

## Office of the Dean

August 30, 2016

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

Dear Governor Brown:

I am writing in support of California death-row inmate Kevin Cooper, whose petition for executive clemency is before your Office. In my view, Mr. Cooper’s arrest, prosecution, and conviction are unreliable and despoiled by racial bias, police misconduct, evidence tampering, suppression of exculpatory information, lack of quality defense counsel, and a court system that bows to technical rules that avoid the central question; is the state of California about to execute an innocent man?

In order to place my letter in context I would like to briefly introduce myself to you, I am currently the Dean of the Valparaiso University School of Law (I should mention that I am speaking for myself, not the university). More important to this issue, though, are my many years as a capital defense lawyer — indeed I date myself by telling you that I am the first woman in the United States to defend a death penalty case as lead counsel. Before becoming the dean here, I was a clinical professor of law, Associate Dean of Clinical Programs, and Director of the Center for Justice in Capital Cases at DePaul University College of Law. I received my undergraduate degree from Rutgers University and my law degree from Antioch School of Law. After graduating, I worked for the Cook County Public Defenders’ Office (in Chicago) in the felony trial division, post-conviction/habeas corpus unit, preliminary hearing/first municipal (misdemeanor) unit and the appeals division. My last position there was chief of the Homicide Task Force, a 22-lawyer unit representing persons accused of homicides. I have tried over 130 homicide cases, defended more than 30 potential capital cases at the trial level and taken 19 through penalty phase; winning all 19. In 1990, I founded the Illinois Capital Resource Center and served as its director until joining the University of Michigan Law School faculty as an assistant clinical professor in 1995. I am proud to say that I have won the prestigious National Legal Aid and Defender Association’s Reginald Heber Smith Award for best advocate for the poor in the country, and in January of 2015 I was awarded Operation Push’s Rev. Dr. Martin Luther King, Jr. and President Lyndon B. Johnson Dream-Makers Award.

I have written two books regarding the death penalty, my memoir *Angel of Death Row*, and a political book about the death penalty, *The Death Penalty: What’s Keeping it Alive*. I am taking the liberty of sending you a copy of each. (My father jokes that he has a new definition of old age; when your daughter has written a memoir).

I am certain that your staff and you are familiar with the over 100 page dissent from the Ninth Circuit’s affirmance of Mr. Cooper’s case and the ruling by the Inter-American Commission on Human Rights that Mr. Cooper’s conviction and sentence violated his human rights, as it is a particularly unique example of a criminal justice system falling short at every stage. I am sure you understand the frustration

expressed by many in the judiciary over the use and reliance upon the technical rules to avoid reaching the true question; is the wrong man in prison awaiting his death?


I have had the experience of representing a death row inmate who was innocent; Madison Hobley. I write about him in both of the books, but the story is frighteningly familiar. Madison Hobley was one of 14 African-American men sentenced to death in Illinois based on confessions — alleged or acknowledged — obtained by a group of Chicago police officers later shown to have engaged in systematic torture of suspects in criminal cases. Four officers claimed Hobley admitted setting a fire that claimed the lives of his wife, infant son, and five other persons early the morning of January 6, 1987, at an apartment building in Chicago. When the fire broke out, Hobley, 26, escaped the flames without shoes and wearing only underwear. He consistently maintained his innocence, alleging that the officers tortured him and — when that failed — fabricated a confession. To corroborate Hobley's alleged confession and other aspects of the prosecution theory of the crime, the prosecution introduced into evidence a two-gallon gasoline can that another Chicago Police Detective testified he discovered at the fire scene. As forensic testing would later show, that could not have been in the fire and had to have been planted. The prosecution also withheld an exculpatory fingerprint report, and the fact that the alleged witness to Mr. Hobley buying a gas can was arrested for an arson strikingly similar to the one Madison Hobley went to death row for after Mr. Hobley was in jail. It wasn't until we reinvestigated the case and were fortunate enough to have issued a subpoena during the time that the "regular" police recipient was on vacation, that we discovered all of this. I thought it might be useful to read former Governor Ryan's words as he pardoned him based on his innocence: "Madison Hobley was convicted on the basis of flawed evidence." Ryan said on January 9, 2003. "He was convicted because the jury did not have the benefit of all existing evidence, which would have served to exonerate him."

Often when I speak to my students about cases like this (we are working on another just now) they have trouble believing it isn't fiction. I wish it was, Governor, but unfortunately it is not.

In this case, physical evidence has been tampered with, the defense has been denied access to the testing, or the so-called contamination the state uses to explain away the evidence that blood was planted. The one survivor of this horrendous murder told the police it was three white or Hispanic men, not one Black man, the police developed what is an all-too-familiar case of tunnel vision when they focused on Mr. Cooper — exactly what they did in Mr. Hobley's case — Madison Hobley survived and his wife and child didn't so Hobley must have done it.

I therefore add my voice to those asking you to mount a real full investigation into this case — one free from bias, and in search of the truth. I know this is a lot to ask; you have many demands on your and your office's time. Nonetheless I do ask it; justice requires it.

Sincerely,



Andrea D. Lyon