

PARDON DOCKET NO. 06-0005

Before The

HONORABLE HALEY BARBOUR, GOVERNOR

STATE OF MISSISSIPPI

In the Matter of

CLYDE KENNARD

MEMORANDUM IN SUPPORT OF APPLICATION FOR

CLEMENCY OF CLYDE KENNARD

Steven A. Drizin
Counsel of Record
Bobby Owens, Law Student
Center on Wrongful Convictions
Bluhm Legal Clinic
Northwestern University School of Law
357 East Chicago Avenue
Chicago, IL 60611
(312) 503-8576
Counsel for Petitioner

Barry Bradford (teacher)
Agnieszka Mazur
Mona Ghadiri
Callie McCune
Adlai E. Stevenson High School
1 Adlai E. Stevenson Dr.
Lincolnshire, IL. 60069

I. INTRODUCTION

We, a joint project of the Adlai Stevenson High School National History Day Club of Lincolnshire, Illinois,¹ and the Center on Wrongful Convictions of Northwestern University School of Law in Chicago, Illinois,² have been retained by Reverend Willie Grant, pastor of the Martin Luther King Baptist Church in Hattiesburg, Mississippi and the brother-in law of Clyde Kennard, Ms. Valerie Kennard of Hattiesburg, Mississippi, the niece of Clyde Kennard, and Mr. Melvin Kennard, Jr., of McClain, Mississippi, the nephew of Clyde Kennard, to submit the instant application for executive clemency in the form of a posthumous pardon based on actual innocence on behalf of Clyde Kennard. In 1960, Mr. Kennard was attempting to become the first African-American to enroll at Mississippi Southern College, now known as University of Southern Mississippi (“USM”), when he was wrongfully convicted as an accessory to a burglary of \$25 worth of chicken feed from the Forrest County Co-op. Mr. Kennard was convicted almost entirely on the basis of the testimony of the true perpetrator, a 19 year old employee of

¹ Students from Adlai Stevenson High School in Lincolnshire, Illinois, under the supervision of their teacher, Barry Bradford, and with the support of the surviving family members of the Chaney, Goodman, and Schwerner families, previously worked with citizens throughout Mississippi, law enforcement officials, the news media, and the Civil Rights Movement Veterans, to try to get the criminal case reopened against the men responsible for the murder of these three civil rights workers in 1964. After the success of these efforts, see www.mississippiburning.org, they were contacted by members of the Kennard family to investigate Mr. Kennard’s case. For the past year or so, the Stevenson students have been conducting interviews of persons associated with the case and hope to produce a documentary of their work.

² Founded in 1999, in the wake of a historic gathering in Chicago, Illinois of the largest number of men and women exonerated from death rows across the country, the Center on Wrongful Convictions of Northwestern University School of Law’s Bluhm Legal Clinic, is dedicated to identifying and rectifying wrongful convictions and other serious miscarriages of justice. *See* www.law.northwestern.edu, Center faculty, staff, cooperating outside attorneys, and Bluhm Legal Clinic students investigate possible wrongful convictions and represent imprisoned clients with claims of actual innocence. The Center has been involved in 11 of the 18 cases of Illinois men who have been exonerated from death row. Our work in these cases and other exonerations has increased public awareness of the prevalence, causes, and social costs of wrongful convictions and led to reforms of the criminal justice system aimed at preventing wrongful convictions.

the Co-op named Johnny Lee Roberts. Now, forty five years after Mr. Kennard's conviction, his chief accuser, Johnny Lee Roberts, has recanted the very testimony which convicted Kennard, signing an affidavit in which he now states: "Kennard did not ask me to get him feed 'on the side.' Kennard did not ask me to steal. Kennard did not ask me to break into the co-op. Kennard did not ask me to do anything illegal. Kennard is not guilty of burglary or any other crime." Affidavit of Johnny Lee Roberts (hereinafter "Aff. of JLR"), attached hereto as Exhibit A).

Johnny Lee Roberts' statements confirm what many in Mississippi have long known or suspected to be truth – that Clyde Kennard is actually innocent of the burglary for which he was convicted, a conviction which not only crushed his dream of completing his college education but led to an imprisonment under conditions so harsh that they hastened his untimely death from cancer at the age of 33. Kennard was sent to the State Penitentiary at Parchman where he joined other inmates picking cotton all day long in the hot sun. Kennard likened the experience to slavery, remarking that the Negro inmates were even fed leftovers from what the white prisoners ate. *See* Jerry Mitchell, *Story of false arrest called civil rights movement's saddest*, CLARION LEDGER, December 31, 2005 (hereinafter Mitchell, *False Arrest*, 12/31/2005)(Copies of all of Mr. Mitchell's articles on the Kennard case are attached hereto as Exhibit B).

By the summer of 1961, Clyde Kennard began shedding weight and experienced severe abdominal pain. He was hospitalized but soon released and sent back to the fields after he was misdiagnosed with sickle cell anemia. In March of 1962, he underwent colon cancer at the University of Mississippi Medical Center. The operation failed to stem the spread of his cancer. As he grew weaker and weaker, civil rights activists in

Mississippi and outside of the state pressured then-Governor Ross Barnett to release Kennard and on January 30, 1963, Barnett relented, granting Kennard clemency on medical grounds and suspending the rest of his sentence indefinitely. Clyde Kennard returned to his farm in Hattiesburg but the cancer raging inside him continued to take his toll. On July 4, 1963, Kennard died in Chicago after a last-ditch emergency operation failed to prolong his life. Mitchell, 12/31/2005.

Clyde Kennard's wrongful conviction also robbed him of his rightful place in history. Instead of being honored as a hero of Mississippi's civil rights movement, mentioned in the same breath as such contemporaries as Vernon Dahmer and Medgar Evers, both of whom were murdered for their civil rights activities, or James Meredith, who became the first African-American to attend University of Mississippi, Kennard has largely been relegated to the status of a footnote in histories of the era. But Kennard is no less a casualty of the civil rights era. Although he was not murdered by whites acting outside of the law, his life was taken by whites acting under the so-called color of law. As Professor David Sansing, professor emeritus of history at the University of Mississippi, has said the Kennard case was "the clearest and best evidence of how mean the state was and the extent to which they would go to destroy anybody who challenged that system." Mitchell, *False arrest*, 12/31/2005.

Largely due to the investigative work of Jerry Mitchell of the Clarion Ledger, Clyde Kennard's story is no longer a footnote in the history of Mississippi's painful struggle for civil rights. Mitchell's stories in 1991 about the Mississippi Sovereignty Commission's efforts to smear Clyde Kennard, including evidence that Kennard was framed on reckless driving and illegal possession of liquor charges, led the University of

Southern Mississippi to own up to its role in the Kennard tragedy. At a ceremony honoring Kennard in 1993, the University named its student center after Kennard and Walter Washington, the first African American to receive a doctorate from USM. The University, on its website, states that authorities “falsely arrested Kennard” for possession of liquor which had been “planted” in his car and later “falsely charged Kennard with stealing chicken feed.” <http://www.usm.edu/avpsa/hfame.html>.

More recently, in December 2005, Mitchell’s groundbreaking article describing Johnny Lee Roberts’ recantation of his testimony from the 1960 trial, has served as the catalyst for the recent events which have all but restored Kennard to his rightful place in history, including the legislature’s resolution honoring Kennard, Governor Barbour’s proclamation declaring March 30 as Clyde Kennard day, see <http://www.governorbarbour.com/ProcKennard.html>, and his statement exonerating Kennard: “I believe it’s very clear he wasn’t guilty.” *See Today proclaimed Clyde Kennard Day*, HATTIESBURG-AMERICAN, March 30, 2006, available at: <http://www.hattiesburgamerican.com/apps/pbcs.dll/article?AID=/20060330/NEWS01/>. (Copies of the legislative resolution and the Governor’s proclamation and accompanying comments are attached hereto as Exhibit C). These recent steps taken by the legislature and Governor Barbour go a long way towards healing the wounds left open by Mississippi’s treatment of Clyde Kennard. One more step, however, is needed to heal this tragic wound to Mississippi’s legacy. The stain of Clyde Kennard’s wrongful burglary conviction must be wiped clean.

