

PETITION FOR EXECUTIVE CLEMENCY  
ON BEHALF OF LISA MARIE MONTGOMERY



PRESENTED TO PRESIDENT DONALD J. TRUMP  
DECEMBER 24, 2020

# PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

President Donald J. Trump  
1600 Pennsylvania Avenue N.W.  
Washington, D.C. 20500

Dear President Trump:

Broken before she was born, Lisa Montgomery's life was filled with torture, terror, failure, and betrayal. Caretakers, family members, neighbors, schoolteachers, social workers, counselors, lawyers, and judges — all could have intervened to save Lisa from the crippling trauma and profound mental illness that overtook her already damaged brain, culminating in the awful tragedy that took the life of Bobbie Jo Stinnett. Had just one person intervened, all of this could have been avoided. But they did not. And so now you are faced with the awesome responsibility of deciding whether Lisa Montgomery lives or dies. You alone have the power to temper Justice with Mercy. You alone have the power to protect her children and grandchildren from more heartache and pain. You alone have the power to join the growing chorus to end the stigmatization of mental illness. You alone have the power to send a message to the thousands of women who have been the victim of childhood rape and trafficking that their pain matters — that they matter — that their lives have value. You alone write the ending to this story — does it end with more pain? Or does it end with hope, mercy, and understanding? We pray it is the latter.

It is with this in mind that, on behalf of Lisa Montgomery and her family, we ask you to use the power granted to you by Article II, § 2 of the United States Constitution to commute Lisa Montgomery's death sentence to Life Imprisonment Without the Possibility of Parole. We are joined in this request by a diverse, bipartisan coalition of supporters including prosecutors who have prosecuted cases similar to Lisa's, former state and federal prosecutors, the nation's three leading mental health organizations, advocates for victims of child sexual abuse, advocates seeking to end violence against women, and over 140,000 citizens who have signed on to our petition for clemency. We respectfully request that Lisa's petition for mercy receive a full investigation as contemplated by the Department of Justice's regulations governing these matters. We also respectfully request the opportunity to make an oral presentation to the Office of Pardon Attorney and to you, personally.

Our request is supported by numerous supporting documents. We have made those available to you, your staff, and the Office of Pardon Attorney via dropbox link: <https://www.dropbox.com/sh/x4de8d6853pz61m/AADXip1h6w3uqa7TyH-7Imp6a?dl=0>. We prepared a short video in support of our request which you can view here: <https://vimeo.com/493579656>. We urge you to listen to Lisa's Song, an

# PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

original piece written by Veronica Cinibulk whose lyrics beautifully capture the horrifying betrayal of Lisa by those who should have loved and cared for her. It is available [\(231\) Lisa's Song by Veronica Cinibulk - YouTube](#).

Appended to this petition is a table of contents to the exhibits we are providing in support of relief. We are presenting you with as much information as we possibly can and in the best format we can, given the extraordinarily short timeframe we had to prepare this document, the challenges of the pandemic, and our own illness during this time. Respectfully, the fact that William Barr's Department of Justice plucked Lisa Montgomery out of sequence to leapfrog her execution over others' and schedule her execution on such a short timeframe came as a shock. There are thirty other death row inmates whose convictions pre-date Mrs. Montgomery's. See [List of Federal Death-Row Prisoners | Death Penalty Information Center](#). Given all that is at stake, all there is to review, and the monumental challenges you face as the leader of our country, we alternatively request you grant Mrs. Montgomery a reprieve of her January 12, 2021 execution date so that a full, studied, and thorough investigation of the issues we raise here and in our attachments can take place.

The truth about Mrs. Montgomery cannot be found in any reported court opinion. As we discuss below, the Judiciary failed. In the pages that follow, we will try to share the truth about Lisa and her case. Before we do, it is important to acknowledge the life and tragic death of Bobbi Jo Stinnett and the on-going pain of the Harper and Stinnett families. Nothing we say here is meant to bring them more pain. And we do not mean to suggest that Mrs. Montgomery should not be punished. She should. We do not make excuses for her actions.

Everything about this case is overwhelmingly sad. As human beings we want to turn away. It is easy to call Mrs. Montgomery evil and a monster, as the Government has. She is neither. The harder thing to do is to face all of the facts, all of the failures, all of the betrayals, and come to a new understanding. With understanding comes hope. You can do Justice and exercise Mercy at the same time. Justice in this case is life imprisonment, without parole.

## **Lisa Montgomery's Life Has Been Filled With Unimaginable Terror**

"Don't spank me it hurts." These were Lisa first words, her mother, Judy Shaughnessy, proudly announced to a defense investigator. Judy was an out-of-control, mentally unstable, alcoholic when she met John Patterson, Lisa's father. She drank throughout her pregnancy with Lisa. We know from science and Lisa's brain scans, that Lisa was born with brain damage. John Patterson was also a heavy drinker and suffered from bipolar disorder. Judy and John had a volatile

## PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

relationship. John volunteered to go to Vietnam to escape Judy. He left his older daughter from another marriage, Diane, in Judy's "care." When he returned, John took the children from Judy without her permission. Ultimately, he returned the children to Judy and abandoned them for good. John Patterson did not see either of his daughters again until Lisa's trial. Patterson regrets not remaining in his daughters' lives.

Judy's treatment of the girls was cruel and sadistic. She beat them if the tines of their forks made a noise on the table. She covered Lisa's mouth with duct tape. As a matter of survival, Lisa's tiny brain learned not to cry when this happened, because if she cried her nose would become so congested that she felt as if she were suffocating. Judy forced Diane to eat raw onions, because she knew that Diane did not like onions. Judy preyed on Diane's fear of abandonment. She stripped her naked and pushed her outside in the cold telling her that she was kicking her out of the house. Leaving Diane to shiver and cry, alone, in the dark. No one called the police.

Diane and Lisa shared a small bedroom, their beds so close together that they could reach out and hold each other's hand. Judy allowed her boyfriends into that bedroom to rape Diane. Lisa would lie silently in the bed next to Diane. We do not know when the rapes began, but we do know that Diane was only eight years old when social services finally rescued her from the hell that was Judy's home.

Diane vividly recalls the day that the social worker came to get her. Judy leaned down to whisper in Diane's ear, "this is all your fault." As Diane was driven away the reality that Lisa was not coming with her set in. She began to vomit. She knew that Lisa would take her place with the faceless men that Judy allowed in the room. The next time Diane saw Lisa was from the witness stand at Lisa's trial. Kansas social services never investigated Judy.

Judy's cruelty knew no bounds. Her son Teddy describes how, as punishment, she killed the family dog by beating its head with a shovel while the children looked on. This sort of behavior instilled in the children the sense that Judy was all powerful and able to take away anything, or anyone, they treasured. And it would be all their fault.

Not long after Diane was removed from Judy, Judy married Jack Kleiner. Kleiner was a vicious, alcoholic, pedophile. A neighbor, Wesley Gann, explained to investigators that Kleiner terrorized his family. Gann, who was a preacher, described how Kleiner would stand across the street from Gann's house on Sunday mornings and masturbate as Gann and his family left for church. Gann's daughter

## PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

was one year old. Kleiner threatened that he would kill Gann and his wife and take their daughter for his own. The threats escalated and one day Kleiner tried to attack Gann with a 4x4. The altercation culminated with Kleiner getting in his truck and attempting to run over Gann and his nine-year-old son. Gann pressed charges and moved away. Kleiner received minimal punishment. No one investigated the home.

Kleiner moved the family from one run-down trailer to the next, finally landing in an isolated tract of land in Osage County, Oklahoma. There, Jack built a special room on the back side of the trailer. The only way to enter the room was through a door on the outside. It was in that room that Lisa was repeatedly raped not only by her step-father, Jack Kleiner, but also by his buddies and other men who paid Judy to rape her daughter.

Jack Kleiner began molesting Lisa when she was approximately 11 years old. When she was a young teenager the molestation turned to rape. During the rapes he beat her head against the concrete floor of the rape room. He allowed his drinking buddies to do the same. Reeking of alcohol, these middle-aged men violated her anally, orally, and vaginally. Jeering at her as they went. Slapping, punching, beating her. When they were done, they urinated on her like she was trash.

People knew. Linda Baker, a neighbor, told investigators that she knew that Kleiner had raped Lisa. Mrs. Baker said that Judy believed that Lisa “brought it on herself.” Though Mrs. Baker recognized that Lisa was scared, Mrs. Baker did not call the police or social services.

A cousin, David Kidwell, a law enforcement officer knew. Kidwell told investigators that he could tell something was wrong when he went to visit the family in Oklahoma. He took Lisa to get a coke so he could ask her what was happening. Lisa told him what Jack Kleiner and his buddies did to her. Kidwell took Lisa home and drove back to Kansas where he lived. He did not call the police. He did not call social services.

The worst betrayal, perhaps, was Lisa’s mother. She prostituted her own daughter. Today we call that trafficking. She told Lisa she had to submit to these men to “earn her keep.” The roofer, the plumber, the propane man, and who knows how many others, each took their turn.

When Judy decided that she was done with Jack and ready to move on to her third husband, Richard Boman, Judy used Jack’s proclivities to her advantage to get what little money she could from Jack Kleiner. She made Lisa testify about the abuse from Kleiner, but ordered her to leave out many important details. Judy did

## PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

not want Jack Kleiner to go to prison, because then he could not pay child support. The judge upbraided Judy Kleiner for her stony demeanor during her daughter's testimony and failure to report the abuse to the police. The Judge did not refer Jack Kleiner for prosecution.

On the advice of her divorce attorney, Judy took Lisa to a few counseling sessions. The counselor noted Judy's narcissism and lack of empathy for Lisa. Judy stopped the counseling sessions when the divorce was finalized. The counselor did not report Jack Kleiner to the police.

After the divorce trial, Lisa lived with public shame and humiliation. Everyone knew what Jack had done to her – but no one helped. Lisa began to make plans to join the military to escape Judy. Judy undermined Lisa's plans. She pressured Lisa into a marriage with her step-brother, Carl Boman. Lisa got pregnant and any hope of escape vanished.

Lisa's marriage to Carl Boman was a continuing nightmare. He used the knowledge of what Jack had done to Lisa to humiliate and degrade her. He violently raped her using inanimate objects. He beat her and forced her into stress positions. And he recorded all this on video that he showed to his friends. Lisa's brother, Teddy Kleiner, confirmed the existence of one such video. He described it as "like something out of a horror movie."

Lisa had four children in four years. By this time in her life, Lisa was suffering from mental illness, alcoholism, severe trauma, and brain damage. When her fourth child was born, Judy and Carl coerced Lisa into a tubal fulguration under threat of taking her children. Judy's and Carl's threat to take Lisa's children would become a consistent theme in her life. No doctor or social worker offered help to Lisa.

Lisa succumbed to her mental illness. She could not function. She did not know what was real and what was not real. She lived in abject poverty. Though she loved her children and wanted to be a good mother, she was not. Her behavior became erratic. One night she woke all the children, poured them into the van, put a diaper on a pet goat, and drove all night to San Antonio to see the Alamo. Still no one got her to a doctor for treatment.

Eventually Lisa married Kevin Montgomery and they moved to a farm in Melvern, Kansas. Kevin was divorced and had three boys. Lisa sank further into an alternate reality. She fantasized about being pregnant. Soon she started having imagined pregnancies.

# PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

Lisa was so out of touch that she often did not respond to her own name. She mistook ammonia for vinegar while cooking. Her home was filthy. She could not dress her children or help them with their hair. Still no one suggested that she seek psychiatric help.

## **Lisa's Mental Illness is Severe, Pervasive, and Debilitating**

In the year before the crime, Lisa finally saw a counselor, Sallye Wilkinson. She was only able to afford a few sessions. The counselor diagnosed Lisa with Depression and assessed Lisa's GAF (Global Assessment of Functioning) at 48, which reflects serious impairment in her ability to function. But this diagnosis was preliminary and did not begin to explain what was really going on with Lisa.

Since her arrest, Lisa Montgomery has been under constant psychiatric care by jail or prison psychiatrists. The Marshal who escorted her to court described her as one of the worst-off inmates he had ever dealt with. An Assistant United States Attorney observed that she was clearly crazy.

BOP psychiatrists have documented Lisa in an acute psychotic state. BOP has diagnosed Lisa with bipolar disorder, depression, and post-traumatic stress disorder. Her medication regimen has changed over time, but she has received anti-psychotics since 2008. Currently Mrs. Montgomery takes a cocktail of psychotropic drugs including anti-psychotics. These medications can only do so much. They treat her symptoms, but they are not a cure.

Mental health professionals with access to all the materials we are providing to you, provide a fuller picture of Lisa's mental functioning. Beginning in 2012, when we were appointed, we began the intensive social history investigation that trial counsel failed to conduct. Our team interviewed hundreds of witnesses and scoured every state, county, and city that Lisa lived in (she moved 63 times in 34 years) for records. Anything to shed light on who Lisa is and how she came to commit this crime. This investigation provided the fundamental data needed for the biopsychosocial history. Mental health experts use the biopsychosocial information to understand a patient's clinical history and presentation.

Although the jury heard some mental health testimony, it was unsupported and so badly bungled that the Government was able to use it against Mrs. Montgomery. The extensive medical and mental health history that could have been developed and presented to the jury is attached to this petition with our materials. It is important to note that the testimony presented here was uncontested by the government at the 2016 hearing on Mrs. Montgomery's postconviction petition; in fact, the government noted that the report was very well sourced. The proof

## PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

establishes that Mrs. Montgomery's brain was damaged from her mother's drinking during pregnancy, multiple head injuries, and the neurobiological impact of the severe torture that Lisa experienced in her life. Scientific imaging demonstrates that Mrs. Montgomery's brain is damaged structurally and functionally. Neuropsychological data shows that this damage expresses itself in functional deficits. Neurological evaluations conclude that Mrs. Montgomery suffers from temporal lobe epilepsy. Further evaluation reveals that Mrs. Montgomery also suffers from bipolar disorder and complex posttraumatic stress disorder. These illnesses are layered one on top of the other, and manifest with many of the same symptoms. The government's mental health professionals agree. Mrs. Montgomery is seriously mentally ill.

