

**BEFORE THE GOVERNOR FOR THE STATE OF TEXAS
AND**

THE TEXAS BOARD OF PARDONS AND PAROLE

In Re:

Robert Otis Coulson,

Applicant

**APPLICATION FOR CONDITIONAL PARDON OR,
IN THE ALTERNATIVE,
FOR REPRIEVE FROM EXECUTION
AND COMMUTATION OF SENTENCE**

**REQUEST FOR INTERVIEW PURSUANT TO
37 Texas Administrative Code §143.43(d),(e) and
37 Texas Administrative Code §143.57(e),(f)**

**REQUEST FOR HEARING PURSUANT TO
37 Texas Administrative Code §143.43(b)(3) and
Administrative Procedures Act §2001.001 et seq**

**REQUEST FOR COMPLIANCE WITH
Texas Open Meetings Act
Texas Government Code §551.001 et seq**

**REQUEST FOR COMPLIANCE WITH
Texas Constitution
Article 4, §11**

June 3, 2002 Mary Ann Starks

**To the Honorable Governor of the State of Texas and
Members of the Texas Board of Pardons and Parole,**

A. Introduction.

Robert ("Bob") Otis Coulson is scheduled to be executed on Tuesday June 25, 2002 for a horrible crime that he did not commit, the murders on Friday November 13, 1992, of his natural sister Robin Coulson Wentworth and her husband Richard Wentworth. His mother Mary Coulson and Otis Coulson and adopted sister Sarah

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Coulson were also killed in the same crime, but Coulson was not tried for those murders.

No one saw Coulson in the area that evening. Even after the murders received wide local and national television and newspaper coverage, no one ever came forward to report that Coulson had been in the area. Coulson's conviction rested almost entirely on the confession and testimony of an alleged accomplice witness, Jared Althaus. DNA testing cannot help establish Coulson's actual innocence because (a) the State presented no physical or forensic evidence of any kind linking Coulson to the murders and (b) the police focused on Coulson, to the exclusion of other suspects almost from the beginning and then failed to conduct further crime scene investigation or follow other leads which might have located and preserved crime scene evidence linked to someone other than Coulson.

Additionally, as will be shown below, false evidence and false testimony presented at Coulson's trial, compounded by ineffective trial counsel, sealed Coulson's fate. The piece of evidence which the Court of Criminal Appeals deemed critical to the conviction – an Aetna envelope allegedly found by police on the top of the desk of Coulson's father the night of the murders, which purported to show that Coulson "was expected" at the house that night – was shown after trial to have been placed on the desk and photographed there by police the day after the murders.

While the state habeas district court found that the Aetna envelope evidence had not been tampered with or planted, and the Court of Criminal Appeals affirmed, the Federal Habeas district court later found that the State was wrong, that the evidence was false and the envelope was placed on the top of the desk by police. Contrary to the State courts or the prosecution earlier position on appeal, however, the federal district court found that the location of the Aetna envelope was not material and would not have affected the outcome of the trial. The 5th Circuit agreed, and the U.S. Supreme Court denied Coulson's writ of certiorari.

Sadly, the verdict stands. The conviction has been upheld. All legal remedies are exhausted. The legal system has failed to strike down a conviction shown to have been obtained through false testimony and key false evidence. Perhaps the natural horror and aversion for the crime for which Bob Coulson was convicted so overwhelmed the courts that they were unable to look beyond the facts of the crime itself to the merits of his legal claims. Perhaps the heinousness of the crime caused the Courts to turn away in disgust rather than give this case the thoughtful, careful review which is demanded when a life hangs in the balance.

The inherent difficulty in examining the tragic and horrible details of this crime is compounded by the fact that there is a massive, almost numbing, amount of testimony and evidence that must be mentally and emotionally digested and absorbed.

Perhaps that is what obscured from the Courts the harm and injustice done not only to Coulson, but to all of us and to the system itself when a conviction is obtained by deceit, but not overturned. Justice is denied. Actual innocence is made to look like guilt.

Caught in a deadly Catch 22 snare, all of his legal remedies are now exhausted or procedurally barred. The undersigned has attempted here to summarize the compelling evidence that Mr. Coulson's claims of actual innocence have merit.

While those claims may no longer be legally cognizable, they are worthy of your consideration. Coulson's case presents exactly the kind of extreme, exceptional and unusual miscarriage of justice which only the executive can address or remedy. Coulson's only hope rests in you and in the pardon and clemency powers of the Governor and the Board of Pardons and Parole.

For that reason, Coulson and his undersigned volunteer lawyer respectfully request that Coulson be granted a conditional pardon such that he not be released, but upon a knowing and voluntary waiver of his rights to assert double jeopardy, that he agree to remain in custody to be re-tried for the murders Robin Coulson Wentworth and Richard Wentworth, or (b) that he remain in custody to be tried for the murders of Otis Coulson, Mary Coulson and/or Sarah Coulson.

In the alternative, Coulson and counsel respectfully request that a reprieve of 120 days be granted to provide time to investigate his case and permit volunteer counsel additional time to develop additional proof of actual innocence or, in the final alternative, that Coulson be granted clemency and that his sentence be commuted to life in prison.

B. Information Required by 37 Texas Administrative Code §143.42.

1. Name of Applicant:

Robert Otis Coulson

2. Identification of Agent Presenting Application:

Mary Ann Starks
Attorney at Law
c/o Palmer Prison Ministry
Palmer Memorial Episcopal Church
6221 South Main Street
Houston, Texas 77030

3. Required Certified Copies of Court Documents:

The required copies of court documents are attached as Exhibit 2 to this application. Mr. Coulson's execution is set for June 25, 2002.

