

BEFORE THE GOVERNOR  
OF THE STATE OF MISSOURI  
THE HONORABLE JAY NIXON

In the Matter of: )  
)  
PAUL GOODWIN, )  
) **Execution Scheduled for**  
Petitioner. ) **December 10, 2014**  
)

**PRELIMINARY PETITION FOR A COMMUTATION OF, OR REPRIEVE FROM,  
SENTENCE OF DEATH**

Simply put, Paul Goodwin requests that Governor Nixon exercise his clemency power to halt Mr. Goodwin's December 10, 2014 execution on the grounds that Mr. Goodwin is mentally retarded and has deteriorating brain function, both conditions causing him to be incompetent to be executed under Missouri and federal statutes and constitutional law.

This preliminary clemency petition will outline the evidence supporting Mr. Goodwin's mental retardation and incompetence. All of the facts stated in this petition are supported by expert reports and affidavits, as well as inmate and other lay person affidavits that accompany the petition and are included in this binder immediately following the petition.

**Paul Goodwin's Background**

Paul Goodwin was born to Dan and Elaine Goodwin on November 12, 1966. He is now forty-eight (48) years old, and has been incarcerated at Potosi Correctional Center

in Mineral Point, Missouri for nearly seventeen (17) years. Paul Goodwin is an unusually large man, standing over six (6) feet, seven (7) inches tall and weighing more than three hundred (300) pounds. He is intellectually and physically slow, and has been compared to Lennie, the intellectually delayed and flat character in *Of Mice and Men*.

The youngest of five (5) children born to Dan and Elaine (nee Meiners) Goodwin, Paul shared a congenital hearing loss with three (3) of his siblings. Paul's congenital hearing loss was the most profound of all of his siblings, and it is believed that he can only understand about one-third of the information he receives orally. Unfortunately, Paul's greatest difficulty in understanding the information he receives is due to his limited intellect, not his difficulty hearing.

Paul was raised in a highly dysfunctional family. The dysfunction and turmoil Paul suffered from as a child is important to understand inasmuch as it is a backdrop against which his intellectual developmental disability defined and limited him. Whereas some children with disabilities are nurtured and reach their maximum potential, others live with parents who are either unable or unwilling to admit there is a disability and are sentenced to a life defined by the limits of their disability.

Paul Goodwin's father, Dan Goodwin, was a perfectionist, who was also a remote, withdrawn and obsessive loner. His behavior was extremely erratic, and was characterized by violent outbursts, which were the result of lengthy drinking binges and binge spending on expensive and fleeting hobbies. (Experts involved in Paul Goodwin's

case have opined that Dan Goodwin's behavior is consistent with behavior patterns seen in individuals living with bipolar mood disorder.)

Paul Goodwin's mother, Elaine Meiners Goodwin is the youngest of seven (7) children. She entered her marriage to Dan Goodwin from a tightly knit and highly social immigrant family. While Elaine is kind and loving, she is also passive and not very bright. Throughout her marriage, she quietly tolerated insulting, inappropriate and off-color comments and criticisms.

While Elaine was loving and kind toward their children, Dan was not. He was very strict, highly critical, cruel and controlling. He would not tolerate anything other than perfection in his children, and nothing his children did was ever good enough for him. Dan treated Paul, whose intellectual deficits were apparent from an early age, in the most demeaning of ways. Paul's father would often look at Paul with "undisguised disgust" and called Paul "moron" and "dumb." Paul's uncle, Paul Meiners, recalls that Dan appeared to have "little use" for Paul. All of Paul Goodwin's family members agree that Paul was a disappointment to his father.

### **Paul Goodwin's Mental Impairments Were Evident from an Early Age**

Individuals living with an intellectual disability are either born with the deficit or suffer a trauma of some sort prior to the age of eighteen (18) that results in a lowered IQ and significant adaptive skills deficits. While it is not always possible to know for certain what the underlying cause of an intellectual disability is, in Paul's case there are several reports of significant head injuries early in life. At the age of two (2) Paul began crying

very hard, for no apparent reason and then passed out, hitting his head on the sidewalk.

Years later, Paul had a bike accident and lost consciousness for several minutes. When he was older, and his intellectual deficits were already obvious, Paul was riding in the back of a pick-up truck while standing. He failed to duck as the truck passed under a concrete bridge abutment and was knocked unconscious.

