bishops of the United Methodist Church;
- A leading organization for family members of homicide victims; and
- The American Bar Association.

See Exhs. 19-24.

Murder Victims' Families for Reconciliation (MVFR), which has 100 Texas members, urges this body to take Mr. Panetti's mental illness into account and recommend commutation of his death sentence. In making this request, the Executive Director of MVFR points out that many of his organization's members have had the experience of having a loved one killed by an individual with mental illness:

For some of our members, the mentally ill person who took the lives of their loved ones was also a member of their family. Some of them tried, unsuccessfully, to get help for the mental illness that was tearing their families apart and they feared would result in violence.

Executing murderers who suffer from serious medical conditions that gravely impair one's ability to know right from wrong does not address the most pressing needs of families like our members' families and it does nothing to help prevent further tragedies. Nor does it address the state's responsibility to prevent sufferers of mental illnesses, such as schizophrenia, from hurting others.

As homicide survivors, MVFR members do not want people who suffer from severe mental illness and commit violent crimes out on the

streets. We do want them kept safely in facilities that can provide treatment that will prevent additional tragedies and we want changes within the legal system and public health agencies that will keep our families and communities safer.

We ask you to commute Scott Panetti's sentence to life in prison and we ask you to prioritize resources that will minimize the violence caused by severe mental illness.

Letter of Scott Bass, Executive Director of MVFR, attached as Exh. 21.

Nor is Texas' asserted need to execute Mr. Panetti supported by a group of prominent former judges, prosecutors, U.S. attorneys, Department of Justice officials, and others with law enforcement and criminal justice backgrounds. These experienced and prominent professionals – including former Texas Governor Mark White and former federal Judge W. Royal Ferguson, Jr. – believe Mr. Panetti's severe mental illness means that death would constitute an “excessive punishment” in this case:

As law enforcement and criminal justice professionals, we are deeply troubled that a capital sentence was the result of a trial where a man with schizophrenia represented himself, dressed in a costume. Mr. Panetti's capital trial was highly problematic. In the criminal justice system, states can force counsel on criminal defendants who suffer from mental illness. In Mr. Panetti's case, the court clearly should have done so; Mr. Panetti should not have been permitted to face the ultimate punishment without assistance of counsel.

Our concern is that the criminal justice system recognizes both the diminished culpability of a person with severe mental illness, like Mr. Panetti, and the absence of penological value in carrying out a death sentence in a case of such extreme mental illness. Therefore, the death penalty is an excessive punishment in this case. Keeping Mr. Panetti in prison for life is sufficient punishment and it will protect society.

Letter of Law Enforcement and Criminal Justice Professionals, attached as Exh. 22.

The American Psychiatric Association, Mental Health America, and Disability Rights Texas, along with mental health professionals and those with expertise on mental health and the law, also find Mr. Panetti's severe mental illness to pose a compelling and sufficient reason for the granting of clemency:

In 2006, the American Bar Association, which does not take a position supporting or opposing the death penalty, passed a resolution on the severely mentally ill and the death penalty, stating:

“Defendants should not be executed or sentenced to death if, at the time of the offense, they had a severe mental disorder or disability that significantly impaired their capacity (a) to appreciate the nature, consequences or wrongfulness of their conduct, (b) to exercise rational judgment in relation to conduct, or (c) to conform their conduct to the requirements of the law.” (p. 1)

Given Mr. Panetti's extensive history of severe mental illness and multiple hospitalizations prior to the crime, there can be no doubt that he fits this description. Further, the fact that he did not have counsel renders his conviction and sentencing even more problematic in light of the delusional nature of his illness.

Mr. Panetti has a fixed delusion that Satan is trying to kill him through the state of Texas in order to stop him from preaching the Gospel. As mental health and legal experts, we urge you to use your powers to ensure that this deeply sick man is not executed, but is sentenced instead to life in prison. It is clear that Mr. Panetti is a severely mentally ill man and that his execution would serve no retributive function given his vastly diminished culpability and lack of understanding of his situation. While the signatories to this letter have different positions on the death penalty, we are united in the belief that execution in a case such as Mr. Panetti's offends widely shared moral sensibilities.

Letter of Mental Health Organizations, Professionals and Experts on Mental Health Issues in the Law, attached as Exh. 19.

Should this body prove unwilling to recommend commutation to Governor Perry, William C. Hubbard, president of the American Bar Association, urges you to recommend that the Governor grant Mr. Panetti a reprieve from execution. Writing on behalf of the largest association of lawyers in the United States, Mr. Hubbard asks that a reprieve be granted so that Mr. Panetti's counsel will have sufficient time to litigate his competency to be executed.

[T]he state of Texas now seeks to proceed with the execution of Mr. Panetti, even though it has been more than seven years since the last hearing to evaluate his competency. Mr. Panetti has not received mental health treatment during this seven-year period, and older assessments may not accurately reflect his current mental state and competency to be executed.

* * * *

We believe that justice requires that Mr. Panetti's execution be stayed until complete and current information about his mental health has been thoroughly considered by a judge to determine whether Mr. Panetti is competent to be executed. This is the only course of action that can ensure that Mr. Panetti receives due process and protection of his rights under the Constitution. We thus request that you grant a stay to prevent the possibility of a miscarriage of justice—one that can never be undone

Letter of William C. Hubbard, ABA President, attached as Exh. 20.

