

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

**In re**

**BETTY LOU BEETS,**

**Applicant.**

**APPLICATION FOR REPRIEVE  
FROM EXECUTION OF DEATH SENTENCE AND  
COMMUTATION OF SENTENCE TO IMPRISONMENT FOR LIFE**

**Submitted by:**

**JOSEPH MARGULIES  
Minnesota Bar No. 208528  
220 South Sixth Street  
Suite 215  
Minneapolis, MN 55402  
(612) 339-2673  
(612) 339-7851 (FAX)**

**JOHN BLUME  
Cornell Law School  
112 Myron Taylor Hall  
Ithaca, N. Y. 14853**

**ALISON NATHAN  
Law Student  
Cornell Law School**

**Counsel for Betty Lou Beets**

**APPLICATION FOR CLEMENCY  
AND MEMORANDUM IN SUPPORT THEREOF**

Betty Lou Beets respectfully submits this application for clemency, requesting that this Board of Pardons and Paroles recommend, and that the Governor grant, a commutation of her sentence of death to life imprisonment. Ms. Beets also seeks an interview and hearing before the Board. To facilitate these requests, Ms. Beets seeks a 30-day reprieve so the Board may fully consider the merits of this Application.<sup>1</sup>

**I. Introduction**

Betty Lou Beets is a sixty-two year-old great-grandmother and a life-long survivor of domestic violence and sexual assault. She is scheduled to be executed by the Texas Department of Criminal Justice on February 24, 2000. If she is executed, it will mark the first time in the modern era that Texas has executed a battered woman for the murder of her husband. We ask that the Board grant a hearing to consider the commutation of Betty's death sentence to life imprisonment without the possibility of parole. As will be set forth in detail below, we make this request for two related reasons. Both of these reasons involve the actions of E. Ray Andrews, Betty Lou Beets' corrupt trial lawyer, himself now a convicted criminal,<sup>2</sup> who sold her out for his own profits.

First and foremost, Betty is innocent of the capital offense—murder for remuneration—for which she was convicted and sentenced to death. Betty Lou Beets is not guilty of capital murder. Evidence was withheld from the jury by Betty's trial lawyer, E. Ray Andrews, who did so, not to aid his client, but for his own financial gain. Andrews could have presented crucial evidence that years after the murder it was he—not Betty—who set in motion the insurance claim which would later become the sole basis of the capital charge against Betty. Yet Andrews did not provide this evidence. Why did he, Betty's lawyer, withhold this crucial testimony? Because Andrews had agreed to represent Betty only in exchange for what he expected to be the lucrative media rights to this highly publicized case. Testifying would have required him to withdraw and abandon this valuable stream of income. As a result, the jury made its life-or-death decision lacking basic, exculpatory information – information that could have been supplied by Betty's own lawyer, had he not put his own interests ahead of hers.

Second, because of Andrews' corruption and incompetence—which infected this case even before Betty was charged—Betty was denied merciful access to the legal system at the penalty phase of the trial. Andrews presented no evidence—not so much as a single mention of her traumatic abuse at the hand of her intimates—nor other powerful mitigating information.<sup>3</sup> This grave omission, particularly in light of our current

---

<sup>1</sup> As required by 37 TAC §143.42(3), certified copies of the indictment, judgment, verdict of the jury, and verdict of the sentencer in this case, as well as a copy of the order scheduling the present execution date, are attached as Appendix 1.

<sup>2</sup> In 1994 Andrews was arrested on a federal charge of soliciting a bribe from a murder suspect. Andrews, who was then the elected district attorney for Henderson County, offered to drop murder charges against a man suspected of killing the man's wife in exchange for a \$500,000 pay-off. See, Bruce Tomaso, *Dallas Morning News*, August 29, 1994, 1A.

<sup>3</sup> In a capital case, it is of paramount importance that the sentencer be provided with the fullest information possible concerning the defendant's life and characteristics. *Lockett v. Ohio*, 438 U.S. 586 (1978). This is so "because of the belief, long held by this society, that defendants who commit criminal

understanding of the patterns of domestic violence and Betty's diagnosis with battered women's syndrome, can only now be rectified through a hearing to consider commutation of Betty's death sentence.

These two grounds, upon which we request a hearing on commutation of Betty's sentence, are discussed fully below. But before turning in detail to the facts upon which this clemency hearing request is based, it is important to answer a fundamental question: Who is Betty Lou Beets? Betty's trial lawyer never asked the jury to consider that question. As a result the jury learned nothing about Betty's life and background. The mitigating evidence would have provided the jury with a tragic history of a woman who simply did not then — and does not now — deserve to die. Lest that omission be repeated, before turning to the grounds of this request, we offer the following "snapshot" of Betty:

Betty Lou Beets has spent much of her sixty-two years attempting to survive in a violent, chaotic, and uncertain world. She has been raped many times. She was the victim of brutal domestic violence. She has endured physical, psychological, and emotional torture. Raised in desperate poverty, Betty has been near deaf since the age of six, and suffers from a severe and debilitating learning disability. This history has left Betty profoundly scarred. Diagnosed as suffering from battered women's syndrome, rape trauma syndrome, and Post-Traumatic Stress Disorder, Betty regularly suffers hallucinations and terrifying flashbacks of past abuse. [See Appendix 2, Report of Dr. Lenore Walker].

Like so many battered women, Betty was physically and sexually abused as a child and has been involved in a pattern of battering relationships. All five of the men to whom she has been married perpetrated escalating acts of psychological, physical, or sexual violence against her. Although Betty made attempts throughout her life to escape this violence by, for example, repeatedly seeking police intervention or leaving and divorcing her husbands, the violence never ended; generally, it escalated. She could not escape the cycle of violence. For example, some of the worst beatings and rapes Betty experienced at the hands of her fourth husband, Wayne Barker, occurred after she divorced him.

