

April 5, 2016

The Honorable Edmund "Jerry" Brown
Governor of the State of California
State Capitol, Suite 1173
Sacramento, CA 95814

Dear Governor Brown:

RE: *Kevin Cooper*

I am writing on behalf of the *Association in Defence of the Wrongly Convicted* (AIDWYC) to urge you to grant executive clemency to Kevin Cooper, sentenced to death on March 1, 1985 for the murders of three members of the Ryen family and a young child, Christopher Hughes who was staying with them at the time.

Mr. Cooper, an African American has steadfastly maintained his innocence for more than three decades. He has been on death row for 31 years, an extraordinary length of time.

First, I should tell you about AIDWYC, shortly to become known as *Innocence Canada*. We were founded in 1993 in Toronto, Ontario in response to the wrongful conviction of one Guy Paul Morin for first degree murder in Ontario. Rubin "Hurricane" Carter, who died in 2015 in Toronto, was our first Executive Director. AIDWYC is the primary wrongful conviction organization in Canada, our membership consisting of lawyers and layperson. We advocate for the wrongly convicted and work, usually on a *pro bono* basis, for their convictions to be overturned. Since our inception, we have succeeded in overturning the convictions of 27 men and women – one of these was our seminal case of Guy Paul Morin – and our work has received considerable attention from governments and courts across Canada. As part of our mandate, we also advocate for changes in the law to reduce the likelihood of wrongful convictions in the future.

Part of AIDWYC's mandate includes complete opposition to the death penalty. In this, we support the position of *Amnesty International* which seeks the worldwide abolition of the death penalty.

Mr. Cooper first contacted AIDWYC for assistance and support in 2003. Rubin Carter reviewed his case and the evidence thoroughly and, on behalf of AIDWYC, took up Mr. Cooper's case. Five days before his scheduled execution on February 10, 2004, Mr. Carter went to California to join the effort to save Mr. Cooper's life. While there, he conducted a television interview, in which Mr. Cooper participated, and said:

"We would like everybody, every person in the United States of America and even in the world to call or e-mail the Governor [Schwarzenegger]".

Since Mr. Carter's death, Mr. Cooper's case has been assigned to me as Senior Counsel for AIDWYC.

AIDWYC's support for Mr. Cooper is based on the fact that he faces a death sentence and on strong evidence that he is actually innocent of the dreadful crimes of which he stands convicted. His case has captured national and international attention. The opposition to his execution has been described in media as being "on a scale that California has not seen since 1992 when the State resumed executions after a 25 year halt". AIDWYC is a small part of the international attention.

I am sure that, as Governor of California, you know a great deal about Mr. Cooper's case. I want to tell you why AIDWYC supports him so strongly. In 2009, Judge Fletcher of the Ninth Circuit Court of Appeal wrote a remarkable dissent from the majority's refusal to review Mr. Cooper's case *en banc*. The dissent began dramatically:

"The State of California may be about to execute an innocent man."

Over a 101 page opinion, Judge Fletcher explained why this was so in the most convincing of terms.

Judge Fletcher's dissent was concurred in by Judge Wardlaw, Judge Pregerson, Judge Reinhardt, Judge Thomas, Judge Berzon, Judge Fisher, Chief Judge Kozinski, Judge Graber, Judge Paez and Judge Rawlinson. These eleven judges present a remarkable array of judicial opinion which cannot be ignored. Even though the majority of the Court did not agree with them, it can surely be accepted that Judge Fletcher and his ten colleagues raise *some* doubts in the mind of any reasonable person that Mr. Cooper may be innocent.

No Governor, least of all a Democratic Governor who has earned worldwide respect for his progressive views, should allow the execution of a person who may be innocent.

The recent 2015 Report of the Inter-American Commission on Human Rights provides overwhelming support for Mr. Cooper's petition that the criminal justice system failed him at his trial and his appeals. The Commission concluded that if the State of California carries out Mr. Cooper's execution:

"It would be committing a serious and irreparable violation of the basic right to life recognized in Article 1 of the American Declaration."

These are powerful words.

Throughout Mr. Cooper's numerous appeals, evidence has continued to emerge that casts doubt on his culpability. As stated by Circuit Judge McKeown in a 2007 opinion:

"Significant evidence bearing on Cooper's culpability 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."

Despite this, Judge McKeown felt unable to grant Mr. Cooper a remedy.

The State has fought Mr. Cooper every time he has tried to have his case reheard. Most recently, when his defence counsel learned of a new DNA testing technique that could be utilized, the State opposed the request for its use even though it was limited to a few select items at no expense to the State. The request for the additional DNA testing was denied by the Court.

Many of the circumstances known to lead to wrongful convictions were present in Mr. Cooper's arrest, prosecution and conviction. Mr. Cooper is an African-American man upon whom the police quickly settled as the lone suspect despite other leads. A pair of bloody coveralls was destroyed by a deputy and a blue shirt, likely with blood on it, was never produced to the defence. Post-conviction DNA testing has detected EDTA present on a t-shirt suggesting possible evidence-tampering yet further DNA testing has been denied by the Court. Racial bias, a police rush to judgment, police misconduct, evidence tampering, and the suppression of exculpatory information are familiar factors that have led to miscarriages of justices in our country as well as yours.

As long ago as 1915, Governor John Slaton, of the State of Georgia, commuted the death sentence of Leo Frank because his guilt was in doubt. In words which survive history, he said:

“...the performance of my duty under the Constitution is a matter of my conscience. The responsibility rests where the power is reposed. ...I can endure misconstruction, abuse and condemnation, but I cannot stand the constant companionship of an accusing conscience, which would remind me in every thought that I, as a Governor of Georgia, failed to do what I thought to be right. There is a territory “beyond a reasonable doubt and absolute certainty”, for which the law provides in allowing life imprisonment instead of execution. This case has been marked by doubt. The trial judge doubted. Two Judges of the Supreme Court of Georgia doubted. Two Judges of the Supreme Court of the United States doubted. One of the three Prison Commissioners doubted.

In my judgement, by granting a commutation in this case, I am sustaining the jury, the judge, and the appellate tribunals, and at the same time am discharging that duty which is placed on me by the Constitution of the State.”

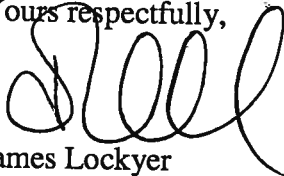
In Mr. Cooper’s case, there are *eleven* judges who have doubted.

As the Governor of California, you have the means to stop the execution of Mr. Cooper through the California clemency power and we urge you to exercise it now.

For 31 years, Mr. Cooper has lived in fear of death by gas and, then, by lethal injection. Twice he has faced imminent execution, receiving last minute stays of execution for further exploration of his likely innocence. In AIDWYC’s opinion, to allow this state of affairs to continue constitutes cruel and unusual punishment. It surely damages the reputation of the State of California in the eyes of all right-thinking people around the world. If, as seems altogether possible, firm evidence of his factual innocence eventually emerges, his execution will leave a notorious stain on the State’s justice system.

In conclusion, I urge you to act so that Mr. Cooper’s death sentence is commuted. Once this *Sword of Damocles* has been lifted, whether he is, in fact, innocent can be further explored.

Yours respectfully,



James Lockyer
Senior Counsel

Association in Defence of the Wrongly Convicted