

# URGENT ACTION

## OUTGOING GOVERNOR URGED TO GRANT CLEMENCY

**Kevin Cooper, who has been on death row in California for 25 years, is asking the outgoing state governor to commute his death sentence before leaving office on 2 January 2011. Kevin Cooper has consistently maintained his innocence of the four murders for which he was sentenced to death. Since 2004, a dozen federal appellate judges have indicated their doubts about his guilt.**

On the night of 4 June 1983, 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. The couple's eight-year-old son, Joshua Ryen, 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 (see <http://www.amnesty.org/en/library/info/AMR51/013/2004/en>).

Kevin Cooper was less than eight hours from execution in 2004 when 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, 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, running to more than 80 pages and signed by five judges, warned that "the State of California may be about to execute an innocent man". On the question of the 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" ordered by the Ninth Circuit. 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.

Governor Arnold Schwarzenegger had already denied clemency in 2004 when the Ninth Circuit issued its stay. At the time, he had said that the "courts have reviewed this case for more than eighteen years. Evidence establishing his guilt is overwhelming". Clearly, a notable number of federal judges disagree. The five judges in the Ninth Circuit's lengthy dissent in 2009 stated that the evidence of Kevin Cooper's guilt at his trial was "quite weak" and concluded that he "is probably innocent of the crimes for which the State of California is about to execute him".

### **PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:**

- Acknowledging the seriousness of the crime for which Kevin Cooper was sentenced to death;
- Urging Governor Schwarzenegger to take account of the continuing doubts about Kevin Cooper's guilt, including as expressed by more than 10 federal judges since 2004, when executive clemency was last requested;
- Urging the Governor to commute Kevin Cooper's death sentence.

### **PLEASE SEND APPEALS BEFORE 2 JANUARY 2011 TO:**

Governor Arnold Schwarzenegger  
 State Capitol Building, Sacramento, CA 95814, USA  
 Fax: +1 916-558-3160  
 Email: [governor@governor.ca.gov](mailto:governor@governor.ca.gov) or via  
<http://gov.ca.gov/interact#contact>

Salutation : Dear Governor

Also send copies to diplomatic representatives of the USA accredited to your country.

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### ADDITIONAL INFORMATION

On 2 June 1983, two days before the Chino Hills murders, Kevin Cooper had escaped from a minimum security prison, where he was serving a four-year term for burglary, and had hidden in an empty house near the Ryen home for two nights. After his arrest, he became the focus of public hatred. Outside the venue of his preliminary hearing, for example, 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". Kevin Cooper pleaded not guilty – the jury deliberated for seven days before convicting him – and he has maintained his innocence since then. Since Governor Schwarzenegger denied clemency in 2004, more evidence supporting Kevin Cooper's claim of innocence has emerged, including for example, 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.

In 2007, Judge Margaret McKeown was the member of the Ninth Circuit's three-judge panel who indicated that she was upholding the District Court's 2005 ruling despite her serious concerns. She wrote: "Significant evidence bearing on Cooper's guilt has been lost, destroyed or left unpursued, including, for example, blood-covered coveralls belonging to a potential suspect who was a convicted murderer, and a bloody t-shirt, discovered alongside the road near the crime scene. The managing criminologist in charge of the evidence used to establish Cooper's guilt at trial was, as it turns out, a heroin addict, and was fired for stealing drugs seized by the police. Countless other alleged problems with the handling and disclosure of evidence and the integrity of the forensic testing and investigation undermine confidence in the evidence". She continued that "despite the presence of serious questions as to the integrity of the investigation and evidence supporting the conviction, we are constrained by the requirements of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)". Judge McKeown wrote that "the habeas process does not account for lingering doubt or new evidence that cannot leap the clear and convincing hurdle of AEDPA. Instead, we are left with a situation in which confidence in the blood sample is murky at best, and lost, destroyed or tampered evidence cannot be factored into the final analysis of doubt. The result is wholly discomfoting, but one that the law demands".

Even if it is correct that the AEDPA demands this result, the power of executive clemency is not so confined. Last September, for example, the governor of Ohio commuted Kevin Keith's death sentence because of doubts about his guilt even though his death sentence had been upheld on appeal (see <http://www.amnesty.org/en/library/info/AMR51/079/2010/en>). Governor Ted Strickland said that despite circumstantial evidence linking the condemned man to the crime, "many legitimate questions have been raised regarding the evidence in support of the conviction and the investigation which led to it. In particular, Mr Keith's conviction relied upon the linking of certain eyewitness testimony with certain forensic evidence about which important questions have been raised. I also find the absence of a full investigation of other credible suspects troubling." The same could be said in the case of Kevin Cooper, whose lawyer is asking Governor Schwarzenegger to commute the death sentence before he leaves office on 2 January 2011. While Kevin Cooper does not yet have an execution date, it is likely that one will be set, perhaps early in 2011.

More than 130 people have been released from death rows on grounds of innocence in the USA since 1976. At the original trial in each case, the defendant had been found guilty beyond a reasonable doubt. It is clear beyond any dispute that the USA's criminal justice system is capable of making mistakes. International safeguards require that the death penalty not be imposed if guilt is not "based upon clear and convincing evidence leaving no room for an alternative explanation of the facts". Amnesty International opposes all executions regardless of the seriousness of the crime or the guilt or innocence of the condemned.

California has the largest death row in the USA, with more than 700 prisoners under sentence of death out of a national total of some 3,200. California accounts for 13 of the 1,234 executions in the USA since judicial killing resumed there in 1977. There have been 46 executions in the USA this year. The last execution in California was in January 2006.

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