To know Betty, however, is to see her for more than the sum of the violence she has endured and perpetrated. To truly know Betty is to see her as a devout Christian, as a poet, as an optimist, as a mother, grandmother, and great-grandmother. Betty's multifaceted character can be felt in this excerpt from a poem she wrote, after learning of her son's death in a car accident, while on death row:

Less than a year ago, June a year ago there was a message from my chaplain.  
My mother was dead.  
I never thought that anything could hurt that bad.  
Six months later I learned that it did.  
When they told me My Baby Son was dead.  
God says we must forgive. It wasn't easy through the tears and pain.  
But my God is a true God and I must be true too.  
So I will be strong and to face another day, and say,

---

acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." *California v. Brown*, 479 U.S. 538, 545 (1987) (concurring opinion).

Thank you Lord for this Day, you have made!

We do not offer this glimpse into the character and circumstances of Betty Lou Beets' life to gain sympathy or even to beg for mercy. For many people in this country, mercy alone might be sufficient to commute the death sentence of a battered woman, a sixty-two year old great-grandmother, disabled by a damaged brain. Yet it is not the primary basis of our submission. But mercy is not irrelevant to the inquiry, because to rectify a gross miscarriage of justice requires careful and merciful consideration of all the relevant circumstances.

## II. The Commutation Power

This application presents, and a hearing would further establish, compelling reasons for the Board to exercise its power to recommend commutation of Betty Lou Beets' death sentence to one of life imprisonment without the possibility of parole. She has been denied access to the legal system by an incompetent and corrupt trial lawyer. Before the Board commences its review of the factual bases underlying this application, however, it is appropriate to recall the purpose and history of the commutation power.

In Texas, as in other states, the power to commute a death sentence is an unrestricted power vested in the Board and the Governor. [Texas Const. Art. IV., § 11 ("Except in cases of treason and impeachment, upon recommendation of the board, the governor may grant a commutation of sentence.")] Note the intermingling legal and political components of the clemency power: legal because the authority comes from a constitution; political because an executive can consider factors that judges and juries cannot or did not. The power to grant clemency is broad, and is intended to be so as indicated in the constitutional text creating this discretionary authority.

The executive clemency power is the embodiment of compassion deeply rooted in our Anglo-American criminal justice system. It has its origins in the Judeo-Christian ethics of both punishment and forgiveness. Sculpting this traditional authority into its current democratic form, Alexander Hamilton said that such a power is required "by considerations of justice, of humanity and of public policy."<sup>4</sup> The clemency power is, therefore, an integral component of the American constitutional structure of checks and balances. As the United States Supreme Court said in 1925:

Executive clemency exists to afford relief from the undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of the circumstances which may properly mitigate guilt. To afford a remedy, it has always been thought essential to popular governments, ... to vest in some other authority than the courts power to ameliorate or avoid particular criminal judgments. It is a check entrusted to the executive for special cases.

*Ex parte Grossman*, 267 U.S. 87, 120-21 (1925).

In this special case, we are asking you to provide the check constitutionally entrusted to you; reviewing this case for the 'evident mistake' that occurred when Betty's

---

<sup>4</sup> The Federalist No. 74 (Alexander Hamilton).

lawyer withheld evidence from the jury which would have defeated an essential element of the capital offense for which she was charged. Furthermore, we are asking you to consider, through these documents and at a hearing, the mitigating evidence of Betty's profoundly tragic life; evidence that should have been presented to the jury at the penalty phase of Betty's trial. However, because Betty's case made a better and more lucrative media story for her lawyer without this evidence, the jury never had the opportunity to consider it. We are confident that had a jury heard this evidence, it would not have sentenced her to the 'unduly harsh' punishment of death.

In exercising the review power in a capital case, it is critical that the Board and Governor have at their disposal accurate information not only about the offense, but also about the offender. Chief Justice Warren Burger underscored this constitutional imperative while writing for the Court in the landmark case of *Lockett v. Ohio*, 438 U.S. 586, 605 (1978):

Given that the imposition of death by public authority is so profoundly different from all other penalties, we cannot avoid the conclusion that an individualized decision is essential in capital cases. The need for treating each defendant in a capital case with that degree of respect due the uniqueness of the individual is far more important than in non-capital cases.

A variety of flexible techniques—probation, parole, work furloughs, to name a few—and various post-conviction remedies, may be available to modify an initial sentence of confinement in non-capital cases. The unavailability of corrective or modifying mechanisms with respect to an executed capital sentence underscores the need for individualized consideration as a constitutional requirement in imposing the death sentence.

The respect due this case is, at a minimum, a hearing on the commutation of Betty's death sentence. This is the respect due not only because an individualized examination is integral to the proper functioning of the executive clemency power, but also because Betty's trial lawyer inexcusably denied the jury the opportunity to carry out its own individualized assessment at the judicial level.

### **III. Reasons Why a Hearing is Appropriate to Commute Betty Beets' Sentence to Life Imprisonment Without the Possibility of Parole**

In considering this request for a hearing, it is important to focus on three significant moments in time and the actions and motivations of Betty's lawyer, E. Ray Andrews, at each of these moments. These three critical junctures—one immediately after the State charged Betty with capital murder, one at the guilt phase of her trial, and one at the penalty phase of her trial—chart Andrews' path of greed and incompetence that assured Betty would be sent to death row. In viewing these moments, it is essential to see E. Ray Andrews not as detached advocate of Betty's legal rights who only becomes involved once charges have been leveled. Rather, E. Ray Andrews was integrally related to the factual development of this case. Because of his involvement and his greed-driven desire to stay involved and capitalize on his media-rights contract, critical information was kept from the jury which would have established that Betty did not commit capital murder.

Furthermore, even after her conviction, Betty was denied access to the justice system once again through Andrews' incompetence and dangerous greed. Although it is difficult to fathom that a lawyer would put money and publicity ahead of his client's interests in a capital case, such conduct was unfortunately not out of character for Andrews.