Key symptoms of Mrs. Montgomery's illness are dissociation, depersonalization, and derealization. One of the leading experts on torture, Dr. Katherine Porterfield, explains in her testimony that children who are experiencing the type of trauma experienced by Mrs. Montgomery lose contact with reality. This is because what is happening to them is so terrifying that their mind goes to another place simply to survive. This all happens at a subconscious level. The part of the brain responsible for fight or flight takes over to protect the mind. The mind then disconnects from the body. These people often describe themselves as having experiences where they are watching what is happening in the room. Sometimes they will describe feeling as if another person is next to them. For Mrs. Montgomery, these episodes of disconnecting from her physical being and reality began at a very young age.

If she had received treatment and medication, then this crime would never have happened. Our country has stigmatized mental disease for centuries. We have not prioritized mental health treatment. Many who are poor, like Mrs. Montgomery, cannot afford treatment and medication. Inevitably, we warehouse rather than treat the mentally ill.

Our country has long recognized that mental illness is a mitigating factor and calls for a lesser punishment. Our call for clemency on this basis is echoed by the letter from Stanley Garnett and Harry Zimmerman. Both men prosecuted women for crimes similar to that committed by Mrs. Montgomery. They write:

We know from first-hand experience that these crimes are inevitably the product of serious mental illness. Women who commit such crimes also are likely to have been victimized themselves. These are important factors that make death sentences inappropriate. We therefore urge you to commute the death sentence of Lisa Montgomery, a mentally ill and brutally traumatized woman[.]

# PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

800 organizations, scholars, individuals, law clinics, and survivors join together to urge you to exercise Mercy on behalf of Lisa Montgomery. They write, “Lisa’s mental illness is inextricable from the crime she committed.” This diverse and bipartisan group concluded:

Those of us who work in the anti-violence field or have experienced abuse know that victims of violence are complex, that someone can both use even horrific violence and nonetheless be a victim of serious trauma. Lisa suffered horrific physical and sexual abuse and serious trauma throughout her life, struggled with mental illness, and was a victim long before she became a defendant. While her experiences of victimization and mental illness do not excuse her crime, they do help to explain what otherwise seems unimaginable. Lisa has experienced a lifetime of punishment and it is now time for mercy.

Leading advocates for people with serious mental illness, the National Alliance of Mental Illness, Mental Health America, and Treatment Advocacy Center, also petition you to commute Mrs. Montgomery’s sentence.

As advocates for people with serious mental illness and their families, we ask that you to commute the death sentence of Lisa Montgomery, a woman with multiple severe mental illnesses and neurological disorders. We believe that Ms. Montgomery, who acted in grip of a psychotic episode, should not be subject to the death penalty due to her brain damage and severe mental illnesses, and a sentence of life imprisonment without possibility of release is an appropriate sentence for her.

A growing number of states are now considering legislation to outlaw the execution of individuals with severe mental illness. Ohio passed such a bill just a few days ago. This movement is a recognition that individuals with severe mental illness are less culpable and to execute them violates our society’s standards of decency. The execution of this sad, severely traumatized, and mentally ill woman would surely be a stain on our country.

## **The Judiciary Failed Lisa Montgomery**

The Sixth Amendment of the Constitution guarantees to every citizen the right to effective assistance of counsel. It is well understood that the representation of persons charged with a capital offense requires experienced counsel. A capital case is unique from every other criminal case: a person’s life is on the line. The Constitution requires heightened due process. In recognition of this fact, the

## PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

American Bar Association adopted Guidelines for the Appointment and Performance of Defense Counsel in 2002. In 2008, the ABA provided further guidance by adopting the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases. These guidelines represent the standard of care required in every capital case. They are based on years of experience and data collected by the American Bar Association. Lisa Montgomery's trial counsel, Fred Duchardt, a self-described "maverick," proudly boasts that he does not follow these guidelines. Trial counsel's approach to cases such as Mrs. Montgomery's is discussed in an article published in the Guardian in 2016, by David Rose titled "Death Row: The Lawyer Who Keeps Losing."

Trial counsel's out-of-the-box thinking included refusing to work with the mitigation specialist on the case; spending nominal time preparing witnesses to testify in the penalty phase; failing to recognize that the key witness to his ill-fated insanity defense was not a licensed mental health professional in this country; and pursuing an impossible theory that Mrs. Montgomery's brother was the true culprit, even though the brother had a rock-solid alibi. Trial counsel's maverick style included announcing his insanity defense in open court in front of opposing counsel before having his client evaluated.

It did not have to be this way.

Mrs. Montgomery's legal team changed personnel multiple times over the course of the first two years of her defense. A chart demonstrating the chaotic turnover is included in the materials. By the summer of 2005, the two lawyers charged with representing Mrs. Montgomery (AFPD Dave Owen and Susan Hunt) realized that they were in over their heads. They knew Mrs. Montgomery was severely mentally ill. They also knew she was incredibly remorseful and willing to accept a plea offer for life without parole. They knew they needed help to accomplish this goal. They sought help from one of the country's most successful capital defense attorneys, Judy Clarke. Ms. Clarke is known for her meticulous preparation, expertise, and negotiating prowess. She agreed to help. Ms. Clarke brought two experienced mitigation experts to the effort. Ms. Clarke's team immediately got to work and tried to build a team with the local attorneys and staff.

Egos got in the way. Dave Owen bristled at Ms. Clarke's leadership of the team. The FPD lead investigator bluntly stated that he was not "taking any orders from some damn woman." Owen went to the Judge and complained about Clarke in a private meeting. At the conclusion, the judge picked up the phone and called the jail to inform them that Ms. Clarke no longer represented Mrs. Montgomery and to deny her anticipated visit that afternoon. Shortly thereafter, the court entered an order

# PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

to remove Ms. Clarke from Lisa Montgomery's approved telephone list. Neither Mrs. Montgomery nor Ms. Clarke knew about the meeting. In her declaration provided in the materials, Ms. Clarke wrote, "Capital cases are always difficult, but I have managed to work with a number of teams through the tense and exhausting disputes that inevitably arise when the consequences are life and death, the pace of work is overwhelming, and the issues complex and multidimensional. The drama that infected this team was definitely detrimental to the work that we were trying to accomplish for Lisa Montgomery." Ms. Clarke candidly explains, "as much as I tried, I could never figure out how to fix what was wrong, and I deeply regret this failure."

Owen's co-counsel, Susan Hunt, implored the Court to bring Ms. Clarke back into the case. Owen announced he could no longer work with Hunt. The Court instructed Hunt to withdraw. And that is how Lisa Montgomery came to have the maverick-lawyer-who-keeps-losing appointed as her trial counsel.

There is little doubt that had Ms. Clarke remained on Lisa's case the information discussed here and in our supporting materials would have been uncovered. It would have led to a plea to life imprisonment without the possibility of parole. And even if it did not, this evidence would have moved at least one juror to vote for a life sentence, which is all the federal system requires to impose a sentence of life.

Mrs. Montgomery should not be executed because her lawyers could not figure out how to set their hurt feelings aside and work together for their client.

## **Mrs. Montgomery's Sentence Is Disproportionate**

The type of crime Mrs. Montgomery committed is rare. Data collected by researchers at Cornell law school verifies that Mrs. Montgomery is the only person on death row (state or federal) for such a crime. The data supporting the research is attached. The reason for this is apparent. As Garnett and Zimmerman explain "these crimes are inevitably the product of serious mental illness. Women who commit such crimes also are likely to have been victimized themselves."

As the 41 current and former prosecutors explain in their letter to you:

Lisa's experiences as a victim of horrific sexual violence, physical abuse, and being trafficked as a child do not excuse her crime. But her history provides us with an important explanation that would influence any sentencing recommendation we made as prosecutors. Our experience prosecuting human traffickers and those who commit sex crimes against children has given us a unique understanding of the profound physical

# PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

and psychological harm that victims like Lisa suffer. ... We view this kind of evidence as critically relevant to determining the appropriate punishment for a serious crime.

## **Lisa Montgomery Has Shown Remorse and Her Prison Behavior Demonstrates That She is Not a Danger**

Mrs. Montgomery confessed to her crime immediately. She was willing to plead guilty and accept a life sentence.

Since her incarceration, Mrs. Montgomery has been housed at the Federal Medical Center where she receives constant psychiatric care. Mrs. Montgomery has a positive prison record and has the support of many current and former staff.

## **International Experts Have Called for Mrs. Montgomery's Execution to Be Stayed**

UN Experts on Violence Against Women; Extrajudicial, Summary or Arbitrary Executions; the Rights of Persons with Disabilities; Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment; Extreme Poverty and Human Rights; and the Working Group on Discrimination Against Women and Girls issued an unusual joint appeal calling for clemency in Mrs. Montgomery's case.

“Ms. Montgomery was the victim of an extreme level of physical and sexual abuse throughout her life against which the State never provided protection and for which it failed to offer remedies. She suffered from several mental health conditions which the State failed to care for,”

the experts said.

“Shamefully, Ms. Montgomery's years of sexual abuse and State's neglect were further compounded by the gender discrimination she faced, pervasive at all stages of the capital proceedings against her.”

The letter from the coalition of UN experts is in your materials and can be accessed here:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26559&LangID=E>.

The Inter-American Commission on Human Rights (IACHR) concluded that Mrs. Montgomery “is in a situation of serious and urgent risk of irreparable harm to her rights.” The Commission called on the United States to refrain from carrying out Mrs. Montgomery's execution, and to “adopt necessary measures to protect [her] life.” The IACHR's Ruling on a Stay of Execution is included in the materials and

# PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

can be accessed here: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2020/10/Precautionary-Measures.pdf>.

The Inter-American Commission's ruling came in response to a petition filed by Cornell Law School's International Human Rights Clinic. The petition argued that the United States has violated several international legal obligations in Mrs. Montgomery's case, including her right to be free from gender discrimination, her right to a fair trial, and her right to humane treatment. The petition also argues that Mrs. Montgomery cannot be executed because of her severe mental illness, including a dissociative disorder and complex post-traumatic stress disorder.

As you know, the Inter-American Commission on Human Rights is an organ of the Organization of American States (OAS) that has the power to review violations of human rights in the United States. The United States has been a member of the OAS since 1951 and accepts the jurisdiction of the Inter-American Commission in death penalty cases. The petition filed by the Cornell Clinic is included in your materials and can be found at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2020/10/IACHR-Petition.pdf>.

## **A Reprieve Is Appropriate Under the Circumstances**

Mr. President, you know better than anyone that our country is under siege from the coronavirus. The pandemic has disrupted life as we know it for every single American. Executions during a pandemic create the environment for super-spreader events. We know that multiple staff and a spiritual advisor have tested positive for the virus after attending executions. It is reported that at least 14 men on federal death row have confirmed cases – though the number is believed to be as high as 32. Mrs. Montgomery's execution stands to put even more people at risk because BOP has determined that they should fly Mrs. Montgomery from where she is housed in Fort Worth, Texas to Terre Haute, Indiana for execution. This operation will involve countless additional personnel placing each of them at unnecessary risk and potentially expose each of their families and communities. Responsible governance counsels in favor of canceling executions during a pandemic, as every state in the union has done. Executions are not essential government operations that must occur during a state of emergency.

The pandemic has had a direct, negative impact on Mrs. Montgomery's ability to pursue her right to clemency. Two of us contracted the virus in the course of our professional duties on behalf of Ms. Montgomery. We developed serious symptoms which substantially impaired our ability to prepare Mrs. Montgomery's case. Moreover, the threat of infection prevents key expert witnesses from traveling to

# PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

the prison where Mrs. Montgomery is housed to conduct important evaluations. These evaluations are critical to Mrs. Montgomery's defense.

To be clear, the materials we are presenting to you are substantial and provide a compelling case for clemency. But there is more work to be done. There are interviews of individuals – such as the prison staff who support her application – that we could not conduct.

Moreover, the Attorney General created an artificial rush to execution by scheduling Mrs. Montgomery's case in such haste. There are important matters demanding your attention during this crucial time. But this is also an important matter which deserves thoughtful and considered attention. A brief reprieve would allow time to carefully weigh the matters presented here.

## **Commuting Mrs. Montgomery's Sentence to Life Imprisonment Without the Possibility of Parole Would Send An Important Message About the Need to Combat Human Trafficking and to Provide Services for Victims of Domestic Violence and Sexual Abuse**

Human Trafficking is a world-wide epidemic. One hundred organizations who work to combat human trafficking in the United States and around the world support Mrs. Montgomery's petition. They explain:

As advocates who raise awareness about human trafficking, create responses to better identify and protect trafficking victims, and support those recovering from sexual exploitation, we understand why Lisa's history is so relevant to determining how she should be punished for her crime.

The coalition goes on to recount the unimaginable abuse Lisa suffered and laments, "like so many other trafficking victims, the very systems that were supposed to protect Lisa did not, rendering her vulnerable to ongoing exploitation and abuse." While Lisa's victimization does not excuse her crime, they write, "it provides critical context that explains why she committed these acts, which might otherwise seem incomprehensible." The coalition explains that the laws we have today that are designed to protect children were not in place to protect Lisa. "Had any of these laws been in effect when Lisa was a child or young adult suffering human trafficking, our legal systems would have offered more meaningful intervention." Their letter concludes, "Lisa has suffered some of the worst forms of sexual violence, and we know the victims of such violence suffer lifelong psychological damage."

## PETITION FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

Forty advocates for child and family victims of violence separately wrote to you in support of Lisa. These experts know from first-hand experience how years of trauma and abuse such as that which Lisa suffered takes a terrible mental toll. While not excusing her crime, “her trauma history is critically relevant to the penalty she should receive.” Poignantly, these experts who have dedicated their lives to protecting children and families observe:

As child and family advocates, we step in for children who been abused, victimized, and/or abandoned by their parents or caregivers. Tragically, no one stepped in to save Lisa. Lisa was repeatedly abused and exploited by the very adults she turned to for protection – first her own mother and stepfathers, then her partners. There were many missed opportunities to intervene and stop Lisa’s suffering: Lisa’s sister was removed from the home by social services and escaped their mother’s abuse, but Lisa was left behind; a judge learned about Lisa’s childhood rapes by her stepfather, but failed to take action; Lisa’s cousin, a police officer, was told that her mother was selling her to multiple men for sex, but also did nothing. In a final betrayal, the justice system failed Lisa when prosecutors dismissed her experience as an “abuse excuse” – a characterization that is contrary to all the evidence and everything we understand as experts in this field.

