PEOPLE'S RESPONSE TO PETITION FOR EXECUTIVE CLEMENCY FOR KEVIN COOPER

MICHAEL A. RAMOS
DISTRICT ATTORNEY
ROBERT C. BULLOCH (STATE BAR NO. 195056)
SUPERVISING DEPUTY DISTRICT ATTORNEY
SAN BERNARDINO COUNTY DISTRICT ATTORNEY
8303 HAVEN AVENUE, 1ST FLOOR
RANCHO CUCAMONGA, CALIFORNIA 91730
(909) 945-4216

ATTORNEY FOR THE PEOPLE

PEOPLE V. COOPER

TABLE OF CONTENTS

PEOPLE'S RESPONSE TO PETITION FOR EXECUTIVE CLEMENCY FOR KEVIN COOPER

INDEX AND DESCRIPTION OF EXHIBITS

EXHIBIT NO.	DESCRIPTION
1	*People v. Cooper* 53 Cal.3d 771 (1991) (Selected pages)
2	Judge Huff Order dated August 22, 1997 (Selected pages)
3	*Cooper v. Calderon* 255 F.3d 1104 (9th Cir. 2001)
4	DOJ Physical Evidence Exam Report (DNA) Jul. 7, 2002
5	DOJ Physical Evidence Exam Report (DNA) Sept. 24, 2002
6	Judge Kennedy's Order dated July 2, 2003
7	Judge Garner Sentencing May 15, 1985
8	Mary Ann Hughes (Mother of Chris Hughes) Impact Statement May 15, 1985
9	Letter of Joshua Ryen (Surviving victim) dated Jan. 13, 2004
10	Letter of Mary Ann Hughes (Mother of Victim Chris Hughes) dated Jan. 7, 2004
11	Letter of William (Bill) Hughes (Father of Victim Chris Hughes) dted Jan. 8, 2004

12	Letter of Cynthia Settle (Sister of Doug Ryen) dated Jan. 5, 2004
13	Letter of Robert Olin (Uncle of Chris Hughes) dated Jan. 8, 2004
14	Letter of Jane Carlone (Aunt of Chris Hughes) dated Jan. 7, 2004
15	Letter of Herbert Ryen (Brother of Doug Ryen) dated Jan.6, 2004
16	Statement of Mrs. Hughes dated April 22, 2005
17	Statement of Josh Ryen dated April 22, 2005
18	Statement of Mr. Hughes dated April 22, 2005
19	Declaration of Mary Ann Hughes dated Dec. 20, 2002
20	Declaration of William Hughes dated Dec. 20, 2002
21	Declaration of Richard Ryen dated Dec. 21, 2002
22	Declaration of Daniel Gregonis dated Dec. 19, 2002
23	Joint Forensic DNA Testing Agreement dated May 10, 2001 (Selected pages)
24	Dr. Ed Blake Letter dated Jul. 24, 2001
25	*Cooper v. Brown*, Filed Dec. 4, 2007 (selected pages)

26	Judge Huff's Order 2005 (selected pages)
27	Lori S. Trial Testimony, pp. 7956-7966
28	Lori S. Statement to Police, Oct. 9, 1982
29	Letter of Richard Ryen (Brother of Doug Ryen) dated Jan. 16, 2004
30	Governor's 2004 Clemency Decision
31	Dr. Thorton Trial Testimony, pp. 7574-7575
32	Dr. Root Trial Testimony, pp. 3931, 3951, 3952-3954, 3957
33	Judge So Order, May 10, 2001 (Transfer Ex. To DOJ)
34	SBSO Crime Lab Report LR 42326, June 6, 7, 8, 11, 12, 14 & Aug. 10, 1986 (selected pages)
35	Handwritten Notes 42376 Car Search V-1 thru V2—26
36	Testimony of Craig Ogino, Jun. 24, 2003, pp. 175-191
37	Testimony of David Stockwell, Jun. 24, 2003, pp. 217, 223-229
38	Josh Ryen Interview, June 14, 1986, 3 pp.
39	Dr. Forbes Interview

40	Abstract of Judgment Cooper LA County
	Defense Exhibit 1 (selected pages)
41	James Gordon Interview by Deputy G. Tesselaar, June 23, 1983, pp. 636-638
42	Trial Testimony of James Gordon pp. 4190-4198
43	Trial Testimony of Sister Joseph Ann James pp. 4171-4185
44	Trial Testimony of Sister Mary Harold Brauningart pp. 4186-4189
45	Interview of Herbert Gordon Mimms by Detective Woods pp. 3283-3284
46	Trial Testimony of Detective Michael Hall pp. 4215-4225
47	Trial Testimony of Edward Peters pp. 7974-7983
48	Trial Testimony of Kevin Cooper pp. 5494, 5546-5549
49	Trial Testimony of Dr. John Thorton pp. 7559-7561, 7574-7575
50a 50b	Diana Roper Interview by Deputy Eckley pp. 1002 Diana Roper Interview by Detective Stalnaker pp. 2777
51	William Kellison Interview by Detective Woods June 15, 1984, pp. N3017-N3018
52	Kathie Kellison Interview by Detective Woods June 14, 1984, pp. N3019

53	Calvin Booker Interview by Detective Roper dated Dec. 29, 1983 pp. 2339-2343
54	Judge So Ruling dated Jan. 14, 2011 (selected pages)
55	Letters of Det Clifford
56	Letter of Retired Sgt. O'Campo
57	Letter of Retired Lt. Neely
58	Letter to Governor Brown dated May 10, 2016 (Bill and Mary Ann Hughes)
59	Letter to Governor Brown undated (Kim Zolotar)
60	Letter to Governor Brown dated April 28, 2016 (Denise Beno)
61	Letter to Governor Brown dated April 28, 2016 (David Beno)
62	Letter to Governor Brown dated March 15, 2018 (Bill and Mary Ann Hughes)
63	Deputy Field's Report dated June 10, 1983
64	Trial Testimony San Bernardino Sheriff's Deputy Scott Fields (Vol. 101 pp. 6508-6513
65	Letter to Governor Brown dated April 20, 2018 (John P. Olin)
66	Letter to Governor Brown dated April 20, 2018 (Joshua Ryen)

67	Audio Josh Ryen Statement Federal Court 2005
68	Letter to Governor Brown dated April 29, 2018 (Stacey Ryen)
69	Letter to Governor Brown dated April 30, 2018 (Nico Lochart)
70	Letter to Governor Brown dated May 2, 2018 (Catherine Ryen)
71	Letter to Governor Brown dated May 3, 2018 (Vanessa Ahrens)
72	Letter to Governor Brown dated May 5, 2018 (Christine Ryen Mills)

PEOPLE v. KEVIN COOPER

PEOPLE'S OPPOSITION TO COOPER'S 3RD APPLICATION FOR CLEMENCY

INTRODUCTION

I.
CONVICTED KILLER COOPER'S THIRD PETITION FOR EXECUTIVE CLEMENCY

Convicted mass murderer, burglar, rapist, career criminal, and multiple-prison escapee Kevin Cooper (aka David Trautman, Chico Gaines, Angel Jackson) now makes his 3rd application for Executive Clemency. The District Attorney's Office is adamantly opposed to any grant of Clemency for this brutal killer who has lead a life of crime and been convicted of numerous violent and serious crimes on both sides of this country.

The surviving families of victims Christopher Hughes, Doug Ryen, Peggy Ryen, Jessica Ryen and surviving victim Joshua Ryen put their faith in the criminal justice system and have waited patiently for thirty-five years to see justice in this case.

Cooper arrived in California in 1983 as an escapee from Pennsylvania, where he had a lengthy criminal history for burglary, auto theft and escape. He was charged by prosecutors in both California and Pennsylvania for serious crimes including sexual assaults. Cooper raped his Pennsylvania victim who he also kidnapped, assaulted, car jacked and robbed when he was interrupted committing a residential burglary in Pennsylvania.

After his escape from authorities in Pennsylvania and subsequent arrival in California he committed additional residential burglaries. He was eventually caught, prosecuted under the assumed name of David Trautman and sentenced to state prison.

Cooper then escaped from the California State Prison in Chino and made his way into the victims' Chino Hills neighborhood. After hiding in a nearby vacant house for several days, Cooper made a nighttime entry into the Chino Hills home of Doug and Peggy Ryen. While inside Cooper brutally attacked and killed father and husband Douglas Ryen, wife and mother Peggy Ryen, daughter Jessica Ryen, neighbor Christopher Hughes and, left for dead son Joshua Ryen. The attack was particularly vicious, and Cooper used an ax and knife while striking each of the victims, including the children, numerous times.

Few cases have been subject to the scrutiny that this case has experienced. The jury by its verdict, the comments and rulings of the trial judge, as well as the decisions of each and every subsequent reviewing court, including the California Supreme Court, federal court and United States Supreme Court, have determined Cooper was convicted by "the overwhelming evidence of his guilt" that was presented at his trial.

Every judge that has presided over an evidentiary hearing dealing with alleged evidence tampering has determined that there was no evidence of tampering and that these defense claims were unfounded. These judges include Judge Garner, the trial judge, Judge Kennedy, who presided over the post-conviction DNA motions in San Diego, and United States District Judge Marilyn Huff. The rulings and decisions of those judges have been upheld by the reviewing state and federal courts as well as the California Supreme Court and United States Supreme Court.

Many of the issues raised in Cooper's current Clemency Petition, including those relating to the processing of the crime scenes, the collection and preservation of evidence, the initial contacts with Josh Ryen, the three men at the Canyon Corral Bar, Diana Roper and the coveralls, spotting of the Ryen station wagon, A-41, Lee Furrow, Kenneth Koon, were raised by Cooper's trial counsel, Dave Negus, and litigated at the preliminary hearing in 1983, the pretrial motions in 1984, and during the jury trial between 1984 and 1985.

Cooper has repeatedly throughout his life mislead others about his name, his identity, his prior history, his occupation and his mental condition to get out of trouble. He lied in Pennsylvania about his mental condition to get placed in a less-secure custodial setting from which he escaped. He lied to his Pennsylvania rape victim when she interrupted him during a residential burglary. He lied in California about his identity and prior criminal history to the police, his attorney, the judge and the probation officer as he proceeded through the court system on his residential burglaries charges. He also lied to California prison officials about his identity and prior history to get placed in medium security housing, and he lied to the Handys about his identity to obtain passage on their boat and escape law enforcement.

At his trial, Cooper testified for several days and denied his involvement in these crimes. The jury subsequently rejected his concocted story and convicted him of four counts of willful, deliberate, and premeditated murder and one count of willful, deliberate and premeditated attempted murder.

