

IN THE MATTER OF:

**STEVEN WESLEY PARKUS, CP-54
Potosi Correctional Center
Mineral Point, Missouri 63660**

TO:

**THE HONORABLE MEL CARNAHAN
Governor, State of Missouri**

APPLICATION FOR COMMUTATION OF A SENTENCE OF DEATH

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INTRODUCTION

This death penalty case comes before the Governor in an unprecedented posture: Mr. Parkus' plea for mercy is accompanied by an undisturbed judicial finding that a fully informed jury would not have sentenced Mr. Parkus to death:

. . . the additional evidence Parkus would have presented to the jury, including data indicating childhood mental illness (schizophrenia), mental retardation and psychosis... The childhood psychological evaluations, unknown to Dr. Daniel at the time of trial, were of sufficient importance to cause him to change his clinical opinion. Daniel now concludes that Parkus suffered from a mental disease or defect at the time and Steffenhagen's murder...

For purposes only of cause and prejudice, we believe this new evidence, while having some bearing on guilt, could have a stronger impact and effect on the death penalty phase. *Further, we determine that a reasonable probability exists that the jury, if given the opportunity to consider Parkus' additional evidence, would not have convicted him of first-degree murder in the guilt phase, or, otherwise, would not have imposed the death penalty at sentencing.*

Parkus v. Delo, 33 F. 3d 933, 939 (8th Cir. 1994) (emphasis added). Supporting this finding is the unanimous testimony of every mental health expert - whether hired by the State of Missouri or the defense in this case - that Mr. Parkus is mentally retarded, brain damaged and mentally ill. All agree he is incapable of harboring the mental state for first degree murder.¹

Strangely, this finding did not result in judicial relief because, although Don Catlett, Mr. Parkus' trial counsel, admitted that he went to the wrong mental hospital looking for crucial records, the court found his performance was "adequate," apparently not wishing to saddle this well-meaning but overburdened public defender with responsibility for this grave injustice. Using legal analysis reminiscent of Lewis Carroll's *Through the Looking Glass*, the court's decision turned not on

¹See Exhibit 1, contrasting the evidence at trial with the actual facts that were later discovered in Mr. Parkus' treatment records from St. Louis State Hospital.

whether Mr. Catlett made a mistake, but whether his mistake was negligent. Petitioner contends that such myopic distinctions are irrelevant to the justice of this cause.

The Courts found that a Constitutional trial does not guarantee a just result.

The unusual posture of this case—that the courts refused to grant relief in spite of finding that the jury likely reached the wrong result--warrants explanation. When attorneys appointed to represent Mr. Parkus obtained an accurate medical history revealing his long-standing history of psychosis, and the mental health experts revised their findings accordingly,² a Petition for Writ of Habeas Corpus was immediately filed in the Missouri Supreme Court. Adhering to its long-standing policy of never reopening a capital case after the first round of state court appeals, the Missouri Supreme Court quickly issued a one-page order denying relief. Counsel then presented the matter to U.S. District Court Judge Donald Stohr, who initially found that the doctors' revised opinions were "procedurally barred," meaning they could not be considered in federal court because they were not presented in state court in a timely fashion. The Eighth Circuit Court of Appeals reversed that ruling under an exception to the doctrine of procedural default,³ finding that "a reasonable probability exists that the jury, if given the opportunity to consider Parkus' additional evidence, would not have convicted him of first-degree murder in the guilt phase, or, otherwise, would not

²See Exhibits 2, 3 and 4, affidavits of psychiatrists for both sides at trial, explaining that the treatment records of St. Louis State Hospital contained significant information that caused them to admit that they misdiagnosed Mr. Parkus in their pretrial evaluation, and consequently misinformed the jury about Mr. Parkus' mental state at the time of the offense.

³ A prisoner can obtain habeas corpus review in federal court if he can show "cause and prejudice" to excuse his procedural default. "Cause" means some factor not attributable to the petitioner or his attorney which prevented him from complying with the state court procedure; "prejudice" means that there is a reasonable probability that the jury would have reached a different result based on the new evidence. Wainwright v. Sykes, 433 U.S. 72 (1977).

have imposed the death penalty at sentencing.” Exhibit 12, (a copy of the Court’s opinion in Parkus v. Delo, 33 F.3d 933 (8th Cir. 1994)). In other words, the jury probably reached the wrong result because it lacked critical information.

That finding alone, however, did not automatically entitle Mr. Parkus to a new trial. The federal courts have made it clear that Constitutional guarantees focus only on the process, and not on the results of a state proceeding. The habeas corpus jurisdiction of federal courts is limited to cases in which a conviction was obtained in violation of a right guaranteed by the Constitution of the United States; the fact that the jury obtained the wrong result does not *ipso facto* present such a situation. See, e.g., Herrera v. Collins, 506 U.S. 390, 421 (1993) (O'Connor, J., concurring). (“throughout our history the federal courts have assumed that they should not and could not intervene to prevent an execution so long as the prisoner had been convicted after a constitutionally adequate trial.”)⁴ Therefore, Parkus was required to show that, in addition to the fact that his conviction was unjust, his conviction was produced by a denial of his constitutional rights—in this case, his right to the effective assistance of counsel:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Parkus II, quoting Strickland v. Washington, 466 U.S. 668, 687 (1984). The Court noted that “to

⁴Also see Townsend v. Sain, 372 U.S. 293, 317 (1963). (“[Newly discovered] evidence must bear upon the constitutionality of the [prisoner’s] detention; *the existence merely of newly discovered evidence relevant to the guilt of a state prisoner is not a ground for relief on federal habeas corpus.*”)

prevail, Parkus must satisfy both prongs of the Strickland test . . . We need not address both components of the Strickland inquiry if the defendant makes an insufficient showing on one.” Ignoring its earlier determination that the result of Mr. Parkus’ trial was unreliable, the Court limited its review to the question of the trial lawyer’s performance.