Because Clyde Kennard is no longer alive, the Mississippi Supreme Court has ruled that the state’s post-conviction proceedings can not be used to clear Kennard’s

name.³ The only remedy left lies squarely in the hands of Governor Haley Barbour. That remedy is the use of his executive clemency power to grant Clyde Kennard a full pardon based on actual innocence. Although Governor Barbour's stated policy is that he will not pardon anyone, there is an exception for every rule, especially when the applicant is absolutely innocent of the crime for which he was convicted and a person of the highest moral character. Historically, pardons based on actual innocence have been within the province of the executive to grant and there are many such examples of such pardons in United States history.

For the reasons discussed below, we ask that the Mississippi Parole Board recommend to Governor Haley Barbour that Clyde Kennard be granted executive clemency in the form of a full and absolute pardon based upon actual innocence and that Governor Haley Barbour accept that recommendation.

II. WHO WAS CLYDE KENNARD?⁴

Who was Clyde Kennard? What kind of man was he? Could he have committed the burglary for which he was convicted? Although Mr. Kennard has been dead for 42 years and many of his family, friends and colleagues have long since passed away, a clear picture of Clyde Kennard emerges from the historical documents relating to Mr. Kennard and the memories of those who knew him personally who are still alive. Ironically, perhaps the best source of information about Kennard comes from the files of the Mississippi Sovereignty Commission, the very agency that set out to smear him. In determining whether or not to recommend a pardon for Clyde Kennard, it is important

³ *W.O. Dillard v. Mississippi*, No. 2006-121 (2/17/2006).

⁴ There are very few photographs of Clyde Kennard from back in the days when he was seeking enrollment at the University of Southern Mississippi. Some of these rare photographs are available online at www.clydekennard.org.

that this Board and the Governor know something about Clyde Kennard's character. This is especially true because Mr. Kennard cannot speak for himself or provide a personal statement to the Board explaining why he is deserving of executive clemency.

Clyde Kennard was a decorated war veteran who loved and defended his country. On September 23, 1945, Clyde Kennard enlisted in the United States Army where he served with distinction until October 6, 1952 when he received an honorable discharge from the service. Upon his discharge, he had attained the rank of Technical Sergeant. While in the Army, he served as a paratrooper in Germany and in Korea. Ronald A. Hollander, *One Mississippi Negro Who Didn't Go to College*, THE REPORTER, November 8, 1962. (A copy of Mr. Hollander's article is attached at Exhibit D). He received three medals: the Korean Service Medal with one Bronze Service Star, the United States Service Medal and a Good Conduct Medal. See Files of the Mississippi Sovereignty Commission, SCR ID # 1-27-0-6-12-1-1.⁵ His ten years of patriotic and voluntary service to his country as a sergeant and paratrooper mark him as a man who was proud of and devoted to his country. His honorable discharge and medals show that his country was also proud of him.

Clyde Kennard was a Mississippian who cared deeply about his home state and wanted to avoid embarrassing the state if at all possible. Clyde Kennard was born on June 12, 1927 in Hattiesburg, Mississippi. He left Mississippi to at the age of twelve to live with his sister in Chicago and stayed until he graduated from the Wendell Phillips Academy. Hollander, 11/8/1962. Although he did not return to Mississippi until after he

⁵ The files of the Mississippi Sovereignty Commission are available online at available at <http://www.mdah.state.ms.us/arlib/contents/er/sovcom/index.html>. Documents cited herein can be easily found by typing in the name of "Clyde Kennard" in a search of files by name. References to files from the Sovereignty Commission files in this petition are denoted by the letters "SC" or "SCR" followed by an ID#.

was discharged from the Army in 1952 and left again to enroll in the University of Chicago, Kennard moved back to Mississippi for good in 1955 after his stepfather became disabled and could no longer run the family farm. Kennard's love for Mississippi ran deep. Although he wanted to attend college at Mississippi Southern, he wanted to spare the state the embarrassment that a federal court order compelling Mississippi Southern to admit him would entail. It was for this reason that he did not force the issue of his admission when his application was first denied in 1955. He trusted Southern's administrators and government officials, particularly Southern's President William D. McCain and Governor J.P. Coleman, even after his application was again denied in 1956. He trusted them so much that in 1958 he agreed to withdraw his application until after the gubernatorial election so as not to jeopardize the chances of Coleman's handpicked successor (who lost anyway). Hollander, 11/8/1962. But by September 1959, Kennard's patience was wearing thin. On September 2, 1959, in a letter to Aubrey K. Lucas, the Director of Admissions at Mississippi Southern about why he was persisting in his attempts to enroll at Mississippi Southern, Kennard wrote:

I am a solid believer in the ability of states to control their own affairs. I believe that if the state should lead out with only the smallest amount of integration, it would never have to worry about federal intervention. As you know, I have done all that is in my power to follow a reasonable course in this matter. I have wanted the state to see that our position had at least some validity. ***I have tried to make you see that my love for the State of Mississippi and my hope for its peaceful prosperity is equal to any man alive.*** The very thought of presenting this request before a Federal Court consideration, with all the publicity and misrepresentation that would entail, makes my heart heavy. Yet what other course can I take?.

SCR ID # 1-27-029-6-1-1, 1-27-029-7-1-1 (a copy of this letter is attached hereto as Exhibit E.) .

Clyde Kennard was a highly intelligent man who deeply valued education.

While in the service and stationed at Fort Bragg, North Carolina from December 4, 1950 until March 3, 1952, Kennard attended the Fayetteville State Teacher's College in Fayetteville, North Carolina. After he was discharged from the Army, he returned to Hattiesburg for a spell, before enrolling at the University of Chicago in February 1953. He stayed at the University of Chicago until the Spring of 1955, when the aforementioned family emergency caused him to return to Mississippi. When he returned to Mississippi, he had completed approximately three years of college. SCR ID # 1-27-0-6-4-1-1. (A copy of the Sovereignty Commission's 37 page investigatory memorandum into Clyde Kennard's background is attached hereto as Exhibit F).

Finishing his education was one of Kennard's top priorities when he returned to Mississippi in 1955. His decision to apply to Mississippi Southern initially had little to do with a desire to integrate the school. Kennard was concerned first and foremost with completing his education and going to school near his home and was less concerned with creating a racial precedent is also supported by several other facts. When he first sought to apply to Mississippi Southern in 1955, he went at it alone, without the assistance of the local chapter of the NAACP. Hollander, 11/8/1962. Kennard was confident that by meeting with school administrators, he could convince them through the power of his reasoning that it was in the school's and state's best interests to admit him. According to his mother, Leona Smith, Kennard did not even care if he attended the school in the day; he was more than happy to take his classes at night where his attendance would attract less attention. Hollander, 11/8/1962.

The importance of staying close to home was further evidenced in 1958, when Kennard rejected President McCain's offer that he could select any college in America that would accept him and that the state of Mississippi would pay his expenses. Hollander, 11/8/1962. That his insistence on attending Mississippi Southern was a matter of necessity rather than personal preference was again made clear in Kennard's September 1959 letter to Aubrey K. Lewis:

Mississippi Southern College is the only State supported four year college in this area, and my situation at home makes it difficult for me to leave home to continue my education. On this account, I have been unable to attend school for nearly five years. By attending the Mississippi Southern College, the problem which confronts me would be solved as I could live at home and attend school at the same time.

SC ID # 1-27-029-2-1-1.

Clyde Kennard's formidable intellect was obvious to all who knew him, even those who sought to discredit him. The Mississippi Sovereignty Commission, whose investigators traveled across the Eastern seaboard, following Kennard's footsteps, in search of dirt to use against him, wrote in one of its many reports on Kennard: "Persons who know Kennard describe him as intelligent, well-educated, quiet spoken, courteous, with a desire to better the Negro race in Mississippi." SCR ID # 1-27-0-6-4-1-1. The Commission also interviewed many members of the white and black communities in an attempt to recruit some of them to persuade Kennard from applying to Mississippi Southern. All of those interviewed remarked upon Kennard's keen mind. For example, Dave Matison, the owner of the largest department store in Hattiesburg and "a member of the Jewish faith," told investigators that he found Kennard to be "highly intelligent and most efficient" and described how he and his entire family had grown very fond of Kennard. SCR ID # 1-27-0-6-18-1-1. N.R. Burger, a Negro principal from the Royal

Street School described Kennard as “intelligent, well-educated, a deep thinker.” SCR ID # 1-27-0-6-30-1-1.