After Cooper's conviction was affirmed by the California Supreme Court and later affirmed by reviewing federal courts due to the overwhelming evidence of his guilt, he subsequently obtained permission for post-conviction DNA testing because he adamantly asserted the DNA would exonerate him. Cooper's own DNA expert, Dr. Blake, help select the items to be tested, which he asserted would be the items most relevant and likely to exonerate Cooper. Despite getting post-conviction permission to test more items, and specifically selecting the items, the results again overwhelming confirmed the jury's verdict and directly contradicted his bold untethered-to-truth assertions. Those post-conviction DNA results *all* corroborated the fact that Cooper alone was responsible for the Ryen/Hughes murders and the attempted murder of Joshua Ryen.

Like in many previous assertions, in trial, in the reviewing courts, and in media, Cooper's current Clemency Petition contains numerous factual and procedural misstatements and misrepresentations which will be addressed further in this opposition to clemency.

The Governor's role in this case should be to bring justice to the victims' families and surviving victim by respecting and upholding the decision of the jury and the rulings of the trial court, the California Supreme Court, Federal Courts, and United States Supreme Court.

The San Bernardino County District Attorney's Office requests that the Governor respect the verdict of the jury and the subsequent rulings of the trial judge, California Supreme Court, reviewing Federal Courts, and the United States Supreme Court and deny Cooper any further testing, investigation or hearing, and deny him Clemency. The

People request that Cooper's convictions and sentences stand and allow the justice that is long overdue for the victims and their families be carried out.

The People's response will outline the overwhelming evidence of Cooper's guilt, the lengthy 30-year review process Cooper has enjoyed and address the misstatements of fact and procedural history contained in Cooper's current clemency petition.

The People request that Cooper's richly-deserved death sentence be carried out.

II.

COOPER'S STATUS AS A TWICE CONVICTED FELON REQUIRES SUPREME COURT RECOMMENDATIONS BEFORE CLEMENCY

"The California Constitution authorizes the Governor to grant reprieves, pardons, or commutations after sentence has been entered, but prohibits the Governor from granting a pardon or commutation to a person twice convicted of a felony except upon the recommendation of the Supreme Court, 4 judges concurring." (Cal. Const., art V, subd. 8(a).)

Two of Cooper's many prior convictions were for two separate felony first-degree burglaries (Pen. Code § 459) committed in California in 1982/1983. When apprehended, Cooper lied about his identity and proceeded through the Los Angeles County Courts under the name of David Anthony Trautman. He pled guilty under that false name to both residential burglaries and was sentenced to California State Prison for 4 years under the

name of David Anthony Trautman.(P. Ex. No. 40 Abstract of Judgment Los Angeles County Superior Court, Central Division, Case. No. A386448).

In addition, Cooper also suffered several convictions for theft-related offenses in Pennsylvania prior to his arrival in California. He escaped from custodial settings in Pennsylvania approximately eleven times. (P. Ex. No. 26 Judge Huff pp. 10, 11). Finally, Cooper has convictions for the four counts of willful, deliberate and premeditated murder (Pen. Code § 187) and one count of attempted willful, deliberate and premeditated murder (Pen. Code § 664 and 187) in the present case.

Because Cooper suffered at least two prior felony convictions before he committed the four murders and attempted murder in the present case, the Governor must have the recommendation of the California Supreme Court with the concurrence of 4 justices before granting a pardon or commutation in this case.

For the reasons outlined below the People contend the Governor should not grant Kevin Cooper any of the relief he is now seeking in his 3rd Application for Clemency. Specifically, Cooper should not be granted clemency, nor any further review, independent investigation or additional scientific testing.

III.
OVERVIEW OF THE CASE
AND COOPER'S PRIOR CLEMENCY REQUESTS

Few crimes resonate in a community after more than 35 years like the murders in Chino, California, on June 4, 1983 at the Ryen household. Fewer yet have received the legal and community scrutiny this case has and it remains clear that overwhelming

evidence demonstrates escaped Chino Prison inmate Kevin Cooper murdered the Ryen family (Husband Doug Ryen, Wife Peggy Ryen, Daughter Jessica Ryen, visiting child Chris Hughes) and brutally tried to kill Josh Ryen.

In the over 34 years since the murders, Kevin Cooper has been afforded extraordinary due process in multiple legal forums, and in each turn, multiple judicial officers have affirmed his convictions and death sentence.

Former California Governor Arnold Schwarzenegger denied Cooper's request on January 30, 2004, in a written decision. Governor Schwarzenegger explained in his decision that he had given serious consideration to Cooper's case but concluded that the case did not warrant an investigation or a hearing. The Governor further concluded that Cooper's petition and supporting materials did not outweigh the circumstances of his crimes. Governor Schwarzenegger stated that Cooper's request for clemency was being denied due to the aggravating circumstances of these brutal murders and Cooper's long history of criminal conduct and violence against others. (P. Ex. No. 30.)

Cooper filed his second request for clemency on Friday, December 17, 2010. The request was filed when there was no execution date set. It was also filed just weeks before Governor Schwarzenegger was scheduled to leave office at the end of his second term. Yet again, on January 2, 2011, Governor Schwarzenegger declined Cooper's request for executive Clemency and stated such an extraordinary clemency request needed more than two weeks of attention.

Between Cooper's first and second clemency requests, United States District Judge Marilyn Huff conducted a lengthy evidentiary hearing in federal court in San Diego. Judge Huff concluded after the lengthy evidentiary hearing that Cooper was the one person responsible for these murders stating: "This Court has conducted mitochondrial DNA testing and EDTA testing, has heard testimony from forty-two witnesses, independently reviewed the evidence, including the trial and evidentiary hearing transcripts of all the parties' submissions and arguments. Based upon this careful review, this Court agrees with the post-conviction DNA results and all of the courts that came

before it in this case: Petitioner is the one responsible for these brutal murders." (P Ex. No. 2 and P Ex. No. 26 Judge Huff's Order pg. 159, lns. 13-15, selected pages.)

Kevin Cooper remains convicted of the brutal murders of Doug Ryen, Peggy Ryen, Jessica Ryen and Christopher Hughes and the equally brutal attempted murder of Joshua Ryen. The attack took place in the sanctity of the Ryen family home after the victims had gone to sleep. Those murdered by Cooper in the attack included Doug Ryen, age 41, a husband, father and chiropractor; Peggy, age 42, his wife and the mother of his children, who was also a chiropractor; their daughter Jessica, age 10; and Chris Hughes, age 11, a neighborhood friend of their son Josh who was spending the night.

The attack that took place on June the 4th or 5th of 1983 was unparalleled in brutality and callousness. Cooper, 25 years old, six feet tall, weighing around 180 pounds used a hatchet and knife in the nocturnal massacre. All the victims died from numerous chopping and stabbing injuries. Doug Ryen had at least 37 separate wounds, Peggy Ryen had at least 32 separate wounds, Jessica Ryen had at least 46 separate wounds and Chris Hughes had at least 25 separate wounds. Josh, who received a lesser number of wounds, including those to his head, back and throat, miraculously survived Cooper's attack despite being left for dead.

Immediately prior to the attacks Cooper hid in a nearby house (the Lease house) for two and one-half days before entering the Ryen house in the dead of night. From his hideout at the Lease home, Cooper could view the Ryen house, gather weapons of opportunity (a hatchet and knife) and plan his attack.

After realizing the Lease house would not provide a long term safe hide-out and after learning neither of his girlfriends would provide him with money or a means of escape from the area, Cooper left his hide-out and armed with weapons he took from the Lease house, Cooper approached and entered the Ryen home.

The attack played out in an understandable and clear sequence based on all the evidence. The parents Doug and Peggy were attacked first. Daughter Jessica was attacked next. The boys, Josh and Chris, who were awakened by family members' screams, were

attacked last. The boys left Josh's bedroom after the screaming had stopped, and walked down the hallway to the master bedroom where Doug, Peg, and Jessica had already been attacked and killed. Unbeknownst to them, the killer, Kevin Cooper, was still lurking in the house.

Chris Hughes entered the master bedroom next and was savagely attacked and killed. Josh entered the master bedroom shortly thereafter and was attacked from behind. He miraculously survived despite receiving serious wounds to his head, throat and back. The terror that the victims felt during this attack--particularly the young children--is beyond imagination.

Their killer, Kevin Cooper, was at the time of these attacks, an escapee of both the California Men's State Prison in Chino and the Mayview State Hospital in Pennsylvania. (Cooper later explained to his trial defense team that he faked mental problems in order to be transferred from prison to mental hospitals where it would be easier to escape.) Prior to his arrival in California, Cooper had also been arrested, charged, and convicted several times of theft-related offenses, including burglary and auto theft. He had escaped from custody in Pennsylvania numerous times as well, making his escape from Chino Prison his 12th escape from a custodial institution.

Between the time of his last escape in Pennsylvania and his arrest in Los Angeles for two residential burglaries, Cooper kidnapped, raped, assaulted, and stole a car from a teenage girl in Pennsylvania who interrupted him while he was committing yet another residential burglary. He threatened to kill the victim during the attack. He committed his sexual assault on the victim even after she begged him not to hurt her.

These acts of gratuitous violence were, without question, a premonition of the terrible things yet to come. The subsequent Chino Hills murders would also reflect the lessons he took from the Pennsylvania rape; i.e., don't leave fingerprints and don't leave witnesses.

Between the time of his attacks on the Ryen family and Chris Hughes and his capture, he sexually assaulted yet another woman in the Santa Barbara area. This sexual

assault was reported to law enforcement and led to Cooper's latest capture. (P. Ex. No 26 pp. 29)

The California Supreme Court found the evidence of Cooper's guilt to be "overwhelming." The Court spent numerous pages outlining the evidence establishing Cooper's guilt and linking him to the hide-out house (Larry Lease/Roger Lang house), the Ryen home, the Ryen station wagon and murder weapons.

Post-conviction DNA testing conducted in 2002 revealed substantial additional evidence of Cooper's guilt, which in combination with the evidence introduced at trial, constitutes conclusive evidence of Cooper's guilt. Specifically, the post-conviction DNA testing confirmed the earlier trial verdicts and multiple subsequent reviewing court decisions whereby it ratified Cooper's presence in both the Ryen home at the time of the attacks and the Ryen's station wagon, which was stolen after he committed the murders.

Additional scientific testing, conducted in 2004 after Cooper's execution was stayed by the 9th Circuit, failed to show that someone other than Cooper committed the murders despite Cooper's adamant and false assertions. Further, Judge Huff, after conducting a very lengthy evidentiary hearing in 2004, heard testimony from dozens of witnesses, independently reviewed the trial and post-conviction record, and determined, yet again, that Cooper alone was the person responsible for these brutal murders.

Current defense Counsel for Cooper in his third application for clemency makes many of same arguments that his original attorney made during the preliminary hearing, motions, and trial of the case. These arguments include: criticism of the crime scene processing and subsequent criminal investigation, failure to preserve certain items collected during the investigation, absence of motive, absence of eyewitness testimony, and the circumstantial nature of the evidence that established Cooper as the killer. Cooper's trial attorney addressed these issues in his arguments to the trial judge and jury. These claims were rejected by the jury, the trial judge, the California Supreme Court, federal courts and Governor Schwarzenegger. (P. Ex. No. 30.)