While the cause of Paul's intellectual disability will never be certain, based on a review of records and interviews with family members, it is clear that anyone who knew Paul recognized that he was different. Even as a very small child, Paul's cousins understood that he would not be able to play even the simplest games -- like Hide-and-Seek -- with them, because he could not remember the rules.

Even Paul's father, Dan, who did not want to acknowledge Paul's deficits, constantly told Paul, "You should be normal. Why can't you be normal?" While Paul's father was unwilling or unable to see Paul's deficits, most of the rest of the family was well aware of Paul's limitations. Paul's uncle, Dr. Paul Meiners felt that it was difficult to know how much of what he was saying was actually "getting through" to Paul, as his answers often had nothing to do with the question at hand. Paul Goodwin's extended family saw that Paul was not like the rest of the children, and that his learning and social skills did not improve over time. They recognized that despite Paul's large size, other children in the neighborhood could easily manipulate Paul into doing whatever they wanted.

**Paul Was Never Able to Succeed in School Due to His Significant Mental Disability**

By the time Paul entered Kindergarten, it was clear to those who knew him that his academic experience was likely to be difficult. All of Paul's siblings attended a private school. Because of his intellectual disability, Paul could not attend a private school. From the time Paul entered school, he struggled to make progress academically and socially. By the time Paul was in first grade, he had been referred for testing by the Special School District, which is the program that serves students whose needs cannot be met within the regular educational program.

As a result of the evaluation conducted by the Special School District, it was determined that Paul was significantly hearing impaired. Records also indicate that despite the district's unwritten policy to make every effort not to label a student as mentally retarded, so as to avoid the stigma associated with such a diagnosis, it was suspected that Paul was mentally retarded. While re-evaluation of special education students is mandated triennially, Paul was referred for re-evaluation after only one and one-half years.

Paul remained in the Special School District program for the duration of his education. Unfortunately, he failed to progress academically, even with the supports offered by the program. He had tremendous difficulty learning, and feared ridicule. In 1980, at the age of thirteen (13), he underwent additional testing. The Wechsler Intelligence Scale for Children (WISC) was administered to Paul, whose IQ was estimated to be 72. This score placed him well within what was termed the "mentally defective" range at the time.

Paul was retained three (3) times during elementary school, so that he was nearly sixteen (16) years old by the time he was in eighth (8th) grade. Recognizing that Paul was not making significant academic and social progress, Paul's maternal uncle, Bob Meiners hired a special education teacher to work privately with Paul when he was in high school. She conducted some informal testing prior to beginning her tutoring of Paul, and determined that he was functioning at a third (3rd) or fourth (4th) grade level in most areas. The tutor worked with Paul regularly, and despite the outside support, Paul still did not make meaningful academic progress. Based on Paul's failure to progress, his extremely concrete thinking and Paul's social deficits, she opined that Paul had low intelligence. Dr. Denis Keyes, a leader in the field of intellectual developmental disability found Paul Goodwin to "lack the capacity to understand the *abstract* nature of almost anything."

At the age of sixteen (16), Paul was found to be developmentally within the four (4) to seven (7) years of age range. By the age of seventeen (17), Paul had accomplished some skills the district identified as important: survival vocabulary, identification of major forms of transportation, knowledge of personal health and grooming, understanding of safety rules and an ability to identify tools. When Paul left school at the age of eighteen (18), he was nowhere near graduation requirements.

### **Paul's Intellectual Disability is Also Reflected in His Work History**

Eventually, Paul's father decided to put Paul to work in the family business, Goodwin Brothers Printing Company. He was hired as a janitor, and Paul was able to

sweep floors and empty trash bins. When there was an opening in the Shipping and Receiving department, Paul was promoted, and unfortunately, Paul never learned how to do the job, and often made costly errors. It became apparent that if Paul were to stay in that position, he would require very close supervision. Everyone at Goodwin Brothers Printing Company understood that Paul was "slow," and limited the things asked of him to basic manual labor, recognizing that he could not do anything more significant. Even though Paul was the son of one of the owners, employees at the printing company called him "Boing, Boing," or "fat and tubby."