As he grew more and more frustrated by his inability to enroll at Southern, Kennard began to flash his intellect publicly, writing a series of insightful and provocative letters to the editor in the Hattiesburg American. According to Ronald A. Hollander, a reporter who interviewed Kennard in prison in 1962 and wrote about Kennard’s case for a national audience in *The Reporter*, Kennard’s columns were so impressive that they drew the comment “no nigga coulda’ written that” in Hattiesburg. Hollander, 11/8/1962. Even the investigators for the Sovereignty Commission could not bear the thought that Kennard wrote these columns; they were convinced that the NAACP wrote the columns for Kennard and the investigators pressed many of those they interviewed to make this connection.

Three columns, in particular, demonstrate the depth of Kennard’s intellect, his willingness to confront and rebut the arguments of the segregationists directly, and his eternal optimism that he could persuade Mississippians through reason and logic that maintaining a segregationist stance was a course that would cost Mississippi dearly for generations to come. (Copies of these three articles are grouped together as Exhibit G). On December 6, 1958, Kennard wrote a piece entitled “Mixing” that was published in the Hattiesburg American. In “Mixing,” Kennard described himself as a “segregationist by nature” but an “integrationist by choice” because only by associating with the dominant white class could the Negro attain the goal of “first class citizenship.” Echoing themes that Dr. Martin Luther King would touch upon years later in his famous “I Have A Dream Speech”, Kennard wrote: “What we request is only that in all things competitive,

merit be used as a measuring stick rather than race” and that “when merit replaces race as a factor in character evaluation, the most heckling social problems of modern times will have been solved.” SCR ID#1-27-0-6-22-1-1.

On September 25, 1959, shortly after Kennard had been wrongfully arrested for reckless driving and possession of illegal liquor charges, he wrote on the subject “The Race Question” in the Hattiesburg American. He attacked the purported equality of “separate but equal” systems, asking the question: “What segregationist in is right mind would honestly claim that facilities of the two races are equal?” He also mocked the claim of segregationists that progress was being made and that all they needed was more time: “Perhaps they are making progress of some kind, but human life is not long enough to extend their time. They have had nearly a hundred years to prove their theory, and so far, they are no closer to proof than when they began.” He exposed the falsity of claims of segregationists that integrationists were Fascists and Communists by quoting great philosophers and great patriots and arguing that the position of the integrationist was much more closely aligned in theory with Locke, Rousseau, and Mill, and in practice with such American heroes as Patrick Henry and Abraham Lincoln. And with unbridled optimism, he ended with a favorite quote from Gandhi” In the midst of death, life persists; in the midst of untruth, darkness persists, in the midst of darkness, light persists” and urged his readers “So, let it be, in our case.” SCR # 1-27-0-46-1-1-1.

The third and final opinion piece written by Kennard and dated January 23, 1960, nine months before his dreams of completing his college education in his beloved Mississippi would be crushed forever, was entitled “School Mix.” In this, his most personal essay, Kennard wrote “not in defense of my efforts to enroll at Mississippi

Southern College, but as an explanation of our position on public school education.” He outlined the odyssey of his thinking on the subject of the “race problem,” how he had carefully weighed and considered the arguments of the segregationists, dissected them and ultimately found them to be wanting. Kennard became convinced that without integration, there was no place in society for the educated Negro, no opportunities in any jobs which require “the least amount of brain power.” He loathed the idea of using the federal courts to gain admission to Mississippi Southern, because he was a firm believer in state’s rights, but with a heavy heart, he concluded that it was the only course left for him to take. SCR ID# 1-27-0-58-1-1-1.

Clyde Kennard was a deeply religious man, a man of impeccable character, who inspired others by his example. Clyde Kennard was a devout Baptist who was active at the Mary Magdalene Baptist Church, teaching Sunday school and co-directing the youth choir. (Rachel Leifer, *Kennard ‘a great warrior in battle’*, HATTIESBURG AMERICAN, March 31, 2006) He was not a firebrand preacher or sermonizer of Christ’s teachings; instead, he chose to serve by his example. He abstained from imbibing alcohol and smoking cigarettes. As Ellie Dahmer, the widow of Vernon Dahmer, has said: “The two most Christian people I’ve ever known were Clyde and my husband...they were always concerned about doing something for somebody else with nothing in return.” Mitchell, *False arrest*, 12/31/05. Despite the fact that he was imprisoned for crimes he did not commit, Kennard was not a bitter, angry or resentful man. Two years after he was imprisoned, before the cancer that would take his life had surfaced, Kennard was visited at Parchman by Ronald A. Hollander, a reporter who wrote that Kennard “does not seem bitter” and still felt there were “good people at Mississippi Southern.” Upon his release

from prison in January 1963, Victoria Gray, an NAACP member who helped secure Kennard's release, recalled that "there was not a trace of anger or revenge or anything whatsoever. He was just thankful to be home." Mitchell, *False arrest*, 12/31/05. Instead of condemning those who abused him, Kennard expressed sorrow for them. As Gray noted: "It was just like 'Lord, forgive them for they know not what they do.'" When a reporter showed up later to interview Kennard, Kennard talked of his enduring love for the State of Mississippi: "I still think there are a few white people of good will in the state, and we have to do something to bring this out."

Indeed, Clyde Kennard's very last words before he died were about forgiveness. John Howard Griffin, author of the book *Black Like Me*, who was by his bedside on the evening of July 3, 1964 and with Kennard when he died in the early morning hours of July 4, 1964, described the last night of Kennard's life as follows:

Kennard lay with a sheet pulled up over his face, so that his grimaces of pain could not be seen. He spoke slowly and at great intervals, as if he was contemplating eternity. At 8:00p.m., Kennard told Griffin: "You mustn't feel bad about this. I'm serious. I would be glad that this happened if it would only show people in this land where racism finally leads. But they're not going to know, are they?"

At around midnight, Kennard said: "Then be sure and tell them that what happened to me is less terrible than what the system has done to that warden, because it has turned him into a beast and it will turn his children into beasts."

Finally at 3:00 a.m., Kennard spoke his last words: "Be sure to tell them what happened to me is less terrible than what this system has done to that guard because it has turned him into a beast and it will turn his children into beasts."

Sound Recordings: Speech by John Howard Griffin in, Hattiesburg, Mississippi concerning Civil Rights, Particularly, Clyde Kennard (undated), available at <http://www.lib.usm.edu/~archives/m191bfls.htm?m191bfl19.htm~mainFrame>

Kennard's example and character inspired the next generation of civil rights activists in Hattiesburg, MS, including Raylawni Branch, who became one of the first African-Americans to be admitted to Mississippi Southern in 1965, and Joyce and Dorie Ladner. As President of the local NAACP chapter, Kennard mentored the Ladner sisters who described him as patient and understanding. Kennard's influence over them was so profound that Branch and the Ladner sisters have fought to keep Kennard's name alive for more than four decades and have been instrumental in recent efforts to clear Kennard's name.

Clyde Kennard was a devoted son and stepson. When Clyde's stepfather became disabled and the future of the family's farm was in jeopardy, Kennard returned to Hattiesburg to assist his family with little hesitation. With only one year left at the prestigious University of Chicago, Kennard's future in Chicago or anywhere else he wished to settle was all but assured. But family was first and his family needed him, so he returned to Hattiesburg.

It is impossible to sum up Clyde Kennard's character and his life with mere words. There were no doubt many facets of his character which we have not captured in these highlights. There were also aspects which were never revealed, not only because Kennard was a private and soft-spoken man, but because he died in the prime of his life before he had the opportunity to marry, have children, or have an impact on others like the Ladners or Branch. But from these snapshots of Kennard's life, one thing emerges with crystal-like clarity. To know Clyde Kennard is to know that he could not possibly have committed the crimes for which he was convicted.