E. Ray Andrews is a convicted felon, an unscrupulous and incompetent lawyer, and an unpredictable alcoholic who puts his own interests before those of his clients. His malfeasance has tainted nearly everything he has touched in this case. Andrews' checkered past spans three decades. He has more than two dozen civil judgments and tax liens filed against him, totaling almost \$130,000, involving unpaid debts dating from as far back as the 1970s. In 1983, he was arrested and charged with drunken driving. In 1991, he was indicted for writing a bad check. On one occasion, he failed to file an appeal of a client's criminal conviction, even though the appellate court granted him three extensions. Another time, he took on a real estate matter for a client in 1977 and still hadn't done the work by 1984.

Andrews' ill deeds finally caught up to him in 1994. Riding the wave of publicity from Betty's case, Andrews was elected District Attorney for Henderson County, where Betty was tried. Not long after his election, he sought to solicit a bribe from Jerry Mack Watkins, a businessman accused of killing Watkins' wife. An FBI affidavit says Mr. Watkins was approached by someone who told him that for \$500,000, Mr. Andrews would drop the murder charge. The murder indictment against Mr. Watkins was dismissed, after his lawyers successfully argued that the district attorney's conduct had tainted the proceedings. Andrews pleaded guilty in federal district court and later served time in a federal prison.

**A. A Commutation Hearing is Appropriate Because Betty Lou Beets is Innocent of Capital Murder**

At trial, the State presented only one theory: Betty Beets was guilty of capital murder for remuneration. The indictment alleged Betty killed Jimmy Don Beets to receive pension and insurance benefits. For Betty to receive the death penalty, the State had to demonstrate beyond a reasonable doubt not only that Betty killed her husband, but that she acted with the intent to recover these benefits. Even accepting the State's evidence as true that Betty shot her spouse, she remains not guilty of the crime of capital murder. Betty had a witness whose testimony could have established that she had no such intent – indeed, that she was completely ignorant of the very benefits that supposedly motivated her conduct. Andrews, however, failed to bring this witness to the stand and therefore kept this valuable evidence from the jury. Why? Because he was that witness. If he testified, he would be forced to withdraw.<sup>5</sup> If he withdrew, he lost the entire value of the media rights contract, which conditioned his fee on his continued representation in the case. If he withdrew, he lost the rights. In the end, the jury never heard Andrews' testimony. It is critical, therefore, that the Board consider his evidence in detail when it deliberates Betty's fate.

---

<sup>5</sup> See, Supreme Court of Texas, Code of Professional Responsibility, DR 5-102(A) ("If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial...").

Jimmy Don Beets, Betty's husband at the time, disappeared August 6, 1983. His overturned boat was found in Lake Athens, Texas, leading to speculation that he had drowned in a fishing accident. In the ensuing months, Betty made no attempts either to ascertain the existence of, or to recover, any benefits potentially owed to her, as a result of her husband's disappearance. Over a year after her husband disappeared, in unrelated circumstances, Betty's trailer was destroyed by fire. Betty then filed a claim with her insurer for the loss of the trailer and its contents. But the insurer refused to pay.

Seeking assistance with her fire insurance claim, Betty contacted a lawyer—E. Ray Andrews. When she first contacted him, her exclusive concern was with the fire insurance claim. [Affidavit of E. Ray Andrews at para. 3-4]. Andrews learned that Betty's husband had worked for the City of Dallas prior to his disappearance; thus, in his initial meeting with Betty, Andrews questioned her about both the fire insurance claim and any claim she may have had to death benefits (insurance or pension proceeds).<sup>6</sup> It is undisputed that it was Andrews who first suggested to Betty that she might have been entitled to benefits arising out of her husband's disappearance. It is also undisputed that Betty had no idea what, if any, benefits she might have been entitled to as a result of her husband's disappearance. [Affidavit of E. Ray Andrews at para. 7].<sup>7</sup>

Andrews offered to pursue on a contingent fee basis Betty's fire insurance claim, as well as claims to any benefits she might have been entitled to in connection with her husband's disappearance. This fee arrangement gave Andrews a financial incentive to pursue insurance claims on Betty's behalf. Andrews acknowledges that while Betty accepted his offer, she showed no interest in anything but her fire insurance claim. [Appendix 3, Affidavit of E. Ray Andrews at paras. 6-8]. Andrews ultimately was able to establish that benefits from her husband's death were available and informed Betty of this fact. Before Andrews received the payment from the City, Betty was arrested and charged with the capital murder of her husband, whose body was found buried in her front yard. The indictment alleged Betty murdered her husband "for remuneration and the promise of remuneration; namely money from the proceeds of retirement benefits from the employment of Jimmy Don Beets with the City of Dallas, insurance policies on the said Jimmy Don Beets in which the defendant is the named beneficiary, and the estate of Jimmy Don Beets."

Andrews' callous greed manifested itself when, despite his ability to exculpate his client from a critical element of the crime with which she was now charged, he sought to represent Betty in connection with the capital murder charge. Betty agreed and her trial began October 7, 1985. On October 8, Andrews presented Betty with a contract. This

---

<sup>6</sup> Andrews' affidavit states: "I knew from my experience that municipalities sometimes provide ... benefits to their employees as a matter of course. Consequently, I suspected that he may have had a pension from the City of Dallas, as well as a life insurance plan. Since they were married at the time of his disappearance, I also suspected that she may have been the beneficiary of these policies." Appendix 3, Affidavit of E. Ray Andrews at para. 6. He reaffirmed this testimony at the federal evidentiary hearing. R. IV at 80.

<sup>7</sup> Andrews' affidavit states: "In questioning Betty, I quickly discovered she had no idea whether she was entitled to benefits. She did not even know whether benefits existed." Appendix 3, Affidavit of E. Ray Andrews at para. 7.

agreement transferred the literary and media rights in the case from Betty to Andrews' minor son, E. Ray Andrews, Jr., in exchange for Andrews' agreement to represent Betty at her capital murder trial. [Appendix 4, Media Rights Contract.]<sup>8</sup> The contract represented the entire fee agreement. Andrews believed that because of the notoriety surrounding this case, the media rights were worth a great deal of money.

