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January 18, 2012

Ms. Rissie Owens
Presiding Officer
Tx Bd of Pardons and Paroles
Box 599
Huntsville, Texas 77340

FORWARDED BY FAX TO
936-291-8367
(Total of 3 pages)

Re: Upcoming parole consideration of Eroy Brown, TDCJ 400764
Request to recuse certain Board members or commissioners from this parole panel

Dear Ms. Owens:

It seems to be confirmed by the Mike Ward story in today's *Austin American-Statesman* that the Board Panels that could vote this case are Panel Numbers 23, 24 or 25 (see BPP-DIR.141.304). In each of these Huntsville panels, two of the three Panel members who would potentially be voting the case are former employees of the Institutional Division of TDCJ. Under Section 508.045(b) of the Texas Government Code, you have the authority to determine the makeup of parole panels.

In my 40 or so years of practicing law and representing clients before the Board, I cannot recall ever seeking the recusal of a Board panel member. However, in this instance, my client, Mr. Brown, requests that the panel voting this case exclude even the prospective appearance of bias or other impropriety by the Panel and seeks a vote only from members who have not been either employees of TDCJ (or its umbrella entities) nor one currently married to a person who has been an employee of TDCJ. The basis for this request should be rather obvious. The Texas prison system has long refused to accept the fact Mr. Brown has been found not guilty by 35 out of 36 jury panel members during the highly publicized trials and re-trials related to the deceased prison employees. The prison officials were further dismayed when, during the civil rights case filed by Brown and other inmates in the wake of the criminal proceedings, the administrative judges from the National Corrections Institute appointed by Federal Judge Black determined that prisoners who cooperated with Brown's defense were in a position of danger if they continued to be incarcerated in the Texas Prison. The conclusion of those hearings resulted in findings against the prison and the court order (as I recall) 24 Texas inmates into Federal custody for their own protection.

After the first jury in Eroy's case returned a verdict of not guilty, my own home in Riverside was shot full of bullet holes, with the local sheriff refusing to investigate the matter. When Mr. Ward's story ran in the Austin newspaper this morning, I have heard that almost immediately the paper began getting calls from TDCJ administrators who have expressed a continuing animus against Mr. Brown, as well as the direction that the story was written. Sadly, this makes clear that prejudice against my client still lives on within the Institutional Division. Commentators on the TIFFA web page immediately started posting notes of how unfair it was to have ex TDCJ employees from Huntsville, the center of corrections in Texas, making up the panel that will consider Mr. Brown's case. These facts alone clearly reflect that the public perceives the serious implication of unfairness in the panel currently assigned this case. Mr. Brown requests any serious hint of bias in the voting panel be reassessed.

While I do not seek to cast aspersions against the character of the current Board Members and Parole Commissioners who previously worked for TDCJ, the history of the case (continuing through today) begs the question of how current Board members and commissioners who in the past have been employed at the Institutional Division vote the Eroy Brown parole case without a scintilla of the past bias and prejudice regarding the events surrounding the case. The reality is that such bias and prejudice has continually existed since the time of the acquittals of Eroy for those unfortunate events and does continue to exist today within the social community that makes up the Huntsville area. We cannot discount the potential of such a continuing animus existing in the lives of the Huntsville Board Panel members who either worked at the prison or who have spouses who worked for the agency.

As I stated from the outset, I do not make this request with any personal animosity or bias aimed at Board members and Commissioners who fall within the class of those Mr. Brown now objects. Overall, I feel that the current Board voters have always treated me fairly, and I believe they vote their convictions in each case that comes before them. However, Eroy's case is highly unusual, and my client presents an exceptional case and circumstances with which a parole panel must deal. Mr. Brown expresses his serious concern over the issues he has asked me to write about and make this unusual request.

We have no objection to Mr. Leeper's serving on the panel, and we do not object to any other persons who vote parole cases so long as such persons do not have prior TDCJ employment experience nor are currently married to someone who has or had prior employment experience with the TDCJ umbrella entities. We are acutely aware that those selected to make up the Brown Panel face the potential of extremely negative reactions from their old friends and social contacts who are employees of the Texas prison system, especially if they were to vote in a favorable manner. The closer the past relationship of the voting panel members to employees of the agency, the more hesitant they could be to consider all available options when voting Mr. Brown's case. For panel members to seriously give favorable consideration to Mr. Brown's potential parole, and if parole were granted, the voters will have to continue to socialize and/or professionally interact with these TDCJ employees who, as we have seen even today in the wake of the Austin article, continue to express serious bias and prejudice against Mr. Brown. Such an element incorporated into the mix of considerations when voting a case would result in an unfairness we would hope that the Board of Pardons and Paroles would wish to avoid.

If you determine to grant this request, and additionally determine a panel outside of the Huntsville area might be the answer, we have no objection to making our presentation at any

location your office would determine. The aforementioned Board Directive also allows for *any* Board member to vote on *any* Parole Panel if you elected to consider that option. We have previously filed our written presentation in Mr. Brown's case. Also on the way to your office is a letter of acceptance from Sister Mary Sean Hodges, Director, Partnership for Re-Entry Program, Office of Restorative Justice, at 2049 So. Santa Fe Ave. Los Angeles, California 90021 admitting Mr. Brown to a special extended term re-entry and rehabilitation program especially designed for long term incarcerated inmates operated by the Los Angeles Diocese of the Catholic Church. This organization offers housing, financial and emotional support, and job training for those who have been long term incarcerated. This group is fully aware of Mr. Brown, his background, criminal history, and federal prison records. We would ask that these records be forwarded in their entirety if the Panel assigned to vote the case is moved from Huntsville to a different Board Panel Office. We would also request written notice of any reassignment of Eroy's case to a different Board Panel Office.

Thank you for consideration of this request.

Yours truly,

Bill Habern

cc. Eroy Brown
Other interested parties