

PEOPLES' ACTION FOR RIGHTS & COMMUNITY

1617 3rd Street Eureka, CA 95501
(707) 442-7465 peoplesarc@gmail.com

April 8, 2016

The Honorable Edmund "Jerry" Brown
Governor of the State of California
State Capitol, Suite 1173
Sacramento, CA 95814

RE: CLEMENCY FOR KEVIN COOPER

Dear Governor Brown:

Please grant executive clemency to Kevin Cooper. Mr. Cooper is a black man who was wrongfully convicted and sentenced to death over 30 years ago after being accused of murdering a white family in Chino Hills, California.

Mr. Cooper's arrest, prosecution, and conviction are marred by evidence of racial bias, police misconduct, evidence tampering, suppression of exculpatory information, lack of quality defense counsel, and a hamstrung court system. In 2009, five federal appellate judges signed a dissenting opinion (by Ninth Circuit Court of Appeals Judge William Fletcher) in Cooper's case. It begins: "***The State of California may be about to execute an innocent man.***" 565 F.3d 581.

Mr. Cooper was prosecuted, tried and convicted in an atmosphere of racial hatred. Outside the courthouse, a crowd hung a monkey in effigy with a sign that said, "Kill the Nigger." The injustice of Mr. Cooper's conviction and sentence is condemned by people throughout the nation and the world.

When US government seeks to impose the death penalty, there *must* be confidence that the process has been fair and that all compelling claims have been subject to meaningful review. The process in Mr. Cooper's case precludes any such confidence and defies all standards of fairness. Furthermore, evidence has emerged in the more than 30 years since Mr. Cooper's arrest that continues to call into question his conviction and that has never been comprehensively examined by any court.

Mr. Cooper is asking for a review of his case including DNA testing, that he would pay for, that could establish his innocence. Mr. Cooper's request for clemency is consistent with a September 2015 ruling from the Inter-American Commission on Human Rights ("IACHR"), which found that Mr. Cooper suffered eight due process violations, racial discrimination, an incompetent defense at trial, and an unfair appellate process. The IACHR ruled that Mr. Cooper's treatment by the US Justice System violated his human rights and international law¹, with the criminal justice system failing him at every stage. Indeed, Mr. Cooper has suffered now for decades in prison, on death row, waiting for true justice- exoneration for a crime he did not commit.

¹ Kevin Cooper v. United States, Case 12,813, Inter-Am. Comm'n H.R., Report No. 78/15, OEA/Ser.L/V/II.156, doc. 31 (2015).

We passionately concur with the IACHR recommendation that Kevin Cooper's execution be stayed and there be a **“review of his trial and sentence in accordance with the guarantees of due process and a fair trial.”** The American Bar Association and thousands of Californians agree that you should grant a reprieve of Mr. Cooper's death sentence while your office conducts a thorough investigation of Mr. Cooper's case. That investigation must include forensic testing and a review of crucial documents held by the prosecution that the prosecution refuses to disclose to Mr. Cooper's defense team.

The facts of Mr. Cooper's case cast considerable doubt on the process he received and the fairness and accuracy of his conviction:

The sole surviving victim identified the killers as three white or Mexican men. Mr. Cooper is black. The medical examiner concluded 3 or 4 weapons inflicted the deadly wounds. Other witnesses saw three white men in the victims' car driving from the crime scene. Three white men were seen in a bar near the crime scene the night of the murders, one of who was wearing coveralls covered in blood. The San Bernardino Sheriff issued a Criminal Bulletin saying the suspects were “3 white or Hispanic men, ... one wearing a t-shirt and another wearing a blue shirt.” Deputies found a t-shirt with blood on it that matched the blood type of one of the victims. They also recovered a blue shirt nearby that is now “missing.” Once the Sheriff learned that Mr. Cooper, an escaped prisoner, had been hiding near the victims' home, the Sheriff publicly named Mr. Cooper as the lone suspect. The Sheriff ignored, among other major inconsistencies, that it would have been impossible for a single assailant to overpower five people including a husband and wife who had loaded weapons within reach at their bedside.

Kevin Cooper was framed:

- Sheriff's deputies **destroyed exculpatory evidence** in Mr. Cooper's case, including: (1) the blue shirt with blood on it found near the crime scene that may have been discarded by one of the real killers, (2) a pair of bloody coveralls turned over a few days after the murders, (3) the crime scene itself, which deputies dismantled to prevent further forensic analysis.
- Sheriff's deputies **planted evidence** to frame Mr. Cooper including: (1) cigarette butts in the victims' car, (2) bloody shoe prints at the crime scene, (3) a hatchet sheath and prison jacket button in the house where Mr. Cooper had slept.
- Sheriff's deputies **tampered with evidence** including falsifying tests on a blood spot found at the crime scene and planting Mr. Cooper's blood on the tan t-shirt. When the prosecution's own tests proved tampering on the t-shirt, the tests were “withdrawn” without explanation.
- Sheriff's deputies **hid exculpatory evidence** including (1) information proving the shoe prints at the crime scene were planted, (2) a log proving that the now missing blue shirt existed, and (3) a report showing a deputy destroyed the bloody coveralls with Sheriff's approval. (This same Sheriff was later convicted of stealing over 500 seized firearms from his department's evidence locker, and the director of the Sheriff's crime lab was fired for stealing large quantities of heroin out of the crime lab.)
- The prosecution has control of crucial evidence that could exonerate Mr. Cooper, but it refuses to allow Mr. Cooper's counsel to test that evidence. **New DNA technology exists that could show that Mr. Cooper is innocent.**

You, as Governor, have broad clemency power. It is your duty to ensure that the California government does not take Kevin Cooper's life with such a lack of meaningful review. Clemency has been determined by the Supreme Court to be "the traditional remedy for claims of innocence based on new evidence, discovered too late in the day to file a new trial motion." Kevin Cooper, and indeed, all of the people of the State of California, need you to exercise your authority to grant executive clemency as the "fail-safe" within the (already questionable) capital punishment system. You can, and must, stop an innocent man from being executed.

If you decide after your investigation that Mr. Cooper is innocent, please grant him a pardon. If you decide that there are troubling questions about the case that require a retrial, please take steps so that Mr. Cooper is retried immediately in a fair trial before a fair judge.

The government regularly learns, *far too late*, that it has killed people for crimes they did not commit. We implore you to do everything you can to prevent Kevin Cooper from being executed.

Please grant Kevin Cooper's petition for executive clemency.

On behalf of our Staff and Members,



Verbena Lea

Executive Director

Peoples' Action for Rights and Community (PARC)

(707) 442-7465