

August 9, 2010

The Honorable Ted Strickland
Governor's Office
Riffe Center, 30th Floor
77 South High Street
Columbus, OH 43215

cc: Ohio Parole Board
770 West Broad Street
Columbus, OH 43222

Dear Governor Strickland:

We are thirty-one former judges and prosecutors from across the country who urge you to grant clemency to Kevin Keith. Mr. Keith is currently scheduled for execution on September 15, 2010.

While we take no opinion on the ultimate merits of his claims, or on whether Mr. Keith is actually innocent, we are gravely concerned that Mr. Keith will be executed despite the failure of any court of law to cumulatively consider exculpatory evidence that was suppressed during Mr. Keith's trial. Since the trial, attorneys for Mr. Keith have discovered numerous pieces of new evidence, including new evidence that shows that the eyewitness identification used to convict Mr. Keith was faulty and improperly influenced; new evidence that an alternative suspect made a statement that he was paid to commit the crime for which Mr. Keith now stands to be executed; and new evidence that contradicts the forensic evidence introduced by the State at trial. Mr. Keith also has an alibi for the time of the crime that is supported by four witnesses.

Ohio courts have denied Mr. Keith's request for relief and refused to allow Mr. Keith to present this new evidence in its entirety. These courts' decisions are in direct contradiction to recommendations made by a bipartisan, blue-ribbon committee convened by the Constitution Project. That committee, comprising both supporters and opponents of capital punishment, made 32 recommendations to increase fairness and accuracy in death penalty cases in its 2005 report, *Mandatory Justice: The Death Penalty Revisited*. One of those recommendations is that procedural barriers to the introduction of newly discovered exculpatory evidence be lifted, to ensure that every capital defendant is provided an adequate mechanism for introducing such evidence. Another of those recommendations is that post-conviction review be provided in capital cases where there are credible claims of innocence, like Mr. Keith's case.

This newly-discovered, previously-suppressed evidence raises grave concerns about the eyewitness testimony used to convict Mr. Keith and seriously undermines confidence in the outcome of his trial and death sentence. Hundreds of scientific studies have shown that eyewitness testimony is often inaccurate and unreliable. Indeed, it is the single greatest cause of wrongful convictions nationwide, playing a role in more than 75 percent

of convictions overturned through DNA testing. Supporters from around the country have thus urged review in Mr. Keith's case, including the National Innocence Network (an affiliation of over 50 innocence projects and legal organizations around the country), the Ohio Innocence Project, and a group of leading eyewitness and memory experts.

Mr. Keith has presented evidence suggesting that prosecutors withheld exculpatory evidence that could potentially exonerate him of the crime for which he now faces execution. When such new evidence is discovered -- particularly in a capital case -- the defendant *must* have an opportunity to present the evidence to a court and the court must review the evidence in its entirety.

The State of Ohio now risks executing Mr. Keith with no court or jury ever reviewing the entirety of the evidence that could prove his innocence. Mr. Keith's execution should not be allowed to proceed when an innocent life may be at stake. We urge you to grant clemency to Mr. Keith.

Respectfully,

Donald L. Beckner, Former United States Attorney, Middle District of Louisiana

A. Bates Butler III, United States Attorney, District of Arizona, 1980-1981; First Assistant United States Attorney, District of Arizona, 1977-1980; Deputy Pima County (Arizona) Attorney, 1970-77.

W.J. Michael Cody, Attorney General, State of Tennessee, 1984-88; United States Attorney, Western District of Tennessee, 1977-1981

J. Joseph Curran, Attorney General, State of Maryland, 1987-2007

Robert J. Del Tufo, Attorney General, State of New Jersey, 1990-1993; United States Attorney, District of New Jersey, 1977-1980; Former First Assistant State Attorney General; Former Director of New Jersey's Division of Criminal Justice

W. Thomas Dillard, United States Attorney, Eastern District of Tennessee, 1981; United States Attorney, Northern District of Florida, 1983-1986