Once Paul started working for Goodwin Brothers Printing Company, he received a paycheck for the first time in his life. His hourly wage was low, and even though he was living at home and had limited expenses, he spent his paycheck almost immediately upon receipt, and within a few days was borrowing money from family, friends and co-workers. Paul's uncle, who was running the business doubled Paul's hourly wage in an effort to better meet Paul's financial needs but discovered that it did not matter *how much* money Paul had -- he spent it all.

Paul's sister Mary recognized that Paul was struggling with the transition to adulthood, and, thinking she might be able to help him, invited him to live with her. Mary hoped to help Paul learn to manage his finances and to improve his personal hygiene. Unfortunately, Mary discovered that living with Paul was like living with a small child, as he was impulsive and unable to think beyond the present moment. Paul's stay with his sister lasted only six (6) months.

Paul's mother helped him even after he became an adult, providing him with food, money, even going so far as to complete job applications on his behalf -- not because Paul would not complete the applications, but rather, because he *could not*. She even drove Paul to and from work in order to ensure his timely arrival -- again, not because Paul would not get himself to work, but because Elaine recognized that he *could not* get himself to work. Paul's mother understood that he was not able to manage a budget, pay bills or go grocery shopping any more than he could tell the difference between a "friend" who was looking for something and a real, true friend.

Paul's father, Dan, scolded and berated Elaine for her efforts to help Paul, taking the position that her coddling of Paul was not helpful to his development. While this might have been true of a typical child, it was not true of Paul, who needed as much assistance as his mother could provide.

### **Paul's Devastation After the Loss of His Girlfriend, Penny Palermo**

At the age of twenty-seven (27), Paul met a woman named Penny Palermo. Penny was thirty-three (33) years old at the time. As the relationship developed, Penny took on the role Elaine played in Paul's life and became his lifeline. Penny used drugs and drank excessively. Their relationship was tumultuous, and they fought often. Penny was in charge, and she was often very violent. Despite the difficulties, and no matter what Penny did or said to Paul, Paul stayed committed to Penny. Paul's family did not approve of Penny, and neither Paul nor Penny were welcome in Dan Goodwin's house. When

Penny died of a drug overdose in November of 1997, just a few months before the offense, Paul was devastated.

When Dan Goodwin heard about Penny's death, he said "good," but never really allowed Paul back into his home. Because Penny had been Paul's lifeline and Dan Goodwin did everything in his power to limit Elaine's support of Paul, with Penny's death, Paul became essentially homeless.

### **Both His IQ and His Adaptive Skills Show that Paul Goodwin is Mentally Retarded**

In considering Paul Goodwin's petition for clemency, it is crucial to look at his intellectual functioning. In 2001, Paul Goodwin was administered the Stanford-Binet Scale of Intelligence. His score was 67, which placed him well within the range of being mentally retarded, which was the term at the time. While he was thirty-five (35) years old at the time, his age equivalent was determined to be thirteen (13) years, nine (9) months.

When assessing whether or not an individual is mentally retarded, or as it is now termed whether or not an individual has an intellectual developmental disability, adaptive skills must also be evaluated, as an individual must have both a low IQ and deficits in adaptive skills to qualify for such a diagnosis. As with IQ, adaptive skills are fixed, and deficits typically remain fairly consistent over the years, as individuals with an intellectual developmental disability are not typically able to learn and improve with experience over time.

Various evaluators and experts involved with Paul over the years have assessed his adaptive skills and found significant deficits. As a part of the clemency efforts, Dr. Denis Keyes assessed Paul's current adaptive skills, with special focus on others' assessment of Paul's adaptive abilities and Paul's own ability to use practical adaptive behavior skills. It should be noted that individuals with an intellectual developmental disability typically look *better* in prison because they thrive on consistency and routine. Even after having been in prison for nearly seventeen (17) years, there are still many significant deficits in Paul's adaptive skills.

Dr. Keyes recently met with two of Paul's sisters and his brother to administer an assessment tool called the Adaptive Behavior Assessment System (ABAS-II). The tool is essentially a questionnaire that consists of more than two-hundred and fifty (250) questions. It surveys specific information covering all ten (10) of the areas of adaptive behavior identified by the American Association on Intellectual Developmental Disabilities.