A colleague and friend of Andrews remembers his singular focus on the wealth he confidently expected from this case:

I remember when E. Ray started talking about getting the book and movie rights in the Beets case. He talked about it several, several times, both at the [V.F.W.] Post and at my house. When he finally got the contract signed [on the second day of Betty's four day trial] he come over to the Post and was excited as he could be. He said how he was going to get rich on all this and the case was going to be the biggest thing that ever happened to him, and whatnot. He said the case was going to turn into a big movie and he had all the rights to it. It was something he talked about pretty often and you could tell he was counting on those rights for a lot of money.

[Appendix 6, Affidavit of Robert Miller]. Two days later, Betty's trial ended with a guilty verdict: Betty was sentenced to die and Andrews' contract skyrocketed in value. To this day, Andrews retains the rights, waiting, like some macabre spectacle, for Betty to die.

At the guilt phase of trial, Andrews' "principal defense strategy" was to attack the remuneration element of the state's case. [Appendix 3, Affidavit of E. Ray Andrews at para. 14]. His sworn affidavit states: "I knew the state had to prove Betty killed her husband for the purpose of receiving benefits. That is, she had to have those benefits in mind at the time she killed her husband. Yet I knew from my discussions with her that this was not the case." Andrews has admitted that aside from his personal knowledge, he had no unbiased testimony to support this argument.

Andrews' decision not to withdraw and not to testify for Betty obliterated any hope she may have had for a fair trial. The jury never heard his testimony regarding an essential

---

<sup>8</sup> In relevant part, the contract provides as follows: "For and in consideration of the law firm of E. Ray Andrews, Sr. representing me ... on two felony murder charges, I give, and release all movie, book, and magazine rights concerning my cases in Henderson and Dallas County to the E. Ray Andrews, Jr. (sic)" Appendix 4, Media Rights Contract (emphasis added). Early drafts of the contract obtained from Andrews' trial file, as well as the sworn testimony of co-counsel Gilbert Hargrave, indicate Andrews intended from a very early stage of his representation in the capital case to secure this agreement from Betty. Appendix 5, Affid. of Gilbert Hargrave at para. 3. He waited until the middle of trial, however, to produce the contract and secure her signature.

There is unanimous agreement among courts, scholars, and bar organizations that a media rights contract of this sort is highly unethical. In 1991, the district court, which originally reviewed the impact of this ethical violation in Betty's case, granted relief and set aside her death sentence because of the conflict it created. This death sentence was later reinstated by the Court of Appeals for the Fifth Circuit, which heard the case *en banc*. A majority of the court conceded that Betty would be entitled to a new trial under the existing circuit law for determining conflicts of interest, but adopted a new, outcome determinative standard for evaluating conflicts. *Beets v. Scott*, 65 F.3d 1258 (5<sup>th</sup> Cir. 1995).

element of the charged offense. He and he alone could have provided the jury with the following evidence:

Andrews and Andrews alone devised the attempt to recover the death benefits; Betty was only aware of the possible existence of benefits because Andrews told her about them long after the murder occurred;

- Andrews encouraged Betty to pursue the benefits because he had a financial interest in doing so—i.e. a contingency fee agreement with Betty.

Had Andrews provided this evidence, Betty would have been found not guilty of capital murder.

**B. A Commutation Hearing is Appropriate Because Betty Beets Did Not Have Access to Justice at the Penalty Phase of Her Trial: The Untold Story of Betty Beets**

Two of Andrews' deadly missteps have now been discussed. You have seen that he decided to represent Betty at the time of her indictment in exchange for her media rights despite the fact that he knew from his personal involvement that she was innocent of the capital offense. And you have seen that, at the guilt phase of Betty's trial, Andrews withheld necessary evidence in her defense when he decided not to testify because it would have sacrificed his possible economic gain. The third and most heartless error occurred at the penalty phase, when Andrews' deprived the jury of Betty's tragic history.

Although the trend is slowly changing, for many years in this country the epidemic of domestic violence has been marked by one pernicious characteristic: silence. Violence against women, particularly that perpetrated by family members, has a history of silence. When the penalty phase of Betty's trial began, E. Ray Andrews had the opportunity to present evidence about the horrific physical and sexual abuse that has defined Betty's life, including the violence and threat of violence she suffered at the hands of Jimmy Don Beets. Yet E. Ray Andrews was silent. The jury which sentenced Betty to die knew almost nothing about her. No mitigating evidence was presented at the penalty phase.

Had a jury heard the relevant evidence of the circumstances of Betty's life at the penalty phase of her trial, it would not have sentenced her to death. In any fair and principled system, Betty cannot be sent to her death without these facts, set forth in detail below, being fully and fairly considered at a hearing to consider the commutation of her death sentence.

Betty was born March 12, 1937, to a violent, alcoholic father and a mentally ill mother. Raised in poverty and reared in violence, the record of her life is a chronicle of virtually uninterrupted physical, sexual and emotional abuse. Beginning with the time she was raped at age five, and continuing throughout her life, she has been beaten, raped, and tortured by the men she has depended on. She has a lengthy history of well-documented head injuries, including repeated blows at the hands of abusive men. Betty also barely survived a near-fatal car accident in 1980. She suffers from Post-Traumatic Stress Disorder, battered women's syndrome, and organic brain damage. She is both learning disabled and hearing-impaired. [Appendix 2, Report of Dr. Lenore Walker; Appendix 7, Report of Dr. Linda Narun]. To fairly judge Betty, a jury – and this Board – must know this information about her physical, cognitive and psychological impairments.

From her birth in a sharecropper's pineboard cabin -- where her family lived in a shack without window glass, screens, electricity, plumbing, or water, and subsisted on a

diet of salt pork, flour, and meal -- to her near fatal bout with measles encephalitis at age six which left her hearing permanently impaired, Betty was raised in poverty and her illnesses went untreated. [Appendix 8, Affidavit of Louise Dunevant, at para. 2-3; Appendix 7, Affidavit of Dr. Linda Narun; Appendix 2, Report of Dr. Lenore Walker.]