Prosecutors did more than dismiss Lisa’s trauma as an abuse excuse—they blamed her for it. They presented an expert who testified that Lisa was a “willing participant” in her stepfather’s abuse. The prosecutors capitalized on trial counsel’s ineptitude, taking evidence which could have been attributed to Lisa’s mental illness and trauma and twisting it into evidence that Lisa was an evil monster undeserving of love or sympathy. The prosecutors did not need to tell her that, her own mother instilled that belief in her from the moment she was born.

Countless women have suffered silently under the weight of the shame and humiliation of the trauma inflicted by sexual and physical violence. They blame themselves. They see themselves as dirty, wicked, trash. They have been told that they are worthless – and they believe it. By commuting Lisa’s sentence to life, your action will send a message of hope to those women. If the Leader of the Free World stands up for them and says “Trauma Matters” it will make a difference in women’s lives. It may even save lives.

# PETITON FOR EXECUTIVE CLEMENCY ON BEHALF OF LISA MARIE MONTGOMERY

## **Clemency for Mrs. Montgomery Will Prevent Additional Pain and Suffering**

Lisa Montgomery has a husband, four children, and twelve grandchildren all of whom will suffer horrible pain if Mrs. Montgomery is executed. She has reestablished her relationship with her father, John, and sister, Diane. Diane has suffered so much in this life and somehow has found the strength to advocate for her sister “because that is what big sisters do.” An execution would bring more trauma and suffering to this family which has lost so much.

Before she was locked down due to the execution warrant, Mrs. Montgomery spent her days making gifts for others. She made angels, blankets, ornaments, sweaters, scarves, mittens, doilies, dolls, stuffed animals, nativity sets. She built a dollhouse for one granddaughter and a carousel for another. Each of us has cherished items that she has made for us and our families. She spent her days trying to make amends from prison in the only way she knew how.

This crime did not have to happen. It could have been prevented if one person had gotten Lisa help. This execution does not have to happen. You can stop it. You can temper Justice with Mercy with just the stroke of a pen.

Very respectfully,

*/s/ Kelley J. Henry*

Kelley J. Henry  
Supervisory Asst.  
Federal Public Defender  
810 Broadway, Ste 200  
Nashville, TN 37203  
615-337-0469  
Kelley\_Henry@fd.org

*/s/ Amy D. Harwell*

Amy D. Harwell  
Asst. Chief, Capital  
Habeas Unit  
810 Broadway, Ste 200  
Nashville, TN 37203  
615-736-5047  
Amy\_Harwell@fd.org

*/s/ Lisa G. Nouri*

Lisa G. Nouri  
Attorney at Law  
2526 Holmes  
Kansas City, MO 64108  
(816) 875-0448  
Lisanouri\_atty@hotmail.com

## Table of Contents

### **Attachment A. Letters in Support of Clemency**

- Letter from 41 Current and Former Prosecutors
- Letter from Prosecutors who Prosecuted Similar Cases
- Letter from 800 Organizations and Individuals Working to Combat Violence Against Women
- Letter from 100 Organizations and Individuals Working to Combat Human Trafficking
- Letter from 40 Child Advocates Whose Work is Devoted to Protecting Abused, Victimized, and Abandoned Children
- Letter from Three of the Nation’s Leading Advocacy Organizations for People with Serious Mental Illness and Their Families

### **Attachment B. New York Times: *Punch After Punch, Rape After Rape, a Murderer Was Made* by Rachel Louise Snyder (Dec. 18, 2020)**

### **Attachment C. Elle Magazine: *My Baby Sister Lisa Did a Terrible Thing. We Shouldn't Kill Her For It*, as told to Rose Minutaglio (Nov. 23, 2020)**

### **Attachment D. Newsweek: *My Sister, Lisa Montgomery, Took a Life. Her Own Was Scarred by Unimaginable Abuse. Spare Her* by Diane Mattingly (Nov. 19, 2020)**

### **Attachment E. Slate: *The Life Story of Lisa Montgomery* by Lauren Gill (Dec. 21, 2020)**

### **Attachment F. Chart of Comparable Crimes Compiled by the Cornell Center for the Death Penalty Worldwide**

### **Attachment G. Petition to the Inter-American Commission on Human Rights and the resulting Precautionary Measures Issued by the Commission**

### **Attachment H. Transcript of the 2255 (Post-Conviction) Hearing**

#### Volume I – October 31, 2016

Russell Stetler .....	55-159
Marc Bookman .....	159-230

#### Volume II – November 1, 2016

Ronald E. Wurtz .....	276-288
Bret Dillingham .....	288-312
Anita Burns.....	313-329
Stephanie Elliott .....	330-361

Troy Schnack.....	361-386
Susan Hunt .....	386-428
Lisa Rickert .....	428-460
Kurt Lipanovich.....	460-473
Volume III – November 2, 2016	
Richard Burr.....	523-611
Judy Clarke.....	611-683
Laine Cardarella.....	683-693
Holly Jackson.....	693-717
Debra Garvey.....	718-766
Volume IV – November 3, 2016	
David Freedman.....	811-862
Robert Peter Fucetola.....	862-897
Erin Garman.....	897-910
Chris Armstrong.....	911-916
Dr. V.S. Ramachandran (deposition introduced) .....	91-920
William Logan.....	920-982
Marilyn Ann Hutchinson.....	982-1069
Volume V – November 4, 2016	
Christopher Davatzikos.....	120-1182
Andrew Newberg.....	1182-1244
Camille Elizabeth Kempke.....	1245-1254
Ruth Boutin Kuncel.....	1254-1303
Volume VI – November 7, 2016	
Charles N. Sanislow.....	1363-1456
Janet Vogelsang.....	1460-1535
Diane Mattingly.....	1538-1553
Danielle Waller.....	1553-1576
Katherine Porterfield.....	1577-1591
Volume VII – November 8, 2016	
Katherine Porterfield.....	1636-1711
Siddhartha Nadkarni.....	1711-1745
George Washington Woods Jr. ....	1746-1864
John O'Connor.....	1864-1905
Volume VIII – November 9, 2016	
John O'Connor.....	1951-2026
Ruben Gur .....	2028-2131
George Parnham .....	2131-2136

David Owen .....	2136-2187
Fred Duchardt .....	2189-2215

Volume IX – November 10, 2016

Fred Duchardt .....	2263-2323
Ben Leonard .....	2324-2329

**Attachment I. Exhibits Submitted at the 2255 Evidentiary Hearing**

Exhibit 1 – The Comprehensive Evaluation of the Inter-generational Biopsychosocial Influences on Mrs. Montgomery’s Development by Janet Vogelsang (supported by accompanying attachments):<sup>1</sup>

- Exhibit 1-1 - Declaration of Thomas Allen Hedberg
- Exhibit 1-2 - Declaration of Lisa Rickert with Incorporating Interviews
- Exhibit 1-3 - Marie Josephine Miller Birth Certificate
- Exhibit 1-4 - Death Certificate of Marie Josephine Miller Stelma
- Exhibit 1-5 - Declaration of Mary Lee Coleman
- Exhibit 1-6 - Declaration of John Joseph Patterson
- Exhibit 1-7 - John Joseph Patterson Military Records
- Exhibit 1-8 - Declaration of Christina Juarez Patterson
- Exhibit 1-9 - Declaration of Diane Rae Mattingly
- Exhibit 1-10 - Mary Lee Coleman Harborview Medical Records
- Exhibit 1-11 - Declaration of Heath Hedberg
- Exhibit 1-12 - Declaration of Lori Mae Hedberg Yates
- Exhibit 1-13 - Mary Lee Hedberg Coleman Gray Junior High
- Exhibit 1-14 - Topeka Kansas School Records of Desiree Boman
- Exhibit 1-15 - Marriage Certificate of Robert Lee Patterson and Marie Miller
- Exhibit 1-16 - Robert Lee Patterson Birth Certificate
- Exhibit 1-17 - Robert Lee Patterson Draft Card
- Exhibit 1-18 - Declaration of Grace A. Figg Baum
- Exhibit 1-19 - Declaration of Wendy Alexander Treibs
- Exhibit 1-20 - Death Certificate of Robert Patterson
- Exhibit 1-21 - Declaration of Ronald J. Figg
- Exhibit 1-22 - Gordon Hedberg Enlistment Records

---

<sup>1</sup> In addition to stipulating to the admission of this exhibit, the Government credited Ms. Vogelsang’s sourcing and documentation as follows at Vol. ##, p.## of the Transcript of the 2255 (post-conviction) Hearing:

Mr. KETCHMARK: Your Honor, if I might, it’s not really an objection. It’s more of a – we did stipulate to her original report and supplement. I would note the original report is 184 pages. The PowerPoint is also – there’s objection to a stipulation of the PowerPoint. **We’re not contesting the information** that she was able to compile and put together in the biosocialpsych (sic) history here. I don’t know that we need to go through ad nauseam the PowerPoint because **it’s all sourced back**, and I think they did an excellent job of providing the Court with a roadmap of the information in the 184 pages and then digesting it down with these source attachments here, and so I just think this is cumulative of stuff that we haven’t objected to coming in, and I just don’t know that we need to do this and go through the two-hundred page PowerPoint in this fashion.

Exhibit 1-23 - Marriage license of John Hedberg and Joyce Hammer  
Exhibit 1-24 - Diane Hedberg, State Dept. of Social Welfare of KS Report  
Exhibit 1-25 - Diane Hedberg, Riley County Court Records, Child in Need of Care  
Exhibit 1-26 - Letter from Kings county Youth Services Center on Dianne Hedberg  
Exhibit 1-27- Hope Kleiner - OK Dept of Human Services Home Study  
Exhibit 1-28 - Birth Certificate of Judy Rignell  
Exhibit 1-29 - In the matter of Justin Kleiner, TR. 149, Testimony of Desiree Boman  
Exhibit 1-30 - Ron Ninemire Interview of Ron Gieck  
Exhibit 1-31 - Declaration of Teddy Kleiner  
Exhibit 1-32 - SSA Itemized Statement of Earnings of Judy Shaughnessy  
Exhibit 1-33 - Certificate of Still Birth (fetal death) Kansas Board of Health  
Exhibit 1-34 - Leo Barabash and Judy Rignell Divorce Decree  
Exhibit 1-35 - John Hedberg and Judy Hedberg divorce decree  
Exhibit 1-36 - Certificate of Live Birth of Lisa Marie Hedberg  
Exhibit 1-37 - FBI 302 Interview of Patty Hedberg Marriage Certificate  
Exhibit 1-38 - Jack Kleiner and Judy Hedberg Marriage Certificate  
Exhibit 1-39 - Kleiner v. Kleiner Divorce Transcript  
Exhibit 1-40 - FBI Interview of Jerri Jo Kleiner Leonard  
Exhibit 1-41 - Second Declaration of Tommy Lee Kleiner  
Exhibit 1-42 - Marriage License of Judy Boman and Hector Ochoa  
Exhibit 1-43 - Ochoa vs Ochoa Petition for Divorce and Final Divorce Decree  
Exhibit 1-44 - Danny Shaughnessy and Judy Ochoa Marriage Record  
Exhibit 1-45 - Declaration of Dani Waller  
Exhibit 1-46 - Declaration of Jessica Marie Robinson Thompson Brown  
Exhibit 1-47 - Diane Hedberg Central Kansas Mental Health Report  
Exhibit 1-48 - Ron Ninemire and Dani Waller Interview with Diane Rae Hedberg Mattingly  
Exhibit 1-49 - Jack Kleiner Death Certificate  
Exhibit 1-50 - Jack Kleiner Grave and Obituary Information  
Exhibit 1-51 – Penny Craig, 12 & 12 Center for Addiction Treatment and Recovery Records  
Exhibit 1-52 - Willadean Kleiner v. Jack Kleiner, Divorce – Riley Co. Case No. 17,260  
Exhibit 1-53 - Josie Kleiner telephone call summary  
Exhibit 1-54 - Ron Ninemire Interview with Teddy Kleiner  
Exhibit 1-55 - Ron Ninemire Interview with Penny Kleiner  
Exhibit 1-56 - Ron Ninemire Interview with Tommy Kleiner  
Exhibit 1-57 - Declaration of Holly Jackson  
Exhibit 1-58 - Teddy Kleiner - Kansas DOC Mental Health Exam  
Exhibit 1-59 - Vacation Bible School Certificate  
Exhibit 1-60 - Lisa Montgomery Manhattan KS Unified School District No. 383 - Kindergarten

Exhibit 1-61 - Lisa Montgomery Tulsa Public Schools cumulative record  
Exhibit 1-62 - Declaration of John Fransisco  
Exhibit 1-63 - Lisa Montgomery Certificate of Merit in Art  
Exhibit 1-64 - Lisa Montgomery Certificate of Merit in Reading  
Exhibit 1-65 - Children's Medical Center - Lisa Montgomery  
Exhibit 1-66 - Lisa Montgomery Tulsa Tribune Spelling Award  
Exhibit 1-67 - Lisa Montgomery Pershing Elementary Good Citizen Award  
Exhibit 1-68 - Lisa Montgomery Report to Parents, Tulsa Public Schools  
Exhibit 1-69 - Declaration of Eunice Copeland  
Exhibit 1-70 - Declaration of Kenneth Alexander  
Exhibit 1-71 - Kenneth Alexander San Antonio State Hospital Medical Records  
Exhibit 1-72 - Kenneth Dale Alexander Florida State Hospital  
Exhibit 1-73 - Kenneth Alexander, SSDI Records -5.21.09 Mental Status  
Evaluation  
Exhibit 1-74 - Kenneth Alexander, Snowy Range Consulting  
Exhibit 1-75 - Kenneth Alexander – Wyoming Behavioral Institute  
Exhibit 1-76 - Kenneth Alexander, WY State Hospital, Psychotropic  
Exhibit 1-77 - Kenneth Alexander, Wyoming State Hospital, Psych admission  
note  
Exhibit 1-78 - Lisa Montgomery Sperry Public Schools Transcript  
Exhibit 1-79 - Declaration of Chelsea Boman Veal  
Exhibit 1-80 - Declaration of Jonathan Caleb Thompson  
Exhibit 1-81 - Declaration of Marvin Alexander  
Exhibit 1-82 - Declaration of Becky Perkey  
Exhibit 1-83 - Declaration of Jacqueline Moffett  
Exhibit 1-84 - Declaration of Jeff Batson  
Exhibit 1-85 - Declaration of Penny Craig  
Exhibit 1-86 - Declaration of David L. Owen Jr.  
Exhibit 1-87 - Declaration of Alice Mae Derry  
Exhibit 1-88 - Declaration of Mary Osborn Hodges  
Exhibit 1-89 - Declaration of Janet McNickle Eastman  
Exhibit 1-90 - Declaration of Rachael Bowman Johnson  
Exhibit 1-91 - Declaration of Brenda Cox  
Exhibit 1-92 - Ron Ninemire interview with Lewis Priest  
Exhibit 1-93 - Jeff Batson Tarrant County Criminal Court file  
Exhibit 1-94 - Defense Interview of Allen Baldwin  
Exhibit 1-95 - Nils Rignell death certificate  
Exhibit 1-96 - Ron Ninemire Interview of Susan Barrow-Swartz  
Exhibit 1-97 - Declaration of Susan Barrow Swartz  
Exhibit 1-98 - Declaration of Nita Milburn Montgomery  
Exhibit 1-99 - Lisa Montgomery Certificate of Merit, Project Upward Bound  
Exhibit 1-100 - FBI Interview of Judy Shaughnessy  
Exhibit 1-101 - FBI Interview of Patty Baldwin  
Exhibit 1-102 - Lisa Montgomery counseling records with Nancy Walentiny