Dr. Keyes also had an opportunity to administer the ABAS-II to four inmates who are incarcerated at Potosi Correctional Center with Paul Goodwin. These men know Paul well, and while inmates might not typically be considered reliable reporters, there is tremendous internal consistency and validity across *all* seven of the respondents, with a differential in scores across all seven (7) of the respondents of only nine (9) points, lending support to the argument that these men were reliable reporters when it came to assessing Paul's adaptive skills. The strong validity in test scores is especially

meaningful given that three (3) of the respondents are family members who were asked to complete the ABAS-II based on Paul's adaptive skills prior to his arrest while the other four (4) respondents were asked to base their responses on their knowledge of Paul's functioning within Potosi Correctional Center.

The significant adaptive skills deficits identified by the respondents who completed the ABAS-II are further detailed in affidavits completed by the four (4) inmates who completed the ABAS-II and four (4) *other* inmates, all of whom know Paul Goodwin well.

At this point, these men know Paul Goodwin better than anyone else. They have shared cells with him, been assigned the same work duty as him, and attempted to train a dog with him. They have watched him struggle -- and fail to manage his money and recognize that he is unable to make appropriate decisions regarding his physical health. Their words say it best, and their affidavits are filed in support of the clemency petition.

“Lester Stone explained, ‘I think it is important for me to say that...[you] could have randomly picked any staff member at Potosi Correctional Center and any inmate who has been there for any length of time. Anyone who knows Paul will be able to talk about his deficits, and while each person might provide different examples, in the end, the result would be the same -- information about the ways in which Paul does not function well cognitively...’”

"Lance Shockley and David Barnett echoed Lester Stone's thoughts, saying it is "commonly understood amongst Potosi Correctional staff and inmates alike that Paul is slow" and everyone "-- staff and inmates alike -- knows that Paul is not all the way there..."

"Charles Armentrout recalled his first impressions of Paul Goodwin saying, "he looked like Baby Huey, in that he was slumped and hulking. Even from a distance, I could tell that he was not very bright." He called Paul Goodwin a "big dummy" explaining, "I do not want that to sound mean or derogatory, but it is the perfect description for him. He is very large, physically, and he is really not very bright..."

"Carmen Deck... recalls his first impressions of Paul, which were of "a Big Dumb guy who acted a lot like a kid. Paul is like a thirteen (13) or fourteen (14) year old kid trapped in a man's body." Walter Storey also provided a strong visual image of Paul Goodwin, saying that he "is as soft as a bed of 'kitty cotton'" and added "'Paul is just like Lennie, the slow-witted character in *Of Mice and Men*.'"

"David Barnett stated that Paul's "comprehension level is delayed. He is slow in everything he does -- his speech is slow...almost as if he has to think extra hard to find the right words -- and even then, the words he uses are often not actually the 'right' words." He described Paul as "child-like," functioning at

"second (2nd), third (3rd), or fourth (4th) grade" and opined that Paul has reached his "mental capacity."

"David Barnett explained by saying "[i]t does not take much to please him or to occupy him." [He] described Paul's sense of humor as "very simple, and child-like," adding that the "things Paul finds funny are so 'low' and simple that sometimes it is hard to find the humor...because you are looking for something subtle or hidden when the 'humor' is right there in plain sight." Daniel Porter echoed David Barnett saying, "[t]he simple things in life please Paul, and early on...I decided I wanted to please him when I could, because I liked how happy it made him."

"...Paul had tremendous difficulty sharing the responsibility of cleaning the cell. Lester Stone explained "Paul is simply not capable of truly cleaning a cell...[he] can get the cleaning supplies, but he is not able to clean so that the cell...is 'tidy clean.'...He will also start cleaning something and then sit down to have a smoke or drink a cup of coffee. He gets distracted and is not clear on the task at hand, so it can take him one (1) to two (2) hours to clean his cell -- and our cells are just not that big."

"Ronald Wright explained that he and Paul had a significant disagreement over the cleaning of their cell. It happened when Paul "got some detergent and put the soap in the toilet. He swished a rag around in the toilet bowl water to

make some suds and then started washing down the cell with a rag he was dipping in and out of the toilet." Ronald Wright explained, "[e]ven though I knew he had some limitations, I just could not accept that Paul was cleaning my living space with water from the toilet bowl." When Ronald Wright tried to talk to Paul Goodwin about the issue, he "responded negatively, because he did not want me telling him what to do." After a few days, Paul Goodwin approached Ronald Wright in the yard, telling him "he knew it was stupid to clean that way." Ronald Wright later learned that Paul Goodwin's mother had told him that using the toilet water was "a nasty way to clean the cell."