4. Statement of the Offense:

On Friday November 13, 1992, Coulson's parents Otis and Mary Coulson, their adult daughters Sarah and Robin (who was pregnant) and Robin's husband Rick Wentworth, a 6 foot 230 pound Harris County Sheriff were all tragically murdered in the Coulson home in Houston. The victims were all bound and gagged, asphyxiated with plastic bags over their heads, the bodies were then doused with gasoline and set on fire. There was extensive smoke and fire damage to the house, a layer of soot covered everything. The charred bodies of the victims were in three bedrooms by Firemen. There were phones in every room where the victims were found.

According to the police report interview of neighbor Mike German, all four cars

belonging to the victims were in the driveway from 3:30 p.m. forward. At 4:45 p.m., the family was alive when a friend of Sarah's called. Robin answered the phone, sounding natural and normal, and said that Sarah was in another room, but that the family was on its way out for dinner. No one ever spoke to any of the victims after that. A fire alarm was called in at 6:17 p.m.

While his family was being systematically killed at the Coulson home, Bob Coulson was several miles away at Town & Country Mall, waiting to meet them for dinner at Luby's between 5:15 and 5:30 p.m. Earlier in the week, roommate Jared Althaus had taken a phone message that the Coulsons would be gathering for dinner at Luby's on Friday. That afternoon around 4:15, on their way out of town for a weekend at his grandfather's farm, Jared dropped Coulson off at Town & Country mall, with plans to pick Coulson up at 6:30 p.m., after dinner, and then drive to the farm.

Sometime between 5:45 and 6:00 p.m., when his family had not arrived at Luby's, Coulson called the house to see why they were late. When no one answered the phone, Coulson assumed that Jared had gotten the message wrong and that they had gone to another restaurant. Jared up picked Bob at the mall around 6:30 p.m., after dark. Jared seemed sweaty and nervous, but did not want to talk about where he had been. By the time they got to the farm, Jared had calmed down and the two played some cards, then went to bed. Coulson did not call his family again after leaving the mall as there was no phone at the farm.

In the course of investigating the fire and murders on Friday night, police learned that Coulson and Jared had gone to a remote farm owned by Althaus's grandfather. On Saturday morning Jared's brother Jason Althaus was dispatched to bring Bob and Jared back to Houston. According to initial police reports, Jared and Jason reported Coulson "freaked out and was crying" and became physically ill when told what had happened to his family. On the way back to Houston, they had to stop because Coulson was sick again. Later, at trial, Coulson would be described as unemotional or as feigning grief.

According to Coulson, on the way back to Houston, Jared became nervous because he and Coulson had not been together between 4:15 and 6:30 p.m., so neither had an alibi for the presumed time of the murders. Jared suggested they alibi each other and say that they had driven straight to the farm from their apartment, as he had a gas receipt from a station on Highway 260 (the way to the farm) that could be used to show they were on their way out of town. Coulson agreed to lie to the police about those facts if it appeared that either were a suspect. He now says that was the biggest mistake of his life.

Back in Houston, Bob and Jared went straight to the police station and were separated. Both provided fingerprints. Since it appeared to both that they were suspects, they both told the (false) alibi story about going straight from their apartment to the farm. For that reason, both declined to take polygraph exams at that time.

Coulson, who arrived at the police station back from the farm dressed in a tank top and shorts, was thoroughly "looked over" to see if he showed any signs of having been in a struggle, but there were no cuts, bruises, burns or singed areas of skin or hair to link him to the murders.

Coulson freely gave consent to search his car, which Jared and Bob had used to

drive to the farm on Friday. With Coulson in the station, police and arson investigators thoroughly searched the car for gas fumes or anything else that might link Bob or Jared to the murders or the fire at the Coulson house. Again, nothing was found.

Jason Althaus took police up to the farm, consent to search was granted. Again, nothing was found linking either Jared or Bob to the murders.

Ultimately only two things linked Bob Coulson to the crime. A false accomplice confession obtained from Coulson's friend, Jared Althaus, and false and misleading photographs presented by the State at trial.

This was an unusually heinous and high profile crime. The crime dominated the local news coverage until a gag order was imposed by the trial court after the Houston Chronicle published an article indicating that Robert Coulson was the father of the child his sister Sarah Coulson had given up for adoption shortly before the murders.

Ironically, while DNA testing proved that Sarah Coulson's ex-boyfriend was the father of the baby, not Coulson, no DNA or other physical evidence is available to exonerate him from the murders because the police never developed further evidence after none could be found linking Coulson to the crime.

Prosecutors were Chuck Rosenthal, now the Harris County District Attorney, and Jeanine Barr, now Judge of the 182nd District Court in which Coulson was convicted. On June 16, 1994, Coulson was convicted of the capital murder of his natural sibling Robin Coulson Wentworth and her husband Richard Wentworth in the 182nd District Court of Harris County, Texas and was sentenced to death on June 22, 1994.

5. Statement of the Appellate History:

Mr. Coulson's court-appointed trial counsel, Jim Skelton, prepared the direct appeal to the Texas Court of Criminal Appeals. On February 29, 1996, Skelton was informed that the appeal was set for submission to the Court on April 17, 1996 at 9:00 a.m. Oral argument would only be permitted if the parties notified the Court of Criminal Appeals, in writing, whether oral argument was desired. When Mr. Skelton failed to request oral argument and the case was submitted on State argument only. Those letters are attached as Exhibit 3. The conviction was affirmed on October 16, 1996, in an unpublished opinion. *Coulson v. State*, No. 71,948 (Tex. Crim. App. 1996) and became final with issuance of the Mandate on November 1, 1996.