Among Betty' earliest recollections is being raped at age five. [R. V at 249-50; 256-57.] When she was twelve, her mother suffered a mental collapse and was institutionalized. [Appendix 2, Report of Dr. Lenore Walker; Appendix 9, Medical Records of Eastern State Hospital; Appendix 8, Affidavit of Louise Dunevant.] After she was released from the hospital, Betty's mother was placed on medication but frequently she became uncontrollable. Ultimately, when Betty was fifteen, her mother returned to the State Hospital where she was held for three months and treated with electroshock and deep coma insulin therapy. [Appendix 2, Report of Dr. Lenore Walker; Appendix 9, Medical Records of Eastern State Hospital]. While her mother was institutionalized, her father turned to alcohol. Even as a young teen, Betty frequently found her father passed out drunk on the kitchen floor. [Appendix 2, Report of Dr. Lenore Walker; Appendix 10, Affidavit of Bobby Branson; R. V at 259.] He grew sullen and violent, with outbursts of irrational jealousy, and often beat Betty with his belt buckle and fists. Home offered no shelter for Betty.

She suffered from chronic migraine headaches and terrifying nightmares. At age 14, she weighed only 82 pounds, placing her in the lowest one percentile on standardized growth charts. School was little better. Because of her hearing loss and learning disability, she was isolated and confused, unable to understand her teachers, and taunted by other children. [Appendix 2, Report of Dr. Lenore Walker; Appendix 7, Report of Dr. Linda Narun; Appendix 8, Affidavit of Louise Dunevant]. Instructors sent notes home to her parents, encouraging them to seek special medical attention, but her parents were unable or unwilling to make special accommodations. *Id.* Betty failed the fourth grade, and missed increasing numbers of days at school. [Appendix 11, School Records of Betty Lou Beets.]

To escape the chaos all around her, Betty was encouraged by her mother to quit school and leave home. In 1952, at age fifteen, she married for the first time. By the time of her arrest in this case, she had been married a total of seven times to five men, all of whom were physically and emotionally abusive, and several of whom were also sexually abusive. Her first husband, within months of their marriage, beat her for some trivial transgressions, and threatened to leave her. Like her father, he was pathologically jealous and overpossessive. [Appendix 2, Report of Dr. Lenore Walker at 4-5]. On one occasion, he flew into a violent rage when he found her at the Laundromat talking with a male friend. By force, he put her on a bus to her parents and would not allow her to take her two young children with her. On the bus, Betty took an entire bottle of sleeping pills, hoping she would die on the trip home. Eventually, he demanded a divorce, leaving her with six children between the ages of one and fifteen, no education, and no skills. Within months of the divorce, he remarried a younger woman, and promptly stopped paying child support. Yet even after he remarried, he often returned to Betty and demanded sex. *Id.*

In 1970, Betty married her second husband, Bill Lane. Unknown to Betty, Lane had a long history of drunkenness and extreme jealousy, accompanied by violent attacks on his former wife, as confirmed by their divorce records. [Appendix 12, Divorce Records of Bill Lane.] Friends and neighbors of Betty, along with her children, recalled

the life-threatening abuse he visited upon her:

He used to beat her terribly. One time he beat her while they were driving. He drove with one hand and was just beating her senseless with the other hand. ... She had to stay in bed, laid up for over a week. Her face was all bruised, and she couldn't get out of bed. It was awful.

[Appendix 13, Affidavit of Connie Faith at para. 10.]

He beat her real bad. I saw her on many occasions when she was bruised up pretty bad. One time she came to work and her eyes were black. ... Black bruises all up and down her arm, down around her forearms and her upper arm. Her face was all beat up.

[Appendix 14, Affidavit of Jim Kinson at para. 6; Appendix 8, Affidavit of Louise Dunevant; Appendix 10, Affidavit of Bobby Branson; Appendix 15, Affidavit of Faye Stringer].

Prior to leaving town for any period, Lane would administer a type of sexual branding by biting Betty on the breasts, thighs, stomach and buttocks, leaving large, black bruises to insure she would not show her body to anyone in his absence. Although she divorced Lane for the first time in 1970, he continued to stalk, rape, beat and threaten her. His sexual torment included forcing her to listen to his sexual fantasies about their daughter Connie. She went to a doctor in May, 1971, "because of her nerves" and was "worried about bills and lack of security." [Appendix 16, Medical Records of Dr. Leonard Nystrom.] In July, 1971, she received stitches in the emergency room after Lane struck her in the left eye. [Appendix 17, Medical Records of Lancaster Hospital; Appendix 2, Report of Dr. Lenore Walker at 5-7.] Unable to escape his torment, Betty remarried Lane in 1973. She divorced him again in 1975.

In 1979, after a brief but violent marriage to Ronald Threlkeld, Betty married Wayne Barker. [Appendix 10, Affidavit of Bobby Branson; Appendix 2, Report of Dr. Lenore Walker at 7-8.] Barker, like Lane, battered and terrorized his former wives. Divorce pleadings from his previous marriage called him "a violent and irrational person" who had "threatened to do serious bodily harm and injury" and had "in fact beaten and injured" his former wife. [Appendix 18, Divorce Records of Doyle Barker]. As described by Betty's son, Bobby Branson, Barker abused Betty repeatedly throughout their marriage:

Every few days he'd hit mama. Mostly when he was drunk, far as I could see. He drank whiskey and beer. He'd push her around and slap her a lot. He liked to hit her in the face a lot. That really hurt mama, to have her face all bruised up. She'd always try to cover it up with make-up, but you could see where he'd hit her. Everybody knew, and she knew they knew, but she'd do it anyway. It was really bad.

He'd hit her every few days, but every three or four weeks he'd really beat the holy shit out of her. I'd say it was at least about ten times that he really beat her up. Her eyes were all blacked, busted lip, bruises all over her arms, chest, forehead.

[Appendix 10, Affidavit of Bobby Branson at para. 6-7; Appendix 19, Affidavit of Leon Lane.]