Those who know Paul Goodwin best clearly view him as having severe adaptive behavior deficits that set him apart from the others at the Potosi Correctional Center. The men who made these observations have nothing to gain from sharing this information. That fact, taken in consideration with the strong validity on the ABAS-II supports the argument that their validity need not be overly scrutinized. But in truth, anyone who is reasonably well educated and who has ever spent more than a few minutes with Paul Goodwin would immediately recognize that he truly is, at the heart, just a big, simple kid.

### **Paul is Incompetent to Be Executed**

In Missouri, the State may not execute any prisoner who "lacks capacity to understand the nature and purpose of the punishment about to be imposed upon him or

matters in extenuation, arguments for executive clemency or reasons why the sentence should not be carried out.” Mo. Rev. Stat. § 552.060.1.

Because of Paul’s inability to assist clemency counsel, who have represented him for over eight years, counsel sought the services of Dr. Robert Hanlon, a Board Certified Clinical Neuropsychologist, to determine whether Paul is competent to be executed under the statutory definition. Dr. Hanlon spent a day with Paul at Potosi, and has consulted with counsel and reviewed relevant records to assess Mr. Goodwin’s competency.

Dr. Hanlon concluded that Mr. Goodwin has a full-scale IQ of 73, and a verbal understanding IQ of 72. Dr. Hanlon further concluded that in addition to Mr. Goodwin’s developmentally based impairments, his long-time diabetes has resulted in declining brain function. Mr. Goodwin suffers from memory, intellectual, and executive dysfunction; and has a language comprehension deficit that impairs his ability to understand any legal arguments or reasoning. Dr. Hanlon is expected to have his full report to counsel within a matter of hours, and counsel will supplement this petition with his findings.

Dr. Keyes also considered competency to be executed pursuant to § 552.060.1, and concluded that “the actual requirement, as presented [ ] in the Missouri State Statute, is that the condemned prisoner must clearly understand something that is extremely abstract in its very nature. As such, Paul Goodwin is simply incapable of this level of understanding in *anything* abstract, much rather the judicial imposition of his own death.” Keyes Report, at 3-4.

## **Governor Nixon Has the Power and Obligation to Step in and Halt Paul Goodwin's Execution if the Courts Do Not Act**

Where a condemned inmate raises a factually-supported challenge to his competency to be executed, as Mr. Goodwin has done here, the Missouri Governor has recognized his obligation to step in and halt the planned execution until competency can be fully determined. In 1999, the Missouri governor issued an executive order staying Steven Parkus' execution until a final determination could be made as to whether Parkus had a mental disease or defect that rendered him ineligible for execution. *In re Competency of Parkus*, 219 S.W.3d 240 (Mo. 2007). Parkus was eventually deemed incompetent. *Id.*

Likewise, the Missouri governor stayed the execution of Chuck Mathenia pending the outcome of a competency examination. *Mathenia v. Delo*, 99 F.3d 1476, 1485 (8th Cir. 1996). Mathenia was also later found to be incompetent.

Because Mr. Goodwin has presented substantial evidence that he is not competent, meaning that his execution would violate both the state and federal constitutions, as well as Missouri state law, we ask that Governor Nixon, at a minimum, halt the scheduled execution on December 10, 2014, pending a hearing on the issue of Paul Goodwin's competency to be executed.

### **Conclusion**

It is often the case that condemned prisoners urge the Governor to spare their life based on pleas for mercy and demonstrations as to how the world would actually be a

better place with them in it. While such pleas can be compelling, Mr. Goodwin stands on much firmer ground here, in that his execution would violate state and federal constitutional and statutory laws that both prevent the execution of the mentally retarded, and of those who are incompetent. Mr. Goodwin is both. We ask that the Governor therefore exercise his power to convert Mr. Goodwin's sentence to life in prison without the possibility of parole. In the alternative, we request that the Governor stay Paul's execution and order that a hearing take place to determine his competency to be executed.

Respectfully Submitted,

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