Exhibit 1-103 - Ron Ninemire interview of Judy Shaughnessy  
 Exhibit 1-104 - Boman v. Boman Oklahoma Divorce file  
 Exhibit 1-105 - Boman v. Boman Oklahoma Divorce file  
 Exhibit 1-106 - Declaration of Richard Leroy Boman  
 Exhibit 1-107 - Lisa Montgomery Cleveland High School Transcript  
 Exhibit 1-108 - Lisa Montgomery Enlistment records  
 Exhibit 1-109 - Michael Boman Valhalla High School records  
 Exhibit 1-110 - Michael Boman Cleveland Public Schools  
 Exhibit 1-111 - State of Kansas v. Carl Boman, Motion for; Involuntary Assign of  
 Comp  
 Exhibit 1-112 - Declaration of Ann Walker-King  
 Exhibit 1-113 - Michael Boman Mar Vista High School  
 Exhibit 1-114 - Declaration of David J. Stadler  
 Exhibit 1-115 - Carl Boman and Lisa Hedberg OK Marriage Certificate  
 Exhibit 1-116 - Desiree Boman Birth Certificate  
 Exhibit 1-117 - Declaration of Darlene Alexander  
 Exhibit 1-118 - C.J. Boman Deming School Records  
 Exhibit 1-119 - C.J. Boman Birth Certificate  
 Exhibit 1-120 - Lisa Montgomery Social Security Itemized Statement  
 Exhibit 1-121 - 1988 Datebook  
 Exhibit 1-122 - C.J. Boman Jane Phillips Birth Records  
 Exhibit 1-123 - Kenneth Alexander, Competency Exam  
 Exhibit 1-124 - Jane Phillips - Early Labor for CJ Admission  
 Exhibit 1-125 - 1989 Datebook  
 Exhibit 1-126 - Scripps Memorial Hospital Operative Report  
 Exhibit 1-127 - Carl Boman - Oklahoma Workers Comp Med. Records  
 Exhibit 1-128 - Carl Boman - C.B. Pettigrew, D.O.  
 Exhibit 1-129 - Declaration of Gerald Upshaw  
 Exhibit 1-130 - Kayla Boman, University of Ca. San Diego Birth Records  
 Exhibit 1-131 - Kayla Boman, University of California - San Diego Post-Birth  
 Records  
 Exhibit 1-132 - Kayla Boman Children's Hospital San Diego  
 Exhibit 1-133 - CJ Boman Scripps Memorial Hospital Admitting Physical Exam  
 Exhibit 1-134 - Desiree Boman, Children's Hosp and Hlth Ctr San Diego, H&P  
 exam  
 Exhibit 1-135 - Children's Hospital San Diego  
 Exhibit 1-136 - CJ Boman Children's Hospital San Diego  
 Exhibit 1-137 - Chelsea Boman, Scripps Memorial Hospital Chula Vista  
 Exhibit 1-138 - Children's Hosp San Diego Concussion  
 Exhibit 1-139 - Desiree Boman, Children's Hospital and Health Center Discharge  
 Summary  
 Exhibit 1-140 - Desiree Boman, Jane Phillips Medical Center  
 Exhibit 1-141 - Chelsea Boman, Jane Phillips Memorial Medical Center  
 Exhibit 1-142 - Lisa Montgomery, Jane Phillips Memorial Medical Center

Exhibit 1-143 - Chelsea Boman, Jane Phillips Memorial Medical Center  
Exhibit 1-144 - Desiree Boman, Deming School Records  
Exhibit 1-145 - Desiree Boman, Jane Phillips Memorial Medical Center  
Exhibit 1-146 - CJ Boman Jane Phillips Memorial Medical Center  
Exhibit 1-147 - Declaration of Eithol Marie Boman Towery  
Exhibit 1-148 - Order Author. Disc of Records under Protective Order, case No. JMJ-20133  
Exhibit 1-149 - Lisa Rickert Telephone Interview of Brett Owens  
Exhibit 1-150 - Lisa Montgomery Statement to Dr. Brian Shane  
Exhibit 1-151 - Kayla Boman Jane Phillips Memorial Medical Center  
Exhibit 1-152 - Boman v. Boman, Luna New Mexico Divorce file  
Exhibit 1-153 - Kenneth D. Alexander and Kimberly Alexander, Decree of Divorce  
Exhibit 1-154 - Lisa Montgomery Jane Phillips Memorial Med Center Radiology Report  
Exhibit 1-155 - Desiree Boman Bayside School Records  
Exhibit 1-156 - Lisa Montgomery Tulsa Community College, Fall 1993  
Exhibit 1-157 - Desiree Boman, Dewey Public School Records  
Exhibit 1-158 - Chelsea Boman, Springdale Public School Records  
Exhibit 1-159 - Desiree Boman, Springdale Public School records  
Exhibit 1-160 - FBI Interview of Carl Boman  
Exhibit 1-161 - Lisa Rickert interview of Roberta and James Upshaw  
Exhibit 1-162 - Lisa Montgomery Medical records, Dr. Brian Shane  
Exhibit 1-163 - Chelsea Boman, Deming Public School Records  
Exhibit 1-164 - Kayla Boman Deming School Records  
Exhibit 1-165 - Desiree Boman, Sunshine Elementary School records  
Exhibit 1-166 - Kayla Boman, Jane Phillips Memorial Medical Center  
Exhibit 1-167 - Declaration of Kayla Deanne Boman  
Exhibit 1-168 - Declaration of Carl James (CJ) Boman II  
Exhibit 1-169 - Tommy Kleiner, Shawnee Co. Kansas Case No. 99-CR-3250  
Exhibit 1-170 - CJ Boman, Stormont Vail Regional Health Ctr  
Exhibit 1-171 - Lisa Montgomery St Francis Medical Center records  
Exhibit 1-172 - Kevin Montgomery, St. Francis Hospital records  
Exhibit 1-173 - Montgomery v. Montgomery, District Ct. of Osage Co. KS No. 97D-1 92  
Exhibit 1-174 - Declaration of Kevin Montgomery  
Exhibit 1-175 - Desiree Boman, Topeka School Records  
Exhibit 1-176 - Chelsea Boman, William Magnet School records, Topeka, KS  
Exhibit 1-177 - CJ Boman, Bartlesville Public School records  
Exhibit 1-178 - Kayla Bartlesville Public School Records  
Exhibit 1-179 - Kayla Boman, Stormont-Vail Regional Health Center records  
Exhibit 1-180 - Lisa Montgomery Kansas Dept. of Labor Workers Comp Claim  
Exhibit 1-181 - FBI Interview of Teddy Kleiner  
Exhibit 1-182 - Lisa Montgomery Stormont Vail Regional Health Center  
Exhibit 1-183 - Danny Shaughnessy and Judy Ochoa marriage record

Exhibit 1-184 - Motion to Temporarily Stay Child Support  
Exhibit 1-185 - Kevin Montgomery Social Security Itemized Statement  
Exhibit 1-186 - CJ Boman, St. Francis Hospital  
Exhibit 1-187 - Chelsea Boman, St. Francis Hospital  
Exhibit 1-188 - Desiree Boman, St. Francis Hospital Medical Records  
Exhibit 1-189 - Lisa Montgomery Lawrence Memorial Hospital  
Exhibit 1-190 - Kevin Montgomery, St. Francis Medical Center  
Exhibit 1-191 - Alias Citation in Contempt  
Exhibit 1-192 - Desiree Boman, Coffey Co. Hospital Medical Records  
Exhibit 1-193 - USA v. Montgomery, No. 05-06-002, Vol. 5, p.1074  
Exhibit 1-194 - Lisa Montgomery St. Francis Medical Center records  
Exhibit 1-195 - Desiree Boman Marais des Cygnes Valley High School Transcript  
Exhibit 1-196 - Kayla Boman, Carroll High School, Alabama  
Exhibit 1-197 - Declaration of Vanita June Boman  
Exhibit 1-198 - Declaration of Cheryl Fine  
Exhibit 1-199 - Notes of Dr. Sallye Wilkinson  
Exhibit 1-200 - Kayla Boman, J. Rob Hutchinson MD physical exam  
Exhibit 1-201 - CJ Boman, J. Rob Hutchinson MD physical exam  
Exhibit 1-202 - Chelsea Boman, J. Rob Hutchinson, MD physical exam  
Exhibit 1-203 - Chelsea Boman, Newman Memorial Co. Hospital  
Exhibit 1-204 - Kayla Boman, Coffey Co. Hospital sports Physical  
Exhibit 1-205 - Chelsea Boman, Dewey Public School records  
Exhibit 1-206 - Lisa Montgomery - Coffey Co. Hospital Records  
Exhibit 1-207 - Justin Kleiner, The Farm History  
Exhibit 1-208 - Bonnie Jean Taylor and Teddy J. Kleiner, Pwr of Atty to Judy Shaughnessy  
Exhibit 1-209 - CJ Boman Coffey Co. Hospital records  
Exhibit 1-210 - Teddy Kleiner Kansas Dept. of Corrections, Intake and Social History  
Exhibit 1-211 - The Farm Court Report on Justin Kleiner  
Exhibit 1-212 - FBI Interview of Lori Colwell  
Exhibit 1-213 - In the Matter of Justin Kleiner, Tr. 179, Testimony of Lisa Montgomery  
Exhibit 1-214 - Kansas Interstate Compact on Placement of Children  
Exhibit 1-215 - Bonding out of Tommy Kleiner  
Exhibit 1-216 - Tommy Kleiner Frankin Co.  
Exhibit 1-217 - Shaughnessy Home Study  
Exhibit 1-218 - Justin Kleiner, Pediatric Assoc. Med Screening Records  
Exhibit 1-219 - Justin Kleiner, Case Log for Monthly Family Contact  
Exhibit 1-220 - Chelsea Boman, Coffey Co. Hospital Records  
Exhibit 1-221 - Casey's General Store Employment records of Lisa Montgomery  
Exhibit 1-222 - Cotton O'Neal Clinic, Topeka, KS  
Exhibit 1-223 - Kansas v. Kleiner, District Ct of Franklin Co. No.03-CR-242  
Exhibit 1-224 - Lisa Montgomery Coffey Co Hospital Records

Exhibit 1-225 - KS v. Tommy Lee Kleiner, Dist. Ct of Shawnee Co., KS, No. 98-CR-1335

Exhibit 1-226 - FBI Interview of Kevin Montgomery

Exhibit 1-227 - Death Certificate of Lori Diane Blalock

Exhibit 1-228 - Declaration of Jenny Hays

Exhibit 1-229 - FBI File 1A32, request for Leave

Exhibit 1-230 - State of OK v. Teddy Kleiner, Tulsa, OK, No. CM-1999-3081

Exhibit 1-231 - Teddy Kleiner KS DOC Mental Health Eval and Class Rpt

Exhibit 1-232 - Letter to Kevin from Lisa referring to baby Sarah

Exhibit 1-233 - Coffey Hlth Systems v. Montgomery, 2004-LM-0108 (\$400 iudg)

Exhibit 1-234 - James H. McMurray, DDS, Account History Report

Exhibit 1-235 - Test of Lisa Montgomery, Prob Rev Hearing of Tommy Kleiner

Exhibit 1-236 - Montgomery v. Shaughnessy, No. 2004-DM-23 Order of Dismissal

Exhibit 1-237 - Chelsea Boman, Newman Reg Hlh Ctr, Patient Disch Sheet

Exhibit 1-238 - Chelsea Boman, Waverly Medical Clinic

Exhibit 1-239 - CJ Boman Marais des Cygnes Valley High School transcript

Exhibit 1-240 - Desiree Boman, Coffey Co. Hospital Medical Records

Exhibit 1-241 - Chelsea Boman, Certificate of Release or Discharge from Duty

Exhibit 1-242 - Kayla Boman Certificate of Release or Discharge from Active Duty

Exhibit 1-243 - Tommy Kleiner v. Nina Green, Pet for Protect Ord, No. 05-DM-226

Exhibit 1-244 - FBI Interview of Cheryl Fine

Exhibit 1-245 - FBI Interview of Lisa Green

Exhibit 1-246 - Kansas v. Tommy Kleiner, District Court for Franklin Co., KS No. 03-CR-242

Exhibit 1-247 - FBI Interview Katheryn Dewey

Exhibit 1-248 - Kayla Boman, Marias des Cynes Valley High School Transcript

Exhibit 1-249 - FBI Interview of Kayla Boman

Exhibit 1-250 - FBI Interview of Mona Marcotte

Exhibit 1-251 - FBI physical evidence glove box 1 B 15(18), appl for reg of birth

Exhibit 1-252 - FBI phys evdce rtrved frm house, rcpt from Toys R Us

Exhibit 1-253 - Desiree Boman Jane Phillips School Records 2<sup>nd</sup> Grade

Exhibit 1-254 - Mary Lee Coleman, Good Samaritan Hospital Records

Exhibit 1-255 - Interview of Judy Shaughnessy

Exhibit 1-256 - Interview of Lisa Green

Exhibit 1-257 - Horne Study of Judy Shaughnessy by KS Dept. of SRS

Exhibit 1-258 - Diane Rae Hedberg Adoption Registry

Exhibit 1-259 - Central Assembly of God Church - Promotion from Beginner to Primary

Exhibit 1-260 - Central Assembly of God Church - Promotion from Primary to Junior Department