Cooper again complains in his newest Clemency Petition about evidence preservation and the procedures of the post-conviction DNA testing that resulted in

further highly incriminating evidence against him. Defense claims criticizing crime scene processing and evidence collection were also rejected by Cooper's jury, the trial judge, the California Supreme Court, reviewing federal courts, and California Governor Arnold Schwarzenegger.

After conducting a lengthy evidentiary hearing, Federal Judge Marilyn Huff concluded Cooper's allegations of evidence tampering to be without merit. (P. Ex. No. 2 and P. Ex. No. 26, Judge Huff's Order pg. 68, lines. 9-10, pg. 79, lines. 18-21.) Likewise, after an earlier lengthy evidentiary hearing in 2003, San Diego Superior Court Judge William Kennedy also concluded there was no merit to Cooper's claim of evidence tampering. (See P. Ex. No. 2, Judge Huff's Order pg. 85, lines 14-16; Judge Kennedy's Order and Findings are attached as P. Ex. No. 6.) Cooper's claim of actual innocence has also been heard and denied on the merits by the California Supreme Court. (P. Ex. No. 2 and P. Ex. No 26 Judge Huff, pg. 132, lines. 15-16.)

The People will set forth below with specificity and support from the decisions and orders by the trial judge, California Supreme Court, United States District Court Judge, State Superior Court Judge, Ninth Circuit Court of Appeals, records of the case, declarations, letters from the victims' families and other attached exhibits why Cooper's claims are without merit and should not result in a hearing, clemency, additional testing or investigation.

Based upon the extreme violence and brutality of the murders of Doug, Peggy, and Jessica Ryen, Chris Hughes, and the attack on Joshua Ryen, coupled with Cooper's prior criminal history and complete lack of any remorse, the People urge the Governor to find that Cooper is undeserving of any clemency or requested relief.

IV.

EVIDENCE OF COOPER'S GUILT PRESENTED AT TRIAL WAS OVERWHELMING

A.

CALIFORNIA SUPREME COURT FINDINGS AND DECISION

The California Supreme Court addressed the issue of Cooper's guilt at length. It spent approximately six pages of its opinion summarizing the extensive evidence of Cooper's guilt as set forth below. (P. Ex. No. 1 Cooper, pp. 795-800.)

> [T]he evidence of guilt was extremely strong. Many items of circumstantial evidence pointed to defendant's guilt. Some alone were quite compelling; others less so. In combination, the evidence established defendant's guilt overwhelmingly. (Emphasis added.)
>
> First, there was the fact of defendant's escape and hiding out at the house nearest the crime scene at precisely the time of the crime. Defendant left the house the very night of the murders. The Ryen house could be seen from the Lease house. Since defendant's telephonic appeals for help had proved vain, he desperately needed a means to get out of the area, a means the Ryen station wagon could provide. The hatchet that was one of the murder weapons came from within the Lease house, near the window through which the Ryen house was visible. The sheath for this hatchet was found on the floor of the very room defendant slept in. Items that could have been the remaining murder weapons were missing from the Lease house.
>
> In addition to these circumstances, there was the strong shoe print comparison evidence, the cigarette and tobacco comparison evidence, the match between defendant's blood type and the drop of blood in the Ryen house that was not from a victim, the bloodstained prison issue button on the Lease house floor, the bloodstained rope (not defendant's blood, consistent with a victim's blood) found in the closet of the bedroom defendant used, the blood in the Lease house shower and elsewhere, the hair comparisons, and the other evidence summarized earlier in this opinion.
>
> It is utterly unreasonable to suppose that by coincidence, some hypothetical real killer chose this night and this locale

> to kill; that he entered the Lease house just after defendant left to retrieve the murder weapons, leaving the hatchet sheath in the bedroom defendant used; that he returned to the Lease house to shower; that he drove the Ryen station wagon in the same direction defendant used on his way to Mexico; and that he happened to wear prison issue tennis shoes like those of defendant, happened to have defendant's blood type, happened to have hair like defendant's, happened to roll cigarettes with the same distinctive prison issue tobacco, and so forth. Defendant sought to discredit or minimize each of these items of evidence, but the sheer volume and consistency of the evidence is overwhelming.
> *(People v. Cooper* (1991) 53 Cal.3d 771 (*Cooper)* at pp. 836-837; emphasis added. P. Ex. No.1.)

An analysis of some of the specific items of evidence the California Supreme Court set forth in their opinion is mentioned below.

1. After his escape from C.I.M., Cooper hid for several days immediately prior to the murders in the Lease Home, the closest house to the Ryen's residence.

2. The Ryen home was clearly visible from the Lease home.

> b. *Evidence* of *Defendant's Guilt*
> Various items of circumstantial evidence connected defendant with the massacre.
> Defendant had been an inmate at CIM since April 29 under the name of David Trautman. On June 1, he was transferred to a minimum-security portion of the prison. The next afternoon, June 2, he escaped on foot.
> Undisputed evidence, including fingerprints, showed that after his escape, defendant took refuge in a nearby house owned by Larry Lease and brothers Roger and Kermit Lang (hereafter the Lease house). He slept in the closet of the bedroom nearest the garage. The Lease house was the closest neighbor to the Ryen house, about 126 yards away. The window by the Lease house fireplace provided a view of the Ryen house.
> Kathleen Silbia, an employee of Lease, had been living in the Lease house in May, and she had used the bedroom defendant later slept in (hereafter the Silbia bedroom). She moved out of the house during May. By May 27, most of her belongings had been removed. On May 30 and June 1, Bilbia vacuumed and cleaned portions of the house, including the bathroom she had used (hereafter the Bilbia bathroom). (*Id.* at p. 795, P. Ex. No.1.)

3. Cooper ended his final telephone call from the Lease house approximately one hour before the Ryen family and Chris Hughes returned home from a barbeque.

> Telephone records showed that two telephone calls were made from the Lease house to the Los Angeles area telephone number of Yolanda Jackson -- one lasting one hundred ten minutes beginning on June 3 at 12:17 a.m., and one lasting four minutes beginning at 2:26 a.m. the same morning. Two calls were also made from that house to the Pittsburgh, Pennsylvania telephone number of Diane Williams -- one lasting three minutes beginning on June 3 at 11:46 a.m., and one lasting thirty-four minutes beginning on June 4 at 7:53 p.m. This final call was only an hour or so before the Ryens and Chris Hughes left the Blade house for their unsuspected rendezvous with death.
>
> Yolanda Jackson testified that she visited defendant on May 30 at CIM. Sometime after midnight on June 3, she received a telephone call from defendant. She believed the call lasted about 30 to 45 minutes. Defendant said he had "walked out" of the prison. He asked her to help him in what Jackson believed was a "joking manner." She refused. Defendant asked her where he should go. She said she did not know. At one point in the conversation, defendant said he was getting a cigarette. Shortly after the first conversation ended, defendant called her again. A brief second conversation ensued. (*Cooper* at p. 796, P. Ex. No.1.)
>
> The parties stipulated that if Diane Williams were called as a witness, she would testify that in June she received two telephone calls from defendant at her Pittsburgh number. Defendant told her that he had been released from prison because of a new law that had been passed, and that he needed money. She said she could not get any. He said he would call back. Defendant called Williams again the next day, and asked if she had gotten any money. She replied that she had not. On June 6, Williams received a collect call from defendant in Tijuana, Mexico.
>
> On June 4, around 10 or 11 a.m., Virginia Lang visited the Lease house briefly to get a sweater. She noticed nothing out of the ordinary." (*Id.* at p. 796, P. Ex. No.1.)

4. A bloodstained khaki green button, identical to the buttons found on CIM inmate jackets, was found in the Bilbia bedroom where Cooper slept. Blood from the button could have come from one of the victims or from Cooper.

> After the murders, a bloodstained khaki green button was found on the rug in the Bilbia bedroom. It was identical in appearance to buttons on field jackets inmates wore at CIM, including one defendant was seen wearing shortly before his escape. The blood on the button could have come from defendant or one of the victims.
>
> A bloodstained rope was found in the Bilbia bedroom closet. It was similar, but not identical, to a length of bloodstained rope found on the driveway of the Ryen residence." (*Cooper* at p. 796, P. Ex. No.1.)

5. Luminol revealed the possible presence of blood in the shower of the Bilbia bedroom and on the rug in the hallway leading to the Bilbia bedroom. Cooper's footprint was found on the sill on this shower.

6. Human hair removed from the sink trap in the Bilbia bathroom of the Lease house was consistent with Jessica Ryen's hair. And hair removed from the shower in that bathroom was also consistent with Doug Ryen's hair.

> A criminalist from the San Bernardino County sheriff's crime laboratory sprayed various areas of the Lease house with luminol, a substance used to detect the presence of blood not visible to the naked eye. A positive reaction consisting of an even "glow" ranging from about two feet to five feet above the floor was obtained on the shower walls in the Bilbia bathroom. Defendant left his footprint on the sill of this shower. There were also four positive reactions to the luminol on the rug in the hallway leading to the Bilbia bedroom that appeared to be foot impressions. Other positive reactions were obtained in the bedroom closet and bathroom sink. The reactions did not prove the presence of blood, but were "an indication that it could be blood.
>
> Investigators found matted hair in the bathroom sink trap that appeared to have been there a long time. Other hair was not matted. A microscopic examination of one of the latter revealed characteristics similar to Jessica's head hair. A hair removed from the bathroom shower had characteristics similar to Doug Ryen's head hair. (*Id.* at pp. 796-797, P. Ex. No.1.)

7. The hatchet taken from Lease house where Cooper hid was found on the side of the road leading away from the Ryen home.

8. Human hairs on the hatchet were consistent with those of Doug and Jessica Ryen. The blood on the hatchet was consistent with that of Josh Ryen.

9. The sheath that covered the blade of the hatchet was found in the "Bilbia" bedroom where Cooper stayed.

> During the afternoon of June 5, a local citizen discovered a hatchet in some weeds next to a fence on the side of a road that led from the Ryen home out of the area. The fencepost above the hatchet had a small indentation indicating that something sharp had struck it. The hatchet was covered by bloodstains; its head was covered by dried blood and human hairs. Some of the hairs were consistent with those of Doug and Jessica Ryen. Some of the blood on the hatchet head could have come from Josh. Dr. Root, who performed the autopsies, concluded that the hatchet could have inflicted the chopping wounds.
>
> Witnesses identified the hatchet as missing from the Lease house after the killing. It had been kept in a sheath by the Lease house fireplace. Bilbia recalled seeing it by the fireplace when she was cleaning the house. On June 7, the sheath for the missing hatchet was found on the floor in the Bilbia bedroom. It had not been there when Bilbia vacated the room. (*Id.* at p. 797, P. Ex. No.1.)

10. Buck knives and an ice pick, which could have inflicted some of the injuries on the victims, were missing from the Lease house where Cooper hid. A strap fitting one of the missing knives was found in the bedroom Cooper used.