Turning to the question of Catlett’s performance, the court observed that he conducted an unsuccessful search for medical records, but that his failure to obtain any psychiatric treatment records was not necessarily his fault. The court reasoned, “his is not a case in which counsel performed little or no investigation of mitigating circumstances. . . With the help of his staff, Catlett conducted a thorough search for records of Parkus’s mental health history. He contacted numerous state agencies, as well as the individual institutions at which he believed Parkus had been placed during the course of his life.” The Court denied relief from Mr. Parkus’ admittedly unreliable conviction because he “failed to demonstrate a deficiency in his counsel’s performance.”⁵ Id.

⁵Counsel for Mr. Parkus disagree with this conclusion. Mr. Catlett himself admitted that he simply went to the wrong hospital for the records:

Q. (by Mr. Hawke) Do you have a recollection of knowing at that time he had been at the St. Louis State Hospital?

A. I don’t specifically recall that, and in the conversations I had with my investigator to go find those whatever records, *that was never one of the records that I requested of him to go seek.* So I would assume-my conclusion would be that I either wasn’t aware that he had been in St. Louis State Hospital, but *quite frankly I was probably under the assumption that Malcolm Bliss was the psychiatric hospital that was being referred to.*

(Hrg. Tr. Vol. 4, p. 69)(emphasis added). Mr. Catlett candidly admitted that this critical piece of investigation simply “fell through the cracks” in his overburdened public defender office. (Hearing Tr., Vol. IV, p. 88). Nevertheless, unlike the courts, the Governor can remedy an unreliable conviction irrespective of why the jury failed to hear critical evidence.

Steven W. Parkus thus continues to await the execution of his sentence of death.

Because the courts have declined to disturb this admittedly unjust, unreliable conviction, the Governor of Missouri now has the responsibility to decide whether or not Mr. Parkus will be executed. Missouri, like every other state in the Union and the federal government, has granted to its executive the power of clemency. See Missouri Constitution Art. IV, Sec. 7 (“The Governor shall have the power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions and limitations as he deems proper....”). The clemency power granted to the Governor is exceedingly broad. He can grant or deny clemency for any reason, or for no reason. He is not bound by the doctrine of procedural default. He is not restricted by the rules of evidence that bind the courts. See Whitaker v. State, 451 S.W. 2d 11 (1970). He can freely review the facts of the case. The Governor must answer only to his own conscience in making the final life and death decision that is before him now.

The state executive’s power to grant clemency is not only authorized; it is necessary. The Supreme Court has transformed executive clemency from an elective act of mercy into a vital safeguard of justice. Calling the clemency power “the historic remedy for preventing miscarriages of justice where judicial process has been exhausted” and “the ‘fail safe’ in our criminal justice system,” the Court suggested that it is the only remedy for those prisoners who were sentenced to death based on errors of fact. Herrera v. Collins, 506 U.S. at 415. In such cases, the exercise of the governor’s clemency powers cannot be characterized as an interference with the judicial process, for the process itself has broken down. The Governor’s power protects against the breakdown of the system. It is, as the Herrera Court understood, a last step in a larger process meant to ensure justice.

Since the courts have failed him, only the Governor of Missouri has the power to overturn

Steven Parkus's death sentence, the imposition of which was based on an error of fact. That error involves the mental condition of Mr. Parkus at the time the crime was committed. The courts have refused to overturn a jury decision made without the knowledge of Parkus' mental deficiencies that was so compelling that upon its discovery, the only doctor who was willing to testify that the defendant was not suffering from a mental disease or defect under Missouri law⁶ recanted his trial testimony. (See Exhibit. 4). It is now unanimous; every mental health expert who has evaluated Mr. Parkus concludes that he suffered from a mental disease or defect at the time the offense was committed, but because of admitted errors of Mr. Parkus's trial counsel, the jury was deprived of this crucial information.

Reasons Justifying Executive Clemency

Steve Parkus's life should be spared because:

1. His trial and conviction was tainted by the jury's lack of knowledge concerning his true mental condition at the time of the crime;
1. His lawyer's admitted mistake by going to the wrong hospital in search of vital records prevented the jury from knowing the facts and rendering a fair and just verdict; and
2. His mental condition prevented him from being responsible for his crimes and if this information had been revealed at trial, the jury would not have condemned Steven Parkus to die.

⁶See §552 R.S.Mo (1994)

Steve Parkus's Tragic Background and Mental Condition

1. Steve Parkus's infancy and early childhood were marred by pervasive neglect and abuse.

Steven W. Parkus was born July 22, 1960, to Linda and J. W. Parkus, who lived in St. Charles, Missouri. Linda Parkus, a poor share-cropper from rural Arkansas, spent most of her time drinking and doing street drugs, even when she was pregnant with Steve. J. W. Parkus was a heavy drinker who had a record for auto theft. The family lived in a bug-infested apartment in the St. Louis area, until Linda Parkus took her children and left J. W. Linda continued to drink frequently and excessively. She would not feed, diaper, or care for Steve and his brother, Chester, and was an extremely poor housekeeper. She was also prone to terrible mood swings and too often her indifference turned into outright abuse. On one occasion, Steve's mother locked him in the bathroom with his younger brother Chester. Steve climbed out the window and wandered around until a police officer found him and brought him home. After the police left, Steve's mother took a knife, held it over the stove, and burned his buttocks with the hot blade as punishment.