III. CLYDE KENNARD'S WRONGFUL CONVICTIONS

Clyde Kennard committed no crimes. He was a decorated veteran of World War II and the Korean War, a religious man who taught Sunday school, a beloved son and stepson who left the University of Chicago to keep his family farm running after his stepfather became disabled, a decent and honorable man who loved the State of Mississippi. He had a dream. He wanted to graduate from college and chose Mississippi Southern College in his home-town of Hattiesburg for no other reason than that it was a short drive from his farm and attending Southern would enable him to both complete his college degree, mind his family, and keep the farm from going under. He trusted Southern's administrators, particularly its President William D. McCain, even after his applications were denied in 1956 and again in 1958.

Mr. Kennard's trust, however, was misplaced. Unbeknownst to him, while he was negotiating with the Governor and the Southern officials, they were cooperating with an investigation by the State Sovereignty Commission designed to develop information that could be used to smear and discredit him. Extensive efforts to uncover dirt on Kennard failed to yield any results. Despite the best efforts of investigators in Chicago, North Carolina, and Mississippi, no one could find even the remotest hint of impropriety in Mr. Kennard's conduct. He paid his bills, had never been arrested, and was highly regarded by most of the white people with whom he conducted business. Dr. Aubrey K. Lucas, then the Director of Admissions at Mississippi Southern, recalled that his contacts in the African American community at the time all "held up Clyde Kennard as a model of Christian decency." Interview of Dr. Aubrey K. Lucas by Stevenson High School National History Day Team (hereinafter referred to as "NHD Team"), 3/19/2006.

When Kennard resubmitted an application to Southern in September 1959, desperate officials turned up the heat, contacting influential whites and blacks from the community to get them to dissuade Kennard from applying. When these efforts failed, more extreme measures to prevent Kennard from entering Southern were taken – Kennard was framed for a crime he did not commit. On September 15, 1959, as he was leaving a meeting with President McCain, Kennard was arrested as he tried to enter his car. He was charged with reckless driving and illegal possession of liquor. All who knew Kennard knew that the charges were false; Kennard was a teetotaler. “The charges were a joke; Mr. Kennard never drank a drop in his life and would often lecture us about the evils of alcohol.” stated Gloria Jean Pack, who had been a student in Kennard’s Sunday School class. Interview of Gloria Jean Pack by NHD Team, 3/27/06. Yet Kennard was jailed and quickly convicted in a hearing before Justice of the Peace T.C. Hobby and fined 600\$ and costs.⁶ Although this conviction was later reversed by the Mississippi Supreme Court,⁷ Kennard had little reason to celebrate. By the time the court had ruled in 1961, Kennard had been the victim of an even grosser miscarriage of justice, one which would forever prevent him from entering Southern and one which ultimately would lead to his imprisonment and would hasten his death.

⁶ Evidence that Kennard was framed surfaced years later when the files of the Mississippi State Sovereignty Commission were released. Zack J. Van Lanningham, a former FBI agent and an investigator for the Commission wrote that the arrest was “an apparent frame-up with the planting of evidence in Kennard’s car.” SCR # 1-27-0-40-3-1-1. Other documents in the Commission’s files specifically referenced plans to plant liquor in Kennard’s car. John Rieter, a former FBI agent working for the Sovereignty Commission, told Van Lanningham that he had been approached by individuals “with possible plans to prevent Kennard from going through with his attempt” to enroll in Mississippi Southern by either putting dynamite to the starter of Kennard’s car or by having “some liquor planted in Kennard’s car” and then having him arrested. SCR ID # 1-27-0-40-5-1-1. When these documents first surfaced, Forrest County District Attorney Glen White investigated the matter and later told the Clarion Ledger that “[t]here is no doubt in my mind he (Kennard) got set up, and we were able to show that.” Jerry Mitchell, *Witness: Man Innocent in '60 burglary*, CLARION LEDGER, January 1, 2006

⁷ *Kennard v. State*, 240 Miss. 488, 127 So.2d 848 (Miss.. 1961).

On September 25, 1960, the Forrest County Coop was burglarized. A night watchman saw a young black man loading bags of chicken feed into his car, took down his license plate, and contacted the police. The police soon traced the car to an employee at the Coop, 19 year old Johnny Lee Roberts. After stealing the feed, which was valued at \$25, Roberts drove the feed to Clyde Kennard's chicken house, a building several miles beyond Kennard's farmhouse. Roberts told the authorities that Kennard was waiting for him and had paid him \$10 for the feed. He then said that Kennard had put him up to stealing the feed, going so far as to say that Kennard instructed him on how to gain entrance to the Co-op by leaving the door unbarred. When the case went to trial in November 1960, based almost exclusively on Roberts' testimony, an all-white jury convicted Kennard of being an accessory to burglary in less than ten minutes. Judge Stanton A. Hall sentenced Kennard to the maximum sentence of seven years sentence. Johnny Lee Roberts entered a guilty plea and was placed on five years of probation.

Many in Mississippi were ashamed by Kennard's conviction and sentence and spoke out against it. Several newspaper editorials also questioned the result. The *Jackson State Times* wrote that one year for each \$3.54 stolen was severe and that a crime netting only \$25 worth of a feed seemed more like "petty larceny" than burglary. Hollander, 11/8/1962. Editor Oliver Emmerich of the McComb Enterprise, asked "why is it that the man who broke into and entered the store and stole the chicken feed. Is free while this man who bought it received seven years of hard labor? The question becomes more pertinent when they learn that the man who was given the seven year sentence was convicted on the testimony of a thief..." Emmerich even went so far as to suggest that Clyde Kennard might be a political prisoner: "Was there any relationship between the

severity of the sentence of one of the Negroes and his attempt to enroll in college? If ever such an influence should affect our courts, we would be approaching the evils of political imprisonment...” Jerry Mitchell, *Farmer Innocent in 1960 burglary, witness declares*, CLARION LEDGER, December 31, 2005 (hereinafter “Mitchell, *Farmer Innocent*,” 12/31/2005).

No one was more distraught over Kennard’s conviction than Medgar Evers, the State Secretary of the NAACP, and a man who viewed Kennard like a brother. Evers decried the conviction, calling it a “mockery of justice” and claiming that there was “overwhelming evidence” of his Kennard’s innocence. The comments so angered Judge Hall that he held Evers in contempt, a conviction which was later overturned by the Mississippi Supreme Court.

Evers mobilized Kennard supporters across Mississippi in a public relations campaign against his incarceration. He called on Governor Ross Barnett to release an innocent man from jail. In the fall of 1961, during an NAACP dinner, Evers, who was “a man of flint” according to Hunter Gray, a civil rights activist who was a sociology professor at Tougaloo College in the early 1960’s, broke down and cried when talking about the Kennard case. See letter of John Hunter Gray, attached hereto as part of Group Exhibit H). What people protested against and appealed to the governor for relief had to do with the fact that Clyde Kennard was obviously innocent of the charges, and he was given the maximum sentence so he would not be a threat to the preservation of the all-white Mississippi Southern College.

These appeals took on urgency when, in 1962, Clyde Kennard was diagnosed with intestinal cancer. He underwent surgery at the University of Mississippi Medical

Center in Jackson. The medical staff recommended he be paroled, but authorities sent Kennard, now severely weakened by cancer, back to Parchman to work in the fields. Kennard later told friends that whenever he fell down, the prison officials in the cotton field made him get up and continue to work.

The Hattiesburg branch of the NAACP, led by J. C. Fairley, Vernon Dahmer, and Victoria Gray publicized Clyde Kennard's incarceration and illness, and appealed to the Governor and other public officials to release him. Tougaloo College students led by Joyce Ladner mobilized a free Clyde Kennard campaign by appealing to civil rights supporters in the north, college students, and civil rights volunteers throughout the South. Supporters were asked to write to Governor Ross Barnett and ask him to release Kennard. Jet Magazine reporter, Larry Still, picked up the students free Kennard campaign. When his story was published, a national audience became aware of this travesty of justice. Letters and other contacts were directed to the Governor and other state officials; however none of them bothered to respond to the pleas or to those of others. In his speeches, Dr. Martin Luther King publicly appealed to Governor Barnett and other Mississippi authorities to release the ailing Kennard. NHD Team Interviews with Dr. Joyce Ladner, 1/29/2006.