> Some buck knives and one or more ice picks were also missing from the Lease house. These could have inflicted the remaining injuries. A strap fitting one of the missing buck knives was found on the floor by the Bilbia bedroom closet. (*Id.* at 797, P. Ex. No. 1)

11. Three separate ProKed Tennis Shoe impressions, consistent with the size and pattern of the shoes given to Cooper at CIM were found in the following locations:

1) in the game room at the Lease house,

2) on the spa cover outside the Ryen master bedroom (which was the scene of the murders);

3) and in blood on the bed sheet in the Ryen master bedroom.

> Investigators found three significant shoe print impressions -- a partial sole impression on a spa cover outside the Ryen master bedroom, a partial bloody shoe print on a sheet on the Ryen bedroom waterbed, and a nearly complete shoe print impression in the game room of the Lease house. All three appeared to come from tennis shoes.
>
> James Taylor, an inmate at CIM who played on the same prison basketball team as defendant, issued equipment to other inmates. He testified that he issued defendant a pair of P .F. Flyer tennis shoes. Three or four days before defendant was transferred to minimum security (i.e., before June 1) defendant exchanged these shoes for a pair of "Dude" Pro Ked tennis shoes. Taylor did not remember what size shoes were issued to defendant. The Stride Rite Corporation sells Pro Ked tennis shoes to the state for use in institutions such as CIM. All "Dude" tennis shoes contain the same sole pattern. The general merchandise manager for Stride Rite testified that this pattern is not found on any other shoe that the company manufactures nor, to his knowledge (which was extensive), on any other shoe. The shoes are not sold retail, but only to states and the federal government.
>
> William Baird, the manager of the San Bernardino County sheriff's crime laboratory, compared the shoe print impressions from the Ryen and Lease houses to each other, to the type of shoes issued to defendant, and to other shoes. He concluded that the three shoe prints "all possessed a similar tread pattern, which would indicate a similar type shoe was used in each case." They "are consistent with one another, and . . . could have been caused by the same shoe." The pattern was similar to the "Dude" tennis shoes used at CIM, probably size 10, but possibly size 9 *1/2*. Baird searched area stores for shoes with similar sole patterns, but could find none. "The defendant testified that his shoe size was between nine and ten. Baird believed that the shoes that made the three impressions were nearly new but not brand new. (*Id.* at pp. 797-798, P. Ex. No.1.)

12. The Ryen family station wagon was taken after the murders. Bloodstains located inside the station wagon had the same blood type as some of the victims.

> The station wagon that was missing from the Ryen house was found on a church parking lot in Long Beach. One witness testified he put a flyer on the car on Sunday morning, June 5, the morning after the killing of the Ryen family. Another saw the car on June 7. Later, the vehicle was

reported to the police, who examined it for evidence.

> The car contained various bloodstains, including one which could have come from one or more of the victims, but not defendant. Several hairs were recovered from the vehicle. Two criminalists microscopically compared the hairs with defendant's hair. One believed that one of the hairs probably came from a Black person, and that "there was enough similarity between ... the hairs from Mr. Cooper and the unknown hair that I felt the unknown hair was consistent with coming from Mr. Cooper." The second criminalist also found it was consistent with defendant's hair. Both believed it was most likely pubic hair. Unlike fingerprint comparison, an absolute match is not possible when comparing hairs. (*Id*. at p. 799, P. Ex. No. 1.)

13. Loose prison issued "Role-Rite" tobacco was found in both the closet of the Bilbia bedroom in the Lease house where Cooper slept and on the floor board of the Ryen station wagon when it was recovered in Long Beach.

> James Taylor, the inmate who issued the Pro Ked tennis shoes to defendant at CIM, testified that he saw defendant smoke hand-rolled cigarettes using rolling paper and "Role-Rite" tobacco issued free to inmates. This tobacco is not sold retail, but only to institutions in California such as CIM.
>
> Loose tobacco was found inside a white box in the Bilbia closet, and in the Ryen car. In addition, two cigarette butts -one of a hand-rolled cigarette -- were found in the Ryen car. The tobacco in the white box was identified as Role-Rite. Criminalist Craig Ogino examined visually and microscopically the two samples of the loose tobacco and the tobacco from the hand rolled cigarette. Each sample was consistent with each other and with Role-Rite tobacco. Ogino also compared them with various other tobacco samples he obtained from a tobacco store. The other tobacco samples were all different.
>
> Aubrey Evelyn, a manager with the company that manufactures Role-Rite tobacco, also testified that he had "no doubt" that the tobacco found in the Ryen car was Role-Rite.
>
> Examination of the saliva on the two cigarette butts from the Ryen car was inconclusive, but was consistent with the cigarettes having been smoked by a nonsecretor such as defendant. Some commercial cigarettes were apparently

> missing from the Lease house. A Viceroy cigarette butt was found in the Bilbia bedroom. Bilbia did not smoke.
>
> A six-pack of Olympia Gold beer with one can missing was found in the refrigerator of the Ryen house. One bloodstained can was hanging over the edge of a shelf. A nearly empty can of Olympia Gold beer similar in appearance to those in the Ryen refrigerator was found in a plowed horse training arena about midway between the Ryen and Lease houses. (*Id.* at pp. 799-800, P. Ex. No. 1)

14. When Cooper was arrested weeks later he was still in possession of several items taken from the Lease home.

> On June 9, defendant met Owen and Angelica Handy in Ensenada, Mexico. Defendant, using the name Angel Jackson, asked for work. Handy offered defendant some food and a place to stay if he would help paint their boat, the Ilia Tika. Defendant agreed. After working on the boat for two days, defendant and the Handys set sail for San Francisco. They made several stops, then eventually went to Pelican Bay near Santa Barbara, where they stayed for four or five days. The Coast Guard arrested defendant at that location after he dove off the Ilia Tika, swam to a dinghy, and started to row for shore. While he was with the Handys, defendant possessed several items identified as coming from the Lease house." (*Id.* at p. 800, P. Ex. No.1.)

15. A drop of blood collected in the hallway at the Ryen home could not have come from any of the victims. [Trial Exhibit A-41]. When analyzed many of the serum protein and enzyme types of that drop of blood matched Cooper's profile.

> With one exception, all of the blood samples obtained from the Ryen house could have come from one or more of the victims. The exception is a single drop of blood found on the hallway wall opposite the master bedroom door.
>
> Daniel Gregonis, a criminalist with the San Bernardino County sheriff's crime laboratory, examined this drop of blood by a scientific process called electrophoresis. Human blood contains various enzymes and serum proteins. The types of enzymes vary from person to person. Electrophoresis is a technique used to distinguish between enzyme types, so as to exclude or include a person as a possible donor of a blood sample.[3] After electrophoretic testing, Gregonis concluded that the drop could not have

> come from any of the victims.
>
> Based upon results obtained for several enzymes, Gregonis also concluded that the drop was consistent with defendant's blood. Results for certain other enzymes were inconclusive. Because of various characteristics, the blood had to have come from a Black person such as defendant. One of the enzymes tested is commonly called "EAP." Gregonis initially believed the EAP of the drop of blood was type B. When he later typed defendant's own blood, Gregonis also believed it was EAP type B. Gregonis subsequently learned that defendant's EAP type was RB, a rare type. Gregonis had never before seen an RB type. He reexamined the photograph of the original testing of the drop of blood, but it was inconclusive as to whether it was EAP type B or RB. Gregonis testified, however, that when he tested the drop of blood, it appeared to have the same EAP type as defendant's blood. Brian Wraxall, another expert, described the difference between types Band RB as "fairly subtle."
>
> Before Gregonis learned of his error regarding defendant's EAP type, he and Dr. Edward Blake, an expert employed by the defense, tested the drop further. Because of the limited amount of the remaining sample, they performed tests that they believed had the best chance of excluding defendant as a possible donor. They did not retest for EAP. The additional tests tended to include defendant as a possible donor. Only a minute amount of the blood remained after these tests. Later, after Gregonis learned of his error regarding defendant's EAP type, he tried to test the remaining sample for EAP. Dr. Blake was again present. This final test completely consumed the sample and was inconclusive.
>
> Electrophoretic testing also established the blood on the rope found in the Bilbia bedroom closet could have come from one of the victims but not defendant. (*Id.* at pp. 798-799, P. Ex. No.1.)

The People contend that based upon the evidence presented at trial and later corroborated on each and every occasion it has been reviewed, there is no doubt that Kevin Cooper alone is responsible for the deaths of the Ryen family, Chris Hughes and vicious attack on Josh Ryen. The People urge the Governor to adopt the findings of the California Supreme Court in this regard.

B.

TRIAL JUDGE RICHARD GARNER'S DETERMINATIONS AND CONCLUSIONS

Trial judge Richard Garner made an independent determination of Cooper's guilt at sentencing. (P. Ex. No 7 Judge Garner's rulings at sentencing May 15, 1985, pp. 8144-8150) Judge Garner stated on the record:

> The Court has examined and reviewed all of the evidence that was presented to the jury, the trier of the fact, and in making this determination, the Court has also examined all of the exhibits admitted into evidence and studied the daily transcripts on both phases.
>
> The law, from all of the evidence admitted at the guilt phase, the Court is satisfied beyond a reasonable doubt, all reasonable doubt that the defendant, Kevin Cooper, is the one who entered the Ryen home and committed the various murders, and that he is thus guilty beyond a reasonable doubt, of Counts Two through Six. (P. Ex. No.7, p. 8145.)
>
> Now, some of the more particular points persuading me of the defendant's guilt are the following: The proof showed, apart from his own statements at trial, that he was in the hideout home next door, in effect to the Ryen home, for several days. He admitted that indeed he could not deny it. He was next door at least until 8:30 p.m. the night of the murder, a fairly short period of time before the crimes occurred.
>
> I am convinced that the hatchet in evidence was one of the murder weapons and that it came from the hideout house where the defendant spent a lot of time.
>
> I am convinced that the defendant stole the Ryens car; thought that that was adequately proved by the evidence found therein, particularly the tobacco, the same tobacco that was also found at the home was the same that comes from the state prison. (P. Ex. No.7, Judge Garner, p. 8146.)

Judge Garner further discussed the evidence linking the Ryen house to the Lease house where Cooper had hidden, A-41/Cooper's blood which was found in the Ryen house, evidence that established after the murders the killer returned to the Lease

house where Cooper stayed, took a shower and brought blood into that house, and Cooper's manner of flight out of the country as additional pieces of evidence that established Cooper's guilt. Judge Garner stated "It just simply strains my imagination to believe anybody else could have done it." (P. Ex. No.7, Judge Garner pp. 8147-8148.)

C.