On December 3, 1996, J. Gary Hart was appointed to represent Mr. Coulson in the state post-conviction writ of habeas corpus. At that time, the Texas Court of Criminal Appeals was dealing with a crisis shortage funding and of competent state habeas attorneys. See John Makeig, *The Buck Stops Here on Costs to Represent Death Appeals*, HOUSTON CHRONICLE, June 26, 1996, at 16 A, and Christy Hoppe, *22 Inmates on Texas Death Row Lack Lawyers; State Pressing for Help as Deadline Looms*, (noting failure to appoint in 22 capital cases with only "eight weeks to either file an appeal or lose their right to a federal court review.")

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Mr. Hart and his partner Robin Norris began a law practice together by taking 10 state capital habeas appointments from the Texas Court of Criminal Appeals on or about December 6, 1996. Mr. Coulson was one of those 10 state capital habeas appointments. Norris and Hart had both been research assistants at the Court of Criminal Appeals for an extended period, but Hart had never had his own practice before, never appeared on behalf of a client in court and never defended a client in any criminal case, while Norris had never represented a client in a death row case. The Court of Criminal Appeals ordered Norris and Hart to file the 10 petitions six months later, at the beginning of June 1997.

When Mr. Coulson learned about Mr. Hart's lack of previous experience, Mr. Coulson became gravely concerned and immediately filed a pro se motion opposing the appointment of Hart and Norris. That motion was denied by the Court of Criminal Appeals on January 3, 1997. The Motion and Order are attached as Exhibit 9.

After requesting an extension of time, Mr. Hart filed Coulson's state habeas application in the 182nd District Court on September 2, 1997. Because Coulson's second chair prosecutor Janine Barr was now judge of the 182nd, Coulson's state habeas and all future proceedings were transferred to the 180th District Court on Coulson's motion for recusal. Senior Judge Sam Robertson was assigned to preside over the post-conviction habeas corpus matter which raised issues of ineffective assistance of trial counsel and prosecutorial misconduct, including the presentation of false evidence.

On November 3, 1998 an evidentiary hearing was held and at the State's request. On January 5, 1999, Judge Robertson filed his recommended findings of fact and conclusions of law. On June 9, 1999, in a written, unpublished Order, the Court of Criminal Appeals denied relief, stating that Judge Robertson's findings and conclusions were supported by the record.

On June 29, 1999, Mr. Hart was appointed by the federal district court to represent Coulson in his federal writ of habeas corpus. On December 12, 2000, the federal district court denied relief in an unpublished memorandum opinion. On August 7, 2001, the Fifth Circuit Court of the Appeals affirmed the district court's judgment and later denied a motion for panel re-hearing. Coulson's petition for writ of certiorari was denied by the United States Supreme Court on March 18, 2002.

On February 12, 2002, the 180th District Court of Harris County, the court set an execution date of June 25, 2002. At that hearing and subsequently by Mandamus and by successive state writ of habeas corpus, Coulson's state habeas counsel challenged the District Court's authority to set an execution date on the grounds that the Findings of Fact upon which the Court of Criminal Appeals denied relief were void ab initio. At the time Judge Robertson conducted the hearing and signed the Findings and Conclusions, the judge had not taken the oath of office required by Article 16, § 1 of the Texas Constitution. Coulson's state habeas counsel argued in the mandamus and in the successive writ that any purported actions Judge Robertson took on behalf of the 180th District Court were absolutely null and void, and of no effect. The Court of Criminal Appeals refused to hear those arguments.

6. The Legal Issues Raised During Judicial Proceedings:

Trial counsel handled the direct appeal, seeking a new trial based on the trial court's alleged improper rulings permitting damaging hearsay testimony to be admitted against Coulson. As noted above, Coulson's counsel waived oral argument and the appeal was submitted on argument from the State, only.

In his state application for writ of habeas corpus, Coulson maintained that his trial attorneys failed adequately to investigate, obtain, and present evidence on Coulson's behalf, failed to request the appropriate limiting instruction for an alleged oral, unrecorded confession allegedly made in a police van immediately after Coulson's arrest outside a hotel room and immediately after the police had conducted an undercover recorded surveillance of Coulson in that hotel room. Coulson further urged that his trial counsel had rendered ineffective assistance at trial and on appeal. Coulson further urged that the Aetna envelope purportedly located on his father's desk the night of the crime could not have been where the State said it was at trial because it was not visible in the crime scene video, and that the evidence had been manufactured and was false.

In his federal petition for writ of habeas corpus, Coulson raised many of the same issues presented during the state habeas proceedings.

7. 120 Day Reprieve Requested:

Coulson seeks a reprieve of at least 120 days in order to allow undersigned volunteer counsel to have recourse to expert testimony in support of Coulson's claims of actual innocence and to permit the Executive and the Board the opportunity to investigate those claims.

8. All Grounds Upon Which a Conditional Pardon or, in the Alternative Reprieve and Commutation, Are Requested:

Coulson's actual innocence has been thoroughly obscured by the failure of the police to conduct a full and fair investigation, by police and prosecutorial misconduct at the trial of the case and by ineffective counsel.

a. Misconduct of the Police and Prosecution:

(i). Obtaining and sponsoring a False Confession:

After the trial, the Judge commented that Jared Althaus's testimony was critical to the jury verdict. For that reason, Althaus was sentenced to 10 years in prison, not 20 as had been reported, of which he served five (5) years and since been released on parole. Yet from the beginning, police had every reason to know that Althaus's confession was false. At the time his confession was given, Althaus failed a polygraph. See Exhibit 14. Much of the perceived value of Althaus's testimony was that he offered to assist police in recovery items used to commit the murders. And he did, indeed, assist the police in retrieving a number of articles (e.g. crow bar, backpack, gas can).