Exhibit 1-261 - Pease Middle School Records

Exhibit 1-262 - Santa Rosa Medical Center Records for Wendy Treibs

Exhibit 1-263 - Email from Lisa Montgomery to Lori Colwell

- Exhibit 1-264 - Hope Kleiner KS SRS Home Study on Judy and Danny Shaughnessy
- Exhibit 1-265 - Salvation Army Shield of Service Discharge Summary for Teddy Kleiner
- Exhibit 1-266 - Montgomery v. Kleiner, District Court for Osage Co. No. 03-DM-198
- Exhibit 1-267 - Motion for Modification of Child Support
- Exhibit 1-268 - History and Physical of Carl Boman by Dr. Tracy Painter
- Exhibit 1-269 - Waiver of Parental Rights for Justin Kleiner by Bonnie and Teddy
- Exhibit 1-270 - In the Matter of Justin Kleiner, Case Activity log for Monthly Family Contact
- Exhibit 1-271 - William Logan Psychiatric Evaluation of Lisa Montgomery
- Exhibit 1-272 - Oklahoma Dept. of Human Services Report
- Exhibit 1-272-1 - Neuropsychological Evaluation of Lisa Montgomery by Robert Fucetola, Ph.D.
- Exhibit 1-273 - Jim Dale Easton Sex Offender Registry KBI
- Exhibit 1-274 - Declaration of Dylan Montgomery
- Exhibit 1-275 - Residences Chart of Lisa Montgomery
- Exhibit 1-276 - Declaration of Dustin Montgomery
- Exhibit 1-277 - State of OK, Dept. of Human Services, Child Abuse-Neglect Referral form
- Exhibit 1-278 - Report to the District Attorney
- Exhibit 1-279 - OK Dept. of Human Services, Child Abuse-Neglect Referral form
- Exhibit 1-280 - Photograph of Lisa Montgomery at age 13
- Exhibit 1-281 - Declaration of Ben Leonard
- Exhibit 1-282 - 1999 Oklahoma OHS Records
- Exhibit 1-283 - Interview of David Kidwell, Sr.
- Exhibit 1-284 - Declaration of Carl Boman
- Exhibit 1-285 - Declaration of Leon Michael Barabash
- Exhibit 1-286 - Declaration of James N. Miller
- Exhibit 1-287 - Declaration of Michael Harlow
- Exhibit 1-288 - Declaration of Sang Ye Seiffert
- Exhibit 1-289 - Declaration of Dr. Sallye Wilkinson, Ph.D.
- Exhibit 1-290 - [Intentionally Left Blank]
- Exhibit 1-291 - Declaration of Bret Dillingham
- Exhibit 1-292 - Desiree Boman Offutt Declaration
- Exhibit 1-293 - Chronology of Disruption of Child Custody
- Exhibit 2 - Curriculum Vitae of Janet Vogelsang
- Exhibit 3 - Map of the 61 Residences in which Lisa Montgomery Lived in the First 31 Years of her Life
- Exhibit 4 – Genograms Depicting Family Tree, Family History of Mental Illness, Family History of Substance Abuse, Family History of Custodial Interference
- Exhibit 5 - Chart of Mental Health Symptoms Exhibited in Lisa Montgomery’s Biological Relatives

- Exhibit 6 - Chart of Traumatic Events Inflicted on Lisa Montgomery with Sourcing
- Exhibit 7 - Report of Dr. Katherine Porterfield, Psychologist at the Bellevue Program for Survivors of Torture
- Exhibit 8 - Addendum to Report of Dr. Katherine Porterfield
- Exhibit 9 - Curriculum Vitae of Dr. Katherine Porterfield
- Exhibit 10 - Declaration of David Kidwell regarding Lisa Montgomery's disclosure of gang rape
- Exhibit 11 - Declaration of Ben Leonard re: David Kidwell
- Exhibit 12 - Declaration of Wesley Gann regarding the strange behaviors exhibited by Jack Kleiner
- Exhibit 13 - Declaration of Carl Boman 9.18.16 regarding Lisa Montgomery's report of gang rape as a teenager
- Exhibit 14 - Declaration of Linda Baker regarding Jack Kleiner's rape of Lisa Montgomery
- Exhibit 15 - Declaration of Ben Leonard re: Linda Baker
- Exhibit 16 - Lisa Montgomery handwritten note re: names of men who participated in the gang rape
- Exhibit 17 - Kleiner v. Kleiner interrogatory answers in divorce proceedings
- Exhibit 18 - Obituary of Gerald "Shorty" Shipley
- Exhibit 19 - Declaration of Carl McClain
- Exhibit 20 - Report of Dr. George Woods, expert neuropsychiatrist describing Lisa Montgomery's symptomology of bi-polar I disorder, complex post-traumatic stress disorder, cerebellar dysfunction, and other brain dysfunction and the impact of each on her functioning
- Exhibit 21 - Addendum to Report of Dr. George Woods
- Exhibit 22 - Curriculum Vitae of Dr. George Woods
- Exhibit 23 - Report of Dr. Siddhartha Nadkarni, expert neuropsychiatrist specializing in epilepsy, finding traumatic brain injury and complex partial seizures
- Exhibit 24 - Declaration of Dr. Diane Bradford expert psychopharmacologist determining Mrs. Montgomery was not receiving appropriate medications at the time of trial to control her psychosis and likely presented a medically induced flat affect
- Exhibit 25 - Curriculum Vitae of Diane Bradford
- Exhibit 26 - Declaration of Dr. Charles Sanislow, expert in psychometric testing, critiquing the misuse of computer generated MMPI analysis by the Government's experts
- Exhibit 27 - Curriculum Vitae of Dr. Charles Sanislow
- Exhibit 28 - Reports of Dr. Ruben Gur (April, 2007-January 2008) (collective), neuro psychological/neuroimaging expert who developed behavioral brain map, his testimony was excluded from the 2007 trial
- Exhibit 29 - 2016 addendum to Report of Dr. Ruben Gur (incorporating data from Dr. Newberg and Dr. Daviztikos) updating his 2007 findings of Mrs. Montgomery's myriad brain impairments
- Exhibit 30 - Curriculum Vitae of Dr. Ruben Gur

- Exhibit 31 - Curriculum Vitae of Dr. Andrew Newberg, Professor of Radiology (Named one of the 30 most influential neuroscientists alive in 2016)
- Exhibit 32 - Testimony of Helen Mayberg
- Exhibit 33 - Testimony of Alan Evans
- Exhibit 34 - Report of Helen Mayberg and Alan Evans
- Exhibit 35 - Curriculum Vitae of Dr. Christos Daviztikos, faculty at the Penn Neurodegeneration Genomics Center and Director for Biomedical Image Computer and Analytics, University of Pennsylvania
- Exhibit 36 - Deposition of Dr. V.S. Ramachandran, defense expert at trial admitting there is no such thing as an expert in pseudocyesis
- Exhibit 37 - March 2005 letter Dr. Marilyn Hutchinson
- Exhibit 38 - Curriculum Vitae of Dr. Marilyn Hutchinson
- Exhibit 39 - March 7, 2005 Report of Dr. William Logan
- Exhibit 40 - May 15, 2007 Report of Dr. William Logan
- Exhibit 41 - Declaration of Dr. William Logan
- Exhibit 42 - Curriculum Vitae of Dr. William Logan
- Exhibit 43 - Report of Dr. Ruth Kuncel
- Exhibit 44 - Curriculum Vitae of Dr. Ruth Kuncel
- Exhibit 45 - Report of Dr. Robert Fucetola, neuropsychologist hired by trial counsel, who discovered a striking discrepancy in her neurological profile strongly indicating brain impairment
- Exhibit 46 - Curriculum Vitae of Dr. Robert Fucetola
- Exhibit 47 - Declaration of Russell Stetler, National Mitigation Coordinator for the Administrative Office of the U.S. Courts' National Habeas Assistance and Training Counsel Project, setting out prevailing professional norms for capital mitigation investigation at the time of Mrs. Montgomery's trial
- Exhibit 48 - Supplemental Declaration of Russell Stetler
- Exhibit 49 - Curriculum Vitae of Russell Stetler
- Exhibit 50 - Declaration of Denise LaBouef,
- Exhibit 51 - Curriculum Vitae of Marc Bookman
- Exhibit 52 - Report of Professor Lawrence Fox, the Supervising Lawyer at the Ethics Bureau at Yale Law School, regarding the ethical violations of trial counsel
- Exhibit 53 - Curriculum Vitae Professor Lawrence Fox
- Exhibit 54 - Lisa Rickert (first trial mitigation specialist) Resignation Letter
- Exhibit 55 - Email from David Owen to Holly Jackson (third trial mitigation specialist) firing her
- Exhibit 56 - Holly Jackson (third trial mitigation specialist) Mitigation Themes chart
- Exhibit 57 - To Do List of Deb Garvey (second trial mitigation specialist)
- Exhibit 58 - Transcript of Proceedings, April 3, 2007, announcing Dr. Ramachandran's diagnosis of Mrs. Montgomery before he had assessed her
- Exhibit 59 - Transcript of Proceedings April 5, 2007,
- Exhibit 60 - Declaration of Susan Hunt (third woman lawyer removed from trial team), regarding removal of Anita Burns from trial team, the decision to involve Judy Clarke in the case, the team and expertise Ms. Clarke brought to the case, Mr.

- Owens' refusal to work with the team and unilateral decision to seek the removal of Ms. Clarke, the removal of Judy Clarke, the devastation Mrs. Montgomery felt at losing Ms. Clarke as counsel, and the court's order that she withdraw as counsel
- Exhibit 61 - Declaration of Phil Thompson (Susan Hunt's private investigator) regarding FPD Investigator Ninemire's reluctance to take direction from women
- Exhibit 62 - Affidavit of David Owen, trial counsel, regarding the removal of Anita Burns as counsel, the need for outside counsel with experience in mental health, the decision to add Judy Clark to the trial team, his problems with Ms. Clarke, Ron Ninemire's problems with Ms. Garvey, Mr. Conrad's discussion with Judge Fenner, Judge Fenner's removal of Ms. Clarke, the appointment of the ultimate trial team, his relationship with Mrs. Montgomery's mother, Mr. Duchardt's abandonment of investigation into FASD and PTSD in favor of pseudocyesis, Mr. Duchart's wife's involvement in the defense team, failure of the team to tell Mrs. Montgomery's story, including that she appeared flat because of her medication.
- Exhibit 63 - Declaration of Judy Clarke, Capital Resource Counsel (second woman attorney removed from trial team), setting out her credentials, involvement with the case, the resources she brought to the team, and her removal as counsel
- Exhibit 64 - Declaration of Deb Garvey (second trial mitigation specialist)
- Exhibit 65 - Susan Hunt Letter to Richard Burr (federal capital resource counsel), 4.30.06
- Exhibit 66 - Transcript of Proceedings April 21, 2006 wherein Judge Fenner informed Mrs. Montgomery that he had removed Ms. Clarke as counsel
- Exhibit 67 - Transcript of Proceedings April 25, 2006 wherein Ms. Hunt informed the Court that Mrs. Montgomery was "a mess," following the removal of Ms. Clarke, that Mrs. Montgomery felt devastated and betrayed by the removal, setting out that neither Hunt nor Owen had ever had a case with a seriously mentally ill client, and asking for Ms. Clarke to be reappointed
- Exhibit 68 - Transcript of Proceedings May 3, 2006, discussing Mrs. Montgomery's letter to the Court reflecting her devastation and loss of trust in her team with the removal of Ms. Clarke and discussing the problems with Hunt and Owen continuing to work together
- Exhibit 69 – District Court Order Banning Judy Clarke from CCA
- Exhibit 70 – District Court Order Directing Judy Clarke's telephone number should be removed from Lisa Montgomery's approved call list
- Exhibit 71 - Letter from Lisa Montgomery to Judge Fenner, filed under seal, discussed at the May 3, 2006 proceeding, wherein Mrs. Montgomery explains the emotional anguish she felt at the removal of Ms. Clarke and endorsing Ms. Clarke as the counsel she trusted
- Exhibit 72 - Deposition of Ray Conrad, regarding Owens' and Ninemires' complaints about Ms. Clarke; testifying that Owen told him that Hunt was in agreement to have Clarke removed and that he called the judge to arrange a meeting and denying—contrary to the testimony of Owen and Maughmer—that he was part of the April 20, 2006 unrecorded, in chambers meeting with the judge.