On April 11, 1980, Betty almost died of head injuries from a serious car accident. She was so disfigured and her face and head so swollen her family could not recognize her. She suffered a basilar skull fracture, lacerations, and a cerebral concussion. [Appendix 20, Medical Records of Baylor Medical Center.] Betty, already physically and mentally weak, sustained permanent brain damage. [Appendix 21, Report of Dr. Robert Geffner; Appendix 22, Report of Dr. James Merikangas; Appendix 23, Supplemental Report of Dr. Robert Geffner]. She lost her equilibrium, her migraines intensified, her hearing impairment worsened, she was constantly dizzy, she lost movement on her right side, and she had greater difficulty in concentrating. [Appendix 20, Medical Records of Baylor Medical Center; Appendix 22, Report of James R. Merikangas at 3, 5-6.]

Her injuries were of no moment to Barker. His physical battering continued despite her health for the next year until his disappearance.

She had knots all over her head after he beat her up. They were big ones, good size. She always complained of real bad migraines. Every couple days she'd get one -- it was always real close in time to when he beat her up. She used to complain that she was dizzy when she walked. She told me she had real bad nightmares too, about once a week or so.

[Appendix 10, Affidavit of Bobby Branson at para. 11]. Betty' son-in-law saw Betty the day after her last beating by Barker in 1981:

I saw Betty the day after Wayne disappeared. She looked really bad. She had a bruised chin, bruises all up on her chest, both eyes were black, there were dark black and blue choke marks on her neck, and her arms were covered with big black bruises. It was incredible. We took pictures of her and you should have seen it. Those pictures were unbelievable.... I've never seen anybody so beat up.

[Appendix 19, Affidavit of Leon Lane at para. 12.]

Given the severity of the violence that Barker inflicted upon Betty, it is tempting to ask why Betty did not leave. Why would anyone endure such repeated abuse? There are two unspoken presumptions in this question. The first, is that Betty didn't try to leave. The second, is that leaving would have ended the violence. But in Betty's case, as for so many victims of horrible domestic abuse, the truth is that she tried repeatedly to leave, just as she tried repeatedly to get help. Often this led only to more severe attacks by her husbands. She also tried, despite fear of retaliation, to seek help and intervention from the police. When the official channels of authority failed her, Betty quickly learned what many battered women learn: that there was no escape from the violence.

By the time Betty met and married Jimmy Don Beets in 1982, her mind and body had been ravaged by maltreatment, chronic illness and neglect as a child, constant threats of annihilation by those who swore their love, and repeated head injuries. To escape the torment of her life, she turned to alcohol. She bought five cases of beer weekly. An alcoholic haze helped block her deep seated fears and insecurities. [Appendix 2, Report of Dr. Lenore Walker at 5-12.] To rebound from the alcohol's depressive effects, she

consumed five or six diet pills a day -- five times the daily therapeutic dose. [Id.; Appendix 24, Report of Dr. Arcelia Johnson Fannin at para. 9]. The primary ingredient in these pills is pharmacologically related to amphetamines. [Id. at para. 4.] When combined with alcohol, this drug produces paranoia, hallucinations, mania, and other psychotic reactions similar to those experienced by persons who ingest LSD. [Id. at para. 11.] Nightmares plagued her, and she was unable to prevent intrusive and recurring thoughts of the physical violence and emotional abuse she had endured. [Appendix 2, Report of Dr. Lenore Walker at 5-12; Appendix 22, Report of Dr. James Merikangas at 6.]

None of this evidence regarding Betty' social or mental health history was developed or presented at trial. Andrews has candidly admitted he did not investigate Betty's social or psychological history for the purpose of discovering evidence that could be used in mitigation. He never even considered having her evaluated by a psychologist.

Expert evaluations conducted in post-conviction proceedings establish that as a result of her history, Betty suffers from Post Traumatic Stress Disorder, battered women's syndrome, rape trauma syndrome, and organic brain damage. [Appendix 2, Report of Dr. Lenore Walker; Appendix 22, Report of Dr. James Merikangas; Appendix 21, Report of Dr. Robert Geffner; Appendix 23, Supplemental Report of Dr. Robert Geffner.] She is learning disabled with an abnormally low I.Q., and is chronically hearing impaired in both ears. [Appendix 7, Affidavit of Dr. Linda Narun; Appendix 23, Supplemental Report of Dr. Robert Geffner.] Her multiple disabilities have left her extremely dependent on others and she has gravely impaired judgment.

Yet in one respect, Betty's abilities are exceptionally accurate. Like many battered women who have lived with years of escalating violence, Betty developed an acutely reliable sense of physical threat. Betty, more than anyone who has not lived with domestic violence, knew well the signs of imminent danger -- the quiet gestures, the sullen glance, the seemingly innocent behavior that portended with terrifying certainty the pain to come. And Betty knew from wretched experience that there would be no safety from outsiders, no shelter from the certain storm. Betty knew, with Jimmy Don Beets and Wayne Barker before him, that she was alone. [Appendix 2, Report of Dr. Lenore Walker].

Had a jury been presented with this mitigating evidence at the penalty phase of Betty's trial, there is simply no question but that she would have received a sentence of life imprisonment.<sup>1</sup>

### **C. A Commutation Hearing is Appropriate Because of Our Current Understanding of Battered Women**

When Betty Lou Beets was sentenced to death in 1985, this country was only beginning to understand and openly discuss the pervasive epidemic of domestic violence. Gradually, our national awareness has expanded, as has our willingness to talk about and break the cycle of domestic violence. Certainly, we know more now than we did fifteen years ago about the devastating and debilitating effects of prolonged and traumatic spousal abuse.

It is within this framework of an "evolving standard of decency that mark[s] the progress of a maturing society," that we ask for a commutation hearing in this case. *Furman v. Georgia*, 408 U.S. 238, 269-70 (1972)(quoting *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958)). Knowing what we do about domestic violence and battered women's syndrome, a fully-informed jury deliberating today would never sentence a battered woman like Betty to death. Similarly, it is unthinkable that we would allow this execution to go forward, knowing what we do.