The campaign to free Kennard drew the attention of civil rights activist and comedian Dick Gregory who contributed substantially by arranging to have Kennard's accuser Johnny Roberts travel to Chicago for an interview. It was hoped that Roberts would recant his story. A transcript was made and sent to Attorney General Robert Kennedy, who pressured Governor Barnett and other influential white Mississippians to fix the problem. It was at this point that Barnett, with pressure to release Kennard at a

fever pitch, that Governor Barnett ordered his release. NHD Team Interview with Dr. Joyce Ladner, 1/29/2006; NHD Team Interview with Dick Gregory, 2/26/2006.

IV. PROOF OF CLYDE KENNARD'S INNOCENCE

Clyde Kennard was convicted of burglary on the basis of testimony given by Johnny Lee Roberts, a 19 year old employee of the Forrest County Co-op who was caught quickly after he burglarized the Co-op. At the time, Roberts was working a second job to support his wife and two children. He supplemented his salary by selling damaged feed to black farmers, feed which the Co-op usually gave to him for free or at a reduced price. He had sold damaged feed to Kennard for \$2 a bag on prior occasions but had been told to stop selling him feed, presumably because Kennard was still trying to get into Mississippi Southern. On September 25, 1960, Roberts snuck into the Co-op warehouse and loaded five sacks of damaged feed into the trunk of his car. While he loaded the feed, he was spotted by a night watchman who took down his plate number and called the authorities. He delivered the feed to Kennard who paid him \$10 for the feed. He then drove home and was arrested by the police.⁸

On November 14, 1960, Kennard and Roberts were both indicted for burglary. Kennard's attorney, legendary black attorney R. Jess Brown, moved to have the indictment dismissed on the ground that Negroes were "systematically excluded" from the grand jury. The motion was denied. Brown, who had other matters set for trial in

⁸ It was not uncommon for white businessmen to punish black farmers and businessman who were active in the civil rights movement. As Ellie Dahmer recalled: "We could not get loans. They put the squeeze on us." (Mitchell, *False arrest*, 12/31/05). Indeed, shortly after Kennard's op-ed "Mixing" ran in the Hattiesburg American, local lawyer Dudley W. Connor, the former head of the White Citizen's Council, told Commission investigators that he could easily "take care" of Kennard by applying economic pressure to "get him out of the way." SCR ID # 1-27-0-6-32-1-1, SCR ID # 2-3-0-10-1-1-1

other courts around the state, asked Judge Stanton Hall for a short continuance. This request was also denied. The trial commenced a week later on November 21, 1960. The evidence against Kennard was weak. In order to convict Kennard as an accessory before the fact, the State needed Roberts to link Kennard to the planning of the burglary. Roberts did this, claiming that it was Kennard who had asked him to obtain the feed and who had suggested to him that he should leave the rear doors of the warehouse unbarred so as not to make a ruckus when he stole the feed. But a close examination of the trial transcripts reveals problems with Roberts testimony on this crucial point.

First, Roberts was unable to give specifics about the dates and times of his supposed meetings with Kennard to discuss the burglary. When asked when he met Kennard, Roberts answered as follows:

A: On Thursday, I think. He seen me one Thursday and then one Friday on Mobile [Street] when he seen me again.”

Q: All right. When was the next time you saw Clyde?

A: One Friday night.

Q: Where were you then?

A: Hit was one Saturday night on Mobile when I was making groceries.

Q: And what if anything did he say to you about how you would get [the feed]?

A: He say, leave de door open where hit's fastened, and I won't have to do anything but shove it.

Hollander, 11/8/1962; Trial Transcript, at 140-141. Johnny Lee Roberts testimony at Clyde Kennard's trial is reproduced in its entirety and attached hereto as Exhibit H). This testimony was problematic for the prosecution. The burglary took place early Sunday morning. The Co-op closed for business on Saturday at noon. If the meeting with Kennard had taken place on Saturday night, Roberts could not have left the door open in time for the burglary. In order to convict Kennard, the prosecution needed the meeting to have taken place before noon on Saturday.

The District Attorney, James Finch, tried to clarify Roberts' testimony but his first attempts to do so, only made the case against Kennard weaker:

Q: Now this conversation you had with Kennard on a Saturday night; was that the Saturday night immediately before you went in on Sunday morning.

A: Dat's right.

Q: Huh, it was?

A: Yassuh, dat's right.

Q: All right. What time did you leave the Co-op that Saturday.

A: Twelve o'clock.

Hollander, 11/8/1962, Trial Transcript, at 143.

With the case against Kennard falling apart, the District Attorney asked Roberts a leading question, one designed to get Roberts to say that the meeting with Kennard took place a week earlier. Such questions are objectionable because they "put words in the witness' mouth" and are especially dangerous when aimed at persons with low intelligence who tend to be naturally compliant. Although an objection made by Kennard's attorney was sustained, the question had its intended effect. Roberts changed his testimony:

Q: Now, Johnny Lee, are you or not confused as to the Saturday or Friday that you talked to Kennard? Was it about a week before you went in on Sunday?

A: Yassuh, 'bout a week.

Hollander, 11/8/1962; Trial Transcript, at 143.

As far as the public was concerned, Johnny Lee Roberts's story remain unchanged for 45 years. But as early as 1962, Roberts told Raylawni Branch, shortly before she became secretary for the local NAACP, that "Clyde had nothing to do with stealing the chicken feed." Mitchell, *Farmer Innocent*, 12/31/05. When Branch asked him to come clean, however, Roberts balked. "I can't do what you all want me to do, he told her, they'll hurt my family."

In December 2005, Johnny Lee Roberts no longer feared telling the truth. He told Branch and then Jerry Mitchell the true story of what happened on September 25, 1960.

Later, in an affidavit he signed in the presence of a judge, Roberts reiterated his account:

At Clyde Kennard's trial, testimony suggested that I planned the burglary in advance with Kennard and that he instructed me on how to leave open the back door of the Co-op. There was also testimony that Clyde Kennard asked me to get him some feed "on the side." None of these statements are true. Kennard did not ask me to get him feed 'feed on the side.' Kennard did not ask me to steal. Kennard did not ask me to break into the Co-op. Kennard did not ask me to do anything illegal. Kennard is not guilty of burglary or any crime.....

Affidavit of JLR, Exhibit A. The true story is that Roberts wanted to help Kennard.

Kennard had told him that the feed companies were cutting him off and refusing to sell him feed. The feed was necessary for Kennard to raise his chickens to the next stage of production. Without the feed, Kennard could lose the farm. So Roberts took it upon himself to obtain some feed for Kennard. He had sold Kennard and other farmers damaged feed from time to time and saw little harm in continuing to do so because the Co-op usually gave him the feed for free. Exhibit A. Roberts' affidavit closed with an apology and a pledge of his support for the efforts to clear Kennard's name:

I have always felt bad about what happened to Clyde. He was a good man, and I thought the world of him. I would like to see his name cleared and for the full truth of what happened on September 25, 1960, to finally become known. Clyde had nothing to do with stealing the chicken feed. I believe that he was arrested and sent to prison not because of the feed but because he was trying to go to Southern.

Exhibit A.

V. THERE IS WIDESPREAD SUPPORT FOR A PARDON FOR CLYDE KENNARD FROM MANY DIFFERENT CONSTITUENCIES

Johnny Lee Roberts' recantation has unleashed a torrent of support for Clyde Kennard from a virtual rainbow coalition, uniting blacks and whites, the young and the

old, Republicans and Democrat, individuals and organizations, to call that he be pardoned. His courage has caused many, including many prominent whites, to break their silence and express their long-held misgivings about Kennard's conviction.