- Exhibit 73 - Declaration of Dr. Linda McCandless, outlining her treatment of Mrs. Montgomery at CCA Levenworth with antipsychotic medication, and reflecting that trial counsel failed to prepare her for testimony at trial and she found that experience traumatic
- Exhibit 74 - Declaration of Ben Leonard re: Dr. Linda McCandless
- Exhibit 75 - Declaration of Charles Dedmon, setting out the symptoms of serious mental illness Mrs. Montgomery manifested upon arrest, outlining that Judy Clarke was the only trial counsel that ever inquired as to his observations and documentation, recounting his interaction with Owen wherein Owen was defensive about having had Clarke removed from the case
- Exhibit 76 - Declaration of Melody Brannon, supporting Charles Dedmon's recollection
- Exhibit 77 - Transcript of In Chambers Hearing April 5, 2007 continuing trial date
- Exhibit 78 - Stipulation Regarding Denise Baker wherein the Government agreed that Ms. Baker would testify that Ms. Baker, a social worker, investigated the allegations that Jack Kleiner sexually abused Lisa Montgomery and concluded that Lisa was telling the truth, that Ms. Baker recommended the case be pursued for criminal charges and filed the appropriate paperwork, but that it appears the case was never reviewed by any prosecutor and appears to have fallen through the cracks.
- Exhibit 79 - Stipulation Regarding Hugh Rineer wherein the Government agreed that Judge Rineer would testify that he reviewed the transcript of the Kleiner v. Kleiner divorce proceeding and that it would not be fair to conclude that he did not believe Lisa Montgomery regarding the abuse, but rather that he believed the matter had been referred for prosecution such that no further action was needed on his part.
- Exhibit 80 - Declaration of James Brooks regarding the Grand Jury investigation of Park Diest
- Exhibit 81 - Grand Jury testimony of Dr. Park Dietz re: Investigation of Dietz in the Andrea Yates matter
- Exhibit 82 - Billing Records of Frederick Duchardt
- Exhibit 83 - Declaration of Chris Armstrong regarding interview of Fred Duchardt wherein Duchardt said Mrs. Montgomery was devastated by the loss of Judy Clarke as trial counsel, explained that Mr. Owen originated the idea of pseudocyesis and Dr. Ramachandran provided the other experts support for the idea, called the idea of a mitigation specialist "laughable" and admitted he did not have a working relationship with Dani Waller, discussed his attempts to counter Mrs. Montgomery's stress at being in a room with a man –including his inclusion of his wife in his visits with Mrs. Montgomery, describing how Mrs. Montgomery would "shut down" when he tried to discuss her history with her, expressing his continued belief that Tommy Kleiner was present during the murder and his probation officer fudged her records, saying he wanted to present Mr. Kleiner as the actual killer to the jury.
- Exhibit 84 - Billing Records of John O'Connor
- Exhibit 85 - CCA Visitation Records

Exhibit 86 - ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989)

Exhibit 87 - Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases Russell Stetler, 2008

Exhibit 88 - Guide to Judiciary Policy; Appx 2A: Model Plan for Implementation and Administration of the Criminal Justice Act (2016)

Exhibit 89 - Summary of Deleted History from Gov. Expert

Exhibit 90 - Amended Plan for Implementing the Criminal Justice Act of I 964, 18 U.S.C. Section 3006A

Exhibit 91 – 2004 Order Appointing Federal Public Defender

Exhibit 92 – Anita Burns 2005 Motion to Withdraw with Suggestions

Exhibit 93 - 2005 Order Appointing Additional Counsel (Susan Hunt)

Exhibit 94 – Susan Hunt’s April 2005 Motion to Withdraw Ordered by the Court

Exhibit 95 - Letter from Susan Hunt to CCA Warden 1.27.05 requesting jail psych stop interviewing Mrs. Montgomery regarding facts of the case

Exhibit 96 - Mitigation Investigation: A Duty that Demands Expert Help but Can't Be Delegated, Russell Stetler

Exhibit 97 - Getting it Right: Life History Investigation as the Foundation for a Reliable Mental Health Assessment, Richard Dudley Jr. and Pamela Blume Leonard (2008)

Exhibit 98 - Curriculum Vitae of David Freedman

Exhibit 99 - Letter to Susan Hunt from Reuben Camper Cahn, Executive Director of the Federal Defenders of San Diego, confirming that the federal defender was willing to accept appointment in the case, assign Judy Clarke as co-counsel, and provide funding for the cost of the defense.

Exhibit 100 - The Mystery of Mitigation: What Jurors Need to Make a Reasoned Moral Responses in Capital Sentencing, Univ. of PA Journal of Law and Social Change

Exhibit 101 – Chart of Records Requested Before Trial comparing the work product of the various trial teams

Exhibit 102 - Witnesses Interviewed Chart comparing the work performed by each trial team

Exhibit 103 - ABA Guidelines (rev. 2003), Hofstra Law Review

Exhibit 104 - The Defense Team in Capital Cases (2003), Jill Miller, Hofstra Law Review

Exhibit 105 - A New Profession for an Old Need (2003), Pam Leonard, Champion

Exhibit 106 - Mitigation Evidence in Death Penalty Cases (1999), Russell Stetler, Champion

Exhibit 107 - Mental Disabilities and Mitigation (1999), Russell Stetler, The Champion

Exhibit 108 - Commentary on Counsel's Duty to Seek and Negotiate a Disposition (2003), Russell Stetler, Hofstra Law Review

Exhibit 109 - Unknown Story of a Motherless Child, Russell Stetler, Law Review

Exhibit 110 - The ABA Guidelines & Norms (20 13), Russell Stetler & W. Bradley Wendel, Hofstra Law Review

- Exhibit 111 - Mental Health Evidence and the Capital Defense Function (2014) Russell Stetler, UMKC Law Review
- Exhibit 112 - The ABA Guidelines: A Historical Perspective (2015), Russell Stetler & Aurelie Tabuteau, Hofstra Law Review
- Exhibit 113 - New Strategies for the Defense of Capital Cases (1979), Dennis Balske, Akron Law Review
- Exhibit 114 - The Trial for Life (1983), Gary Goodpaster, NYU Law Review
- Exhibit 115 - The Penalty Phase Trial (1984) Dennis Balske, Champion
- Exhibit 116 - The Nelson Case (1982), Lacey Fosburgh, Forum
- Exhibit 117 - Using the Mitigation Specialist and the Team Approach (1987), James Hudson, et al., Champion
- Exhibit 118 - The Mental Health Evaluation in Capital Cases: Standards of Practice (1994), Douglas Liebert & David Foster, American Journal for Psych.
- Exhibit 119 - Mitigation Investigation (1992) Lee Norton, Champion
- Exhibit 120 - Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation, Spencer, Cauthron, Edmonds, May 1998 - Spencer I
- Exhibit 121 - Cultural Competency in Capital Mitigation, 2008, Scharlette Holdman and Christopher Seeds
- Exhibit 122 - Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases, 2010, Jon B. Gould and Lisa Greenman – Spencer II
- Exhibit 123 - Why Capital Cases Require Mitigation Specialists, 1999, Russell Stetler
- Exhibit 124 – 2007 Memo from Stephanie Elliott to Defense Team - Prosecution Interview of Judy Shaughnessy and Patty Baldwin, setting out that the paralegal was sent to accompany Ms. Shaughnessy for an interview with the FBI
- Exhibit 125 - CV of Siddhartha Nadkarni
- Exhibit 126 – 2005 Affidavit of Lisa Rickert discussing role of mitigation investigator
- Exhibit 127 – 2005 Letter from Lisa Rickert to Ron Ninemire discussing possibility of consulting on case
- Exhibit 128 - Hallmarks of Bipolar Disorder
- Exhibit 129 – 2006 FPD Contract with Dani Waller
- Exhibit 130 - Memo from Dani Waller to Team re: Interview of Family 9.12.06
- Exhibit 131 - Chart of Similar Cases Involving Fetal Abduction
- Exhibit 132 - Letter from Susan Hunt to Isaac Johnson, CCA Chief of Security, 3.5.05
- Exhibit 133 – Timeline of Trial Counsel
- Exhibit 134 - Letter from John David Luton, Tulsa D.A.
- Exhibit 135 - The Jury as Critic: an Empirical Look at How Capital Juries Perceive Expert and Lay Testimony, Scott E. Sundby
- Exhibit 136 - U.S.D.C. Docket Sheet - USA v. Montgomery, No. 2:04-mi-08107-DJW-l
- Exhibit 137 – 5.9.2007 Notes by R. Ketchmark on hearing to complete expert examination
- Exhibit 138 – 4.3.2007 Notes by R. Ketchmark on meeting wherein Duchardt revealed that in January 2007 Mrs. Montgomery said Tommy Kleiner with her during the

- crime and stating that Leona Hayes made a positive identification of Tommy Kleiner.
- Exhibit 139 - Duchardt's 9.29.2007 letter to DOJ providing reports of experts, endorsing defense of pseudocyesis that caused her to be unable to appreciate wrongfulness of her conduct,
- Exhibit 140 - Billing statement - Dillingham
- Exhibit 141 - Billing statement - Dillingham
- Exhibit 142 – 10.14. 2016 Deposition of Tommy Kleiner regarding the government's concealment of his alibi from trial counsel
- Exhibit 143 - Base Rates of WAIS-R VIQ-PIQ Differences
- Exhibit 144 – Chart (Frequencies of Diff between WAIS III IQ and Index Score)
- Exhibit 145 - Probation chronos for Tommy Kleiner from 12.09.2004 – 7.05.2007, documenting probation department's actions with regard to records about Mr. Kleiner
- Exhibit 146 – MMPI-2 Testing of Dr. Marilyn Hutchinson
- Exhibit 147 – MCMI-III Testing by Dr. Marilyn Hutchinson
- Exhibit 148 - Printout MIM Re-analysis
- Exhibit 149 - no exhibit
- Exhibit 150 - no exhibit
- Exhibit 151 - no exhibit
- Exhibit 152 - Martell's MMPI-2
- Exhibit 153 - 2007 PAI report
- Exhibit 154 – PowerPoint presentation of the Inter-generational Biopsychosocial Influences on Mrs. Montgomery's Development by Janet Vogelsang presented (albeit in truncated fashion) in testimony at 2255 hearing (*see* Vol. VI, p. 1460-1535, November 7, 2016).
- Exhibit 155 – PowerPoint presentation of Dr. Porterfield's expert opinions presented in testimony at the 2255 hearing (*see* Vol. VI. p.1577-1591 November 7, 2016, and Volume VII p. 1636-171, November 8, 2016)
- Exhibit 156 - Dr. Ruben Gur CV
- Exhibit 157 – 3.07.2007 Memo from Fred Duchardt to Trial Team
- Exhibit 158 - Leona Hayes Statement
- Exhibit 159 – PowerPoint Presentation of Dr. George Woods' expert opinions presented in testimony at 2255 hearing (*see* Vol. VII, p. 1746-1864, November 8, 2016).
- Exhibit 160 – 2007 fax memo Fred Duchardt to FDC Warden including his wife, Ryland Duchardt, in his visitation request
- Exhibit 161 - Declaration of Dorales Torres, potential juror who was excluded because she was Cuban, attesting to her proficiency in English and her ability to understand the proceedings.
- Exhibit 162 - Juror Questionnaire of Juror 24 – Torres, completed in English, noting she was a high school graduate, that the last book she read was Dante's The Divine Comedy.

**Attachment J. Application for Certificate of Appealability to the Eighth Circuit**

Table of Contents ..... i

Table of Authorities ..... xx

I. Introduction/References to the record..... 1

II. Issues for which COA is requested..... 11

III. Procedural History..... 14

IV. COA Standard in a capital 2255 case..... 20

V. Statement of Facts. .... 23

A. How Lisa Montgomery lost a highly trained and qualified team and came to be represented by conflicted counsel who refuse to follow professional norms ..... 23

1. Mr. Owen causes Mrs. Montgomery to lose attorney Anita Burns and mitigation Specialist Lisa Rickert..... 28

2. Inexperience and micromanagement cripple the Hunt/Owen team ... 31

3. At the urging of resource counsel, the team seeks help from Judy Clarke. .... 34

4. Progress begins with Judy Clarke leading the team..... 36

5. The FPD develops resentments ..... 48

6. FPD unilaterally goes to the court with untrue accusations against Ms. Clarke. .... 53

7. What was said off-the-record. ....57

8. Ms. Hunt, Ms. Clarke, Mrs. Montgomery belatedly learn that Ms. Clarke is off the case.64

9. Mrs. Montgomery is devastated .....67

10. Ms. Hunt tries to bring Ms. Clarke back to the case. ....70

11. At Ms. Hunt’s instruction, Mrs. Montgomery writes the court a letter: She is devastated by the loss of Ms. Clarke, has lost trust in attorneys, but expresses appreciation for Ms. Hunt..... 75

12. After more off the record communication, the court removes Ms. Hunt. .... 77

13. Mr. Owen fires second mitigation specialist, Holly Jackson. .... 82

14. The court appoints Mr. Duchardt as learned counsel..... 83

B. How counsel failed to comply with professional norms regarding

preparation of a social history, latched onto an improbably defense theory, lied to the court thereby committing to an unqualified expert and unsupportable defense, and missed a “field of red flags” signaling the need for investigation of Mrs. Montgomery’s lifetime of trauma and mental impairment..... 85

1. Mr. Duchardt jumps on hiring Dr. Ruben Gur. .... 88
2. Regular team meetings and record collection stop. .... 89
3. Institutional knowledge of the case is lost in the turnover. .... 90
4. Mr. Owen floats his pseudocyesis theory again. .... 95
5. Mr. Owen resumes his special relationship with Mrs. Montgomery’s mother. .... 95
6. New mitigation specialist is hired but not allowed to do her job. .... 96
7. Personality problems continue to compromise the team’s efforts. .... 98
8. Due to turnover, mental illness, and trauma, Mrs. Montgomery can’t trust her lawyers. .... 105
9. Case conflicts distract Mr. Duchardt. 108
10. Focused elsewhere, counsel sends consulting expert’s work product to government expert. .... 109
11. FPD demotes Mr. Owen. .... 111
12. Mr. Duchardt misrepresents his wife’s role to the BOP warden ..... 112
13. Ms. Waller alerts Mr. Duchardt that mental health evidence is not ready for trial. .... 113
14. Mr. Duchardt locks himself into a pseudocyesis defense by announcing his experts have spoken to Mrs. Montgomery and are writing reports on pseudocyesis. .... 118
15. Missing symptoms of dissociation, the counsel pursue ‘the Tommy Defense’. .... 121
16. Mr. Duchardt relies on Mrs. Montgomery for his mitigation script..... 130
17. Mr. Duchardt *et al* miss obvious red flag signaling need for investigation. .... 133
18. NGRI defense needlessly subjects Mrs. Montgomery to interrogation by government expert .....134
19. Failing to comply with professional norms regarding development of a social history, Duchardt team misses critical mitigation evidence. ....138
  - a. Information that Lisa was serially raped by multiple perpetrators is ignored ..... 140
  - b. The names of the perpetrators contained in records collected

	by prior teams are ignored.....	145
	c. The database cannot and does not function as a social history .....	147
	d. An intergenerational history is not developed.....	149
	e. Evidence regarding cruelty in the Kleiner home is not developed, presented to experts, or integrated into the mitigation strategy. ....	155
	f. Mr. Duchardt fails to recognize, investigate, and develop Lisa’s history of dissociation unrelated to the crime. ....	164
	g. Proof that Lisa was mistreated even as an adult – reflecting and exacerbating the effect of her traumatic upbringing – was ignored. ....	167
	h. Counsel fail to investigate Mrs. Montgomery’s pre-crime functioning: If they had, would have known this was not a “good mother” who “just snapped”.....	169
	i. Counsel fail to investigate neurobehavioral symptoms of brain dysfunction and to consult a neurologist.....	179
	j. Counsel fail to investigate and develop proof of Mrs. Montgomery’s remorse.....	180
	k. Counsel fail to investigate other, similar crimes for proportionality argument. ....	183
20.	Stretching Dr. Gur’s conclusions into support for pseudocyesis draws a <i>Daubert</i> challenge to Dr. Gur’s testimony in the first phase of the trial. .....	183
C.	Trial: How counsel’s improbable, unsupported pseudocyesis defense stepped on the mitigation proof counsel had developed. ....	187
1.	The team’s pseudocyesis theory is inconsistent with the facts, Mr. Duchardt can’t back out of his misrepresentation to the court.....	189
2.	<u>‘The Tommy Defense’ is not ruled out until after <i>voir dire</i> has begun.</u> .....	206
3.	<u>Despite concerns about Mrs. Montgomery’s competence, no one seeks an assessment or a competency determination.....</u>	211
4.	Counsel fail to protect Mrs. Montgomery’s right not to proceed with expert evaluation.....	214
5.	<u>Counsel inadvertently creates (erroneous) proof that Mrs. Montgomery malingered by mishandling Hutchinson notes and data, undermining all mental health evidence. ....</u>	216
6.	<u>Counsel’s inadequate, incomplete presentation of mental health evidence</u>	