Although nothing excuses E. Ray Andrews' failure to present the mitigating evidence readily available to him at the time of Betty's trial, it is still true that our national understanding of the cycle and pattern of domestic violence has developed. This trend is exemplified by the growing number of task forces, legislation, and clemency projects developing around the country, which consider clemency for battered women in light of our current comprehension of domestic violence. For example, in 1991, the Texas Legislature passed a resolution urging Gov. Ann Richards to direct the parole board to investigate all cases of individuals convicted of killing when the killers were victims of domestic violence.

In 1990, Richard Celeste, then-governor of Ohio, granted clemency to 28 battered women imprisoned for violent crimes, including one woman on death row. In 1996, Illinois Governor Jim Edgar commuted the death sentence of Guinevere Garcia, who was condemned for the murder of her abusive husband. Governors in Maryland, Illinois, Florida, and California, have also commuted the sentences of incarcerated battered women. In declaring his commitment to continuing and seeking federal funds for Florida's battered women's clemency project, Governor Jeb Bush stated:

"Domestic violence is a huge problem...It can change people's lives forever."

Domestic violence forever changed Betty's life – a life the State of Texas is poised to take in barely three weeks. This Board has the power to prevent this injustice. It should exercise this power and, at a minimum, hold a public hearing to consider the merits of Betty's application.

### **IV. The Effect Of Betty's Crime**

We have not spoken with Jimmy Don Beets' family, but we accept that they mourn his passing deeply, and miss him very much.

#### **V. Claims Raised In the Judicial Proceedings**

Betty raised the following claims in state and federal post-conviction proceedings:

**MS. BEETS WAS DEPRIVED OF HER RIGHT TO CONFLICT FREE REPRESENTATION BECAUSE TRIAL COUNSEL LABORED UNDER AN ACTUAL CONFLICT OF INTEREST THAT ADVERSELY AFFECTED HIS REPRESENTATION**

**MS. BEETS RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL**

**THE PROSECUTION FAILED TO INFORM THE DEFENSE IT HAD REACHED AN AGREEMENT WITH MATERIAL WITNESSES IN EXCHANGE FOR THEIR TESTIMONY FOR THE PROSECUTION, AND FAILED TO CORRECT PERJURED TESTIMONY BY THESE WITNESSES**

**THE MURDER FOR REMUNERATION PROVISION IN THE TEXAS CAPITAL MURDER STATUTE FAILED ADEQUATELY TO GUIDE THE JURY'S DISCRETION**

**THE COURT'S CHARGE FAILED TO INSTRUCT THE JURY THEY HAD TO FIND MS. BEETS HAD THE SPECIFIC INTENT TO KILL, WHICH IS AN ESSENTIAL ELEMENT OF THE OFFENSE OF CAPITAL MURDER FOR REMUNERATION**

**THE TEXAS CAPITAL SENTENCING STATUTE PRECLUDED THE JURY FROM GIVING FULL EFFECT TO MS. BEETS' MITGATING EVIDENCE**

**THE FIRST SPECIAL ISSUE PREVENTED THE JURY FROM CONSIDERING AND GIVING EFFECT TO MS. BEETS' MITIGATING EVIDENCE REGARDING HER ROLE IN THE OFFENSE  
THE REFUSAL BY THE TRIAL COURT TO DEFINE "DELIBERATELY" IN ITS PENALTY PHASE INSTRUCTIONS VIOLATED MS. BEETS' RIGHTS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS**

THE APPLICATION OF ARTICLE 37.071(a)(1)(2) VIOLATED MS. BEETS'  
RIGHTS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS  
BECAUSE THE TRIAL COURT FAILED TO DEFINE VAGUE TERMS IN  
THE SECOND SPECIAL ISSUE

THE TRIAL COURT'S CHARGE ON PUNISHMENT FAILED TO INSTRUCT  
THE JURY TO CONSIDER MITIGATING EVIDENCE  
THE PROSECUTOR IMPROPERLY COMMENTED UPON PETITIONER'S  
FAILURE TO RESPOND TO POLICE QUESTIONING AFTER SHE HAD  
BEEN ARRESTED AND GIVEN MIRANDA WARNINGS

MS. BEETS' RIGHTS TO A FAIR TRIAL AND TO A RELIABLE  
SENTENCING DETERMINATION WERE VIOLATED BY NUMEROUS  
INSTANCES OF PROSECUTORIAL MISCONDUCT

THE STATE COURT VIOLATED PETITIONER'S DUE PROCESS RIGHTS WHEN  
IT OVERRULED PRIOR PRECEDENT TO HOLD FOR THE FIRST TIME THAT  
TEXAS' CAPITAL MURDER STATUTE INCLUDES A MURDER COMMITTED IN  
THE HOPE OF RECEIVING LIFE INSURANCE PROCEEDS AND PENSION  
BENEFITS, THEREBY RETROACTIVELY SUBJECTING PETITIONER'S  
CONDUCT TO THE DEATH PENALTY

THE PROSECUTOR IMPROPERLY PRESENTED EVIDENCE AND  
ARGUMENT ABOUT THE CHARACTERISTICS OF THE VICTIM, AS  
WELL AS THE IMPACT OF HIS DEATH ON HIS FAMILY AND FRIENDS,  
AS A REASON TO CONVICT AND SENTENCE MS BEETS

THE TRIAL COURT FAILED TO INFORM THE JURY OF THE  
CONSEQUENCES OF THEIR "YES" ANSWERS TO THE TWO SPECIAL  
ISSUE QUESTIONS, AND UNDERMINED THE JURY'S SENSE OF  
RESPONSIBILITY FOR THE CONSEQUENCES OF ITS VERDICT

THE TEXAS CAPITAL SENTENCING STATUTE UNCONSTITUTIONALLY  
PROHIBITED THE COURT FROM INSTRUCTING THE JURY AT THE  
PENALTY PHASE REGARDING THE EFFECT OF A "NO" VOTE BY ONE  
JUROR