One of those who has come forward is Dr. Aubrey K. Lucas, a past president of USM, and the director of admissions at Mississippi Southern on that fateful day in September 15, 1959 when Kennard's application was rejected and he was arrested on the trumped up liquor charges. Dr. Lucas, who later became President of the University of Southern Mississippi, recently acknowledged his complicity in the Kennard affair in an interview with Rachel Leifer of the Hattiesburg American:

We did horrible things trying to maintain a social order that was wrong....And I say we even though I think I had a keener sense of guilt, perhaps than some. But we were all a part of it – you just couldn't help but be a part of it.

Rachel Leifer, *Kennard 'a great warrior in battle'*, HATTIESBURG AMERICAN, March 31, 2006.

Another unlikely ally has surfaced since Roberts' recantation. Ouida Barnett Atkins, the daughter of the late Governor Ross Barnett, told Jerry Mitchell that her father thought the entire Clyde Kennard affair was "disgraceful." As a 29 year old, she overheard her father speaking of the Kennard case and recalls that he believed that Kennard was innocent. She believes that if he were alive today, her father would support efforts to clear Clyde Kennard's name. Jerry Mitchell, *Daughter: Barnett said Kennard Innocent*, CLARION LEDGER, January 29, 2006.

Another prominent member of the Hattiesburg community, Dr. Glen Pearson, has come forward calling for the Governor to clear Kennard's name. Now over 90 years old, Dr. Pearson recalled that Kennard consulted with him when he was attempting to enroll

at USM. In a letter to the editor dated February 19, 2006, Dr. Pearson wrote of Kennard's "intelligence and pleasant demeanor," his "love for Mississippi" and his hopes of becoming the first of his race to join the student body. In closing, Dr. Pearson issued a clarion call for pardoning Kennard:

When, if not now, should the state of Mississippi expunge all court records, of charges against this law abiding and promising young citizen who suffered such great wrong at our hands?

When, if not now, should we apologize to his family and friends for the years of pain they have endured?

When, if not now, should we examine our own hearts for traces of intolerance that might yet impede the upward course of authentic humanity and eschew them forever?

Dr. Glen Pearson, CLARION LEDGER, 2/19/2006. (All the letters of support, including Dr. Pearson's, are attached as Group Exhibit I).

Led by student LaKeisha Bryant and the Afro-American Student Union, over 110 faculty and students of the University of Southern Mississippi signed petitions calling for a complete pardon. The petition was signed by, among others, the current President Shelby Thames, and President Emeritus Aubrey Lucas, the man who as Admissions Officer in September of 1959, notified Kennard that his application had been rejected yet again. Jerry Mitchell, *Diverse Group Calls for Pardon*, CLARION LEDGER, March 19, 2006. (A copy of the petition complete with the signatures is attached hereto as Exhibit J).

Mississippi politicians, both black and white, from both sides of the political aisle have banded together to honor Kennard and to call for a pardon of Kennard. In the State Senate, Senator John Horhn, a Democrat from Jackson, was the torchbearer of these efforts, and the guiding force behind a resolution which passed the Senate and was presented to Kennard's brother-in-law, the Rev. Willie Grant of Hattiesburg, on March

30, 2006 in a ceremony at the Capitol. Third District United States Rep. Chip Pickering, a Republican, has also called for Kennard's name to be cleared: "This is a clear-cut question to me", Rep. Pickering told Jerry Mitchell, "He (Kennard) was an innocent man, wrongly convicted. The Mississippi justice system should clear his name, and if not, the governor should pardon him." Mitchell, 3/19/2006. Seven term Congressman Bennie Thompson from the Second District has also submitted a letter in support of efforts to pardon Clyde Kennard.

Veterans of the Civil Rights Movement have also voiced their support for a pardon. Julian Bond, the Chairman of the National Association of the Advancement of Colored People ("NAACP"), a former Georgia state senator and representative, and one of the founders of the Student Non-Violent Coordinating Committee (SNCC), in a letter to Governor Barbour, praised Governor Barbour for his plan to honor Kennard at the capitol but noted that it "would be complete if you were to take the occasion to pardon him and to erase the wrongful conviction he suffered from continuing to deface his name and reputation." In closing, Chairman Bond wrote: "Mississippi has long suffered because of its segregationist past. You have the opportunity to erase yesterday's shame through your action. I hope you have the courage to take it." Dr. Joyce Ladner and her sister Dorie Ladner-Churnet, and Lt. Col. Raylawni Branch, all veterans of the Civil Rights Movement in Hattiesburg who were mentored by Kennard, also have submitted compelling testimony attesting to Kennard's character and to the tragedy which befell him at the hands of Mississippi authorities. John Hunter Gray, a young sociology professor at Tougaloo College during the time of Kennard's conviction and a civil rights activist, has also submitted a letter.

Several prominent authors and journalists who have researched and written about the Kennard case are urging that Clyde Kennard be pardoned. Taylor Branch, Pulitzer Prize Winning historian and author of Parting the Waters, noted: “Clyde Kennard suffered unjustly to establish rights that Mississippians of all backgrounds now take for granted, His memory should be honored, rather than stained by official misconduct. Your order granting executive clemency would be an act of truth in atonement.” Monte Piliawsky, a professor at Wayne State University in Michigan, a former associate professor at University of Southern Mississippi, and the author of Exit 13, Oppression and Racism in Academia, a book which devoted a chapter to Clyde Kennard, wrote: “Kennard’s life cannot be restored: however, his honorable legacy as a truly brave and magnanimous individual can be restored. I urge you, in the name of humanity, to do the right thing.” Professor Ron Hollander, who was among the first national journalists to break the Kennard story, wrote: “I believe that as Governor and Parole Board members, you have been given a gift that many of us wish for, but never receive. The chance to right a great wrong, to make amends for something we wish we had done differently.”

The movement to pardon Clyde Kennard has also received support from organizations who represent the wrongfully convicted and who advocate on their behalf. The Innocence Network, which is comprised of 32 organizations from the United States, Canada, and Australia, has submitted a letter as has Hans Sherrer, the publisher of *Justice Denied – the magazine for the wrongly convicted*.

Major Mississippi newspapers, including the Jackson Clarion-Ledger, (*Kennard: A Measure of Justice in Tragic Case*, April 1, 2006); the Hattiesburg American, (*Time Has Come to Exonerate Innocent Man*, April 7, 2006), and the Meridian Star,

(Trailblazer Should be Pardoned, March 19, 2006) have also called upon the Governor to pardon Clyde Kennard. (Copies of these editorials are attached hereto as Exhibit K).

Nor has the call for Kennard's exoneration been limited to Mississippi. A website devoted to the case has received over 2,000 page views at last count in the first six weeks it has been on line. As a result, Attorney General Jim Hood's office has received a steady stream of correspondence from within Mississippi and throughout the nation, calling for Kennard's conviction to be overturned and his record cleared.

An award winning documentary about the Kennard case, "Carrying the Burden: The Story of Clyde Kennard," produced by Adlai E. Stevenson High School students from Lincolnshire, Illinois, Mona Ghadiri, Agnes Mazur, and Callie McCune, has sparked a great deal of interest in the case, prompting attention from many media outlets.

VI. GOVERNOR HALEY BARBOUR SHOULD PARDON CLYDE KENNARD BASED ON ACTUAL INNOCENCE

A pardon is an "act of grace proceeding from the power entrusted with the execution of the laws and a pardon relieves the person named from legal consequences of a specific crime." *Whittington v. Stevens*, 221 Miss. 598 (1954) "After the pardon, he is as if he was never convicted. It shall never be said of him that he was convicted. The pardon obliterates the fact of conviction, and makes it as if it never was." *Ex parte Fleming*, 60 Miss. 910 (Miss. 1883). The Mississippi Supreme Court stated "when a pardon is granted after a conviction, it makes the convict a new man and gives him a new credit and capacity, the court explained that a pardon rehabilitates a person in all his rights as a citizen" *Ex parte Crisler*, 159 Miss 247 (1931).

