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Further information on UA 22/04 (AMR 51/013/2004, 16 January 2004) - Death penalty / Legal concern

USA (California) **Kevin Cooper (m), black, aged 45**

Less than eight hours before he was due to be killed, in the first few minutes of 10 February, Kevin Cooper received a stay of execution from the US Court of Appeals for the Ninth Circuit to allow DNA testing on evidence from the crime to be carried out. The state appealed to the US Supreme Court, arguing that the Ninth Circuit stay was "an unwarranted intrusion on California's ability to carry out a lawful and final judgment that has been the subject of over 18 years of post-conviction appeals." The Supreme Court declined to intervene.

Kevin Cooper was sentenced to death in 1985 for the murders of Douglas and Peggy Ryen, their 10-year-old daughter Jessica, and 11-year-old Christopher Hughes, who were hacked to death in the Ryen home in Chino Hills, outside Los Angeles in 1983. Kevin Cooper has consistently maintained his innocence of the murders.

Governor Arnold Schwarzenegger denied clemency. It was the first capital case to come before him since he took office. In a statement issued on 30 January, he said: “I have carefully weighed the claims presented in Kevin Cooper's plea for clemency. The state and federal courts have reviewed this case for more than eighteen years. Evidence establishing his guilt is overwhelming, and his conversion to faith and his mentoring of others, while commendable, do not diminish the cruelty and destruction he has inflicted on so many. His is not a case for clemency.” Governor Schwarzenegger added: “I also note that Mr. Cooper sought and obtained recent DNA testing of evidence and, when that testing further proved his guilt, Mr. Cooper claimed that law enforcement authorities had tampered with the tested evidence. There are no facts which lead me to believe this claim has any merit.”

Among those who had called on Governor Schwarzenegger to grant clemency were various officials from the Governor’s native Austria. They included the Mayor of Graz, the town where Arnold Schwarzenegger began his bodybuilding career. The Austrian Foreign Minister subsequently expressed her disappointment at the Governor’s refusal to grant clemency, and the speaker of the Austrian parliament said that the death penalty “has no legitimate place in a modern society.”

Meanwhile, Kevin Cooper’s lawyers continued to seek a stay of execution from the courts. Several jurors from the original trial urged the courts not to allow the execution to go ahead, so that DNA testing could be carried out.

The 11-judge panel of the Ninth Circuit Court of Appeals ruled that the execution should be stopped. The majority stated that “No person should be executed if there is doubt about his or her guilt and an easily available test will determine guilt or innocence”. The Court noted that Kevin Cooper’s lawyers had asked for testing of the blood found on a t-shirt (see original UA) to establish whether it contained preservative, thereby showing “that his blood was not on the t-shirt at the time of the killings, but was rather placed there at some later time”. The lawyers had also asked for DNA testing of hairs in Jessica Ryen’s hand to attempt to establish their source. The Ninth Circuit Court sent the case back a lower federal court to order such testing.

Amnesty International opposes all executions regardless of the seriousness of the crime or the culpability of the condemned. The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death

Penalty prohibit the execution of those about whose guilt there is room for any doubt. The death penalty carries the ever-present risk of irrevocable error.

No further action is requested at present. Many thanks to all who sent appeals.