	<u>in support of NGRI steps on its mitigating value.....</u>	<u>226</u>
	a. <u>PTSD.....</u>	<u>226</u>
	b. <u>Other major mental illnesses.....</u>	<u>231</u>
7.	<u>The team’s presentation of Mrs. Montgomery’s children backfires.....</u>	<u>233</u>
8.	<u>Mr. Duchardt mishandles the expert witnesses.....</u>	<u>235</u>
	a. <u>Ramachandran.....</u>	<u>235</u>
	b. <u>Dietz.....</u>	<u>238</u>
	c. <u>Martell.....</u>	<u>239</u>
	d. <u>Logan.....</u>	<u>241</u>
	e. <u>McCandless.....</u>	<u>243</u>
	f. <u>Kuncel.....</u>	<u>245</u>
9.	<u>Counsel fails to present mitigation evidence readily available through the witnesses who testified at trial.....</u>	<u>248</u>
	a. <u>Despite calling David Kidwell as a witness, the defense team fails to present proof of serial, gang rape, by Mr. Kleiner’s friends.....</u>	<u>249</u>
	b. <u>Despite calling Diane Mattingly as a witness, the team fails to present that as a child, Lisa witnessed her sister being raped.....</u>	<u>251</u>
	c. <u>The team fails to present Judy’s cruelty in repeatedly forcing Diane out of the home.....</u>	<u>253</u>
	d. <u>Failed to present all the available information in Nancy Wallentini’s report.....</u>	<u>257</u>
10.	<u>Counsel fails to explain to the jury that Mrs. Montgomery is under the influence of psychotropic medications.....</u>	<u>259</u>
<b>D.</b>	<b>§2255 Proceedings: Mrs. Montgomery establishes her entitlement to relief despite denial of process, removal of habeas counsel, and the district court’s limitation of proof.....</b>	<b>263</b>
1.	<u>Mrs. Montgomery filed her Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. §2255.....</u>	<u>263</u>
2.	<u>Counsel pleads claims relating to the removal of Judy Clarke upon information and belief and seeks reassignment of the motion to allow discovery of Judge Fenner’s testimony.....</u>	<u>266</u>
3.....	<u>The district court hears oral arguments on the motion to reassign. ....</u>	<u>270</u>
4.	<u>The court denies the motion to reassign and contemplates removing counsel.....</u>	<u>275</u>
5.	<u>The district court denies motion to stay and supplements the record.....</u>	<u>277</u>
6.	<u>The district court compels trial counsel to provide affidavit to the</u>	

	government and grants discovery to trial counsel. ....	280
7.	<u>The district court removes Ms. Blegen as counsel for Mrs. Montgomery.</u> .....	<u>283</u>
8.	<u>The district court grants an evidentiary hearing and sets the matter for hearing expeditiously.</u> .....	<u>286</u>
9.	<u>The district court limits the hearing.</u> .....	<u>287</u>
	a. <u>The district court limits the testimony of Mrs. Montgomery’s expert witnesses.</u> .....	<u>288</u>
	b. <u>The district court excludes expert testimony.</u> .....	<u>290</u>
	c. <u>The district court chastises counsel for failing to anticipate the exclusion of Professor Fox.</u> .....	<u>292</u>
E.	The proof at the hearing entitles Mrs. Montgomery to relief.....	296
	1. Mrs. Montgomery establishes that standards for effective capital representation and identifies the red flags ignored by the trial team. .....	297
	2. <u>Testimony by capital defense practitioners confirmed that the standards presented by the expert witnesses are the standard of practice in representation of capital clients.</u> .....	<u>317</u>
	3. Mrs. Montgomery presents the history of the disruption of counsel including its case and effects on representation. ....	322
	a. <u>Because the Hunt/Owen team was “floundering,” it sought help from Mr. Burr and Ms. Clarke.</u> .....	<u>322</u>
	b. <u>Ms. Clarke and her team made progress in the six months they were on the case.</u> .....	<u>325</u>
	c. <u>The team began developing rapport with Mrs. Montgomery and noted her symptoms of impairment.</u> .....	<u>326</u>
	d. <u>Under Ms. Clarke’s leadership, record collection “skyrocketed”.</u> .....	<u>328</u>
	e. <u>Under Ms. Clarke’s leadership the team identified a “whole field of red flags”.</u> .....	<u>330</u>
	f. <u>Team members qualified to identify and assess symptoms of trauma and mental illness began the process of observation, investigation, and assessment.</u> .....	<u>332</u>
	g. <u>Team members qualified to identify and assess symptoms of trauma and mental illness perceived that Mrs. Montgomery’s competence was impaired.</u> .....	<u>334</u>
	h. <u>The team ruled out the possibility that Tommy Kleiner was present at the crime.</u> .....	<u>335</u>
	i. <u>The team ruled out Dr. Ramachandran as an appropriate</u>	

	<u>defense expert.....</u>	<u>337</u>
j.	<u>The team began identifying and retaining experts.</u>	<u>339</u>
k.	<u>Mrs. Montgomery was devastated by the loss of Ms. Clarke and the loss further weakened her ability to trust any lawyer.....</u>	<u>340</u>
4.	<u>Mrs. Montgomery presented proof that Mr. Owen’s lack of awareness, pettiness, and misogyny was the source of the team’s problems. ....</u>	<u>342</u>
5.	<u>Mrs. Montgomery established that resource counsel and their mitigation team remained available to assist even after Ms. Clarke was removed, but were never invited to help. ....</u>	<u>350</u>
6.	<u>Mrs. Montgomery presented trial counsel’s testimony, providing ample opportunity for counsel to explain their reasoning and strategy. ....</u>	<u>353</u>
a.	<u>Trial counsel’s testimony established that removal of Ms. Clarke harmed Mrs. Montgomery and the defense.....</u>	<u>353</u>
b.	<u>Trial counsel’s testimony supported Mrs. Montgomery’s IAC for failure to competently handle experts claim. ....</u>	<u>355</u>
c.	<u>The proof established that counsel failed to reasonably investigate mitigation. ....</u>	<u>355</u>
d.	<u>The proof rebutted Mr. Duchardt’s prior statements.....</u>	<u>359</u>
7.	<u>The proof supported Mrs. Montgomery’s <i>Riggins</i> claim.....</u>	<u>361</u>
8.	<u>The proof showed that Mr. Duchardt took his wife on visits with Mrs. Montgomery, misrepresented his wife’s (non)role to the warden, and failed to discuss involving his wife with the other attorneys.....</u>	<u>361</u>
9.	<u>The proof established that Mr. Owen and Mr. Duchardt thought Mrs. Montgomery lacked the ability to rationally assist counsel but did not alert the court to her incompetence.....</u>	<u>363</u>
10.	<u>The proof established that counsel were ineffective in their pursuit of ‘the Tommy Defense’.....</u>	<u>364</u>
11.	<u>The proof established that counsel were ineffective in putting forward a NGRI defense based upon an unqualified expert’s opinion based upon an erroneous, presumption of facts.....</u>	<u>365</u>
12.	<u>The proof established that counsel failed to protect Mrs. Montgomery’s Fifth Amendment Rights.....</u>	<u>367</u>
13.	<u>The proof established that counsel failed to effectively develop expert testimony/evidence. ....</u>	<u>368</u>
a.	<u>Movant presented the testimony of Dr. Hutchinson to demonstrate the proof available to trial counsel through Dr. Hutchinson who had begun an evaluation of Mrs. Montgomery in 2005 and who, had she been provided a comprehensive social history, could have provided expert psychological testimony</u>	

	<u>regarding the deleterious effect of trauma.....</u>	368
b.	<u>Movant presented the testimony of Dr. Logan in support of her claims of ineffective assistance of counsel as to Mr. Duchardt’s misrepresentations to the court and as to the team’s handling of the pseudocyesis defense. ....</u>	380
c.	Movant presented Dr. Fucetola’s testimony regarding the evidence of brain damage identified by his neuropsychological testing, his recommendation to trial counsel that additional investigation of Mrs. Montgomery’s brain impairments was needed, and further information he would have been able to present had he had a biopsychosocial history. ....	388
d.	<u>Movant presented Dr. Kuncel’s testimony regarding trial counsel’s failure to provide her adequate social history information, to insure her testing conditions met protocol, to adequately prepare her to testify, and the trial team’s bungling of the proof regarding Mrs. Montgomery’s MMPI profile. ....</u>	392
e.	<u>Movant presented Dr. Sanislow, the nation’s preeminent expert on the MMPI, who testified that the government’s expert’s use of the MMPI data did not conform to standard of care and misrepresented that which can be gleaned from Mrs. Montgomery’s MMPI profile. ....</u>	396
f.	<u>Movant presented Dr. Davatzikos to support her ineffective assistance of trial counsel claim regarding counsel’s failure to adequately defend Dr. Gur’s MRI data at the <i>Daubert</i> Hearing. ....</u>	406
g.	<u>Movant presented the testimony of Dr. Newberg to support her claim of ineffective assistance of counsel for failure to defend the reliability of Dr. Gur’s PET results thereby opening the door to the government’s discovery dispute that resulted in the exclusion of the PET data. ....</u>	411
h.	Movant presented Dr. Gur’s testimony that was available but not presented – at trial regarding his behavioral image, his testimony regarding the reliability of his MRI data, and the difficulty posed by counsel’s mishandling of the discovery dispute that resulted in the exclusion of the PET analysis.....	417
i.	<u>Movant presented testimony that Dr. Ramachandran never was the expert Mr. Duchardt represented him to be.....</u>	427
14.	Proof Lisa Montgomery was sexually trafficked becomes available once Kidwell memo investigated.....	432
15.	Proof at the hearing established that trial counsel failed to comply with prevailing professional norms and prepare a comprehensive social	

history.....	435
a. <u>Mrs. Montgomery’s social history – both the historical narrative reflecting family dysfunction and abuse and also the description of Mrs. Montgomery’s impaired functioning pre-crime – is the foundation for the reliable expert assessments and opinions presented at the hearing as well as providing mitigation.....</u>	435
b. <u>Ms. Vogelsang’s proof is uncontested, scrupulously sourced, and supported by social work literature. ....</u>	437
c. <u>Ms. Vogelsang’s testimony is rooted in the narrative life history of Lisa Montgomery as framed by the discipline of clinical social work. ....</u>	438
d. <u>Ms. Vogelsang sets the stage with intergenerational history showing patterns of dysfunction and mental illness. ....</u>	439
e. <u>Ms. Vogelsang’s chaos map illustrates the instability and rootlessness of Lisa’s upbringing.....</u>	450
f. Ms. Vogelsang describes the terror, isolation, and abuse that permeated Lisa’s childhood and demonstrates Lisa was subjected to strategies of coercive control.....	451
g. <u>Ms. Vogelsang points to information indicating Lisa’s dissociation and other mental health problems began in childhood. ....</u>	462
h. <u>Ms. Vogelsang points to the critical point at which Lisa almost escaped. ....</u>	463
i. Ms. Vogelsang describes, with reference to clinical literature, the devastating effect of the chronic trauma, instability and helplessness on Mrs. Montgomery’s functioning as an adult...	465
16. <u>Mrs. Montgomery presents proof that, once sexual trafficking and gang rape are presented, proof of the debilitating effect of complex posttraumatic stress disorder on Lisa’s development and functioning is compelling. ....</u>	482
17. Mrs. Montgomery present proof of her significant brain impairments. ....	502
18. Mrs. Montgomery presents proof that her brain impairments, mental illness, and Complex Post-Traumatic Stress disorder are more than the sum of each added together: The conditions are compounding, each worsening the impairment cause by the other. ....	511
VI. <u>Argument.....</u>	542
A. It is reasonably debatable that the district court’s abrupt removal of attorney Judy Clarke from the defense team without notice to Ms.	