SUBSEQUENT FEDERAL COURT FINDINGS AND CONCLUSIONS

Both Judge Huff, the United States District Court Judge who reviewed the entire trial court proceedings and subsequently conducted an evidentiary hearing, and the Ninth Circuit Court of Appeals concluded that Cooper was convicted by "overwhelming evidence of guilt". (P. Ex. No 2, Judge Huff's Order, Aug. 22,1997, pp. 1-3,49-50, 104-105; and P. Ex. No. 3, *Cooper v. Calderon* (9th Cir. 2001) 255 F.3d 1104)

Judge Huff commented on the evidence of Cooper's motives for committing the offenses as she referenced the following portion of the California Supreme Court opinion; "He had an obvious motive both for stealing the car--to get transportation away from the area—and--for killing the family--to facilitate the theft and gain time to perfect his escape." (P. Ex. No. 2, Judge Huff Order p. 49.)

Judge Huff also found that similarities existed between Cooper's previous Pennsylvania offenses (the burglary, kidnap, robbery, rape and car theft of a teenage girl after an escape) and the Ryen/Hughes killings. (P. Ex. No. 2 Judge Huff Order p. 24.)

After Cooper was denied clemency in 2004 United States District Court Judge Marilyn Huff again held a very lengthy evidentiary hearing. Cooper's claims relating to factual innocence, evidence tampering, the Pro-Ked Dude tennis shoes, other suspects, witnesses at the Canyon Corral Bar, the hair recovered from Jessica's hands, EDTA and post-conviction DNA testing were litigated and argued in a very lengthy evidentiary hearing. Additional scientific testing was ordered and conducted and forty-two witnesses were called to testify. Judge Huff also conducted an independent review of all the evidence including the trial and pretrial hearing transcripts. Judge Huff concluded after

the hearing and her independent review of the evidence that Cooper was the person responsible for the Ryen-Hughes murders. (P. Ex. No. 26, Judge Huff Order, pg 159.)

Cooper's case was again reviewed by the Ninth Circuit Court of Appeals after his clemency was denied in 2004 and after Judge Huff wrote her lengthy decision in 2005. That Court rendered its opinion in 2007, three years after Cooper's clemency was denied and two years after Judge Huff wrote her decision. Judge Rymer, in writing for the Ninth Circuit panel concluded, that the tests Cooper asked for to show "once and for all" his innocence showed nothing of the sort.

That Court discussed, and was not persuaded by, many of the same issues Cooper recycles in his current Clemency Petition including: the Pro-Ked tennis shoes, tan/blue t-shirt, post-conviction DNA testing, cigarette butts found in the Ryen station wagon with Cooper's DNA, Josh Ryen's statements to law enforcement, coveralls, Canyon Corral bar witnesses and many of Cooper's other claims. Ultimately, the court concluded that Cooper's claims of evidence tampering and withholding lacked merit.

Judge Rymer set out in detail the evidence that established Cooper was the killer in her ruling including:

> The facts are set out in meticulous detail in the district court's order. Order at 15703-32; 15796-810. Suffice it to summarize here that Cooper admitted staying in the Lease house; a blood-stained khaki green button identical to buttons on field jackets issued at the state prison from which Cooper escaped was found on the rug at the Lease house; tests revealed the presence of blood in the Lease's shower and bathroom sink; hair found in the bathroom sink was consistent with that of Jessica and Doug Ryen; a hatchet covered with dried blood and human hair that was found near the Ryens' home was missing from the Lease house, and the sheath for the hatchet was found in the bedroom where Cooper had stayed; Cooper's semen was found on a blanket in the closet of the Lease house; one drop of blood (A-41) that belongs to an African-American male, which Cooper is, was found on the wall of the Ryen hallway opposite where Jessica was found and post-trial DNA testing confirms that Cooper is the source of A-41; plant burrs found inside Jessica's nightgown were similar to burrs from vegetation between the Lease house and the Ryen house, and to burrs found on a blanket inside the closet where Cooper slept at the Lease house, and in the Ryen station wagon, which was missing when the bodies were discovered but turned up, abandoned, in Long Beach; two partial shoe prints and one nearly complete one found in or near the Ryens' house and in the Lease house were consistent both with Cooper's shoe size and

> Pro-Keds Dude tennis shoes issued at CIM that Cooper did not deny having; a hand-rolled cigarette butt and "Role-Rite" tobacco provided to inmates at CIM was in the Ryens' vehicle, and similar tobacco was in the bedroom of the Lease house; and a hair fragment found in the Ryen station wagon was consistent with Cooper's pubic hair. Cooper checked into a hotel in Tijuana about 4 o'clock on Sunday afternoon. (P. Ex. No. 25 attached selected pgs. *Cooper v. Brown* (9th Cir. 2007) 510 F.3d 870, 874-875.)

The court also found that the evidence of Cooper's guilt was overwhelming, and concluded, "As the district court, and all state courts, have repeatedly found, evidence of Cooper's guilt was overwhelming. The tests that he asked for to show his innocence "once and for all" show nothing of the sort. (P. Ex. No. 25, *Id.* at p. 887.)

The People again urge the Governor to respect and adopt the findings of the federal courts cited above in denying Cooper's renewed request for clemency or any additional testing or investigation.

D.

THE NATURE OF THE CRIMES ARE CONSISTENT WITH A SINGLE KILLER

Counsel for Cooper once again argues in his latest Clemency Petition the theory that multiple murder weapons must mean there were multiple assailants. However, Dr. Root, the pathologist who conducted all the autopsies and testified at trial, stated that just two weapons, a hatchet and a certain type of knife, could have caused all the wounds that inflicted death and great bodily injury on the victims. Two such potential weapons were determined to be missing from the Lease house where Cooper hid after he escaped prison. (No. 32, Trial transcript Dr. Root pp. 3931, 3951-54 and P. Ex. No. 1, *Cooper, supra*, 53 Cal.3d at pp. 795, 797.)

The fact that the weapons that could have caused death and great bodily injury to all the victims were taken from the Lease house when Cooper was hiding there is further evidence of his guilt and does not entitle him to clemency. The use of the recovered hatchet and missing knife are consistent with a single attacker, particularly one with Cooper's youth (age 25), physical stature (6 feet, 170-180 pounds) and who

was ambidextrous and had the element of surprise. The attack took place during the nighttime after the victims had retired for the evening. Doug and Peggy Ryen were not wearing any clothes when they were attacked by Cooper.

The sequence of the attack as provided by surviving victim Joshua Ryen also corroborated the fact that a single attacker committed these crimes. Specifically, the sequence established that father Doug Ryen, mother Peggy Ryen and daughter Jessica Ryen were attacked and killed first. Chris Hughes was attacked later after he left his place of hiding with Josh. Josh Ryen described that he was the last to be attacked after he no longer heard his friend's cries for help. Physical evidence also established that there was significant movement within the master bedroom by both Doug and Peggy Ryen during the attack. It also established that all three children, Jessica, Chris, and Josh all moved from their respective bedrooms down the hall to the master bedroom during the attack.

E.
STATEMENTS FROM SURVIVING VICTIM JOSH RYEN DO NOT EXONERATE COOPER

Contrary to Cooper's claims, surviving victim Josh Ryen's statements did not suggest he could no longer remember anything about the attack.

"The California Supreme outlined Josh Ryen's trial statements as follows:

> c. *Joshua Ryen's Statements*
> Joshua Ryen did not testify at trial. Pursuant to stipulation, two taped statements made by him were played to the jury -- a videotape of a December 9, 1984, interview in which he was questioned under oath by the prosecutor and defense counsel; and an audiotape of a December 1, 1983, interview with Dr. Lorna Forbes, his treating psychiatrist. Josh never identified anyone as the assailant.
>
> In the videotaped statement, Josh said that the evening before the murders, just before the family left for the Blade barbecue, three "Mexicans" came to the Ryen home looking for work. Josh had never seen them before. The family then went to the barbecue in the truck and later returned. Josh and Chris Hughes slept in sleeping bags on

> the floor in Josh's bedroom. Josh's parents slept in their bedroom, and Jessica slept in hers.
>
> At some point during the night, Josh woke up and fell asleep again. He was reawakened by a scream. Josh woke Chris up, and they walked down the hall, stopping at the laundry room. Josh saw Jessica in the hallway. He walked closer to his parents' room, and saw a "shadow or something" by the bathroom. It was dark. Josh could not see what the shadow was or what it was doing.
>
> Josh and Chris 'started getting a little scared.' Josh started to look around. The next thing he remembered was "just waking up" surrounded by the bodies of his parents.
>
> In the audio taped interview with Dr. Forbes, Josh said he heard his mother scream. He walked into her bedroom, and saw someone by the bed "turning his back against me." Josh "just saw his back and his hair." After his mother stopped screaming, and Josh "saw him," he went into the laundry room and hid behind the door. Chris went into the parents' room, and then "was gone." Josh then went into the bedroom and "he knocked me out." He thought the person was a man "because women usually don't do that sort of thing.
>
> Josh remembered talking to a deputy sheriff named "O.C" (Hector O'Campo). He told O'Campo he thought three men had done it because 'I thought it was them. And, you know, like they stopped up that night.' He did not actually see three people during the incident." (*Id.* at p. 801, P. Ex. No. 1.) (See also, P. Ex. No. 39, Dr. Forbes Interview with Josh.)

Josh mentioned only a single person (assailant) being in his home at the time of the murders in both his videotaped and audio taped statements that were submitted at trial.

Although Josh did not testify at trial, his previously recorded statements that were played for the jury did provide important information in several respects. First, they provided information as to the sequence of the attacks. Josh and Chris were asleep when the attacks started in the master bedroom. The screams and the attacks that caused them stopped before he and Chris left his bedroom. Chris was the fourth victim attacked. Josh was attacked last. Second, Josh only saw a single person (assailant) in his house during the attack. Third, he had previously told investigators that he "thought"

the three men who came by earlier in the day looking for work had done this. (P. Ex. No. 1, *Id.* at p. 801.)

Josh was severely injured during the attack including having suffered blows to his head. He was initially questioned after he lay in his own blood for hours next to his dead family and friend. He was unable to speak at all at first because of the injuries to his throat. He attempted to communicate with the first Sheriff's Deputy through a series of hand squeezes. (P. Ex. No. 1, *Id.* at pp. 794, 795)

It is ironic that counsel for Cooper now complains of Josh's limited memory at trial. Not only was any such loss attributable to the injuries Cooper inflicted on Josh's head, but Josh told a much more chilling account of the murders earlier to investigators (P. Ex. No. 38 Josh Ryen, June 14, 1983 interview)

Josh told investigators on June 16, 1983, it was still dark when he was awakened by his mother's screams. He woke Chris up and they both went toward his parents' bedroom. They saw Jessica lying in the hallway at the door to his parents' bedroom. She was already dead. (P. Ex. No. 38, p.2, Josh Ryen June 14, 1983 interview)

Josh looked into the bedroom and saw his father by the closet side of the room. Josh ran into the laundry room and hid. He heard Chris running in circles. Chris was calling out his name in a shrill/scream manner. (P. Ex. No. 38, p.2., Josh Ryen June 14, 1983 interview)

Josh eventually left the laundry room and went back into his parents' bedroom. He saw Jessica in the same position. He saw his mom lying on her back, nude. He saw his father lying in the same place. He went over and stood by Chris, who was lying on the floor by the ironing board dying. As he stood by Chris he felt himself get hit on the head. (P. Ex. No. 38, p. 3., Josh Ryen June 14, 1983 interview) The sequence of the events described by Josh are consistent with all the attacks being carried out by a single assailant.

