

At one minute past midnight on February 10th, the State of California plans to execute Kevin Cooper.

WE BELIEVE THAT SIGNIFICANT POST-TRIAL DEVELOPMENTS MUST BE EXPLORED BEFORE CALIFORNIA EXECUTES AN INNOCENT MAN

On the night of June 4, 1983, three members of the Ryen family and a houseguest were murdered in San Bernardino County. The only surviving eyewitness says three White or Hispanic men carried out the murders. There are serious allegations of evidence tampering. Police records show evidence was destroyed. DNA tests may have been altered.

Despite what has been described as “overwhelming” evidence against Kevin Cooper, numerous facts that were not presented at trial or were discovered subsequent to trial strongly support Mr. Cooper’s innocence. Those taken in conjunction with questionable facts, motive, and testimony presented at trial together show that execution is not appropriate. The following are highlights of issues that raise serious questions about Mr. Cooper’s guilt and about our criminal justice system if Mr. Cooper is executed for a crime he did not commit:

- **Jurors Said Prosecutors Had Barely Enough Evidence to Convict Cooper; But They Did Not Hear Critical Exculpatory Evidence** – After their deliberations, jurors reported that “If there had been one less piece of evidence, Kevin Cooper would today be out on the streets.” “In my mind, they had barely enough evidence...” Yet, these jurors did not hear crucial, material information that demonstrates Mr. Cooper did not commit the murders, including evidence that the victims were clutching hair that was not Mr. Cooper’s in their hands, evidence that a woman believed her boyfriend was involved in the murders and turned in bloody coveralls to support her suspicions, a convicted criminal admitted to the murders and corroborated Josh Ryen’s statements that three individuals murdered his family.
- **Surviving Victim of the Attack Claimed That Three, White/Hispanic Perpetrators Murdered His Family** – The only surviving victim, Josh Ryen, told police that his family and friend were murdered by three White or Mexican assailants. Hospital staff testified that right after Josh Ryen was brought in, he communicated that there were three assailants who had his skin color. Josh Ryen is white. Notes taken by Josh’s psychiatrist reveal that he stated, “Three Mexicans chased us around the house.” Mr. Cooper is African-American. When Josh saw a picture of Mr. Cooper on television during the manhunt for the murders, Josh said, “That was not the person that did it.” At trial, the prosecution downplayed Josh’s statements by saying, “he was only eight years old, had suffered incredible shock, and thus, his statement was not credible.”
- **Blond Hair Found in the Victim’s Hand** – Large clusters of blond hair were found in one of the victim’s hands, which were never tested or compared to other potential perpetrators of the crime. Mr. Cooper is an African-American, so the hairs are clearly not his. Another

victim was clutching a lock of brown hair, also clearly not from an African-American man.

- **Implausibility That One Person Could Kill Four People with Three Different Weapons in Less than Two Minutes** – The prosecution’s own forensic experts determined that Doug, Peggy and Jessica Ryen and Chris Hughes were killed, and Josh Ryen was severely injured, within minutes of each other with three different weapons: a hatchet, a knife and an ice pick. The coroner, Dr. Irving Root, testified at trial that he would have a difficult time envisioning that one person, using three different weapons, could control and kill four people – but then changed his testimony when the investigating officers presented their “one assailant” theory.
- **Evidence of Other Perpetrators** –
 - A week after the murders, Diana Roper contacted police to report that her boyfriend, Lee Furrows, came home wearing blood splattered coveralls the night of the Ryen Family murders. Ms. Roper, believing that Furrows was involved in the murders, gave the coveralls to the police. The police subsequently destroyed the coveralls without submitting them for testing or contacting Mr. Cooper’s defense team to advise them of this evidence. The police claim they were not relevant.
 - During a police interview, Ms. Roper told police that Furrows was wearing a beige t-shirt the night of the murders.
 - The police found a beige, bloodstained t-shirt approximately 1/2 mile from the crime scene, which t-shirt was determined to have Doug Ryen’s blood on it. Patrons of the rural bar right next to where the shirt was found reported seeing three, unfamiliar, white men at the bar the night of the murders. The bartender testified that one of three men was wearing a beige t-shirt, similar to the one that was found to have Doug Ryen's blood on it.
 - Ms. Roper also told police that Furrows owned a hatchet that was missing from his tool belt after the murders.
 - Consistent with Josh Ryen’s statements made immediately after the crime, eyewitnesses saw three or four people speeding away from the Ryen Family house in the family’s car, shortly after the murders were committed.
- **Corroborating Confession** –
 - A convicted felon, Kenneth Koon, confessed to his cellmate, Anthony Wisely, that he was involved with two other men in the Ryen Family murders. Koon and Furrows know each other. According to the cellmate, on the day of the murders, Furrows bailed an individual named Michael Darnell, out of jail. Furrows, Darnell, and Koon are three white men, all of whom share a criminal history, including one being convicted of a grisly murder. Koon told his cellmate that the Ryen murders were an Aryan Brotherhood “hit” gone wrong.
 - Jurors never heard evidence of the Koon confession or Diana Roper’s statements. As one prominent circuit court judge stated in a dissenting opinion, “Kevin Cooper may be executed without any court considering the merits of colorable evidence that another individual, Kenneth Koon, confessed to the murders.”
- **Crime Scene Was Destroyed, Making It Impossible to Reconstruct the Murders** – The trial judge stated several times that the evidence against Mr. Cooper had been mishandled and that “[w]ithout any criminalistics experience at all, [he] could have gone in

there and done a better job” than the police criminalist had done in collecting and preserving the evidence. As a result of the botched investigation and failure to preserve the crime scene, the defense was unable to present key evidence in response to the circumstantial evidence the prosecution used to convict Mr. Cooper.