In November, 1967, Steve began living with his maternal great-aunt and -uncle, Mr. and Mrs. Taylor Hampton. On April 23, 1968, a report of parental neglect was made against Steve's natural parents, and on May 10, 1968 legal custody of Mr. Parkus was transferred to his aunt and uncle, Mr. and Mrs. Hampton. Unfortunately for Steve, this change of circumstances thrust him out of the frying pan and into the fire. Taylor Hampton was an alcoholic pedophile who regularly brutalized and savagely raped his nephew. Examples include the following:

[Mr. Parkus] was beaten with a belt, with fists, and was hit on the head with a monkey wrench by the uncle who not only beat them but made his brother fight with him for his entertainment. The uncle restrained the aunt by holding her by the throat and cracked eggs on

her head. After the uncle became tired beating Steve, the boy was made to stand at the corner of the room with his nose in the corner, on his tip toes. If he moved, the uncle hit him with a belt. He was made to stand there for hours. He was subjected to sodomy by his uncle who forced him to perform oral sex and to submit to anal sex. On one occasion, his brother had lost the uncle's cigarettes, but the uncle thought it was Steve's fault and so told him to put his hand on the kitchen counter. Steve did not know what was coming and complied. The uncle then hit Steve's hand with a meat cleaver, nearly severing the right index finger at the base.

Parkus v. Delo, 33 F.3rd at 939. A physical examination by one medical professional revealed burn scars on Mr. Parkus' buttocks and scars on his head and right index finger, which corroborates these horrifying acts of child abuse inflicted upon young Steven Parkus. (Exhibit 5, report of Dr. Jonathan Pincus).

Considering the treatment Mr. Parkus received from those who should have nurtured and protected him, it is not surprising that he began to behave strangely throughout his early childhood. Even when he lived with his mother, he frequently ran away from home. He was also slow in learning to walk and talk. The bizarre behavior continued after he began living with the Hamptons. Sometimes he would become lost on his way home from school. He began running away from home or school regularly; about once a week he would make another attempt to escape only to be found and returned to his abuser by the police. He acted aggressively toward the other children at school. It was this aberrational and seemingly inappropriate behavior that led to Steve's first commitments to psychiatric facilities for mental evaluations, when he was only eight years old.

2. **Steve's early psychiatric treatment history.**⁷

On December 23, 1968, child welfare authorities sent Mr. Parkus to Dr. Mildred Berland, Ph.D., for a psychological evaluation. She described Mr. Parkus, as a "friendly, verbal little boy, 8 years, 5 months of age." She wrote, "The extent of his disturbance became readily apparent in the brief interview before the more structured examination. Thinking was loose and affect often inappropriate." Steve's performance on intelligence testing placed him in the "mental defective intellectual range." Testing revealed that "his consciousness seems flood with threatening, hostile thoughts and feelings to the point where. . .reality testing [is] adversely effected, possibly to the point of thought disorder." Concluding that Steve "is very unstable at this time and may be psychotic," Dr. Berland "strongly recommended" residential treatment.

Pursuant to his recommendation, Mr. Parkus was admitted to St. Louis State Hospital for inpatient treatment in early 1969, where he was examined by a psychiatrist, Dr. F. Crimi, M.D. He noted a history of bizarre behavior "[since] kindergarten after he went to live with his relatives in November, 1967." Dr. Crimi observed that Mr. Parkus repeated the first grade twice, and at age 8, "speaks and talks like a boy of 4 or 5 years of age." It was reported to him that "Steve did not play with other children and had no friends." Dr. Crimi observed, "he doesn't know how to play. He talks a lot but it makes no sense. He never asks for anything like toys, ice cream, donuts, etc. . . . Mr. Parkus admitted running away very often, but said he did not know why. He said that he has bad dreams almost every night, about monsters who have fights inside his body." He also "talked about a big yellow monster and a huge spider and stated that this was not a dream, this was something

⁷ Quotations in this section can be found in treatment records from St. Louis State Hospital, set out in Exhibit 9.

real.” Dr. Crimi concluded: “apparently this is a case of a borderline psychotic boy with possible mild mental retardation.” He recommended in-patient treatment and placed Mr. Parkus on Phenothiazine. Perhaps most importantly, an EEG test confirmed Dr. Crimi’s suspicions. The abnormal results of that test were indicative of brain damage.

Over the next two years, Mr. Parkus alternated between in-patient treatment at St. Louis State Hospital and the Taylor home. In July and August of 1970, Dr. Marjorie S. Baker, Ph.D., tested him to make future plans for his placement. Mr. Parkus’ performance on intelligence tests was split between the “dull normal” and “mentally defective range,” suggesting that “Steve’s is not a case of simple mental retardation, but that other factors are involved.” Furthermore, “reality testing was inadequate,” and “reality testing which may be adequate when stimulation is not too great, rapidly breaks down with increased stimulation and emotional arousal.” The doctor’s “diagnostic impression is that of the symbiotic psychosis with pseudo mental retardation.” However, she was careful to point out that the “prognosis is reasonably favorable if Steve continues to receive the kind of therapy which he is currently receiving and utilizing.”

Less than four months after Dr. Baker’s report, Mr. Parkus was again admitted for in-patient treatment at St. Louis Hospital, in part to protect him from his uncle’s heavy drinking. He was now all of ten years old.

