

URGENT ACTION

NO CLEMENCY FROM OUTGOING GOVERNOR

Before leaving office on 2 January, the outgoing governor of California declined to act on the clemency petition filed on behalf of Kevin Cooper, who has consistently maintained his innocence of the four murders for which he was sentenced to death in 1985.

In a letter to **Kevin Cooper's** lawyers and the state authorities on 2 January, the Legal Affairs Secretary for outgoing Governor Arnold Schwarzenegger acknowledged that "the clemency application raises many evidentiary concerns which deserve a thorough and careful review of voluminous records." The letter suggested however that there was not enough time for such a review before the governor left office. The letter concluded by stating that the clemency materials would remain in the Governor's office "for consideration by Governor-elect [Jerry] Brown".

The letter struck a different tone to Governor Schwarzenegger's statement in January 2004 when he denied clemency to Kevin Cooper who was then facing an execution date. Then he had said that "Mr Cooper's conviction and sentence have been thoroughly reviewed and upheld by our highest state and federal courts... I will not second guess the decisions of these courts, and I will not disturb the jury's verdict of guilt and sentence of death".

Less than eight hours before Kevin Cooper was due to be put to death, the US Court of Appeals for the Ninth Circuit granted a stay and sent the case back to the District Court for testing on blood and hair evidence from the crime, including to establish if the police had planted evidence. The District Court ruled in 2005 that the testing had not proved Kevin Cooper's innocence – his lawyers (and five Ninth Circuit judges) maintain that it did not do the testing as ordered. Nevertheless, in 2007, a three-judge panel of the Ninth Circuit upheld the District Court's ruling. One of the judges described the result as "wholly discomfoting" because of evidence tampering and destruction, but noted that she was constrained by US law, which places substantial obstacles in the way of successful appeals.

In 2009, the Ninth Circuit refused to have the whole court rehear the case. Eleven of its judges dissented. One of the dissenting opinions warned that "the State of California may be about to execute an innocent man". Regarding evidence testing, they said: "There is no way to say this politely. The district court failed to provide Cooper a fair hearing and...imposed unreasonable conditions on the testing". They pointed to a test result that, if valid, indicated that evidence had been planted, and they asserted that the district court had blocked further scrutiny of this issue.

The crime in question occurred on 4 June 1983, when Douglas and Peggy Ryen were hacked and stabbed to death in their home in Chino Hills, California, along with their 10-year-old daughter Jessica and 11-year-old houseguest Christopher Hughes. Their eight-year-old son, Joshua, was seriously wounded, but survived. He told investigators that the attackers were three or four white men. In hospital, he saw a picture of Kevin Cooper on television and said that Cooper, who is black, was not the attacker. However, the boy's later testimony – that he only saw one attacker – was introduced at the 1985 trial. The case has many other troubling aspects which call into question the reliability of the state's case and its conduct in obtaining this conviction. Since Governor Schwarzenegger denied clemency in 2004, more evidence supporting Kevin Cooper's claim of innocence has emerged, including testimony from three witnesses who say they saw three white men near the crime scene on the night of the murders with blood on them.

California accounts for 13 of the 1,235 executions in the USA since judicial killing resumed there in 1977. The last execution in California was in 2006. There were 46 executions in the USA in 2010, and there has been one so far in 2011. Kevin Cooper does not currently have an execution date, but could face one in the coming months.

No further action by the UA Network is requested at present. Many thanks to all who sent appeals.

This is the first update of UA: 259/10. Further information: <http://www.amnesty.org/en/library/info/AMR51/109/2010/en>

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