- **Police Lied About Evidence That Was Used to Link Cooper to the Murders** – The first police officer to search the house next to the Ryen house said nothing about a hatchet sheath. Mr. Cooper was known to have taken shelter in this house located next door to the Ryen’s. Later, a hatchet sheath was found in that same room, in “plain view” smack in the middle of the floor. How was the newly found hatchet sheath explained? The first officer said he was never in that room. Yet, fingerprints taken from the room by the forensic experts show that he was in the room. No further explanation was offered.
- **Evidence Mishandling and Possibly Tampering** – Post-trial, at Mr. Cooper’s insistence, DNA testing was performed on certain evidence. The testing showed a match, but compelling questions regarding the handling of that evidence require that the evidence be further tested before a reliable conclusion can be drawn:
 - Single Drop of Blood: Although there was blood everywhere, only a single drop of blood in the entire crime scene could be tied to Mr. Cooper and that single drop of blood was found far away from the rest of the crime scene. This was the prosecution’s most important piece of evidence and the prosecution’s investigators essentially used all of it before the defense experts could fully test the sample to determine how it got there. The police took a sample of Mr. Cooper’s blood from him when he was arrested and stored it in a test tube containing EDTA preservative. The single drop of blood evidence was in the hands of the prosecution crime lab for months after they took the blood sample from Mr. Cooper. After obtaining the blood sample, the results started to match up much more closely than those performed under actual “blind” conditions before they had the sample of Mr. Cooper’s blood taken upon his arrest. EDTA preservative testing on the single drop of blood evidence, if any remains, would show whether that sample came from the blood drawn from Mr. Cooper after his arrest.
 - Blood-Stained T-Shirt: Post-trial, DNA testing on the blood stained t-shirt matched Mr. Cooper’s blood. Testing performed on the shirt at the time of trial found no blood consistent with Mr. Cooper’s. EDTA preservative testing is necessary for the same reasons.
 - Cigarette Butts: The prosecution contends that cigarette butts containing Mr. Cooper’s DNA were found in the missing Ryen Family car. The DNA matched cigarette butts were not there during the initial police report on the contents of the car. Strangely, cigarette butts that were identified in the abandoned house where Mr. Cooper was known to have stayed are unaccounted for. No one has ever explained the disappearance of the cigarette butts from the abandoned house and the emergence of cigarette butts in the Ryen Family car. No amount of testing will explain this discrepancy in the evidence.
- **Lack of Motive** – Prosecutors contend that Mr. Cooper killed the Ryen family and Christopher Hughes in order to steal the Ryen car and take their money. The keys to the Ryen truck were in the ignition (which was parked next to the supposed get away car, and several neighbors stated that the Ryens usually left their keys in their cars) and a substantial

amount of money and numerous valuable items in the house were left untouched.

- **Racist Climate During the Trial** – The trial was held in a climate of great racial hatred. An African American was being tried in the public opinion for the murder of a white family and houseguest. Jurors were allowed to stay on the jury that had been exposed to the press - - most of which was not relevant and yet was highly prejudicial. Graffiti was posted around the court house and jurors were exposed to it as they came and went to the trial. During the pretrial phase, a toy gorilla was hanged in effigy with a sign attached which read, “Kill the Nigger.”

Mr. Cooper and his defense team have asked authorities to submit the blond hairs found in the victim’s hand for testing. Mr. Cooper has also requested that authorities allow the t-shirt and blood drop found at the scene of the crime to be subjected to EDTA testing, and if properly preserved, would demonstrate that the blood was not the byproduct of the murders, but rather came from the sample of Mr. Cooper’s blood taken from him at the time of his arrest. EDTA testing would discredit crucial pieces of evidence linking Mr. Cooper to the murders and demonstrate the evidence was planted. Authorities have steadfastly refuse to allow such testing to take place.

Mr. Cooper is currently scheduled to be executed by the State on February 10, 2004.

San Francisco, California – Orrick, Herrington & Sutcliffe recently became involved in the case of Kevin Cooper, a death row inmate at San Quentin, through the Northern California Innocence Project. Based on the substantial evidence of Mr. Cooper’s innocence, Orrick agreed to assist in his direct representation, and is currently working on the case with individuals from the California Appellate Project and the Center for Capital Assistance.

For more info and to get involved:

Call California People of Faith Working Against the Death Penalty at 213/637-7402
or go to out website at: <http://detention.la-archdiocese.org/penalty.html>