On June 28, 1971, Mr. Parkus was examined by Dr. Aurora Amin, M.D. She also noted Mr. Parkus’ documented history of bizarre behavior, getting lost on his way home from school, and fighting with his peers. She observed that he “tended to be perseverative and concrete in his verbalization. He had poor peer relationships and functioned impulsively and quite immaturely at the level of a three year old.” Tests revealed that Steve had a “severe though disorder” and a full

scale IQ of only 69. Mr. Parkus was preoccupied with bizarre fantasies pertaining to ghosts and demons, and sometimes was easily confused and lost contact with reality. Her diagnosis was "schizophrenia, childhood type and mental retardation, mild, psycho-social environmental deprivation." She noted that his medication history included anti-psychotic drugs such as Taractan, Mellaril, Dexetrine, and Sodium Dilantin Suspension. At the time of the examination, he was receiving Mellaril, yet another anti-psychotic drug.

Mr. Parkus was discharged from St. Louis State Hospital on June 22, 1973, at age 12, with the expectation of continued out-patient treatment. In his discharge summary, Dr. Jovan Simeon, M.D., a psychiatrist, summed up Mr. Parkus' sad social and psychological history. Mr. Parkus, he wrote, was "born and reared in a deprived environment, was frequently neglected until he was adopted by an aunt and an alcoholic uncle." He noted that Mr. Parkus "was frequently destructive for no apparent reason, appeared to have intelligence lower than normal, was unable to play with friends, and was never able to carry on a conversation normal for his age." Mr. Parkus "continued to manifest sociopathic and psychotic behavior . . . [and] severe learning difficulties." Dr. Simeon's notes testified to a laundry list of symptoms:

Severe motor activity, poor impulsive control, perseveration and fragmentation of thought, bizarre and aggressive fantasies, confabulation and confusion of reality, concrete thinking, inappropriate emotional responses, mood lability, lack of appropriate sense of fears, . . . poor attention and memory, insomnia, lying, stealing, and destructiveness.

Finally, he observed that

due to a rather poor family situation, caused by his uncle's episodes of alcoholism, Steven was very ambivalent as to whether he wanted to go home for a weekend or stay on the ward. His adoptive parents cooperated very poorly with efforts on the part of the staff to conduct

intensive family therapy. . .

Handwritten at the bottom of Dr. Simeon's report is the final diagnosis: "childhood psychosis."

3. **Steve's placement by the Missouri Division of Youth Services, and his eventual incarceration.**

Upon his discharge from St. Louis State Hospital, Mr. Parkus was returned to the Hampton home. However, his impulsive behavior continued and four months after being discharged, Mr. Parkus was placed in juvenile detention.⁸ Nevertheless, the odd behavior, especially the running away, continued unabated during a string of short placements. His placement from that point on was very sporadic. A one week placement at Butterfield Boy's Ranch in Marshall, Missouri in March of 1974 ended in "placement failure" due to Mr. Parkus running away. A two day placement at Big Brothers, Inc., in Joplin, Missouri, and a one month placement in a foster home failed for the same reason. He was transferred to and ran away from the E.W. E. Sears Youth Center a number of times. Finally, he was transferred to the Missouri Training School for Boys at Booneville, Missouri, at age 16.

Documents dating from the time Mr. Parkus spent at the Missouri Training school for Boys in Booneville bear testimony to the extent to which Mr. Parkus' family continually failed to provide for his well-being. The admission summary states

When I contacted the natural mother, Mrs. Linda Parkus . . . she informed us that she wanted nothing to do with either of her children and generally would not give us any background matter.

A field report dated December 17, 1974 notes

⁸It is important to note that from this movement through to his eventual incarceration, Mr. Parkus received no treatment or medication for his mental disorders, though, as noted by Dr. Baker, such treatment would no doubt have improved his condition.

We have contacted Mr. & Mrs. Taylor Hampton and they have stated that . . . they want nothing to do with Steve or his younger brother and would have to have time to consider whether or not they would be willing to accept him back into their home for placement.

An AYC departmental memo dated September 19, 1975 states

“On September 16, 1975 this AYC contacted Mrs. Marsha Sindel of the St. Louis Board of Education, School Social Worker. Mrs. Sindel stated that in her opinion, Mr. & Mrs. Hampton could not handle Steven because of Mr. Hampton’s drinking problem. His drinking seems to cause him to be abusive. We also made contact with Mr. Charles Epperson of the St. Louis City Juvenile Court, Special Probation Unit. Mr. Epperson did handle at one time Chester Parkus, Steven’s younger brother. He stated that he would have great reservations for placement of either of the boys within the Hampton home. He further stated that Mr. Hampton was enrolled in Alcohol Anonymous, but this did not seem to be effective.”

Mr. Parkus assaulted Ms. Mary Fisher, a teacher at the Booneville Training School.

This event is described in a recent neurological examination report:

[Mr. Parkus] had been placed in an institution called Booneville and was called by this girl, Nancy, who wanted him to return to Farmington to protect her from rape and beatings by other kids. She was lonely. The next week he attempted a poorly planned escape . . . and entered a school room where he was going to hide preparatory to his leaving. His teacher came in the room and found him behind the door. She was very happy to see him and gave him a hug and said that everyone had been looking for him and she was so happy that she had found him. He had a sudden feeling of empowerment; he choked her to keep her from screaming, grabbed her breast and could not explain why he had done it. It was not primarily a sexual thing, in fact he knew very little about sex at that time, only what his uncle had done to him.

Ms. Fisher was not seriously injured. One month later, on February 25, 1977, Mr. Parkus was certified to stand trial as an adult for the assault of Ms. Fisher. While awaiting trial in the Booneville jail, he escaped by slipping between the bars of his cell and assaulted a local woman, but did not

injure the woman. For this incident, Mr. Parkus was charged for escape and assault.⁹ Mr. Parkus pleaded guilty to three felony charges stemming from the two assaults and his escape from the county jail. At age 17, he was sentenced to 17 years in the Missouri State Penitentiary.