Hon. Bruce J. Einhorn, United States Immigration Judge, 1990-2007; Special Prosecutor and Chief of Litigation, United States Department of Justice Office of Special Investigations, 1979-1990

Hon. Norman Fletcher, Justice, Supreme Court of Georgia, 1989-2005, Chief Justice, 2001-2005

Bennett L. Gershman, Professor of Law, Pace Law School; Former Prosecutor, Manhattan District Attorney's Office; Former Prosecutor, New York Special State Prosecutor

Daniel F. Goldstein, Assistant United States Attorney, District of Maryland, 1976-1982

Hon. Isabel Gomez, Judge, Fourth Judicial District of Minnesota, 1984-2006

Hon. Stewart F. Hancock, Jr., Associate Judge, New York Court of Appeals, 1986-1994; Justice, New York State Supreme Court, 1971-1986

Bruce Jacob, Dean Emeritus and Professor of Law, Stetson University College of Law; Former Assistant Attorney General, State of Florida

Hon. Nathaniel R. Jones, Judge, United States Court of Appeals for the Sixth Circuit, 1979-2002; Former Assistant United States Attorney, Northern District of Ohio, 1962-67

Hon. Gerald Kogan, Former Chief Justice, Supreme Court of the State of Florida; Former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida

Miriam Krinsky, Assistant United States Attorney, Central District of California, 1987-1988, 1990-2002 (Chief, Criminal Appellate Section, 1992-2002; Chief, General Crimes Section, 1991-1992); Chair, Solicitor General's Appellate Working Group, 2000-2002; Assistant United States Attorney, District of Maryland, 1988-1990

Laurie L. Levenson, Professor of Law, Loyola Law School Los Angeles; Assistant United States Attorney, Central District of California, 1981-88

Hon. Timothy K. Lewis, Judge, United States Court of Appeals for the Third Circuit, 1992-99; Judge, United States District Court for the Western District of Pennsylvania, 1991-92; Former Assistant United States Attorney, Western District of Pennsylvania; Former Assistant District Attorney, Allegheny County, Pennsylvania

Gerard P. Martin, Former Assistant United States Attorney, District of Maryland

Sam D. Millsap, Jr., District Attorney, Bexar County, Texas, 1983-87

Thomas Campbell Morrow, Assistant State's Attorney, Dade County (Florida), 1979-80; Assistant Attorney General, Maryland Criminal Investigations Division, 1978-79; Assistant State's Attorney, Baltimore County (Maryland), 1975-78.

Hon. Stephen M. Orlofsky, Judge, United States District Court for the District of New Jersey, 1995-2003; Magistrate Judge, United States District Court for the District of New Jersey, 1976-1980

Harold James Pickerstein, Chief Assistant United States Attorney, District of Connecticut, 1974-1986; United States Attorney, District of Connecticut, 1974

Richard J. Pocker, United States Attorney, District of Nevada, 1989-90

James H. Reynolds, United States Attorney, Northern District of Iowa, 1976-82

Hon. H. Lee Sarokin, Judge, United States Court of Appeals for the Third Circuit, 1994-1996; Judge, United States District Court for the District of New Jersey, 1979-1994

Kurt Schmoke, Dean, Howard University School of Law; Mayor of Baltimore, 1987-1999; State's Attorney, Baltimore, 1982-1987; Assistant United States Attorney, District of Maryland, 1978

Anthony F. Troy, Attorney General, State of Virginia, 1977-78

Joseph D. Tydings, United States Senator, Maryland, 1965-1971; United States Attorney, District of Maryland, 1961-1963

James J. West, United States Attorney, Middle District of Pennsylvania, 1985-1993

Hon. Alfred Wolin, Judge, United States District Court for the District of New Jersey, 1987-2004; Presiding Judge, Superior Court of New Jersey, Criminal Division, 1983-87; Judge, Superior Court of New Jersey, Civil Division, 1982-83; Judge, Superior Court of New Jersey, Juvenile and Domestic Relations Division, 1980-82; Judge, Union County (New Jersey) District Court, 1980-85