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Death penalty / Legal concern

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USA (California)

Kevin Cooper (m), black, aged 45

Kevin Cooper is scheduled to be executed in California on 10 February 2004. He was sentenced to death in 1985 for a quadruple murder committed in 1983. He maintains his innocence of the murders.

On 4 June 1983, Douglas and Peggy Ryen and their 10-year-old daughter Jessica, together with 11-year-old Christopher Hughes, all white, were hacked to death in the Ryen home in Chino Hills, outside Los Angeles. Joshua Ryen, aged eight, was wounded in the attack, but survived. The victims sustained multiple injuries – at least three weapons were used: a knife, a hatchet and an ice pick. The brutality of the crime led to intense pressure on the authorities to resolve the case.

Kevin Cooper was arrested several weeks after the murder. He had escaped from a minimum security prison on 2 June and had hidden in an empty house near the Ryens' residence for two nights before the crime. He became the focus of public hatred. Outside the venue of his preliminary hearing, people hung an effigy of a monkey in a noose with a sign reading "Hang the Nigger!!" At the time of the trial, jurors were confronted by graffiti declaring "Die Kevin Cooper" and "Kevin Cooper Must Be Hanged".

Following the arrest, the police focussed on Cooper as the sole suspect to the exclusion of other possible leads, according to his clemency petition. At first the authorities had theorized that more than one assailant was involved, given the scale of the violence and the number of weapons used. This theory was consistent with the account of a witness who said that he had seen a car like the Ryens' leaving the area at high speed on the night of the crime. He said it was being driven by a young white male. A second witness thought she saw the silhouette of three or four other people in the car. The theory of multiple assailants also tied with initial statements by the only survivor, Joshua Ryen, that there had been three white or Latino attackers. After seeing a picture of Kevin Cooper on television, the boy said: "That was not the person that did it". However, after substantial contact with the police and exposure to the media spotlight on Cooper, he said he could not remember details of the crime.

Two days after the murders, a local woman, Diane Roper, found a pair of bloody overalls belonging to her then-boyfriend Lee Furrows, who had himself been convicted of a knife murder. Believing that the evidence might be linked to the Chino Hills murders, she turned the overalls over to the police. However, without testing them, the police destroyed them on the day of Cooper's preliminary hearing. Later the authorities learned that a prisoner, Kenneth Koon, had allegedly confessed to a cellmate that he and two other men had carried out the murders. Koon allegedly said that after the murders he had gone to his girlfriend's house and changed his overalls. Kevin Cooper's jury heard no evidence about either the confession or the overalls. In 2002 a federal judge dissented against his colleagues' refusal to consider the issue: "Kevin Cooper may be executed without any court considering the question of colorable [plausible] evidence that another individual, Kenneth Koon, confessed to the murders".

The trial judge was critical of the police handling of the crime scene evidence, and suggested that he himself could have done a better job. According to Cooper's current lawyers, there are also questions surrounding the evidence that did link Cooper to the crime. Among the massive amounts of blood at the crime scene was found a single spot from someone other than the victims. Initial testing on this blood spot was inconclusive, but after Cooper's arrest he gave blood and the criminologist testified that Kevin Cooper's blood matched that from the blood spot. No independent verification was possible because the blood spot was allegedly used up by the testing. Cigarette butts found in the stolen car were linked to Kevin Cooper. An initial, detailed inspection of the car had not revealed these particular butts, despite revealing other small items from the same location. A police search of the house where Cooper had hidden prior to the murders had reportedly

revealed cigarette butts, but these were never logged as evidence, raising suspicion that they later became the evidence allegedly found in the car.

A T-shirt found near the crime scene had spots of blood on it. At the time, testing did not reveal this to be consistent with Kevin Cooper's blood. He claimed not to have seen the shirt before, and it was not prison issue, nor did it come from the house where he had been hiding. Diane Roper has stated that she had purchased such a shirt for Lee Furrows and that he was wearing it on the night of the crime. Kevin Cooper sought DNA testing of the T-shirt. The testing was carried out, and the blood was shown to be Cooper's, although testing of the sweat was inconclusive. He is now seeking testing to see if there was a laboratory preservative in the blood spot (as was found in a Texas capital case in 2000, see <http://web.amnesty.org/library/index/ENGAMR510142000>). This would indicate that it was blood taken from Cooper after arrest and was therefore planted after the crime. The state is resisting such testing. Kevin Cooper's lawyers have also been unsuccessful in their attempt to have DNA testing of blondish and brown hairs (i.e. not Cooper's) which the murder victims were reportedly clutching.

Kevin Cooper's trial lawyer did little preparation for the sentencing phase, resulting in a bare 15-minute presentation which provided the jury with almost none of the available mitigating evidence, including Cooper's difficult background and a brain injury that he sustained as a child. Despite this, the jurors struggled for five days on the question of sentence. Two jurors commented to the media that the prosecution had "barely enough evidence", and that Cooper would not have been convicted "if there had been one less piece of evidence". On death row, Kevin Cooper has been a model prisoner with an exemplary disciplinary record. He has committed himself to further education, art and writing.

Amnesty International opposes all executions regardless of the seriousness of the crime or the culpability of the condemned. Since the USA resumed judicial killing in 1977, there have been 891 executions, 10 of them in California. During this time, more than 100 prisoners have been released from US death rows on the grounds of innocence. Others have had their death sentences commuted by governors because of residual doubt over their guilt. 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.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- explaining that you are not seeking to excuse the crime or the suffering it caused;
- expressing concern about the reliability of Kevin Cooper's conviction, as raised in his clemency petition, using any of the above information, noting that the jury did not hear crucial evidence;
- expressing concern that the jury also never heard available mitigating evidence, and yet still had struggled to pass a death sentence, apparently due to residual doubt about his guilt;
- noting the mounting evidence of errors in capital cases, and that several prisoners have had their death sentences commuted by governors because of doubts over their guilt;
- noting Kevin Cooper has been a model prisoner;
- calling on the governor to grant clemency in the interest of justice and the reputation of California;
- urging that, at the very least, the governor grant a reprieve to allow further DNA and other testing.

APPEALS TO:

Governor Arnold Schwarzenegger, State Capitol Building, Sacramento, CA 95814, USA

Fax: +1 916-445-4633

Email: governor@governor.ca.gov

Salutation: Dear Governor

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.