Mr. Parkus arrived at the Missouri State Penitentiary in Jefferson City at the age of 17. Because of his youth and small stature, Mr. Parkus was victimized physically and sexually by other prisoners. Prison documents indicate that he was sold by one inmate to another for use as a sex slave for the price of \$60. At one point, Mr. Parkus was stripped naked and paraded up and down a cell block by prison guards who asked other inmates if they wanted Mr. Parkus in their cell for sex. Despite this continued abuse, doctors continued to indicate that Mr. Parkus could still respond well to treatment, if only it were provided. Dr. Henry Guhleman, Jr., M.D., said in a January, 1980, psychiatric report:

In many ways, despite of all of the handicaps which he has, the fact that he has managed to keep himself afloat and even exist may speak for certain untapped strengths which eventually could be turned into more socially acceptable behavior. It would be very easy to write this young man off. It is far too early to do that. He has a great deal of maturing to do. Unfortunately, so far, it has been within institutions which, in essence, is the only life he really knows and can feel comfortable in.¹⁰

Mr. Parkus continued to act out in prison, sometimes violently. On July 16, 1980, Mr. Parkus raped and sodomized Louise Harshbarger in a prison classroom where she taught. He received two

⁹On July 26, 1977, Mr. Parkus was examined in connection with these charges by Dr. David Jannick, a psychologist with Fulton State Hospital. Dr. Jannick noted that Mr. Parkus was functioning in the "middle limits of the borderline mentally retarded range," and noted that visual motor tests suggested "possible organic dysfunction, which should be more fully investigated with additional neurological testing such as the EEG." A neurological examination was never performed.

¹⁰See Exhibit 10, report of Dr. Henry Guhleman.

consecutive 30 year sentences for those offenses. Then, on November 24, 1985, Mr. Parkus went into Mark Steffenhagen's cell and choked him to death as they were having sex. The two men had been involved in a consensual a homosexual relationship, which is documented in prison records. Steffenhagen, like Mr. Parkus, was small in stature, probably mentally retarded, and victimized by predatory inmates. Mr. Parkus and Mr. Steffenhagen had talked about the treatment that they received from other prisoners, and had discussed suicide as a way to end their suffering. When interrogated about the killing, Mr. Parkus provided the following explanation:

Armontrout: Had [Steffenhagen] ever asked you to kill him? Parkus: No, not direct, but I guess, I mean. He'll, he'll tell you right up front, I've seen him tell guards all the time.

Brooks: And in a sense you felt as though he would be better off dead to be alive in here? Parkus: Yeah. Brooks: Is that right? Parkus: Yeah, yeah, I've seen what's happening to him. I've seen, I've seen people take him, and make him lick their assholes and shit, and that's sick. Shitting on him pissing on his face, you know.

4. **Steve Parkus's trial for the murder of Mark Steffenhagen.**

As previously noted, the courts have found that Mr. Parkus' conviction is unreliable, and that a fully informed jury would not have sentenced him to death.

The court below briefly described petitioner's background:

Steven Parkus suffered physical abuse, sexual abuse and neglect throughout his childhood. At age three, his parents abandoned him to the custody of an alcoholic uncle, who brutalized and sexually abused him. Later, Parkus' natural parents and his uncle refused to have any contact with him. Between the ages of four and seventeen, Parkus lived primarily in state mental health facilities and juvenile detention centers.

(Exhibit 12, 933 F.3d at 935).

Donald Catlett, Mr. Parkus's appointed trial counsel, attempted to investigate Mr. Parkus' background and mental health history in order to find some evidence on which to base a defense, for it was clear that the sole defense at trial would be that Mr. Parkus did not have the capacity to deliberate upon his conduct, as required for first degree murder. See R.S.Mo. §565.030. He searched for records through the Division of Youth Services, but found only a single document containing a partial placement summary. Upon further investigation, Mr. Catlett was told that all of Mr. Parkus's other records had been destroyed.¹¹ Therefore, only the records from Dr. Janick's 1977 forensic examination were made available to Mr. Parkus's defense counsel. Mr. Catlett also made a single attempt to uncover the wealth of information contained in the files of St. Louis Hospital, where Mr. Parkus had received treatment throughout the late 1960's and early 1970's, but failed because he confused St. Louis hospital for Malcolm Bliss hospital. When he inquired at Malcolm Bliss, Mr. Catlett was told that they had no record of a Steve Parkus, and Mr. Catlett neglected to make any other attempt. Due to the admittedly inadequate investigation of Mr. Parkus's trial counsel, the two doctors who examined Mr. Parkus prior to trial read only a single one of the many records that detailed Mr. Parkus's extensive psychiatric history, that of Dr. Janick's forensic evaluation. Without a doubt, this lack of empirical background evidence distorted their findings and later testimony. The first pre-trial psychiatric examination was conducted by state doctor Mahinda Jayaratna, M.D. At trial, based in part on the fact that he diagnosed Mr. Parkus without knowing his full psychiatric history, Dr. Jayaratna opined that Mr. Parkus did not suffer from a mental disease at the time of the offense. A second psychiatric examination was conducted by Dr. A. E. Daniel, M.D., the report of which is submitted herewith as Exhibit 3. Dr. Daniel, relying upon the same

¹¹See Exhibit 11, affidavit of Donald Catlett.

sketchy medical records provided to Dr. Jayaratna, concluded that Mr. Parkus was not insane at the time of the offense. However, Dr. Daniel also found that Mr. Parkus did not have the capacity to deliberate upon his conduct when he killed Mr. Steffenhagen, and so testified on behalf of the defense at trial.

