

May 2, 2013

The Honorable John Hickenlooper
Office of the Governor
136 State Capitol
Denver, CO 80203-1792

Re: Clemency for Nathan Dunlap

Dear Governor Hickenlooper:

We are former prosecutors from Colorado and across the country who urge you to grant clemency to Nathan Dunlap, commuting his death sentence to life imprisonment without possibility of parole. Mr. Dunlap is slated to receive an execution date on May 1, 2013. As you know, despite capital punishment being reinstated in Colorado in 1976, only one person has been executed in that 37-year span.

We understand that Mr. Dunlap takes responsibility for his terrible crimes. However, we are gravely concerned that he may be executed, despite the fact that his jury was not informed that he suffers from a serious mental illness, and was given no opportunity to consider the effects of that illness on Mr. Dunlap's moral culpability.

Mr. Dunlap's defense lawyers decided not to investigate his mental health, despite numerous red flags raised during the course of their representation. Thus, the court and the jury were left only with the prosecution's description of Mr. Dunlap as violent, aggressive, and remorseless. In fact, during closing arguments, defense counsel began by telling the jury: "How can anyone be so cold? How can anyone be so cruel? . . . I still don't know."

And yet, records in trial counsel's possession clearly showed Mr. Dunlap was manic at the time of his arrest and trial. After finally receiving Mr. Dunlap's mental health records in 2000, Dr. Rebecca Barkhorn—the psychiatrist Mr. Dunlap's defense counsel hired to testify at his original trial, but refused to provide with any records—concluded that Mr. Dunlap suffered from bipolar disorder with psychotic features. In post-conviction proceedings, the state trial judge found Mr. Dunlap's counsel performed deficiently by not investigating his mental health, but this finding was reversed by the Colorado Supreme Court in 2007.

We are mindful that defense counsel has wide latitude in trial strategy. But failure to present any evidence of Mr. Dunlap's serious mental illness or the role of that illness in his behavior clearly prevented the jury from fairly and accurately assessing his culpability. Indeed, the Colorado death penalty statute expressly provides that a defendant's mental state may be mitigating, even if his mental illness does not rise to level of legal insanity.

There can be no dispute that Mr. Dunlap suffers from bipolar disorder, and suffered from that same disease before he committed his terrible crime. The Colorado Department of Corrections

has acknowledged Mr. Dunlap's illness and has properly medicated him for that illness since 2006. Since that time, he has not suffered another manic episode. With continued, proper care in prison, Mr. Dunlap poses no threat to society.

We urge you to commute Mr. Dunlap's sentence of death to life imprisonment with no possibility of parole.

Respectfully,

Richard Bloch, Chief Deputy District Attorney, Arapahoe County (Colorado), 1999-2004

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, 1970-1977

W. Thomas Dillard, United States Attorney, Northern District of Florida, 1983-1987; United States Attorney, Eastern District of Tennessee, 1981; Assistant United States Attorney for the Eastern District of Tennessee, 1967-1976 and 1978 to 1983; United States Magistrate for the Eastern District of Tennessee, 1976-1978

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

Bruce Jacob, former Assistant Attorney General for the State of Florida, represented Florida in *Gideon v. Wainwright*

Gerald Kogan, Chief Justice, Supreme Court of the State of Florida, 1987-1998; former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida

Miriam Krinsky, Former Assistant United States Attorney, Central District of California, 1987-2002

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