As will be discussed in more detail in the Supplemental Application to be filed later this month, not one of those articles could be forensically tied to Robert Coulson, to

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the crime or to any of the victims. For example, the crowbar was supposedly used to bludgeon Richard Wentworth, a 6 ft. 200- pound Harris County Sheriff's Deputy, on the back of the head. Yet there was no blood, hair, fingerprints or anything else to tie the crowbar to Coulson, to any of the victims or to the crime scene or the Coulson house. Similarly, efforts to tie the acquisition or purchase of the items allegedly used in the crime to Coulson failed, though most could be traced back to Althaus.

Not only did Jared fail a polygraph exam on his confession, by the time of his confession he had provided several other versions of the story. Moreover, as will be further detailed in the Supplemental Application, his story did not match other known facts of the crime. For example, Jared said Bob had suffocated his mother, Mary Coulson, with a pillow. Yet no pillow was found in that room and no fibers around her nose or mouth substantiated that version of what happened.

Another example: to explain how Robert Coulson could have single-handedly subdued and killed his entire family, including Rick Wentworth, without any struggle, Jared stated that Coulson arranged for them to arrive at the house in staged intervals. Yet this contradicts the statements and testimony of Mike Gherman, a Coulson neighbor, that all four of the family's cars had been parked in the driveway from 3:30 or so in the afternoon and remained there when the fire trucks arrived. Within weeks of the crime and arrests, it should have been crystal clear to police that Jared's testimony was not accurate and that the articles collected with Jared's help were not "instrumentalities of the crime."

Rather than reassess their initial rush to judgment that Coulson was the murderer, and conduct further research, the police – and the prosecution – simply put on blinders and pressed forward. The theory developed was that Jared was a submissive personality to Coulson's dominating and controlling personality. Jared was a "puppet." A psychologist was retained to support that theory. While the defense did not have access to that report for purposes of impeachment at trial, its contents may be inferred from an article published after Althaus was sentenced, summarizing the psychological findings. See Exhibit 18.

- Trial testimony was "shaded." Despite clear evidence in the initial police records that Jared Althaus and Coulson were about 6 feet tall and weighed in the 175-185 range (both suspects were weighed by police), at trial Jared was allowed to make it appear that at the time of the crimes he was smaller and more subject to domination. Jared was allowed testify – contrary to police records - that he had weighed only 135-140 at the time of the crime.

Why was Jared's confession inconsistent with the facts of the crime? Why did none of the recovered articles link up to the crime forensically?

In the last decade, research and scholarly work has identified and scrutinized the phenomena of "false confessions." See Exhibits 12-13, attached. In Texas, properly qualified expert testimony is admissible for purposes of attempting to suppress false confessions. One of the hallmarks of a false confession is that, as here, the confession facts do not hold up against known facts from the investigation and witnesses. As will be explored more in the Supplemental Application, the Althaus confession was obtained in the wee hours of the morning. At one point during the confession session, Althaus was found apparently asleep on the floor.

The confession occurred after Jared had gone to San Marcos, Texas on the Monday after the crime without surveillance. That night the police tracked Althaus to a campus motel where he had gone with his girlfriend. Police then conducted an unrecorded interview of Althaus in the police car of which no written report was made. Something clearly happened to frighten Althaus. Before the Houston police had left San Marcos for Houston, Althaus paged homicide detectives that he was coming back. Althaus reached the Houston police station before the officers did and offered his confession. Althaus's actions that night look suspiciously like those of a very frightened individual. There are no notes or recordings of what the police said to him in

San Marcos that caused such a rapid response, but one can logically conclude that coercion was a factor.

(ii). State Sponsored False Evidence: the Planted Envelope

As noted earlier, the State introduced two photos of an old Aetna envelope. The envelope had notations about a prior loan to Bob Coulson sitting on top of Otis Coulson's desk. State Exhibits 15 & 16 were used to prove Jared's claim that Coulson called his father to arrange a business meeting and "was expected" at the house to discuss a "business opportunity." The State urged that the photos "proved" that Otis Coulson put the envelope on top of the desk to discuss with his son on the night of the murders and must have pulled the envelope out from the other papers for that purpose.

The location of the envelope in the photo was the only uncontested piece of evidence that Robert Coulson was "expected" at the house that night. It was the only uncontested evidence to support Jared's testimony that Coulson "lured" his family to the house to murder them in order to inherit the \$600,000 estate.

In closing argument, the State told the jury (incorrectly) to remember that the envelope was found "on the table in the den apart from anything else because [Otis] is expecting his son to come over and talk to him about a business deal." (R. Vo. 49, p. 186)

After closing, the jury asked to see the "envelope that was on the desk" on two occasions. Once during guilt and innocence deliberations and again during penalty phase deliberations.

On appeal, the State again urged that the importance of the envelope as a material piece of evidence was because of where it was found, "...because it was discovered on top of Otis Coulson's desk the night of the murders. As such, it corroborates Jared Althaus's testimony that Appellant called his father to arrange a meeting for the night of the murders to discuss his business deal[.]" State's Appellate Brief, at pp. 33-34.

The Court of Criminal Appeals agreed, stating that the importance of the Aetna envelope was not in what was written on it, but the fact it was, "...found on Otis Coulson's desk on the night of the murders. This fact tended to show that Otis Coulson was expecting to discuss Appellant's business plans around the time of the murders. Coulson v. State, (Tex. Cr.App., No. 71,948, at pp. 15-17, October 16, 1996) (emphasis added)

After the direct appeal, Coulson's habeas attorney proved that the envelope was NOT on the desk on the night of the crime as shown in State Exhibits 15 & 16. (See Exhibit 15). Using the crime scene video and police photos not introduced at trial, Coulson's lawyers proved to the satisfaction of the federal district court and the 5th Circuit that the envelope was not on the desk the night of the murders.

