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September 8, 2016

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

RE: Kevin Cooper – Death Penalty

Dear Governor Brown:

I write to recommend that you commute the sentences of Kevin Cooper, who is now facing the death penalty, to life without the possibility of parole based on what we know today.

The Cooper case is indeed a troubling one.

I've approached it at this stage with this thought. A Governor should never approve carrying out the death penalty if there is any real question of guilt. Certainty should be the order of the day.

The facts of the Cooper case are murky.

On the side of guilt, one finds there is no dispute that he had escaped from a minimum security state prison, was living in a vacant home 125 yards from the home on the same day the four murders in question took place.

Cooper testified he left the home around 8:30 the night of the murders, hitchhiked to Tijuana, where he checked [in] at 4:30 p.m. the day after the murders were committed. Cooper tossed possibly incriminating evidence, including his prison issued tennis shoes, and other prison clothing overboard into the ocean after he got a job in Ensenada.

Bloody shoe prints, similar to the shoes issued at prison were found in the crime scene. (Evidence has been introduced that the type of shoes involved were also sold at retail).

Sheriffs department claimed they found cigarette butts consistent with prison issued tobacco in the murder victim's car. (The police reports written at the time reported no evidence of the butts.)

There is more inculpatory evidence including evidence in the Lease house where Cooper stayed of blood on a hatchet matching that of the murder victims. DNA testing of a shirt found after the murder where Cooper's blood tested positive. (This finding is in dispute).

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There is more, as a study of the record will show. This is not a clear-cut case of innocence. And of course as it has gone its tortuous way through the Court system, the Courts have repeatedly upheld Cooper's conviction and the punishment.

Yet there are also disturbing facts which gives real pause.

The surviving son, who was present at the attacks, first said that the murderers were three white men. And while in the hospital after the murders he saw a picture of Cooper on television and said he was not one of the killers. He was the only eye witness to the murders. (Later he identified Cooper as the murderer in a 2004-05 habeas hearing.)

A woman provided a statement describing the tee shirt that she had purchased for her boyfriend, Lee Furrow, a convicted murderer. The shirt appeared identical with the shirt found near the scene of the crime.

During the early morning after the murder she saw Furrow without the T shirt but wearing a bloody set of coveralls, which he took off. She turned them in to the San Bernardino Sheriffs Department, which then discarded them without testing.

Other evidence indicated that 3 men came into a bar before, and apparently after the killings, one of whom was in coveralls who had blood on him.

Much of this is described in the dissenting opinion of Judge William Fletcher, who along with 10 9th Circuit judges dissented from a denial of Cooper's 2009 Petition for Rehearing en banc, Fletcher stated that "The State of California may be about to execute an innocent man". He describes the evidence in greater detail than I can here.

Judge Reinhart in his separate dissent said "This is case in which a man's life is at stake. Kevin Cooper may or may not be guilty, but serious flaws in our legal system have been exposed. An en banc review by our court would surely do no harm."

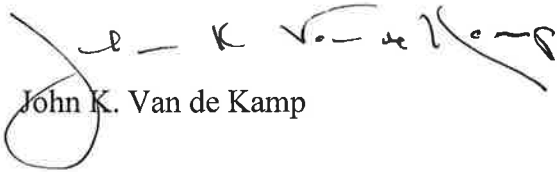
Judge Rymer, who wrote a concurring opinion, denying the Petition for Rehearing en banc, citing AEDPA (the Anti-Terrorism and Effective Death Penalty Act of 1996) notes Cooper prior state and federal court determinations finding no evidence of evidence tampering, and points to evidence tying Cooper to the crime, and that "no test on any item has ever pointed to anyone else as the killer, and that the district court found no evidence undermining evidence of actual guilt."

It seems clear that judicial review is at the end of the road. Barring new attempts to get judicial stays the case seems to be in your hands. Some have written to you calling for an independent investigation. Unquestionably, before making your decision, you should do all within your power to have the case investigated to determine if there is greater clarity with respect to the actual evidence in the case, with access to the latest scientific methodology available. Given the fact the case is now more than 30 years old, it is unlikely new evidence will be found.

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But ultimately, if certainty as to guilt cannot be found, I recommend commutation to life without the possibility of parole. And of course if you obtain evidence of innocence, a full commutation would be in order.

My best,

A handwritten signature in black ink, appearing to read "John K. Van de Kamp". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

John K. Van de Kamp