Article 5, Section 124, of the Mississippi Constitution, gives the Governor the authority to grant pardons in criminal cases, subject to the rules and regulations prescribed by law. Miss. Const. Art.5, § 124. The Governor “has the unlimited and unrestricted power to pardon.” *Ex parte Fleming*. Under Mississippi Law, the Parole Board has “exclusive responsibility for investigating pardon cases at the Governor’s request.” Miss Code Ann. Section 47-7-5(3). It is without question that the Governor has the power to issue pardons to citizens of its state. “Under the Constitution the Governor is vested with the exclusive power to pardon with the sole exception that the Legislature may provide for the commutation of sentence of convicts for good behavior and that the power to pardon includes the power to commute sentences in criminal cases and this power may not be infringed upon by legislative enactment.” *Whittington v. Stevens*, 221 Miss. 598 (1954). This power is virtually unfettered. As the Mississippi Supreme Court has stated in *Montgomery v. Cleveland*, 134 Miss. 132 (1923):

The governor... is the sole judge of the sufficiency of the facts and of the propriety of granting the pardon, and no other department of the government has any control over his acts or discretion in such matters. Nevertheless he acts for the public. He dispenses the public mercy and grace; the efficacy of the pardon flows from the sovereign. The sovereign acts through the governor, but it is none the less the act of the sovereign, and not the personal act of the governor.

Former Mississippi governors have used their authority to grant pardons.

Governor Ronnie Musgrove granted 14 sentence suspensions and restored rights to eight other Mississippians before he left office in 2004. Andy Kanegiser, *Most Clemency Pleas Rejected*, HATTIESBURG AMERICAN, January 14, 2004. Kirk Fordice granted clemency to at least eight people during his two terms as governor from 1992-2000. *Id.* The reasons for granting clemency varied in each case.

The Governor should pardon Clyde Kennard based on actual innocence. Actual innocence is the most important reason and the most legitimate basis upon which a governor may grant clemency. “Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law.” *Ex parte Grossman*, 267 U.S. 87, 120 (1925). Only a full and complete pardon based on actual innocence, however, will suffice to overcome the presumption, in the minds of many, that a pardon implies guilt. In fact, in a passage that could have been written about the Kennard case as Kathleen Dean Moore’s written in Pardons: Justice, Mercy, and the Public Interest (Oxford Univ. Press 1989), a pardon does not imply guilt:

If a pardon does not establish or imply innocence, why else would anyone seek a posthumous pardon for a relative? One of the results of a conviction is ‘infamy’ – the offender’s name is besmirched, her reputation ruined. When a person has been wrongfully convicted, even long after the unjust sentence has been served, sometimes long after the convict is dead, friends of the wrongly punished may seek a pardon. Why?—to establish her innocence, to clear her good name, to make sure that her name does not “live on in infamy.”

The use of executive clemency to pardon actually innocent individuals is especially important in cases where, as here, the applicant cannot avail himself of state or federal post-conviction remedies through the courts. Indeed, the United States Supreme Court, in *Herrera v. Collins*, 506 U.S. 390, 415 (1993), in an opinion written by the late Supreme Court Chief Justice William Rehnquist, described the governor's power of executive clemency as the "fail safe" option in our criminal justice system and noted that "history is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence."

At the time of his conviction, many people believed Clyde Kennard was innocent and his conviction was a miscarriage of justice. Today, we know Clyde Kennard was

innocent. The evidence against Kennard was weak and essentially consisted of only the testimony of Johnny Lee Roberts. Now, Johnny Lee Roberts has signed an affidavit stating that Kennard had nothing to do with the burglary he was convicted of conspiring to commit. The opening of the Mississippi Sovereignty Commission files also shows that attempts to frame Clyde Kennard were underway in order to keep him from enrolling in the University of Southern Mississippi.

Recently, Mississippi Governor Haley Barbour acknowledged Kennard's innocence. "Clyde Kennard, if he were living, would be entitled to have his rights restored," "I think it's very clear he wasn't guilty." *Today proclaimed Clyde Kennard Day*, HATTIESBURG-AMERICAN, March 30, 2006. While the Mississippi Legislature has passed a resolution recognizing Clyde Kennard, and Governor Barbour designated March 30, 2006 as Clyde Kennard day, his legacy is presently marred by the criminal record that still stands. Clyde Kennard cannot use the courts to clear his name; the only legal remedy and consolation for the family of Clyde Kennard is for the Governor to pardon Clyde Kennard based on actual innocence. Only then can his good name be restored.

VII. GOVERNOR HALEY BARBOUR HAS THE POWER TO GRANT A POSTHUMOUS PARDON.

Clyde Kennard's death does not preclude the granting of a pardon. The Mississippi Constitution places no such limitation on the pardon power. The only limitations are that pardons cannot be given to those convicted of treason or impeachment and pardons may not be granted before a person is convicted. Lastly, in the case of a felony, the applicant must publish, for thirty days, in a newspaper, his petition stating the reasons he should be pardoned. Miss. Const. art. 5, § 124.

Although no Governor in Mississippi has granted a posthumous pardon, Governor Barbour would be in good company if he granted Clyde Kennard a posthumous pardon. By our count, Governors of at least 10 other states and the President of the United States have granted posthumous pardons. The following states have granted posthumous pardons: Maryland, California, Arizona, Massachusetts, Pennsylvania, Oklahoma, Nebraska, Nevada, New York, and Georgia. The source of the Governor's pardoning power in Mississippi is the same as in those states that have granted posthumous pardons. In all states, the power to pardon is vested in the Executive Branch. In Nebraska and Nevada, the Governor is a member of the Board of Pardons, along with others including the attorney general, secretary of state, and five justices of the Supreme Court. Nevertheless, both states have used their authority and granted posthumous pardons.

Mississippi law allows, but does not require the recommendation of the parole board before the Governor is able to grant a pardon. Miss Code Ann, Section 47-7-5(3). Posthumous pardons have been granted by three states that require the recommendation of a board before a pardon is given; Massachusetts, Pennsylvania, and Oklahoma. Mississippi differs from these states in only that the board's recommendation in Mississippi is non-binding.

A. Massachusetts

In 1977, posthumous pardons were granted to Nicola Sacco and Bartolomew Vanzetti by Massachusetts Governor Michael Dukakis. Sacco and Vanzetti, two Italian Immigrants, were convicted of the robbery and murder of the paymaster and a guard at a shoe factory in Massachusetts. Through the use of contradictory testimony, questionable forensic evidence, and a paid informant, a jury found the two immigrants guilty and

sentenced them to death. Despite new exculpatory evidence, confession from another murderer and widespread public outcry, Sacco and Vanzetti were executed in 1927. “[Governor Dukakis], in issuing the posthumous pardons, asserted: ‘the stigma and disgrace should be forever removed from the names of Nicola Sacco and Bartholomew Vanzetti, from their families and descendants.’” Darryl W. Jackson, *Bending Toward Justice: The Posthumous Pardon of Lieutenant Ossian Flipper*, 74 IND. L. J. 1251, 1282 (Fall 1999).

B. Pennsylvania

In 1979, Pennsylvania governor Milton Shapp granted the state’s first posthumous pardon to Jack Kehoe. Kehoe was executed after being found guilty of the 1862 murder of a mine foreman. “Kehoe was the “reputed” leader of the Molly Maguires, a secret group of Irish coal miners who battled the coal barons of northeastern Pennsylvania.” A pardon was granted with the support of the parole board and the district attorney who stated the “trial was conducted in an atmosphere of religious, social, and ethnic tension.” They stated the execution of Kehoe was “a miscarriage of justice.” *Id.*, at 1283.

C. Oklahoma

In 1966, Oklahoma Governor Frank Keating granted an honorary executive pardon to J.B. Stradford. Stradford was charged with inciting a riot that destroyed 35 city blocks and killed an estimated 250 people in Tulsa, Oklahoma. Stradford considered himself a peacemaker and tried to stop the violence that ensued. As a result of the posthumous pardon all charges were formally dropped. *Id.* at 1284.

In Maryland, California, and Arizona the governor is the sole authority on whether a pardon is granted. This is similar to Mississippi in that only the Governor

makes a decision on whether a person receives a pardon. Mississippi only uses the Parole Board to investigate pardon requests, and to make a non-binding decision to the governor. In Maryland, California, and Arizona, the state constitution grants the authority to pardon in the governor, except in cases of impeachment and the process is subject to state laws. In Maryland and California the governor is required to give notice to the state legislature. Governors from each of these states have granted posthumous pardons.