The federal courts agreed that the evidence showed that the police placed the envelope on top of Otis's desk the day after the crime was false evidence, finding (contrary to the finding of the Texas Court of Criminal Appeals, above), that, ... the false evidence concerning the location of the envelope at the time of the murders misled the jury into thinking that the envelope was out and on the desk then night before. (Coulson v. Johnson, C.A. H-99-2535, Memorandum and Order on Reconsideration, p.18, December 12, 2000, Judge Nancy Atlas)

and,

... We agree that... the evidence regarding the location of the envelope was "false." We also agree that this knowledge may be imputed from the police to the prosecution. (Coulson v. Johnson, p. 21 No. 01-20083, U.S. Court of Appeals for the 5th Cir., August 7, 2001, King, Smith & Parker)

Unfortunately, the federal courts did not find the location of the envelope to be "material."

(iii) Failure to Conduct Adequate Crime Scene/Forensic Investigation Once no Evidence was Linked to Coulson

As noted above, once the police focused in on Coulson as the prime suspect, all forensic investigation was geared toward connecting Coulson, physically, to the murders. When that could not be done, the police simply stopped looking. If, instead, the police had conducted further forensic and crime scene investigation, they might well have obtained, developed and preserved physical evidence link someone else to this awful crime. That was not ever done here.

(iv) Failure to Follow other Leads, or to Even Disclose such Exculpatory Evidence to the Defense Prior to trial

* Reported Death Threat to a Coulson Neighbor

Unbeknownst to the defense until a arson investigator testified at trial, on the night of the murders, one of the Coulson neighbors, Charlotte Diemer, was extremely alarmed that the Coulson murders had been meant for her and her family. Some days before the crime, she had received – and reported – a telephone death threat. Ms. Diemer pointed out the physical similarity of the two homes, the similarity of the addresses (same street name, similar street numbers), both houses had "for sale" signs out front. Both houses had realtor "lockboxes" on the front door. See Exhibit 16, attached. Police and arson investigators not only failed to follow up or document this matter, they never disclosed any of this to the defense until more than a year later, at trial.

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The Two Roof Sweepers

At the precise time of the murders, two itinerate workers were on the house immediately to the east of the Coulson residence owned by Mr. and Mrs. Bob Herring. A neighbor across the street reported seeing them staring into the window of the bedroom where Sarah Coulson was found. Mrs. Herring provided information for a composite sketch which was published in the paper. See Exhibit 16, see also Bob Herring letter, Exhibit 21. The two men were allegedly questioned and released, but there is no record of what they said or what information they had concerning this matter. Because the two men were released are itinerates, and no police reports concerning the contents of the interviews were available, the defense never had any opportunity to explore what these men might have know, or where that knowledge might have led.

* Discouraging Witness Stephen Pickerell From Coming Forward

Shortly after Coulson arrived at Death Row, he received a letter from a man named Stephen Pickerell. See Exhibit 17. Mr. Pickerell stated that he had seen Robert Coulson in the parking lot of the Luby's cafeteria at Town & Country Mall at approximately 4:40 to 4:45 the afternoon of Friday November 13, 1992, the afternoon of the murders. This confirmed Coulson's testimony before and during trial, that he had been waiting for his family to join him at Luby's. Shortly after Coulson's arrest, however, a "gag" order was imposed to prevent prejudicial pre-trial publicity from requiring a change in venue. Because of the "gag" order, Pickerell was unaware of Coulson's need for corroborating witnesses as to Coulson's alibi. Pickerell did contact Officer Brad Rudolf, one of the HPD investigators, but was reportedly told that Pickerell's information was not important, that this was a very high profile case and that Pickerell would not want to become involved in the case. This critical information was never provided to Coulson's attorneys before trial.

After the trial, when Pickerell learned what had happened to Coulson, he contacted Coulson's attorneys, who never called back. He then wrote to Coulson, but has since disappeared. See Exhibit 17. Efforts to locate Mr. Pickerell again are ongoing.

b. Ineffective Assistance of Counsel:

Earlier, some of the deficiencies of Coulson's appointed trial counsel were noted. The consensus between his investigator, a witness and two potential witnesses (See Exhibits 4, 5, 6, 20, 21 and 22) is that counsel failed to conduct any meaningful investigation until shortly before trial, failed to return phone calls, etc. Among other things, counsel never visited the crime scene, allowed the house be torn down without an independent investigation, failed to obtain statements from witnesses, had been disbarred, waived oral argument on appeal.

All of the foregoing actions on the part of the police, prosecutors and defense counsel made it impossible for Coulson to properly defend himself and establish his innocence.

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9. Impact Upon the Family of the Victims:
At trial, the State did not put on any testimony concerning victim impact. In truth and in fact, Bob Coulson and Bob Bennett, Mr. Coulson's natural, biological father, are family of the victims.

Robert Coulson lost his entire family. He and his natural sibling Robin were both adopted by the Coulsons, as was there sister Sarah. Since all three of the children were adopted, Bob never felt any "stigma" or concern over being adopted. The Coulsons raised him. They were his family: Mary Coulson was Mom and Otis Coulson was Dad. On top of that devastating loss, he now finds himself wrongfully convicted of their murders and sentenced to death.

Bob Bennett is also clearly family of the victim. Bob Bennett's statement to the Board is submitted separately and also attached as Exhibit 20. Please give that letter your closest attention. This is the plea of a man who first lost his only two children to state welfare workers when his wife took them from Rhode Island and gave them up for adoption in Texas. Next he lost his only daughter Robin to a violent crime. Now he is about to lose his only son to the judicial system. Please do not compound tragedy with tragedy.

