



NATIONAL BAR ASSOCIATION

July 20, 2016

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

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Dear Governor Brown:

I humbly write to you on behalf of the National Bar Association ("NBA") to strongly urge you to grant the petition for executive clemency filed on behalf of death row inmate Kevin Cooper. Before incarceration for life and surely a sentence of death is carried out in a criminal justice system, there should be no doubt and without any question that a person is guilty of the offenses for which they have been convicted. Here, there are many questions which arose after Mr. Cooper's first habeas petition was denied and during and after the hearing on his successor habeas petition which he has not had the opportunity to address. In short, there is very substantial doubt concerning his guilt. Therefore, we request that you exercise the clemency power granted to your office and stop Mr. Cooper from continuing to be wrongfully incarcerated and certainly not executed without investigation he seeks.

As Governor of the State of California and ultimately responsible for the fairness of its criminal justice system, you should be very concerned about Mr. Cooper's long incarceration and threatened execution based upon the numerous abuses by law enforcement. These abuses include, but are not limited to, tampering with evidence, destruction of evidence, alteration and withdrawal of laboratory results that exculpate Mr. Cooper.

Before a defendant is incarcerated for life or given the death penalty, one must be confident that a person's human rights and constitutional rights have not been violated, that a person has received effective assistance of counsel and that the rules governing the criminal justice system were not abused. In the instance of Mr. Cooper, the Inter-American Commission on Human Rights found last September that each of these fundamental rights had been violated. The United States is a member of this Agency, and although it actively opposed Mr. Cooper's petition, it filed no substantive response to the IACHR findings when given the chance to do so.

The death penalty should not be imposed nor should a conviction go unexamined by the chief executive of a state when, as here, almost half a federal Circuit Court bench agrees that there is reasonable doubt about the factual basis for a conviction.

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This is particularly true where some of those judges felt they were constrained by law, in this case, for example, by the controversial Anti-Terrorism and Effective Death Penalty Act of 1996, from overturning the conviction of someone who may be innocent. Legal limitations on the courts is one of the fundamental bases for the particular form of executive clemency Mr. Cooper seeks and why we urge you to grant his petition for clemency so that an unfettered factual investigation may occur. This includes investigation of the numerous instances of abuses in the handling of the evidence by law enforcement before and at trial and subsequently in connection with post-conviction testing, including the mishandling of DNA evidence and related testing. We have experienced too many times that a person is determined not guilty after serving years in prison or, horrifically, after his execution. A conviction and death sentence cannot stand when at least twelve judges, including the conservative former Chief Judge of the court, have expressed very serious doubts about the factual bases for Mr. Cooper's guilt. This raises the horrific and untenable result of continuing to incarcerate and risk executing an innocent man. As succinctly stated by one federal appellate judge, who said she felt legally constrained, "[r]esting Cooper's conviction on the DNA evidence is particularly problematic because of the extensive evidence documenting the mishandling of the evidence."

Black Lives Matter is not a mere slogan. It reflects many forms of racial discrimination that continue to infect our criminal justice system. The disproportionate percentage of wrongful convictions that affect black Americans, such as Mr. Cooper, is a disgrace at all levels and in all states. As a preeminent voice of African-American lawyers, the National Bar Association is especially concerned about this phenomenon. Mr. Cooper's case is a leading example. It cannot be ignored or given brief attention. It demands the proper investigation that Mr. Cooper's petition requests.

The State of California, under your political and moral leadership, or any civilized society cannot risk the horrific act of the further incarceration and execution of an innocent man where there is significant doubt expressed by so many jurists and others who have examined the record. In the words of Sir William Blackstone, "[i]t is better that ten guilty men escape, than one innocent man suffer."

There were too many abuses and mistakes, deliberate or not, made in Mr. Cooper's case to allow his further incarceration and sentence of death to stand uninvestigated. While the appellate courts may not have the remedies to change the outcome of the trial, you do. Mr. Cooper has been in prison for a crime that he did not commit for over thirty years. Please don't make the ultimate mistake and allow him to die.

On behalf of the NBA, I humbly request that you grant the petition for executive clemency in the case against Mr. Cooper.

Respectfully,



Benjamin L. Crump
President