Clarke or Mrs. Montgomery, contrary to the wishes of Ms. Clarke and Mrs. Montgomery, and without a hearing, violated Mrs. Montgomery’s rights to counsel, due process, and a fair trial as protected by the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and 18 U.S.C. §3599. .... 542

1. In April, 2006, Judy Clarke had established attorney/client relationship with Mrs. Montgomery and was the only attorney on the team qualified to represent Mrs. Montgomery..... 542
  - a. Prior to Ms. Clarke’s appointment, the defense team was crippled by inexperience, fear, and power struggles. ... 542
  - b. Judy Clarke joined the team. .... 545
  - c. Without consulting the client and behind lead counsel’s back, Mr. Owen and Mr. Conrad unilaterally asked the court to remove Ms. Clarke in an unrecorded *ex parte* meeting..... 547
  - d. Susan Hunt tried to undo the damage done, but the court refused and then instructed Ms. Hunt to withdraw from the case..... 551
2. It is reasonably debatable that the trial court’s decision to remove Ms. Clark as counsel without notice or hearing was an unconstitutional denial of Mrs. Montgomery’s Sixth Amendment right to counsel. .... 552
3. The district court’s error is structural. .... 564
4. Even though error is structural, Mrs. Montgomery, has demonstrated actual prejudice..... 566

**B.** David Owen and Ray Conrad rendered ineffective assistance of counsel by engaging in conduct leading to the district court’s decision to abruptly remove Ms. Clarke from the defense team without notice to Ms. Clarke or Mrs. Montgomery and contrary to the wishes of Ms. Clarke and Mrs. Montgomery resulting in a violation of Mrs. Montgomery’s rights to counsel, due process, and a fair trial as protected by the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and 18 U.S.C. § 3599..... 570

**C.** Mrs. Montgomery was deprived of counsel at a critical stage in the proceedings when David Owen and Ray Conrad met with the district court without her knowledge or consent resulting in the removal of Judy Clarke as counsel for Mrs. Montgomery in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States

Constitution.....	574
<b>D. <u>Claims A-C are not subject to Procedural Bar.</u></b> .....	<b>577</b>
<b>E. <u>It is at least debatable that the district court denied Mrs. Montgomery due process and a fair hearing on claims relating to the removal of Judy Clarke as counsel, in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, 28 U.S.C. §2255, and Rules 6 and 8 of the Rules on Motions Attacking Sentence Under §2255.</u></b> .....	<b>583</b>
1. <u>It is at least debatable that the district court should have recused itself.</u> .....	583
2. <u>The district court erroneously limited discovery.</u> .....	591
3. <u>The district court erroneously denied an evidentiary hearing.</u> .....	595
4. <u>Constitutional concerns.</u> .....	596
<b>F. Multiple deficiencies by successor trial counsel including: failure to consult with prior counsel, virtually stopping record collection; stalling the investigation; working on other cases while ignoring Mrs. Montgomery’s; failing to communicate with other working on the case; zeroing in on an improbable NGRI defense and an equally improbable and logically inconsistent innocence defense; refusing to work with his mitigation expert; failing to develop competent expert proof; and making false statements to the court, constitute ineffective assistance of counsel.</b> .....	<b>599</b>
1. <u>Legal standard.</u> .....	599
2. <u>Prevailing professional norms.</u> .....	606
<b>a.</b> <u>The proof at the hearing established that the ABA Guidelines defined the prevailing professional norms at the time of Mrs. Montgomery’s trial. However, contrary to the district court’s opinion, Mrs. Montgomery’s proof regarding prevailing professional norms was corroborated and animated by Judicial Conference Policy, scholarly research, professional literature, and expert testimony. The district court’s order fails to engage with the proof in the record.</u> .....	606
<b>b.</b> Prevailing professional norms at the time of Mrs. Montgomery’s trial required at a minimum a functioning team of two lawyers, an investigator, a mitigation	

	specialist, and a person qualified to identify and screen for mental health symptoms.....	613
c.	<u>Prevailing professional norms at the time of Mrs. Montgomery’s trial required frequent communication among all the team members.</u> .....	625
d.	<u>Prevailing professional norms at the time of Mrs. Montgomery’s trial required thorough and complete investigation.</u> .....	627
e.	Prevailing professional norms at the time of Mrs. Montgomery’s trial required counsel to be honest with the court, to put the interest of the client ahead of professional interest, and prohibited trial counsel from continuing its representation once a conflict of interest arose. ....	634
	i. The Federal Public Defender’s Office had an actual conflict of interest in the representation of Lisa Montgomery.....	634
	ii. Mr. Duchardt was also operating under an actual conflict of interest that adversely effected Mrs. Montgomery, when he knowingly made untrue statements to the trial court thereby pitting his interest in not being found out against Mrs. Montgomery’s interest in a fair trial and effective representation. ....	636
3.	Counsel’s unprofessional errors prejudiced Mrs. Montgomery where her first phase defense utterly destroyed any chance she had in the second phase of trial. ....	641
	a. <u>The Tommy Defense.</u> .....	642
	b. Counsel were ineffective in pleading NGRI thereby waiving important Rule 12.2 protections, in tying their evidence of brain damage to the unsupportable NGRI defense resulting in loss of powerful proof of brain damage, in failing to prepare witnesses to testify, and for failing to obtain a biopsychosocial history to present a multidisciplinary team. ....	655
	i. <u>Counsel chose a factually insupportable defense.</u> .....	655
	ii. The NGRI plea exposed Lisa Montgomery to an expensive five day video-taped interrogation by seasoned government experts Drs. Park Dietz and	

	Daniel Martell. ....	662
c.	Trial counsel’s inattention, ineffective investigation, and lack of preparation led to the disclosure of privileged information – represented to be the report of Dr. Marilyn Hutchinson, which was then presented by the governments experts as proof that a defense expert had concluded that Mrs. Montgomery was a malingerer. Dr. Hutchinson testified that she never wrote a report, she never concluded that Mrs. Montgomery was a malingerer, and that which was represented as her impressions was not even her work.....	666
d.	<u>Resulting ineffectiveness in cross-examination of Dr. Dietz, Dr. Martell, and failure to rebut testimony. ....</u>	<u>670</u>
	i. <u>Mr. Duchardt’s cross examination of Dr. Martell was so poor that his co-counsel became visibly upset at counsel table and one team member had to leave the courtroom.....</u>	<u>671</u>
	ii. <u>Mr. Duchardt’s incomplete social history investigation left him unprepared to challenge Dr. Dietz’s testimony.....</u>	<u>678</u>
e.	The defense pursuit of NGRI resulted in the exclusion of powerful evidence of Mrs. Montgomery’s brain injury because of the defense insistence of presenting the evidence in the first phase and the resulting <i>Daubert</i> challenge that was poorly litigated. ....	687
f.	<u>Trial counsel failed to object to improper argument which prejudiced the penalty phase.....</u>	<u>695</u>
g.	<u>Conclusion.....</u>	<u>697</u>
G.	Mrs. Montgomery’s entitlement to relief is reasonably debatable where, in contravention of prevailing professional norms of counsel unreasonably failed to investigate, develop, and present readily available, compelling penalty phase evidence.....	697
	1. <u>Contrary to prevailing professional norms, counsel failed to investigate, develop, and present a full social history despite obvious red flags signaling familially linked mental illness, chronic trauma and abuse, an inter-generational family pattern of custodial interference. ....</u>	<u>701</u>
	2. <u>Counsel failed to present evidence of the pervasive trauma that permeated Mrs. Montgomery’s life. ....</u>	<u>711</u>

a.	Counsel failed to investigate the readily available proof of the justice’s system’s failure to address Jack Kleiner’s rape of Lisa.....	713
b.	<u>The defense undermined their own narrative by presenting that Lisa’s mother believed that Lisa stole her husband. ....</u>	717
c.	<u>Counsel failed to present readily available proof of Judy’s lack of care for and silencing of Lisa. ....</u>	719
d.	Counsel failed to investigate the Kidwell Memo despite its obvious red flag signaling extreme sexual trauma.....	721
i.	<u>The record refutes the district court’s finding that the Kidwell evidence was unavailable. ....</u>	723
ii.	The record refutes the district court’s finding that trial counsel made a strategic decision to abort further investigation into Kidwell. ....	725
iii.	The district court’s finding that the trial counsel only aborted their investigation after “reasonable diligence to corroborate Mr. Kidwell’s statement” is refuted by the record and contrary to case law. ....	727
e.	<u>Counsel failed to investigate, develop, and present other proof of the coercive control and trauma that defined Lisa’s existence.....</u>	737
f.	<u>Counsel failed to effectively use experts to explain the debilitating effects of lifelong, chronic trauma on Lisa. ....</u>	739
3.	<u>Counsel failed to investigate, develop, and present Mrs. Montgomery’s impaired functioning prior to the crime. ....</u>	742
4.	<u>Counsel bungled the presentation of evidence about Mrs. Montgomery’s brain impairments.....</u>	750
a.	Because counsel failed to conduct a reasonable investigation and create social history, counsel did not glean Mrs. Montgomery’s neurobehavioral history from available documents, records, and witness interviews. ....	751
b.	<u>Counsel failed to investigate or develop proof regarding the neurological effect of trauma on Lisa’s developing brain. ....</u>	754
c.	<u>Counsel failed to present the neuropsychological findings indicative of brain damage found by Dr. Fucetola.....</u>	757
d.	Counsel sought to present Dr. Gur’s finding in the first	

phase of trial in support of NGRI/pseudocyesis, thereby drawing the state’s *Daubert* motion, but failed to present evidence of Mrs. Montgomery’s brain damage – including Dr. Gur’s MRI or behavioral image – in the penalty phase. 758

- e. Counsel failed to obtain a neurological consult – thereby failing to investigate or develop proof of Mrs. Montgomery’s neurological impairments..... 761
- f. Counsel failed to present the synergistic effect of brain damage, trauma and mental illness, failing to show the jury that each impairment is both a cause and effect and the combined nature of all together is greater than the sum of each..... 765
- 5. Counsel failed to present readily available proof of statutory mitigating circumstances. .... 766
- 6. Mrs. Montgomery’s entitlement of relief is at least reasonably debatable where, had counsel complied with prevailing professional norms and conducted a reasonable investigation, provided a social history to trial experts for accurate and reliable diagnosis, and explained both the nature of Mrs. Montgomery’s impairments and their causes, including the devastating Complex PTSD she suffered as a result of her mother sexually trafficking her – one juror could have decided to choose life... 768

- H. It is reasonably debatable that Mrs. Montgomery was incompetent to stand trial because she was unable to rationally assist counsel due to her brain damage, mental impairments, severe complex trauma, and the incomplete, ineffective and inappropriate regimen of psychotropic medication administered to her by CCA before and during her capital trial. As such, it is reasonably debatable that Mrs. Montgomery’s rights to due process, a fair trial, effective assistance of counsel, and to be free from cruel and unusual punishment under the Fifth, Sixth, Eighth, and Fourteenth Amendment were violated. .... 774
  - 1. Constitutionality test for competence to stand trial. .... 774
  - 2. Evidence available pre-trial placed counsel and the district court on notice that Mrs. Montgomery’s competency was in questions. 775
  - 3. The record establishes that Mrs. Montgomery was unable to rationally assist counsel at trial..... 784
  - 4. It is reasonably debatable that Mrs. Montgomery was tried while incompetent. (Substantive due process claim)..... 790

5.	<u>It is reasonably debatable that the district court should have conducted a competency hearing. (Procedural due process claim)</u>	<u>793</u>
6.	<u>It is reasonably debatable that trial counsel was ineffective in failing to raise a competence claim at trial. (IAC claim)</u>	<u>795</u>
	a. <u>Prevailing professional norms</u>	<u>796</u>
	b. <u>Red flags</u>	<u>796</u>
	c. <u>Prejudice</u>	<u>798</u>
I.	It is reasonably debatable that Mrs. Montgomery’s Fifth Sixth, Eighth, and Fourteenth Amendment rights to due process, full and fair trial, and reliable sentencing were violated when she was administered multiple psychotropic medications during her trial which distorted her affect, while at the same time incompletely treating her comorbid mental illnesses without a detailed pre-trial determination that the administration of the drugs during trial was necessary. Further, trial counsel was ineffective for failing to raise issue with the trial court; failing to explain this issue to Mrs. Montgomery; and failing to elicit testimony that would explain the physiological impact of medications to the jury	799
	1. <u>Riggins v. Nevada and its progeny hold that a criminal defendant may not be forcibly medicated during trial absent detailed findings that support the involuntary administration of the medication and ameliorative steps are taken to lessen the impact of the medication on the trial rights of the defendant.</u>	799
	2. <u>The incomplete and ineffective treatment regimen of multiple psychotropic medications administered to Mrs. Montgomery had significant side effects resulting in her loss of a full and fair trial, interfered with her right to counsel and right to present a defense, and deprived her of a fair sentencing hearing in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments.</u>	804
	a. <u>Opinion of Dr. Bradford</u>	<u>804</u>
	b. <u>Dr. Woods corroborates Dr. Bradford’s opinion</u>	<u>807</u>
	3. <u>The evidence in the record establishes that Mrs. Montgomery did not voluntarily agree to be medicated during her capital trial in violation of Riggins</u>	<u>813</u>

4.	It is reasonably debatable that trial counsel was constitutionally ineffective in failing to protect Mrs. Montgomery’s rights under Riggins v. Nevada and in failing to ameliorate the impact of the jury observing Mrs. Montgomery under the influence of psychotropic medication. ....	818
	a. <u>It is reasonably debatable that trial counsel’s performance fell below prevailing professional norms.....</u>	818
	b. It is reasonably debatable that Mrs. Montgomery was prejudiced in multiple ways by trial counsel’s professional errors. ....	822
	i. <u>The jury observed Mrs. Montgomery display a flat affect without any understanding that the medications, and her major mental illness, were responsible.....</u>	822
	ii. <u>Government took advantage of Mrs. Montgomery’s appearance.....</u>	824
	iii. <u>Mrs. Montgomery was not competent. ....</u>	825
	iv. <u>Mrs. Montgomery’s trial while involuntarily medicated undermined her insanity defense. ....</u>	826
	v. <u>Penalty phase. ....</u>	827
<b>J.</b>	Mrs. Montgomery was denied due process at the evidentiary hearing below where the court denied discovery, failed to honor stipulations, cut short testimony, and displayed bias towards habeas counsel. ....	827
1.	The court’s decision to grant an evidentiary hearing, by definition, meant that Mrs. Montgomery met the standard for conducting discovery under Rule 6 of the Rules on Motion Attacking Sentence Under §2255. The denial of discovery was therefore a denial of due process and a full and fair hearing..	829
2.	Mrs. Montgomery was denied due process and a full and fair hearing where without notice to Mrs. Montgomery, in its final order the district court failed to treat stipulations as agreements between the parties, and where the district court truncated witness’ testimony based on the stipulation of the government. .....	833
3.	Mrs. Montgomery was denied due process and full and fair hearing where the district court decided her case without post-hearing briefing or a transcript. ....	835
4.	Mrs. Montgomery was denied procedural due process and a full	

	and fair hearing where the district court excluded the testimony of Lawrence Fox, Esq.....	835
5.	Mrs. Montgomery was denied procedural due process in the district court because she was denied a hearing before an impartial arbiter. ....	837
K.	It is reasonably debatable that Mrs. Montgomery’s rights to due process and a fair reliable sentence free from emotion and caprice under the Fifth, Sixth, Eighth and Fourteenth Amendments were violated by the introduction of overly prejudicial victim impact evidence. Trial counsel was constitutionally ineffective for failing to object to this proof. ....	839
L.	Mrs. Montgomery’s capital sentence violates the Eighth Amendment. because it is constitutionally disproportionate where Mrs. Montgomery is the only individual to be sentenced to death for these crime facts and where Mrs. Montgomery suffers from brain damage and severe mental illness .....	840
M.	Government witness, Dr. Park Dietz, presented untrue and prejudicial testimony regarding the nature of the Grand Jury investigation into his untrue testimony in the Andrea Yates trial and the circumstances surrounding that untrue testimony in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments, <i>Napue v. Illinois</i> , 360 U.S. 264 (1959), and <i>Giglio v. United States</i> , 405 U.S. 150 (1972).....	843
VI.	Conclusion .....	845
VII.	Certificate of Service .....	846