Josh explained he thought the killer was a man because "women usually don't do that sort of thing". Josh also explained he thought three men were involved because, "like

they stopped by that night". He did not actually see three people at any time in his home during the incident.

It was Kevin Cooper who eliminated other witnesses and thought he permanently silenced Josh as well, but none of these claims support a claim of clemency.

F.

STATEMENT OF OTHER WITNESSES, INCLUDING AN ALLEGED NEW WITNESS, DO NOT EXONERATE COOPER NOR ENTITLE HIM TO CLEMENCY

Counsel for Cooper now submits a statement from an alleged newly discovered witness, a female adult who claims she saw the Ryen station wagon being driven the ***afternoon of June 5, 1983*** northbound on Indian Hill near the towns of Chino and Pomona. She claims the station wagon was occupied by three young white adult men and that it traveled northbound on Indian Hill and then entered the Interstate 10 freeway headed eastbound. She claims she did not call the police upon the advice of her father and out of concerns for the health and safety of her family. Cooper's counsel now argues this entitles Cooper to Clemency, a hearing, or a new investigation.

First, ***witnesses who testified at trial established that the Ryen station wagon was parked in a church parking lot in Long Beach on the morning of Sunday, June 5, 1983***. Witness James Gordon testified at trial that on Sunday, June 5, 1983, around 11:00 a.m., he placed two advertising leaflets on and in the Ryen station wagon. He testified that he placed one of the leaflets on the front window and another inside the vehicle through a partially opened window. The leaflets advertised the Casa Blanca Salon. Mr. Gordon placed these leaflets in and on the Ryen vehicle before the murders of the Ryen family and Chris Hughes were discovered. (See attached exhibits No P. Ex. No 42 trial testimony of Gordon James Jr. aka James Gordon Jr., and P. Ex. No. 41, Gordon James' interview with San Bernardino Sheriff's Department Det. Tesselaar and P. Ex. No. 1, *Cooper*, *supra* 53 Cal. 3d at pp. 771, 779.)

Detectives from the San Bernardino County Sheriff's Department later found these same leaflets on and inside the Ryen station wagon when they arrived days later. (P. Ex. No. 46 trial testimony of Det. Michael Hall RT 4215-4225) The trial testimony of Mr. Gordon James and Det. Hall and the discovery of the leaflets refutes the claims of Cooper's current attorneys that the Ryen vehicle was not in the church parking lot in Long Beach until days after the murders. (P. Ex. No. 42 and P. Ex. No. 46) Other witnesses, Sister Joseph James and Sister Mary Brauningart, saw the Ryen station wagon in the church parking lot on Tuesday June 7, 1983. (P. Ex. No. 43 Trial testimony of Sister Joseph James RT 4172-4174 and P. Ex. No. 44 Sister Mary Brauningart RT 4186.)

Two experts confirmed at trial that a pubic hair found in the stolen Ryen station wagon was consistent with Cooper's hair. Defense expert Dr. John Thornton also confirmed that plant burrs found in the Ryen station wagon were like the plant burrs found in the closet of the hideout house where Cooper slept, and the inside of Jessica's night gown. Dr. Thornton testified those plant burrs, known as Medicago, found inside Jessica's night gown were virtually identical to the plant burrs found in the bedding in which Cooper slept in at the Hideout House. (P. Ex. No. 26 Judge Huff's Ruling p. 26).

The trial testimony of Mr. Gordon also establishes that the proffered statement of the "newly-discovered" witness is inaccurate. The testimony of witness Mr. Gordon, also known as Gordon James, and evidence of the leaflets later found, place the Ryen vehicle in the church parking lot in Long Beach prior to 11:00 am on Sunday morning June 5, 1983. The physical evidence found inside the Ryen station wagon, including the plant burrs, pubic hairs consistent with Cooper's pubic hair, loose prison-issued tobacco and DNA on the cigarette butts establishes that Cooper stole the Ryen station wagon, and not three white men. This disproves the current defense claim that the Ryen station wagon was in Pomona or Claremont the afternoon of June 5, 1983, or that it was occupied by several white males at the time.

And this claim of other witnesses seeing the car is not newly discovered at all. Rather, it was presented and rejected at trial. For example, Cooper's trial counsel called witnesses at his trial in 1984-1985, including Mr. Leonard and Mrs. Paula Leonard, who claimed to

have seen several white males driving the Ryen station wagon shortly after the murders. The jury heard and rejected their testimony. Judge Huff also referred to their testimony in her ruling in which she determined that the evidence admitted at trial established Cooper alone was responsible for the murders. (P. Ex. No. 26 Judge Huff Ruling 2005 p. 159.)

Neither the trial testimony of Mr. Leonard and Mrs. Paula Leonard, nor the belated statements from the defense team's "new witness" entitle Cooper to clemency. They are both contradicted by the evidence presented at trial, which established that the stolen Ryen station wagon was already parked in a church parking lot before 11:00 a.m. on Sunday morning June 5, 1983, and the physical evidence and DNA which linked Cooper to the Ryen station wagon.

And as further support for their claims, Cooper's clemency counsel incorrectly suggest Cooper was not familiar with the Long Beach area and would have no reason for leaving the Ryen station wagon there. Long Beach is located in Los Angeles County. Prior to his sentence to state prison California, Cooper lived in Los Angeles County. Cooper was arrested in Los Angeles County for residential burglaries he committed in Los Angeles County. One of his girlfriends, Yolanda Jackson, lived in Los Angeles County. As presented in his trial in 1984, Cooper called Ms. Jackson in Los Angeles several times from the Lease house after his escape from prison and shortly before he committed the murders. (P. Ex. No. 1, *Cooper, supra* 53 Cal.3d at p. 796.)

After his arrest in Los Angeles County for two residential burglaries, Cooper was incarcerated in the Los Angeles County jail. While in this jail, he met and developed relationships with several individuals, including inmate Mims, who were from the Long Beach area. And when he took the stand in trial, Cooper confirmed and corroborated all these contacts with Los Angeles A County prior to his escape from California Institution for Men in June of 1983. (P. Ex. No. 45 Interview with inmate Mims, P. Ex. No. 50 Cooper's testimony at trial.)

G.

COOPER'S SELF-SERVING CLAIM OF ABSENCE OF MOTIVE DOES NOT ENTITLE HIM TO CLEMENCY

Counsel for Cooper claim the absence of motive and the senseless nature of the murders somehow raise questions as to his guilt. Cooper's trial attorney made this same argument to the jury and they resoundingly rejected this argument after Cooper's testimony at trial. However, notwithstanding clemency counsel's unsupported assertions, both the California Supreme Court and Federal District Court found clear evidence of Cooper's motives.

The first motive articulated was to steal the Ryen family car to get transportation out of the area. The second motive, already identified and considered, for killing the family was to facilitate the theft, gain time to perfect the escape and eliminate witnesses. (P. Ex. No. 1, *Cooper, supra,* at 832, P. Ex. No 1 and P. Ex. No. 2 Judge Huff Order p. 50) Judge Huff also found there were obvious similarities between the Pennsylvania offenses and the Ryen/Hughes crimes. (P. Ex. No. 2 Judge Huff Order, p. 20)

Cooper has demonstrated over and over that he will use grotesque and gratuitous violence to cover up his thefts and crimes. Similarities between these horrific murders in Chino, and Cooper's prior crimes and actions, also provide stark insight into the senselessness of the murders in this case.

In Pennsylvania, as in California, Cooper escaped from a custodial setting in which he found himself because of his criminal misconduct. In both cases he eventually needed a car to facilitate his escape out of the immediate area. In both cases, he stole a car. In both cases, he committed gratuitous acts of violence that were beyond any degree of force required to simply effectuate and cover up his car thefts and burglaries.

For example, when Cooper was in the process of the Pennsylvania residential burglary, he did not have to gratuitously open the door when a young teenage girl knocked on the door to visit her friend. But he did. After committing the burglary, then opening the victim's door to the young female visitor, then--beyond any need to accomplish his thefts--he kidnapped the young female visitor in a stolen car and raped her. Once the sequence is

considered, a clear pattern emerges demonstrating Cooper's sinister and evil methods. (P. Ex. No. 1, *Cooper, supra* 53 Cal. 3d at p. 840, and P. Ex. No. 27 Trial Transcript of rape victims Lori S. pp. 7956-7966 and P. Ex. No. 28, St Claire Police Reports, pp. 1-3 and P. Ex. No. 47 trial testimony of fingerprint expert Edward Peters). There was also a stipulation entered during the penalty phase of Cooper's trial that "Kevin Cooper was the man who abducted Lori S. on October 8th of 1982 from the Heath residence, kidnapped her, and later raped her in Frock Park. (P. Ex. No. 47, Cooper RT 7982).

Cooper's conduct in the Ryen/Hughes homicides was just an escalation of the criminal conduct he exhibited with his teenage female victim in Pennsylvania. Clearly he believed it worth the lives of a mother, father, and three children to be able to drive off and not have the car reported stolen until after he got where he wanted to go. Cooper could flee into Mexico before evidence was discovered that linked him to these murders.

Cooper also had a lot to lose if recaptured. He not only had his California State Prison sentence for two counts of residential burglary to complete, he was also facing serious consequences for the matters pending in Pennsylvania, including prison escape, robbery and rape. Those felonies included numerous pending felonies when he escaped, which were compounded by his burglary, kidnap, robbery and rape of Lori S. after he escaped from custody in Pennsylvania.

This conduct also ties in with his car accident. As mentioned below, that accident occurred while Cooper was driving yet another stolen car after an escape.

There is no evidence that Cooper was aware that the Ryen family often kept the car keys in the station wagon. But as his conduct in Pennsylvania demonstrated, sometimes simply stealing a car wasn't enough. Cooper demonstrated a tendency to escalate thefts or burglaries into over-the-top gratuitous violence.

There is no issue as to "absence of motive" that entitles Cooper to clemency.

H.

COOPER'S CRITICISM OF THE CRIME SCENE PROCESSING DOES NOT WARRANT CLEMENCY

Cooper claims the way the crime scene was processed deprived him of a fair trial and therefore he should be granted clemency. The trial court, after a lengthy evidentiary hearing, the jury after a trial, and later the California Supreme Court, and United States District Court and Ninth Circuit Court of Appeals after a lengthy review, have **all** concluded the investigators acted in good faith and there was no destruction of material evidence as set forth below.