The testimony of the two doctors was doubly flawed. Not only did both experts diagnosis Mr. Parkus without knowledge of his extensive psychiatric history, they both labored under the false assumption that Mr. Parkus had received a full neurological examination, when in fact he was returned to the Missouri State penitentiary before the examination was performed. When no findings from the presumed examination were reported to the doctors, they assumed that the results of the examination were negative, that is, that Mr. Parkus suffered from no organic brain dysfunction. This assumption colored their findings and testimony, the very findings and testimony that was used by the jury to decide Mr. Parkus's fate.

A jury hearing Mr. Parkus's case today would know the truth, for both Dr. Jayaratna and Dr. Daniels, after reading the complete psychiatric history of Steve Parkus, have recanted their trial testimony. Both doctors now believe that he could not have formed the state of mind necessary to commit the murder of Mark Steffenhagen, for it is now evident that Mr. Parkus suffers from schizophrenia, mental retardation, and organic brain damage. See Exhibit 1, summarizing the sharp contrast between what the experts told the jury and what they now know to be true.

The Legal Merits of Steve Parkus's Arguments

Mr. Parkus's conviction and sentence, which rests upon an error of fact, is the direct result of defense counsel's mistake, which he candidly admitted. Mr. Catlett knew that crucial records alluding to Mr. Parkus's extensive history of treatment existed. He was, after all, in possession of a partial placement summary given to him by the Missouri Division of Youth Services that mentioned that Mr. Parkus had been a patient at St. Louis Hospital for several years. Mr. Catlett's own expert witness, Dr. Daniel, at one point asked Mr. Catlett if he could see those records. A witness at trial, Rebecca Sago of the Farmington State Hospital, referred to the existence of records, as did the prosecution's expert witness, Dr. Jayaratna. Mr. Catlett knew they existed, and his own expert witness's interest were enough to make him suspect that the records were important. Nevertheless, after one unsuccessful attempt to obtain records from Malcolm Bliss Hospital, which he apparently confused with St. Louis Hospital, Mr. Catlett stopped searching.

By his own admission, Mr. Catlett fell short of meeting the Sixth Amendment mandate that every defendant be assisted by an attorney "who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668, 685 (1984). It is axiomatic that "[a]n attorney does not provide effective assistance if he fails to investigate sources of evidence which may be helpful to the defense." Davis v. Alabama, 596 F.2d 1214, 1217 (5th Cir. 1979), vacated as moot, 446 U.S. 903 (1980). See also, Chambers v. Armontrout, 907 F. 2d 825 (8th Cir. 1990) (en banc). In this case, Mr. Catlett failed despite the ease with which he might have upheld his duty. A look through the phone book might have told him that Malcolm Bliss and St. Louis Hospital were two separate institutions. The ease with which Mr. Parkus's federal habeas corpus lawyer eventually obtained the records bears testimony to how little effort it would have taken to ensure that Mr. Parkus received

a fair trial. Even Mr. Catlett, via affidavit, has admitted that a reasonable investigation would have disclosed the reports of the treating physicians who found Mr. Parkus to be seriously mentally ill. The investigation that would have helped his client simply “slipped through the cracks” because of the large caseload of the overworked public defender because the records archived at St. Louis State Hospital were not uncovered until after Mr. Parkus was convicted, his trial was rendered unfair in several respects.¹²

1. **Without documentation, defense counsel was foreclosed from presenting a defense based on insanity.**

Mr. Catlett suspected after his very first interview with Mr. Parkus that his client suffered from a brain disorder. His suspicions were so strong that he presented notice to the prosecution that he would rely on the defense of mental disease or defect, or the insanity defense. Because they believed Mr. Parkus had no history of mental disease, Dr. Jayaratna and Dr. Daniel concluded that he did not have a mental disease. Only after these pre-trial examinations, made without knowledge of Mr. Parkus’s mental history, suggested that the insanity defense would be unavailing, did Mr. Catlett decide to rely on a different mental defense, that of diminished mental capacity. As discussed below, had the pre-trial examiners known the truth about Mr. Parkus’s mental history, they would have concluded that he has a mental disease, as defined by Missouri statute, and that defense would have been presented to the jury.

2. **Without the documents in hand, the doctors testifying at trial were unable to correctly**

¹²Counsel are aware that the courts absolved Mr. Catlett of responsibility for the misinformation that the jury received, no doubt because they perceived Mr. Catlett to be a conscientious professional who, due to an unconscionably oppressive caseload, made a human error. Mr. Parkus’ present counsel are personally acquainted with Mr. Catlett, and believe him to be a dedicated professional—which is all the more reason that the Governor should credit his candid and honorable admission that he simply made a mistake.

diagnose Mr. Parkus. If they had so diagnosed him, they would have testified that he was not responsible for his actions under Missouri law.

After having received and read all records pertaining to Mr. Parkus's mental condition, both Dr. Jayaratna and Dr. Daniels have revised their trial testimony. Those records, supplemented with the neurological findings of Drs. William O'Connor and Jonathan Pincus, (See Exhibits 5, 6 and 8), have caused them to conclude that Mr. Parkus was suffering from a mental disease or defect within the meaning of Missouri law when he committed the crime.¹³ They now both state that Mr. Parkus was not legally responsible for his crime.