D. Maryland

In 1994, Maryland Governor William Donald Schaefer granted a full posthumous pardon to Jerome S. Cardin, who was convicted of stealing \$385,000 from the savings and loan company which he co-owned. Cardin only served one year in prison and was released due to his failing health. Governor Schaefer pardon Cardin based on “his lifetime of philanthropic service, time served in prison, and payment of \$10 million in restitution.” *Id.*, at 1278.

On 2001, Maryland’s Governor Parris Glendening gave a posthumous pardon to John Snowden. Snowden was sentenced to die in 1919 and eventually hanged for the rape and murder of the wife of a prominent businessman. Snowden’s execution was called by many black leaders a “legal lynching”. Two key trial witnesses recanted their testimony, and 11 of the 12 jurors wrote letters asking the governor to commute the sentence. Eight decades of Snowden professed his innocence all the way to the gallows, Governor Glendening pardoned him stating that the execution “may well have been a miscarriage of justice” Jay Apperson & Andrea F. Siegel, *Glendening Pardons Black in 1919 Murder: Governor attempts to ‘correct inequity’*, BALT. SUN, June 1, 2001.

E. California

Governor Pete Wilson granted a posthumous pardon to Jack Ryan in 1996. Ryan had been wrongfully convicted for murder. Ryan served 25 years in prison. His innocence became known after one of his accusers admitted to committing perjury. Governor Wilson pardon Ryan despite a California rule which stated the individual must submit their own clemency petition. Jack Ryan was given a posthumous pardon based on actual innocence. Jackson, *Bending Toward Justice*, 74 IND. L. J. at 1279.

F. Arizona

In 1990, Arizona Governor Rose Mofford gave a “full and unconditional pardon posthumously to Joseph L. Chacon, Alex S. Contreras, James Ellis, and Curtis Springfield.” The pardon was a “symbolic measure” granted because the four men were killed while on firefighting detail. *Id.*

G. Georgia

In 1986, the Georgia Board of Pardons and Paroles granted Leo Frank a posthumous pardon. However, the pardon was not based on actual innocence but on the fact that his lynching deprived him of his further right to appeal. Leo Frank was convicted of murdering Mary Phagan, a 13 year old employee of a factory Frank managed. Frank’s housekeeper placed him at home at the time of the murder. Frank was convicted with the help of Jim Conley, who was arrested two days after Frank was arrested. Conley was arrested after he was seen washing blood off his shirt, and he also admitted to writing two notes that were found near the victim’s body. This information about Conley was never told to the Grand Jury. While Frank was sentenced to death he was not allowed in the court room. Georgia’s Supreme Court and the U.S. Supreme Court

rejected re-opening the case. *Id.*, at 1288. Frank's sentence was commuted to Life in Prison after a 12 day review of the evidence and letters from the trial judge who was having second thoughts. On August 17th 1915 Frank was kidnapped from the Prison Hospital and lynched by a mob of 25 men. *Id.*

Recently, on August 26th 2005, Lena Baker, the only woman to die in Georgia's electric chair, was granted a posthumous pardon by the state of Georgia for killing a white man in 1945. During her trial, Baker, who was black, claimed she acted in self defense when shot E.B. Knight, a white man whom she was hired to take of. Baker claimed that Knight had enslaved her and threatened her life. A jury of all white men convicted her after a one day trial. Errin Haynes, *Civil Rights era gaining new respect in the South; Pardon is official for maid who got death penalty in 1945*, CHI. SUN TIMES, August 31, 2005.

H. New York

On December 23, 2003 Governor George Pataki granted New York's first posthumous pardon to Lenny Bruce for an obscenity conviction. During a performance in 1964 Bruce used more than 100 "obscene" words; he was later convicted of a misdemeanor obscenity charge. Bruce later died of a drug overdose in 1966 before he could get his appeal to court. John Kifner, *No Joke! 37 Years After Death Lenny Bruce Receives Pardon*, THE NEW YORK TIMES, December 24, 2003.

I. United States of America

The United States Constitution authorizes the President "to grant pardons for offenses against the United States of America, except in cases of impeachment." U.S. Const. art. II, Sec. 2, cl. 1. In 1999, President William Jefferson Clinton granted the first

posthumous presidential pardon to Lt. Henry O Flipper. The pardon of Lt. Henry O Flipper struck down longstanding legal and policy arguments against granting posthumous pardons. Jackson, 74 IND. L. J. at 1251.

Lt. Flipper was the “Acting Commissary officer at Ft. Davis, Texas, supervising the accounting and payments from persons buying goods, such as food and uniforms, from the Army. In 1881, he discovered a deficiency of approximately \$2,400 in the funds entrusted to him.” Lt. Flipper did not report the missing funds because he believed he could not trust officers around him. He kept it a secret and planned to resolve the deficiency with his own money. However the deficiency was discovered and Lt. Flipper was court-martialed. Many people testified to Lt. Flipper’s good and character. Lt. Flipper was dismissed from the Army after being found guilty of conduct unbecoming of an officer and gentleman. He was acquitted of the more serious crime of embezzlement. His discharge was upheld even though officers convicted of more serious violent crimes were allowed to stay in the Army. “In 1977, the Army Board for Correction of Military Records (“ABCMR”) granted a posthumous honorable discharge to Lt. Flipper, finding that his treatment was “unduly harsh” and “unjust.” *Id*,

Attorneys for Lt. Flipper’s family attacked the long standing policy, of not awarding posthumous presidential pardons, by arguing that modern authorities indicated that the president does have constitutional power to grant posthumous pardons. They argued that the modern legal standard for granting a pardon is whether under the totality of circumstances granting the pardon will promote public welfare. They also argued that State governors had granted posthumous pardons, and that the President’s power was at least as expansive. Finally, they also rebutted the argument that a posthumous pardon

would cause many more requests for pardons. They asserted that the states that have granted posthumous pardons have not received many additional requests, if any at all.

CONCLUSION

Martin Luther King once stated that the “moral arc of the universe is long but it bends toward justice.” The moral arc is bending towards justice in Clyde Kennard’s case but it must bend just a little bit further. Only Governor Haley Barbour can ensure that full justice is accorded to Clyde Kennard, to his surviving family members, and to his legacy. And the only way to ensure that justice is served is to grant posthumously to Clyde Kennard a full unconditional pardon based on actual innocence. For all the reasons stated herein, we respectfully request that Mississippi Parole Board recommend that Governor Barbour issue such a pardon to Clyde Kennard and that Governor Barbour follow this non-binding recommendation.

Respectfully submitted,

Steven A Drizin, Attorney
Bobby L. Owens (law student from
Mississippi)
Bluhm Legal Clinic
Center on Wrongful Convictions
Northwestern University School of Law
357 E. Chicago Avenue
Chicago, IL 60611
(312) 503-6608

Barry Bradford (teacher)
Agnieszka Mazur
Mona Ghadiri
Callie McCune
Adlai E. Stevenson High School
1 Adlai E. Stevenson Dr.
Lincolnshire, IL 60069

ATTACHED EXHIBITS

- Exhibit A:** Affidavit of Johnny Lee Roberts dated January 27, 2006
- Exhibit B:** Clarion Ledger Newspaper Articles by Jerry Mitchell on the Kennard Case
- Exhibit C:** Legislative Resolution Concerning Clyde Kennard Dated January 27, 2006 and Proclamation of Governor Haley Barbour Dated March 30, 2006
- Exhibit D:** Ronald A. Hollander's Article
- Exhibit E:** Letter from Clyde Kennard to Aubrey K. Lucas Dated September 2, 1959
- Exhibit F:** Sovereignty Commission's Investigation Memorandum into Clyde Kennard
- Exhibit G:** Clyde Kennard's Letter to the Editor
- Exhibit H:** Johnny Lee Roberts Testimony at Clyde Kennard's Trial
- Exhibit I:** Letters of Support
- Exhibit J:** University of Southern Mississippi Petition
- Exhibit K:** Editorials Calling a Pardon for Clyde Kennard