

February 14, 2018

The Honorable Edmund G. Brown
Governor
State of California
State Capitol, Suite 1173
Sacramento, CA 95814

Dear Governor Brown,

We write to urge that you act affirmatively on Kevin Cooper's pending clemency petition. We are law school deans representing the University of California Berkeley School of Law, Loyola Law School in Los Angeles, Santa Clara School of Law, and the University of San Francisco School of Law. We come from diverse backgrounds, with different areas of expertise, but we share an abiding commitment to social justice and the rule of law.

Mr. Cooper's clemency petition does not ask you to pardon him or commute his sentence. It asks only that you order an independent innocence investigation that includes state-of-the-art DNA and other forensic testing. Crucial testing has never been done because the state and federal entities in possession of that evidence have steadfastly refused to turn it over.

It is imperative that the full and fair evaluation of Mr. Cooper's innocence claim be conducted as soon as possible. Mr. Cooper will likely be among the first men executed once California begins that process again. Already, proponents of the death penalty have moved to lift the injunction against the death penalty that has been in place from a Marin County court since 2012, and they have stated publicly that they also intend to vacate the federal injunction, which has been in place since 2006.

Since the day of his arrest, Mr. Cooper has maintained his innocence. But his innocence claim has never been fully and fairly evaluated, for the reasons documented in Judge William Fletcher's lengthy dissent from the Ninth Circuit's 2009 denial of rehearing *en banc*.

In *Herrera v. Collins*, 506 U.S. 390 (1993), the Supreme Court of the United States discussed at length the crucial role that clemency plays in our justice system. The Court acknowledged the system's fallibility, noting that "history is replete with examples of wrongfully convicted persons," and characterized executive clemency as the final "remedy for preventing miscarriages of justice." *Id.* at 398, 411-12, 415. In this case, clemency provides the only remedy. *Id.* at 415.

Otherwise, we face the horrific possibility that, as Judge Fletcher stated: “the State of California may be about to execute an innocent man.” *Cooper v. Brown*, 565 F.3d 581 (2009).

As Governor, you have the authority under Article V, Section 8 of the California Constitution to grant a temporary reprieve of Mr. Cooper’s death sentence to avoid this catastrophic and irreversible miscarriage of justice. The fact that there is scientifically reliable testing to resolve the innocence question compels the granting of this request. Indeed, Mr. Cooper’s case draws many parallels to that of Craig Coley, whose sentence you commuted on November 22, 2017. In that case, you rightfully ordered an investigation in response to claims of a mishandled investigation. Mr. Cooper now asks for the same opportunity, which is simply a chance to re-examine questionable forensic evidence and ensure the integrity of California’s judicial process before the ultimate punishment is carried out.

Mr. Cooper’s clemency petition lays out in great detail the long history of such failure in his case beginning with the racially biased investigation and cover-up by the San Bernardino Sheriff’s Department, continuing with his woefully inadequate legal representation at his trial, and compounded by an appellate process that makes innocence claims virtually incapable of succeeding.

This case is playing out in a time of crisis in our criminal justice system. Californians are learning that prosecutorial and law enforcement misconduct is much more prevalent than many have believed. Judge Fletcher maintains that Cooper “is on death row because the San Bernardino Sheriff’s Department framed him.” A recent report by the National Registry of Exonerations concludes that the number of exonerations of black men far exceeds their percentage of the general population. The risk of wrongful conviction is particularly acute when the victim is white and the accused is black. In 2014, six men were exonerated from death row. All of them were African Americans.

Mr. Cooper is also African American, and he was convicted of the horrific murders of a white family and a young friend of their son, who barely survived. It is an infamous crime that still haunts the surviving child, the victims’ families and the residents of California. From the outset, race played a role in how the case was litigated in the courtroom and in the court of public opinion. Fundamental questions going to the good or bad faith of law enforcement and the viability of the prosecution’s single-perpetrator theory of the case remain unanswered. An investigation with up-to-date DNA testing could show whether someone else committed the crimes—someone who may still be at large. We urge you to provide the relief that is solely within the Governor’s authority—to grant the pending clemency petition. Only an independent innocence investigation can prevent what may very well be the ongoing injustice of an innocent man being deprived of freedom, under threat of execution, for a crime he did not commit.

Thank you very much for your consideration of our views.

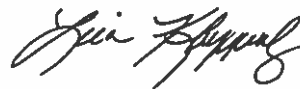
Yours truly,



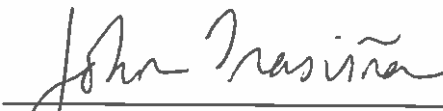
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