Dr. Jayaratna's testimony at trial, suggesting that Mr. Parkus suffered from an anti-social personality disorder, is clearly erroneous. As Dr. Jayaratna has since testified, the DSM-III, the psychiatric reference used at the time of Mr. Parkus's pre-trial examinations, precludes a psychiatrist from diagnosing a personality disorder when the patient has organic brain damage. At the time of trial, the doctor was unaware that Mr. Parkus had brain damage, and therefore, misdiagnosed him.¹⁴ An affidavit signed by Dr. Jayaratna after he had read through the many records unavailable to him before trial is much more reliable. In that affidavit, the doctor states:

Based on . . . additional historical data and a considered review of the complete history of Mr. Parkus' mental illness, affiant can now attest that his 1986 pretrial opinion and testimony were erroneous. Affiant's diagnosis of Mr. Parkus as suffering from Antisocial Personality Disorder was in error.

¹³In habeas corpus proceedings in federal court, the Attorney General sought a second opinion on the MRI scan, which confirmed Dr. Pincus' finding. See Exhibit 7.

¹⁴Because he labored under the assumption that Mr. Parkus did not suffer from a mental illness, Dr. Jayaratna's testimony to the effect that someone with Mr. Parkus's horrific upbringing is still able to reason is also compromised. When asked if such severe abuse would affect the defendant's mental state, he replied, "If he has a mental disease, it will."

It is Affiant's opinion that at the time of the offense Mr. Parkus was suffering from a mental disease/defect within the meaning of Chapter 552 of the Revised Statutes of Missouri which rendered him incapable of forming the state of mind necessary to deliberate as required on a charge of murder in the first degree. It is Affiant's opinion that Mr. Parkus's capacity was diminished and that he acted in an impulsive manner without premeditation due to his lack of impulse control and maturation.

Exhibit 4.

Similarly, Dr. Daniel's conclusion that Mr. Parkus was not suffering from a mental disease or defect was flawed. Dr. Daniel also has recognized his mistake, and after reviewing the uncovered records and again examining Mr. Parkus stated via affidavit:

Affiant's pretrial opinion was influenced by his belief that Mr. Parkus did not suffer neurological impairment and the lack of any reported history of psychosis. The more complete historical information now available clearly demonstrates the error of those assumptions. Subsequent testing clearly and unequivocally reveals the presence of substantial organic impairment consistent with that reported as early as 1972. [A]ffiant can now attest that his 1986 pre-trial opinion and trial testimony was erroneous.

It is affiant's opinion, based upon a reasonable degree of medical certainty, that at the time of the offense, Mr. Parkus was suffering from a mental disease/defect within the meaning of Chapter 553 R.S. Mo. which rendered him incapable of knowing or appreciating the nature, quality and wrongfulness of his conduct. Mr. Parkus was further incapable of conforming his conduct to the requirements of the law.

Exhibit 3. Furthermore, Dr. Daniel diagnosed Mr. Parkus as having schizophrenia, organic delusion disorder, post-traumatic stress syndrome, and mild mental retardation. It goes without saying that if either doctor had been able to diagnose and testify concerning Mr. Parkus correctly in 1986, the trial would have proceeded differently and ended with a fair result.

3. **Because he could not rely on previous psychiatric reports, Dr. Daniel had to base his**

testimony for the defense on the statements of Chester Parkus, Steve Parkus, and their fellow inmates. An experienced and aggressive prosecutor easily undercut this testimony, and even suggested that the childhood trauma suffered by Mr. Parkus was fabricated.

Though Dr. Daniel testified for the defense that Mr. Parkus could not form the intent necessary to commit murder in the first degree, the prosecutor was able to suggest that this finding was based on nothing more than the self-serving statements of Mr. Parkus and his inmate-brother and friends. Without documents to buttress his testimony, Dr. Daniel was unable to rebut this suggestion. When defense counsel attempted to strengthen the doctor's testimony indirectly by calling Mr. Parkus's brother to the stand, the prosecutor continued his attack. While cross-examining Chester Parkus, the prosecutor suggested that he records indicated that Mr. Parkus was institutionalized during the time which Chester said that the physical abuse occurred, and then called him a liar. Records now available reveal that Mr. Parkus was, as Chester testified, in the custody of the Hamptons when Chester said the assaults occurred. However, the records were not known to defense counsel at the time of trial, and the prosecutor's suggestions, made in front of the jury, could not be effectively disputed.

4. **The lack of proper documentation allowed the prosecutor to suggest to the jury that Mr. Parkus's long history of institutionalization was the result of his criminal tendencies, when in fact it was the result of his mental impairment.**

The reason for Mr. Parkus' lengthy history of institutionalization was, predictably, a point of much speculation at trial. As records now available but unavailable at trial amply demonstrate, Mr. Parkus was institutionalized from an early age because of his psychotic behavior, abuse and neglect. Without the records, defense counsel was unable to contradict the prosecutor when he suggested that Mr. Parkus was confined virtually all his life because he habitually broke the law, that

Mr. Parkus's history of confinement weighed heavily against him, and that the absence of historical corroboration weighed heavily against Dr. Daniel's testimony that Mr. Parkus could not deliberate upon his conduct. Indeed, the prosecutor was able to force the defense expert to admit to the jury that Mr. Parkus's unexplained history of institutionalization was as consistent with repeated criminal conduct as with continuing mental impairment. The jury most certainly considered these suggestions when deciding the fate of Mr. Parkus.

5. **Without proper documentation, the defense could not corroborate testimony concerning Mr. Parkus's abusive childhood, presented for the purposes of mitigating punishment.**

At the punishment phase of Mr. Parkus's trial, after he had been convicted, defense counsel again tried to introduce evidence, through Dr. Daniel and other witnesses, that Mr. Parkus suffered from a traumatic childhood and mental impairment. As in the earlier portions of the trial, this evidence was weakened at the outset by the lack of documentary support, and further undercut by skilled prosecutor who was able to create the false impression that the testimony was a pack of lies.