The Wentworths also lost their son Richard. Certainly that is another tragic loss. But I must remind you that, despite his conviction, Robert Coulson continues to deny that he is responsible for that death

10. Grounds for Commutation:

Evidence not available to the jury at the time of Coulson's sentencing establishes that he is not likely to commit criminal acts of violence in the future such that he will be a continuing threat to society. While the jury imposed the death penalty based on their prediction of future dangerousness, that prediction has not been borne out. Coulson has been a model prisoner at all stages of his incarceration. He is always described as polite and well-mannered. He was qualified for Death Row work duty and was classified to work on the garment factory computer for inventory. He would have done so, but for the administrative changes which occurred after the escapes from Huntsville in late 1999.

Moreover, as a result of the issues detailed above, and to be explored again in a Supplemental Application, there is credible reason to believe that Coulson is actually innocent of the crimes for which he was convicted. Commutation under such circumstances is the only way to avoid executing a man whose actual innocence might not otherwise be proven until after his death.

C. Request for Conditional Pardon

For the reasons stated, extraordinary circumstances exist such that conditional pardon is appropriate such that Coulson not be released, but upon knowing and voluntary waiver of his rights to assert double jeopardy, that he agree to remain in custody to be re-tried for the murders Robin Coulson Wentworth and Richard Wentworth, or (b) that he remain in custody to be tried for the murders of Otis Coulson, Mary Coulson and/or Sarah Coulson.

D. In the Alternative, why a Reprieve and Commutation should be granted.

It is the public policy of Texas that no person be executed for crime unless it is likely that he will commit criminal acts of violence in the future which pose a continuing threat to society. At the time of his conviction for capital murder, a jury found that Coulson would probably pose just such a threat. But he was very young, had no criminal history, and there was nothing apart from the severity of the offense for which he was convicted from which to draw an inference of future dangerousness. The state produced no specific evidence of Coulson's future dangerousness, merely reintroducing the same evidence from trial. There was no expert testimony from any witnesses for the prosecution concerning future dangerousness.

We now know that Coulson is not the continuing threat which the jury predicted he would be. Mr. Coulson has been incarcerated for almost ten (10) years. During that time, he has been a model prisoner. As noted above, Mr. Coulson was classified as "work capable" and in late 1999, Mr. Coulson was re-classified to work in the factory office using a computer to conduct inventory, but was prevented from working in that capacity as a result of changes after the late 1999 escapes.

In a place such as Texas Death Row, where life is strictly controlled and inmates frequently engage in prohibited behavior ranging from disobedience to deadly assault, Coulson has consistently been polite, well-mannered, compliant and cooperative. He has shown absolutely no inclination to threaten the lives or safety of others, whether inmates, prison guards or support staff. If Coulson should remain in prison for the balance of his life, subject only to early release at the discretion of the Governor, Coulson has demonstrated that there is virtually no chance of his endangering anyone.

Moreover, under Texas law, the death penalty should only be exacted on any offender if it is reasonably certain that public safety will be imperiled if the offender is not put to death, no matter how horrible the crime. Under Texas law, Jurors are asked to answer several questions at the punishment phase of capital murder trials. The first question addresses the future dangerousness issue. Unless the jurors answer "yes" to future dangerousness, the other questions are irrelevant, and need not be answered.

The Board has evidence on the dangerousness issue which the jury did not have. By granting clemency, the Board neither invalidates the jury's verdict nor impugns it in retrospect.

The Board merely makes a decision based upon additional evidence produced by of 9 ½ years in custody. This is a plea to give serious consideration to evidence about his predicted future dangerousness which was not available at the time of Coulson's trial and which has not been borne out by his conduct while in custody these many years.

Coulson's claim continues to be a claim of actual innocence and inadequate access to the judicial process. The legal authority of the Board to recommend, and of the Governor to grant, reprieves and commutations in such circumstances is the only recourse that remains.

Moreover even if the Board and the Governor are unpersuaded by Coulson's compelling claims of innocence and of State misconduct, Texas law nonetheless

treats the death penalty differently than other offenses by deliberately and specifically confining it only to those cases in which the public safety cannot otherwise be secured. Coulson respectfully requests this Board to follow both the letter and the spirit of that law by ensuring that no person in this state be executed for a crime when it appears to the Board and the Governor, from the best evidence available, that an individual does not present a continuing threat to society. Especially when, as here, the prediction of dangerousness made at trial has proven to be mistaken.

E. Request for Interview and Hearing:

Robert Coulson respectfully requests that the Board members grant him interviews, pursuant to 37 T.A.C. §143.43(d),(e) and § 143.57(e),(f).

Robert Coulson further requests that the Board grant him a hearing, pursuant to 37 T.A.C. §143.43(b)(3) and the Administrative Procedures Act, §2001.001 et seq, and allow him to present evidence in support of conditional pardon or reprieve and commutation.

F. Request for Compliance with Open Meetings Act and with Texas Constitution Article 4, § 11:

Robert Coulson further requests the Board to comply with the Open Meetings Act, §2001.001 et seq Texas Government Code, and with the Texas Constitution, Article 4, § 11 requirement that the Board give its reasons for granting or denying this application.

Conclusion & Prayer

For the reasons stated, the undersigned and Robert Coulson respectfully submit that Texas law militates against execution of the death penalty in this case because there exists substantial evidence, not available to the jury, that Robert Coulson was wrongly convicted of/is actually innocent of the crime for which he was convicted, and a conditional pardon is requested on the terms described above. In the alternative, a 120 day reprieve is requested so that Coulson's claims may be investigated and further evidence of actual innocence might be obtained.