> A lengthy pretrial evidentiary hearing was held. At the end, the court, although critical of aspects of the investigation found that all law enforcement authorities acted in good faith, and that there was no destruction of material evidence within the meaning of *Hitch.* The court refused to impose any sanctions, but invited the parties to 'present your best shots at the time of trial to the jury on credibility (P. Ex. No. 1, *Cooper, supra,* 53 Cal. 3d at pg. 810.)
>
> Although a perfect investigation might have uncovered additional evidence, the large amount that *was* discovered all pointed directly at defendant. Additional evidence would have been 'much more likely' to inculpate defendant that to exculpate him. (*California v. Trombetta, supra*, 467 U.S. at p. 489 [L.Ed.2d at p. 422].) Nothing in the record suggests that any additional evidence would have been exculpatory, or that any exculpatory value was apparent at the time any evidence was lost. (*People v. Daniels, supra*, 52 Cal.3d at p. 855.) (P. Ex. No.1, *Id.* at pp. 810, 811.)
>
> Defendant has also failed to show bad faith. The court below expressly found the investigators acted in good faith, a finding not challenged on appeal and fully supported by the record. This was a major and complex crime investigation. Although in hindsight one might criticize the investigation in a number of respects, the large number of persons involved all acted in good faith. (*Ibid.,* P. Ex. No. 1)

Judge Huff confirmed and adopted the entire state court proceeding and reached the same conclusion as in the 2004 federal hearing as set forth below:

> As an initial matter, this court notes that after holding a lengthy pretrial evidentiary hearing on these claims, at which

> the facts which thoroughly developed, the trial court concluded that all law enforcement authorities acted in good faith, and that there was no destruction of material evidence. Explaining his conclusion, the trial judge specifically noted that he had filled up ten notebooks, re-read testimony, and in general spent many hours analyzing these issues. (70 RT 6402-6404). Specifically regarding Exhibit A-41, the trial court concluded that all tests were conducted in good faith, and that there had been no denial of due process. (70 RT 6416-6417). (Judge Huff Order, Aug. 22,1997, pp. 50, 51, P. Ex. No.2.)
>
> ... In summary, based upon its own through review of the record, this court agrees with the trial court and with the California Supreme Court that all law enforcement authorities acted in good faith, and that there was no destruction of material evidence. (*Cooper, supra,* 53 Cal.3d at 811, P. Ex No.1.) (Judge Huff Order Aug. 22,1997, p. 50, 51 P. Ex. No.2.)

The Ninth Circuit Court of Appeals also affirmed the findings of Judge Huff and the trial court ruling that the police did not act in bad faith. (P. Ex. No. 3, *Cooper v Calderon supra,* 255 F.3d 1104*.)*

The California Supreme Court concluded that not only did the investigators act in good faith, they also discovered a large amount of evidence that pointed directly at Cooper. The Court also noted that any additional evidence that might have been discovered and preserved would have been "much more likely" to inculpate Cooper. (*Cooper, supra,* 53 Cal. 3d at p. 811). They were proven correct, as the recent post-conviction DNA tests results do just that.

Interestingly, the way the crime scene was processed was an issue raised by Cooper's original trial counsel at his preliminary hearing in 1983, and again during pretrial motions in Superior Court in 1984, and yet again at his trial in 1984/1985. After extensive evidentiary hearings and testimony on these issues the preliminary hearing magistrate, the trial judge, and later the jury, rejected the defense contentions that the manner in which the crime scenes were processed undermined the evidence of Cooper's guilt.

Further, at trial--it is significant to note--Cooper's own defense reconstruction expert, Dr. John Thornton, who testified at the trial, had no quarrel with the manner in which various key pieces of evidence were collected from the crime scene including, A-41, a drop of blood from the murder scene that was later determined to be from Kevin Cooper, the bloody shoe print collected from the Ryen master bedroom sheet, and the shoe wear impression on the spa cover outside the Ryen master bedroom. (Cooper RT 7559-7571, P. Ex. No. 48) Dr. Thornton also testified at trial that in his opinion the Sheriff's detectives kept an open mind during the investigation. (P. Ex. No. 31 trial testimony of Dr. Thornton RT 7574, 7575)

The manner in which the crime scene was processed does not call into question the validity of the conviction and certainly does not entitle Cooper to any consideration for clemency, nor does it entitle him to any further investigation.

I.

CIGARETTE BUTTS FOUND INSIDE THE RYEN STATION WAGON FURTHER IMPLICATE COOPER IN THE MURDERS

In the clemency petition, Cooper relies on two clearly refuted and rejected arguments regarding cigarette butts found in the Ryens' car when it was recovered in Long Beach after the murders. First, he claims there is an issue with the discovery of the cigarette butts and secondly, in the chain of custody. He also claims there are no reports documenting this event. He is incorrect on both counts. The report of Criminalists Stockwell and Ogino, who collected the cigarette butts from the Ryen station wagon are attached as P. Ex. No. 34. That report documents the June 11, 1983, collection of both V-12, the hand rolled cigarette butt from the crevice in the passenger side of the front seat, and V-17, the filter cigarette butt recovered from the front passenger floor of the Ryen station wagon. (P. Ex. No. 34 See pp. 9 & 10) Attached as P Ex. No. 35, are handwritten notes from the criminalist that documents the collection of those two items as well.

Both Criminalists Ogino and Stockwell testified at the preliminary hearing and later at trial as to the recovery of these items from the Ryen car in Long Beach. The

California Supreme Court never did discuss chain of custody as an issue as to these items. (P. Ex. No. 1, *Cooper, supra,* 53 Cal. 3d at pp. 799, 800.)

Both Ogino and Stockwell also testified in Judge Kennedy's courtroom on June 24, 2003. Criminalists Ogino and Stockwell testified as to the location and circumstances of the collection of both cigarette butts from the Ryen station wagon. (P. Ex. No. 36, Motion Transcripts June 24, 2003, pp. 188-193,217 and P. Ex. No. 37, pp. 223-229.)

Counsel also suggests there was no documentation of the collection of any cigarette butt from the bedroom in the Lease house that Cooper occupied before the murders. This is incorrect and not supported by the record. The documentation is described in the exhibits listed above, including the testimony of Ogino and Stockwell in Judge Kennedy's courtroom on June 24, 2003, twenty years after the crimes. (P. Ex. No. 36 and P. Ex. No. 37.) Judge Kennedy commented in his order that chain of custody was established as to the items in question, including the cigarette butts from the Ryen car. (P. Ex. No. 6, Judge Kennedy Order p. 10)

There is no issue as to the chain of custody of the cigarette butts (one of which was hand rolled and contained the same type of prison issued tobacco the Cooper took with him when he escaped, that were recovered from the stolen Ryen car and subsequently determined to contain Cooper's DNA after Cooper's counsel successfully argued for post-conviction DNA testing.

This contrived issue does not entitle Cooper to any clemency consideration. It does, however, shed some light on Cooper's request for the original DNA testing. When the results didn't turn out in his favor, he complained about chain of custody and contamination. This bought him more undeserved delays.

J.

JURY'S DETERMINATION OF GUILT AND DEATH SENTENCE

Counsel for Cooper argues the length of time the jury took in their

deliberations suggests there is doubt and illegitimacy of the verdicts. The California Supreme Court commented on the length of the jury's deliberation as follows:

> The trial lasted over three months. Dozens of witnesses testified, some about complex scientific testing. Well over 700 exhibits were admitted into evidence. This was a capital case. It is not surprising that the deliberations were protracted. Even accepting defendant's time estimate, the length of the deliberations demonstrates nothing more than that the jury was conscientious in its performance of high civic duty. (*Cooper, supra,* 53 Cal. 3d. at p. 837, P. Ex. No.1.)

The length of the jury deliberations does not entitle Cooper to clemency.

Trial Judge Richard Garner independently concluded that there was proof beyond a reasonable doubt of Cooper's guilt when he ruled at Cooper's motion to modify the verdict on May 15, 1985. (P. Ex. No. 7, Judge Garner Sentencing May 15, 1985, pp. 8144-8150) Judge Garner stated he was convinced Cooper hid at the Lease House until shortly before the murder, that the hatchet stolen from the Lease house was one of the murder weapons, that Cooper stole the Ryen car, that Cooper's blood was found in the Ryen home (A-41), that, after the murders, Cooper cleaned up and washed blood off himself in a shower at the Lease house after the murders, and that Cooper changed his escape plans after the murders and left the country.

Judge Garner also stated that the cool, calculated, and deadly way Cooper killed the victims, the circumstances of the crimes and the nature of the wounds, coupled with Cooper's violent conduct raping the victim in Pennsylvania, and his prior felony convictions in Los Angeles County, made the death sentence appropriate in this case. (P. Ex. No. 7, Judge Garner comments May 15,1985, pp. 8150, 8750)

In fact, Judge Garner felt so strongly that the death sentence was appropriate in Cooper's case that he stated that to do anything other than deny Cooper's motion to modify the verdict or sentence would be arbitrary and a capricious act and against the Court's sworn duty to uphold the law of the State of California. (P. Ex. No. 7, Judge Garner, p. 8151)

K.

DISAGREEMENT OVER PENALTY PHASE STRATEGY DOES NOT ENTITLE COOPER TO CLEMENCY

Counsel for Cooper also argues that the nature of evidence offered by his attorney during the penalty phase of the trial entitles him to clemency. However, Judge Huff noted that Cooper's trial attorney did call members of the defendant's family to testify on his behalf that he was adopted, yet loved and cared for, and a talented artist. Judge Huff noted Cooper's attorney made a sound tactical decision not to open the door to Cooper's prior bad acts by attempting to offer evidence of his good conduct. These prior bad acts included: twelve prior escapes, driving a stolen car after an escape from a juvenile facility at the time of his automobile accident, admitting he had falsely claimed to hear voices in the past to manipulate the criminal justice system and into the mental health system, that Cooper had been in continuous trouble with the law since the age of seven, and that Cooper had committed numerous prior acts of violence. (P. Ex. No. 2, Judge Huff's Order Aug 22, 1997 pp. 22-25)

A summary of Judge Huff's comments on this issue is set forth below. (P. Ex. No.2.)