The call for clemency for Scott Panetti extends to the Christian community, which nationally and statewide appeals to this body and Governor Perry to protect one of the state's most vulnerable citizens from execution. More than 50 Christian Evangelical leaders from Texas and across the country have written jointly to seek clemency for Mr. Panetti:

The Gospel message compels us to speak for those without a voice and to care for the most vulnerable. For this reason, it is imperative that we treat those with mental illness in a fair and humane manner.

The execution of Scott Panetti would be a cruel injustice that would serve no constructive purpose whatsoever. When we inflict the harshest punishment on the severely mentally ill, whose culpability is greatly diminished by their debilitating conditions, we fail to respect their innate dignity as human beings. We therefore respectfully encourage you to consider granting Scott Panetti's clemency petition and commuting his death sentence to life in prison without the possibility of parole.

Letter of Evangelical Christian Leaders, attached as Exh. 23.

Joining the Evangelical Christian voices in the view that Mr. Panetti's severe mental illness merits the granting of mercy are six current and retired Bishops with the United Methodist Church in Texas. Observing that executing Mr. Panetti "would be an appalling travesty of justice," the Bishops write:

We cannot accept retribution or social vengeance as a reason for taking human life, particularly in the case of someone who lacks a meaningful understanding that the state is taking his life in order to hold him accountable for his crime. This is certainly true of Mr. Panetti, whose delusional belief system has distorted every aspect of his case such that he firmly believes the State seeks his execution in order to prevent him from preaching the Gospels, not for the murder of his wife's parents.

Allowing the execution of Scott Panetti to proceed would be an appalling travesty of justice that serves no purpose whatsoever and would forever tarnish the reputation of our state's criminal justice system. In the name of mercy, we urge you to grant his clemency petition and commute his sentence.

Letter of Active and Retired Bishops with the United Methodist Church, attached as Exh. 24.

The import of these opinions is undeniable: only the criminal justice system in the State of Texas views the execution of Scott Louis Panetti as necessary. The victims' daughter does not agree. And, as prominent national figures in the realms of mental health, criminal justice, law and Christianity urge, Mr. Panetti's longstanding mental illness renders inapposite any rationales the State of Texas could provide for killing him. The consensus is that there is no just or moral reason to kill Scott Panetti. Justice in this case would be best served by a recommendation of commutation of Mr. Panetti's sentence or, in the alternative, a recommendation of a 180-day reprieve from execution.

CONCLUSION

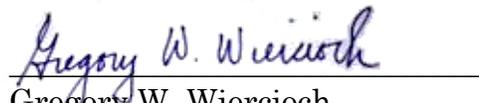
This is the enduring image of Mr. Panetti's case: A paranoid schizophrenic wearing a TV-Western cowboy costume; on trial for his life; insisting on defending himself without counsel; attempting to subpoena the Pope, John F. Kennedy, and Jesus Christ; and raising an insanity defense. Any objective reader of the trial record must reach the painfully obvious conclusion that Mr. Panetti's *pro se* performance was an abomination, his trial a disaster of the criminal justice system.

Time has not enhanced the image of Mr. Panetti's case, made worse by the deterioration of his mental state to the point that he cannot appreciate why Texas seeks to execute him. Meanwhile, just as the Texas criminal justice system has refused to undo the disaster of his trial, it has continued its efforts to carry out the execution of this severely mentally ill man. His execution date of December 3, 2014, looms while the world looks on in horror. This body holds the power to correct the

injustice of Mr. Panetti's trial and death sentence and to address the failure to ensure Mr. Panetti's competence to be executed. This body holds the power to grant mercy in the form of recommending a commutation of his sentence or, alternatively, a reprieve of Mr. Panetti's execution for 180 days to permit a full and fair inquiry into Mr. Panetti's competence to be executed. We ask that such clemency be granted.

Dated: November 12, 2014

Respectfully submitted,



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EXHIBITS

- 1 Certified copies of the Indictment, Judgment, Verdict, and Sentence in *State v. Panetti*
- 2 Warrant of Execution
- 3 Brooke Army Medical Center records (redacted)
- 4 Affidavit of Jane Irene Panetti
- 5 Social Security Administration records (redacted)
- 6 Report of Michael Arambula, M.D., R.Ph.
- 7 Affidavit of Scott Monroe.
- 8 Affidavit of Jessica McBride
- 9 Subpoena of Jesus
- 10 Affidavit of Wolfgang Selck, Ph.D.
- 11 Affidavit of F.E. Seale, Ph.D.
- 12 Affidavit of Meridel S. Solbrig
- 13 Affidavit of S. Preston Douglass, Jr.
- 14 Affidavit of Victoria Panetti
- 15 Affidavit of Tom Panetti
- 16 Affidavit of Marcia Panetti
- 17 Affidavit of Yvonne Panetti
- 18 Affidavit of Sonja Alvarado
- 19 Letter of Mental Health Organizations, Professionals and Experts on Mental Health Issues in the Law
- 20 Letter of William C. Hubbard, President of the American Bar Association
- 21 Letter of Scott Bass, Executive Director of Murder Victim's Families for Reconciliation

- 22 Letter of Law Enforcement and Criminal Justice Professionals
- 23 Letter of Evangelical Christian Leaders
- 24 Letter of Active and Retired Bishops with the United Methodist Church