In the further alternative, Robert Coulson seeks a commutation to life in prison. Robert Coulson does not pose a significant danger to prison society and a sentence of life imprisonment is sufficient to ensure that Coulson would not pose any threat to society.

Respectfully submitted,

MARY ANN STARKS
SBT No. 19071300
c/o Palmer Prison Ministry
Palmer Memorial
Episcopal Church
6221 Main Street

Houston, Texas 77030
 Tel: (713) 222-0004
 Fax: (713) 222-0166

Table of Exhibits

Tab

1. Signed Request of Robert O. Coulson for Conditional Pardon or, in the Alternative, Reprieve or Clemency
2. No Fee Charged Affidavit of Mary Ann Starks
3. Required Documents
4. Affidavit of Creg Hargis, Trial Investigator (Original on file with Court of Criminal Appeals with the State Habeas Petition)
5. Coulson's Trial/Direct Appeal Attorney Disbarred by Default, HOUSTON CHRONICLE, Stephanie Asin, August 8, 1997.
6. Coulson's Trial/Direct Appeal Attorney's Waiver of Oral Argument On Direct Appeal
7. The Buck Stops Here on Costs to Represent Death Appeals, John Makeig, HOUSTON CHRONICLE, June 26, 1996, at 16 A
8. 22 Inmates on Texas Death Row Lack Lawyers; State Pressing for Help as Deadline Looms, Christy Hoppe, March 4, 1997
9. Coulson's Pro Se motion opposing appointment of State habeas counsel, and Order denying relief.
10. The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation, Richard A. Leo & Richard J. Ofshe, 88 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 429 (1998)
11. The Psychology of False Confessions, Richard P. Conti, JOURNAL OF CREDIBILITY ASSESSMENT AND WITNESS PSYCHOLOGY, Vol. 2, NO. 1, 14-36 (1999)
12. The Admissibility of False Confession Expert Testimony, Major James R. Agar, II., THE ARMY LAWYER, August, 1999, p. 26-42.
13. Judicial Notebook: Recent Cases Focus on False Confessions and Expert Testimony, Solomon M. Fulero, Ph.D., J.D., MONITOR ON PSYCHOLOGY, Vol. 32, No. 5, May 2001.
14. Houston Fire Department – Arson Squad Report: Jared Althaus Confession Statement of November 17, 1992 and Polygraph Exam with Notation: Results "DECEPTION INDICATED," will assist in recovery of items; hand drawn map showing location of recovered items.
15. Police Photos: the False or Planted Evidence:
 - 14 A, State #15 (Taken the day after the murders)
 - 14 B, State #16 (Taken the day after the murders)
 - 14 C, Not Admitted at Trial (Taken the night of the murders, no Aetna envelope on the desk)
 - 14 D, Not Admitted at Trial (Taken the night of the murders, no Aetna envelope on the desk)
 - 14 E, probable location of Aetna envelopes on the night of the murders: note envelope-shaped white space in the bottom of the topmost of the stacked drawers)
16. Houston Fire Department Report of Prior Death Threat to a Coulson Neighbor; Houston Chronicle Article regarding search for the two roof sweepers.
17. Statements of J. Gary Hart, Tena Francis, Valerie Price, Robert Coulson and Gary Etheridge Concerning of Coulson Alibi Witness at the Mall the night of the murders. (Except for the original Gary Hart Affidavit, are at Court of Criminal Appeals in the State Habeas Petition)

This document is housed in the Capital Punishment Clemency Petition (APAP 314) collection in the M.E. Grenander Department of Special Collections and Archives, University Libraries, University at Albany, SUNY

18. Correspondence between Prosecutor Rosenthal and attorney for Jared Atkins of March and May 1994 regarding plea bargain and psychological report; October 22, 1994, Houston Chronicle report of Dr. Pesikoff's psychological findings made in open Court
19. Miscellaneous Houston Chronicle articles covering the trial.
20. Letter in Support of Clemency of Robert Bennett, biological father of Robin Coulson Wentworth and Robert O. Coulson.
21. Letter in Support of Conditional Pardon or Clemency from Bob Herring, former Coulson neighbor and friend.
22. Letter in Support of Conditional Pardon or Clemency from Patricia Ann Clark, mother of former Coulson friend.
23. Pardon or Clemency Petitions with 962 signatures (361 e-mail signatures, 601 handwritten signatures)
24. 24 letters from Norway in support of Pardon or Clemency.
25. The Death Penalty in 2001: Year End Report, Death Penalty Information Center, December 2001.

To the Honorable Governor of Texas and the Board of Pardons and Parole,

Reference: Capital Case of Robert O. Coulson, TDCJ #999115

I, Robert Bennett of Kent County Rhode Island am the biological father of both Robert O. Coulson who is scheduled to be executed on June 25, 2002 and Robin L. (Coulson) Wentworth, one of the victims who Bob was convicted of killing. I am writing this letter in support of Bob's conditional pardon request.

Robin was born on April 13, 1967 and Bob was born the following year on March 13, 1968. I was married to Elaine Courser in 1966. By 1970 my marriage to Elaine was not going well. I had been injured on my job and we were having financial problems. We finally separated with her leaving me to care for our two children. She had run off with another man. After four months had passed, she returned to Rhode Island and took our children with her to Oklahoma and then on to the state of Texas. We were subsequently divorced.

The man she had initially left with wanted to marry her but he did not want his family to know that she had ever been married or that she ever had children. She was given an ultimatum by this man to either give up the children or give him up. She decided to take the children to the Nueces County Welfare Office in Corpus Christi, Texas, and place them up for adoption.