Altogether, the failure of defense counsel to obtain the psychiatric records of Mr. Parkus infected his trial from beginning to end, and kept the jury from considering the most salient facts concerning the main, indeed only, issue at trial: his mental illness. Though the federal district court hearing Mr. Parkus's habeas corpus claim has found that "The subsequent neurological and psychological examinations performed by Drs. O'Connor and Pincus and the substantial psychiatric history reflected in the records which Mr. Catlett failed to discover have caused the psychiatric examiners for both the prosecution and the defense to reconsider the conclusions concerning petitioner to which they testified at trial" and that "had Catlett succeeded in obtaining the additional records [of] petitioner's mental health history, the history reflected therein might in turn have

prompted more thorough neurological and psychological evaluations of petitioner," it refused to grant Mr. Parkus relief. Now, since the United States Supreme Court has refused to overturn this decision, only the Governor of Missouri can remedy the breakdown of the judicial process that occurred at Mr. Parkus's trial.

CONCLUSION

Even without the benefit of the new information, two judges of the Missouri Supreme Court questioned the justice and morality of Mr. Parkus' execution:

The record shows that the defendant has lived his life from a very young age in some form of custody in a Missouri institution. He has been unable to adapt to any environment in which he finds himself. The easiest course of action might be to execute him as a means of extermination or euthanasia, but there should be a limit to the process of burying our mistakes. The state must bear some responsibility for the situation which has developed. I would exercise our statutory authority by mitigating the death sentence to life imprisonment.

State v. Parkus, 753 S.W.2d 881, 891 (Mo. 1988) (en banc) (Blackmar and Welliver, JJ., concurring in part and dissenting in part). The new information regarding Mr. Parkus' mental disease confirms their sense that a miscarriage of justice has taken place.

WHEREFORE, Counsel for Mr. Parkus respectfully urge the governor to commute his sentence of death, and grant such further relief as he deems just and equitable.

Respectfully submitted,

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EXCERPTS OF MENTAL HEALTH FINDINGS

The following is a synopsis of medical and judicial findings regarding Mr. Parkus' mental condition:

William O'Connor, Ph.D. (psychologist):

Mr. Parkus suffers "sub-cortical damage in the mid-brain, . . . the portion of the brain which regulates arousal, impulse control, and excessive aggression," likely caused by "alcohol or substance abuse by the mother during pregnancy." In addition, Mr. Parkus has "diffuse non-dominant hemisphere and posterior cortical damage." These conditions prevent him from controlling his impulses and constitute a mental disease or defect within the meaning of Missouri law. (App. - 16-18).

Jonathan H. Pincus, M.D. (neurologist):

Mr. Parkus "has brain damage, including frontal lobe damage, and . . . numerous indications of maternal fetal alcohol effect." Magnetic Resonance Imaging "showed bilateral lesions in the frontal white matter, probably of traumatic origin." Neurological tests "demonstrate diffuse cortical dysfunction . . ." (App. - 18). Mr. Parkus "suffers from a mental disease as defined by Missouri law" which "existed at the time of Mark Steffenhagen's death." Petitioner's behavior "is a result of brain damage combined with . . . psychosis and/or schizophrenia, as well as mental retardation, and a history of serious physical and sexual abuse." (App. - 18-19).

A. E. Daniel, M.D. (psychiatrist):

"Based on . . . subsequent examination and additional records, . . . [petitioner] suffers, and did at the time of Steffenhagen's killing, from . . . schizophrenia, organic delusional disorder, post-traumatic stress disorder, and . . . [petitioner] is mental retarded and has organic brain damage." (App. - 19). These conditions "rendered him incapable of knowing or appreciating the nature, quality and wrongfulness of his conduct and incapable of conforming his conduct to the requirements of the law." (App. - 25).

Mahindra Jayaratna (psychiatrist):

"[Petitioner] has substantial organic brain damage and was, at the time of the offense, 'suffering from a mental disease/defect within the meaning of Chapter 552 . . . which rendered him incapable of forming the state of mind necessary to deliberate as is required on a charge of murder in the first degree.'" (App. - 20).

U.S. District Court Judge William Stohr:

The subsequent neurological and psychological examinations performed by Drs. O'Connor and Pincus and the substantial psychiatric history reflected in the records which Mr. Catlett failed to discover have caused the psychiatric examiners for both the prosecution and the defense to reconsider the conclusions concerning petitioner to which they testified at trial, though in differing measure. Had Catlett succeeded in obtaining the additional records [of] petitioner's mental health history, the history reflected therein might in turn have prompted more thorough neurological and psychological evaluations of petitioner, as have been performed in connection with these proceedings.

The Eighth Circuit Court of Appeals:

. . . the additional evidence Parkus would have presented to the jury, including data indicating childhood mental illness (schizophrenia), mental retardation and psychosis... The childhood psychological evaluations, unknown to Dr. Daniel at the time of trial, were of sufficient importance to cause him to change his clinical opinion. Daniel now concludes that Parkus suffered from a mental disease or defect at the time and Steffenhagen's murder...

For purposes only of cause and prejudice, we believe this new evidence, while having some bearing on guilt, could have a stronger impact and effect on the death penalty phase. *Further, we determine that a reasonable probability exists that the jury, if given the opportunity to consider Parkus' additional evidence, would not have convicted him of first-degree murder in the guilt phase, or, otherwise, would not have imposed the death penalty at sentencing.*

Parkus v. Delo, 33 F. 3d 933, 939 (8th Cir. 1994)