THE COURT'S VAGUE AND CONTRADICTORY INSTRUCTIONS  
RESULTED IN THE ARBITRARY AND CAPRICIOUS  
INFLECTION OF MS. BEETS' DEATH SENTENCE

THE TEXAS COURTS HAVE FAILED TO APPLY  
THE CONSTITUTIONALLY MANDATED LIMITING CONSTRUCTION  
TO THE INHERENTLY VAGUE SPECIAL ISSUE QUESTIONS

MS. BEETS WAS SENTENCED TO DIE UNDER A MANDATORY  
STATUTE THAT IMPROPERLY LIMITED THE DISCRETION  
OF THE SENTENCING AUTHORITY

THE TEXAS SENTENCING SCHEME IS UNCONSTITUTIONAL ON ITS  
FACE AND AS APPLIED BECAUSE THE JURY IS NOT INSTRUCTED ON  
THE PAROLE IMPLICATIONS OF A LIFE SENTENCE IN A CAPITAL  
CASE, BUT IS SO INSTRUCTED IN A NON-CAPITAL CASE

MS. BEETS WAS DEPRIVED OF HER RIGHT TO BOTH A FAIR TRIAL  
AND DUE PROCES WHEN THE STATE IMPROPERLY IMPEACHED HER  
WITH EVIDENCE OF INADMISSIBLE PRIOR ACTS

THE COURT DEPRIVED MS. BEETS OF HER RIGHT TO BE PRESUMED  
INNOCENT BY IMPROPERLY INSTRUCTING THE JURY THEY SHOULD  
NOT HAVE AN OPINION AS TO HER GUILT OR INNOCENCE

THE JURORS WERE IMPROPERLY ADMINISTERED AN OATH WHICH  
INFORMED THEM THEY COULD NOT BE "AFFECTED" BY THE  
POTENTIAL PENALTY OF DEATH

THE PROSECUTION UNLAWFULLY USED PEREMPTORY CHALLENGES  
TO EXCUSE VENIREPERSONS WHO EXPRESSED QUALMS ABOUT THE  
DEATH PENALTY, IN VIOLATION OF THE FEDERAL AND STATE  
CONSTITUTIONS

VENIREPERSON RUBEN WALKER, JR., WAS  
WRONGLY EXCUSED FOR CAUSE

VENIREPERSON E.C. LEWIS WAS  
WRONGLY EXCUSED FOR CAUSE

THE TRIAL COURT SHOULD HAVE GRANTED MS. BEETS'  
MOTION FOR CHANGE OF VENUE

THE TRIAL COURT SHOULD HAVE GRANTED MS. BEETS' MOTION  
FOR CHANGE OF VENUE AT THE CONCLUSION OF VOIR DIRE

#### **VI. Appellate History**

After a four day trial, the jury sentenced Betty to die October 14, 1985. Her conviction was originally overturned by the Texas Court of Criminal Appeals, but the Court, overruling prior authority, reversed itself and reinstated Betty's conviction in 1988. *Beets v. State*, 767 S.W.2d 711 (Tex. Crim. App. 1988). The federal district court granted habeas relief in 1991 and overturned her death sentence, but the Fifth Circuit, again overruling prior authority, reversed the lower court and again reinstated Betty's conviction. *Beets v. Scott*, 65 F.3d 1258 (5<sup>th</sup> Cir. 1995)(en banc). The district court then denied Betty's remaining claims, and the Fifth Circuit affirmed. *Beets v. Johnson*, 180 F.3d 190 (5<sup>th</sup> Cir. 1999). The United States Supreme Court denied Betty's Petition for Writ of Certiorari January 18, 2000. \_\_\_ U.S. \_\_\_ (Jan. 18, 2000). The next day, without notice to Betty's lawyers, the State of Texas scheduled Betty's execution for February 24, 2000. On January 26, the trial court denied the request brought by Betty's lawyers for an additional 30 days to prepare this clemency application.

#### **VII. Conclusion**

Execution—that most extreme and permanent of punishments—does not fit the individual circumstances that are Betty Lou Beets' life. The punishment does not fit Betty. If there has ever been a moment in which the clemency power, as described by Alexander Hamilton, is required "by considerations of justice, of humanity and of public policy," this is it. Justice would right the wrong of exclusion of basic and essential defense testimony at the guilt phase of Betty's trial; a trial tainted by a corrupt and selfish lawyer. Humanity would require that the jury, and if not the jury, those considering her clemency, hear the horrid circumstance of the abuse that Betty survived. And public policy would scream out to prevent the execution of a sixty-two year old great-grandmother, who believes in Jesus and her 'grandbabies,' and who is where she is because of the life of domestic violence and sexual assault that she has, so far, survived.

WHEREFORE, for the reasons stated herein, and in the appendices submitted herewith, Betty Lou Beets, convicted in the County of Henderson and ordered to be executed on February 24, 2000, by and through her undersigned counsel, respectfully requests that her sentence of death be commuted to a sentence of life imprisonment without the possibility of parole pursuant to Texas Const., Art. IV, § 11 and Texas Administrative Code § 143.51 and 143.57, et. seq. In addition, Ms. Beets, through counsel, requests that the Board grant a 30-day reprieve, and that a hearing be set on the matter of recommending commutation of Betty Lou Beet's death sentence, pursuant to Texas Admin. Code § 143.43(b) and (f)(3). Finally, Ms. Beets, through counsel, requests that the Board interview her, pursuant to Texas Admin. Code § 143.43(d).

Respectfully submitted,

JOSEPH MARGULIES  
MN. Attorney No. 208528  
220 South Sixth Street, #215  
Minneapolis, MN 55402  
(612) 339-2673  
(612) 339-7851 (FAX)

JOHN BLUME  
Cornell Law School  
112 Myron Taylor Hall  
Ithaca, N. Y. 14853

ALISON NATHAN  
Law Student  
Cornell Law School

COUNSEL FOR MS. BEETS

Dated: \_\_\_\_\_