Upon learning who the father was and where I was located, the Nueces County Welfare Office then contacted the Rhode Island Social Services, who then sent me a letter requesting that I make plans for my children. I scheduled an appointment in Providence. Their office was in a large state run foster home. When I drove up to the Mount Pleasant Avenue building, I will never forget the fifty or more children playing and rough housing together in the playground outside the building. I couldn't help but wonder if this is what my children were doing in Texas.

It was their request that I sign papers to allow the state of Texas to place my children up for adoption. They told me my children were unplanned and unwanted as well as that I was unable to care for them. I became very upset and refused to sign these papers. I was then told that the state of Texas would obtain a court order forcing me to sign. I left telling them somehow I would get the money to fly my children home to Rhode Island.

I made a call to the airlines and was informed that I would need \$800.00 for tickets that would cover the cost of flying them home to me and that a stewardess would sit with them to watch them. The old car that I had was just too unreliable to make the round trip to Texas and back.

I sold some of my belongings and also managed to borrow some money from friends to raise the airfare and was pleased I had reached the goal to get my children back home with me.

I called the state to tell them that I had come up with the money. They set up an appointment to visit my apartment and concluded it was much too small. They said I would need a larger apartment and probably could not afford one. They also informed me that Texas would not release the children to me unless I could pick

This document is housed in the Capital Punishment Chamber Petitions (CP-P-1) collection at the MA. Grenander Department of Special Collections and Archives, University Libraries, University at Albany, SUNY.

them up in person. They said they would not just put them on an airplane at such a young age.

This meant another \$800.00 roundtrip ticket for myself, which they knew I could not come up with. It seemed like they kept putting roadblocks up in front of me. Please remember that at this time, which was over thirty years ago it was almost unheard of for a single father to receive custody of his children.

After many meetings in Providence, they finally told me that my children would be adopted by an attorney in Texas who was interested in keeping them both together but that if I delayed much longer, then I would risk my children being separated. Under much duress I finally signed the papers, but they knew I was not at all happy.

Knowing that I had left their office very upset I was called about a week later back to their office. I was then offered help by the state. They offered to pay to bring the children back to Rhode Island if I would quit my job and go on welfare. As this was not the life I wanted for my children, and knowing that an attorney and his wife could provide a much better life than I could on welfare and wanting them to have a better life, I declined their offer.

Please know my children were never forgotten. From that point on, I intentionally planned the rest of my life for when I would finally see them again. I was always hoping to see them again, but never wanting to disrupt their lives a second time, I have lived with the guilt, the hurt, the unknown and the hope that everything was okay.

Now that a Texas jury has found my son guilty of murdering my daughter Robin the guilt is only worse.

I did not start looking for them until they were both eighteen years old, but by then the trail was pretty cold. I had intentionally stayed in the same town for over twenty years in hopes my children might someday try to find me as these were the only children I ever had.

In 1994 when it came time for Bob's trial, his attorney obtained a court order and opened the adoption file. He was then able to locate me and then I was able to keep a promise I made with my ex-wife years ago, that is, whoever heard from the children first we promised to contact the other.

Since that time in 1994 when Bob and I were reunited, my son has always insisted that he is innocent. I am well aware he was found guilty and put on death row.

In the eight years that he has been in prison on Death Row, I have come to see many things that have troubled me. The Texas legal system is certainly not fair in capital cases and my son certainly did not receive a fair trial nor a fair appeal process.

As a witness at the trial, I was not allowed to be present in the courtroom except for my own testimony. For that reason, since the trial I have taken the time to read all of the trial transcripts, to see for myself what all of the testimony was. I have read all the appeals briefs and studied all of the evidence and read the police report that

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was withheld from Bob and his trial attorneys. On that basis, I am truly convinced that the police lied, they planted false evidence, and solicited false testimony from an accomplice witness who changed his story to the police on four occasions. There is no DNA or forensic evidence that links Bob to the crime nor is there any physical evidence that positively links my son to this crime.

When this false evidence was finally discovered and proven, long after the trial was over, the appellate courts just looked the other way. There is also no provision for getting attorney errors corrected. This certainly can not be called justice. It is only a system of lie - cheat - steal - cover it up - and execute them. I ask you - Why waste time just bring back the lynch mobs and hang them...

There is also the issue of the visiting judge, who handled the most important part of Bob's appeal and evidentiary hearing. The Judge not even sworn in under the state constitutional mandated oaths at the time, so by Texas law he was in fact not even a judge. He of all people should be doing the right thing and admit his error. The Texas State legislature should be changing the law to allow him to serve without an oath if this is their intent.

I guess it is just turn your back, kill off a few more people and maybe no one will notice your errors.

I, like a lot of people have always believed in the death penalty. We were told it was to act as a deterrent. I like most people assumed they were guilty of their crime, had a fair trial, a competent and experienced attorney, a fair appeal process and a final review by our Supreme Court. WOW WAS I SURPRISED!!!!

I now believe it is time to stop the death penalty and finally end the killing, as all that has been done in the name of the state is to make a lot of people guilty of accessory to murder themselves. It is time that the public learns how the system is run before, God forbid, their son is on death row.

It is time to stop the death penalty as it is very clear that the state of Texas can not and will not play the game fairly and by the rules as the state and federal constitutions mandate. Texas is violating their civil rights.

Three times I have placed my son's future in the hands of Texas. The first time was when I trusted that my children were to be adopted by an attorney and they were not. The second time was when my son had his trial and appellate process and I thought everything would be fair and it was not.

Twice the state of Texas has failed me, please do not fail me a third time.

I beg that you consider my son's request for a conditional pardon which I feel has merit. If nothing else, then that he receive a commutation of sentence to life. Even though my only daughter was one of the victims, I do not want Bob executed. You are my last hope.

Thank you for taking the time to read my letter.

Sincerely,