> . . . However, given trial counsel's testimony at the evidentiary hearing that petitioner had escaped from *twelve* prior institutions, including the California Institute for Men, Mayview Mental Hospital in Pennsylvania, and a number of juvenile facilities, this court finds trial counsel's decision not to get into this line of questioning was a sound one. In addition, the record shows that trial counsel *did* in fact present testimony that petitioner was a talented artist. 107 RT 8066. (Emphasis in original.)
>
> ... As to petitioner's now raised contentions that he was unloved, this is directly contradicted by the sworn testimony of petitioner's family at trial, that he was loved and cared for and had a good relationship with his family members and relatives. (107 RT 8058-8069.)
>
> Petitioner also alleges that the trial counsel should have presented evidence that petitioner had a frontal lobe injury from an automobile accident which occurred when he was thirteen. However, counsel specifically testified at he

> evidentiary hearing that he made the tactical decision not to offer any evidence of mental deficiency, based upon his belief that this would allow the prosecution to present a number of 'bad facts' to the jury, including the fact that petitioner had in the past admitted that he falsely claimed to hear voices in order to get out of the criminal justice system and into the mental health system, which ultimately resulted in his escape from the Mayview facility. Trial counsel also explained that although he was aware of the car accident, he was also aware that petitioner had stolen the car following an escape from a juvenile facility. . .
>
> Counsel also testified that he made the tactical decision not to offer character evidence, based upon his belief that this would again allow the prosecution to present a number of 'bad facts' to the jury, including the fact that petitioner had been in trouble with the law on a constant basis since he was *seven* years old, and had in fact committed numerous acts of violence. . .
>
> Petitioner additionally alleges that trial counsel failed to present evidence that petitioner's past behavioral conduct did not fit the image of the perpetrators of these crimes. This court disagrees, and finds that given the similarities that existed between petitioner's previous Pennsylvania offenses and the crimes he was on trial for, defense counsel could not have argued that based upon petitioner's past behavior, he did 'not fit the image' of the perpetrator of these crimes. In addition, given that defense counsel's strategy of emphasizing the weaknesses in the prosecutor's case and arguing lingering doubt was tactically sound, this court finds that focusing the jury's attention on the prior violent Pennsylvania crimes, which included a forced break-in which resulted in a kidnap and rape, would have severely undercut counsel's lingering doubt argument.
>
> In summary, this court finds that by calling Melvin Cooper (adoptive father), Calvin O'Neal (godfather), Gloria O'Neal (godmother), Sandra Cooper Thomas (sister) and Esther Cooper (adoptive mother), trial counsel presented a very credible sympathy defense. (P. Ex. No. 2, Judge Huff Order, Aug. 22, 1997, pp. 22-25.)

Counsel for Cooper is partially correct in that the trial jury did not hear extensive evidence about Cooper's background. They did not hear about his twelve prior escapes, his lengthy criminal history dating back to age seven, and his attempts to fake mental

illness to avoid responsibility for his criminal conduct. None of these factors would have helped Cooper in the penalty phase of the trial and none of them entitle him to clemency. They paint a picture of a criminal totally undeserving of any clemency consideration. In fact, past criminality is so important and critical in the consideration of a grant of clemency that the California Constitution will not even permit a grant of clemency, to a person such as Cooper - who was a twice convicted felon prior to the Ryen/Hughes murders, absent authorization from the four Supreme Court Justices. (Calif. Const., art. V, § 8.)

V.

POST-CONVICTION DNA TESTING RESULTED IN ADDITIONAL COOPER-INCRIMINATING EVIDENCE

Notwithstanding the volume and consistency of the overwhelming evidence at Cooper's trial *(*P. Ex. No. 1, *Cooper, supra,* 53 Cal. 3d at pp. 836-837.), and subsequent to the passage of Penal Code section 1405 the People agreed to have certain DNA testing performed. The agreement specified the items of evidence to be tested, how they were to be shipped, and the method of DNA testing. (P. Ex. No. 23, Joint Forensic DNA Testing Agreement.)

Pursuant to the agreement, the evidence to be tested was shipped to the DOJ DNA Laboratory in Berkeley from two locations: the San Diego Superior Court and the San Bernardino County Sheriff's Identification Division. (P. Ex. No. 33, Judge So Order, May 10, 2001.) The items shipped from the custody of the San Diego Superior Court Evidence Clerk were: trial exhibit 584A, a hand-rolled cigarette butt recovered from the Ryen station wagon in Long Beach (Laboratory item #V-12); trial exhibit 42, a hatchet (one of the murder weapons); the major portion of a T-shirt found near the Canyon Corral Bar (trial exhibit 169; Laboratory Item CC); and trial exhibit 97 (containing a button found in the Lease hideout house bedroom). (P. Ex. No. 33, Judge So Order, May 10, 2001.)

The remaining items to be tested were shipped by the San Bernardino County Sheriff's Identification Division. Those items were: a manufactured cigarette butt (Laboratory item #V-17), found in the Ryen station wagon in Long Beach; the cutout portion from the same T-shirt referred to above, which remained in the custody of the San Bernardino County Sheriff's Identification Division following Cooper's trial; hair recovered from the hands of the victims; the remains of bloodstain A-41 (the drop of blood found in the hallway outside the Ryen master bedroom); and the reference hair and blood samples from Cooper and the victims. (P. Ex. No. 23, DNA Testing Agreement at pp. 2-5.)

The agreement provided for STR Profiler Plus DNA testing to be performed by the DOJ Berkeley DNA Laboratory on the specified items of evidence in two stages: "blind" STR Profiler Plus DNA testing was to be performed first on specified pieces of crime scene evidence, followed by STR Profiler Plus DNA testing on the known exemplars from Cooper and the victims. (P. Ex. No. 23, DNA Testing Agreement at p. 11.) The "blind"[1] test results from the crime scene evidence would then be compared with the results obtained from the known reference samples from Cooper and the victims. *(*P. Ex. No. 23, *Id.* at pp. 11-12.)

The DNA testing provided for by the Agreement was completed prior to September 24, 2002. The results are summarized in the Physical Evidence Examination Report dated July 7, 2002, and in the Supplemental Report dated September 24, 2002, copies of which are attached as P. Ex. No. 4 and P. Ex. No. 5

The Supplemental Report concludes that the DNA testing provides "strong evidence" (P. Ex. No.5) that Kevin Cooper is the donor of the DNA extracted from: the drop of blood found in the hallway outside the Ryen master bedroom, saliva from the hand-rolled and manufactured cigarette butts found inside the abandoned Ryen station wagon, and the blood smears on the T-shirt found near the Canyon Corral Bar. Cooper's

[1] "Blind" testing refers to the procedure whereby the DNA testing on the items taken from the crime scene containing genetic profiles of unknown donors are completed first, then the second; the known blood samples from the victims and suspect are tested to determine their genetic profiles.

DNA profile is consistent with the DNA profiles obtained from each of those items of evidence. The probability estimates with respect to these several items of evidence are reported on page 2 of the Supplemental Report. (P. Ex. No.5, pp. 1-3.) The major donor DNA profile from A-41A (extracted from the bloodstain found in the hallway outside the Ryen master bedroom) is estimated to occur at random in the population with a frequency of approximately 1 in 310 billion for African Americans, 1 in 270 billion for Caucasians, and 1 in 340 billion for Western Hispanics. (P. Ex. No.5.) The corresponding probability estimates for the other items of crime scene evidence listed in the Supplemental Report range from approximately 1 in 12 million to 1 in 19 billion. *(Ibid.)* The DNA test results obtained pursuant to the Agreement which do not match Cooper are all consistent with the victims' DNA profiles. No unknown DNA profiles resulted from the testing performed pursuant to the Agreement. (P. Ex. No.5.) The major bloodstain on the T-shirt matches victim Doug Ryen's DNA profile.

This is no longer a case in which no DNA testing has been done. Extensive DNA testing has already been done, and it has been done on the most relevant, probative evidence. In his July 24, 2001, report, (P. Ex. No. 24, Dr. Blake Letter July 24, 2001, p. 4), Cooper's own DNA expert, Dr. Edward T. Blake, stated that the "most relevant biological evidence in this case is contained within the blood and cigarette butt evidence described above." (P. Ex. No. 24, p. 4, emphasis added.) Dr. Blake had been one of the defense experts on the Cooper defense team prior to trial, at trial, and during the post-conviction DNA testing procedure. Dr. Blake participated in some of the joint serological testing of A-41 in 1983/1984 and in the DNA testing in 2002.

The STR Profiler Plus DNA result obtained from trial exhibit A-41A found that the major donor (the drop of blood found on the hallway wall outside the Ryen master bedroom) has been determined to match Cooper's DNA profile. (P. Ex. No.5 at pp. 1-2.) The probability of a random match is approximately 1 in 310 billion for African Americans, 1 in 270 billion for Caucasians, and 1 in 340 billion for Western Hispanics. *(Id.* at p. 2.)

The evidentiary significance of this result is twofold. First, at trial Cooper testified at length and denied ever "approaching the Ryen house." *(*P. Ex. No. 1, *Cooper, supra,* 53

Cal. 3d p. 802.) Second, the presence of Cooper's blood inside the Ryen home indicates that he was injured and bled at the crime scene. The DNA result obtained from A-41 places Cooper inside the Ryen house, in the middle of the crime scene.

The STR Profiler Plus partial profile DNA results from both cigarette butts that were recovered from the Ryen station wagon in Long Beach also have particular significance when considered with the other evidence introduced at trial. They establish that Cooper took the Ryen station wagon to make his escape after committing the murders.

There was a massive manhunt for Cooper after he escaped from Chino and there was evidence at trial that, shortly prior to committing the murders, Cooper had made telephone calls from the hideout (Lease) house in an unsuccessful attempt to get assistance to further his escape. *(*P. Ex. No. 1, *Cooper, supra,* 53 Cal.3d at p. 796.) The partial DNA results obtained from the two cigarette butts fortify the conclusion stated by the California Supreme Court that Cooper "had an obvious motive both for stealing the Ryen car – to get transportation away from the area - and for killing the family - to facilitate the theft and gain time to perfect his escape." *(*P. Ex. No. 1, *Id.* at p. 832)

The STR Profiler Plus DNA results obtained from the T-shirt found by the roadway near the Canyon Corral Bar provide new and further incriminating evidence against Cooper which was not available at the time of his trial. Blood on the cutout portion of the T-shirt (DOJ item CC-1 B) matches Doug Ryen's blood. (P. Ex. No.5 at p. 3.) In addition, several faint blood smears/spatters were found during the course of the STR Profiler Plus testing on the rest of the same T-shirt (trial exhibit 169; Laboratory Item CC). Partial STR Profiler Plus DNA profiles obtained from those faint blood smears/spatters match Cooper's DNA profile. (P. Ex. No.5, at p. 3.) It is important to note that these faint blood smears/spatters, from which partial DNA profiles matching Cooper were obtained, were found on trial exhibit 169 (Laboratory Item CC), i.e. the portion of the T-shirt that remained in the custody of the San Diego Superior Court, Evidence Clerk, since the time of Cooper's trial in 1984 and 1985. Those blood smears/spatters matching Cooper were not found on the cutout portion of the T-shirt,

i.e., they were not found on the part of the T-shirt which remained in the custody of the Sheriff's Department since the time of trial.

The T-shirt was found by the side of a road which connected the Ryen home with a freeway system that eventually leads to Long Beach, where the Ryen station wagon was found abandoned. The STR Profiler Plus DNA results from this T-shirt establish the presence of Cooper's and victim Doug Ryen's blood on the same article of clothing. The T-shirt DNA results provide significant additional evidence establishing Cooper's guilt.

The DNA test results obtained from the foregoing evidence and, additionally, blood stains on the hatchet consistent with the DNA profiles of the victims (P. Ex. No. 5, p. 3) have, in combination with the evidence presented at trial, conclusively established Cooper's guilt beyond the shadow of any doubt.

Conveniently, Cooper attempts to undermine the recent DNA testing results by making the salacious claim that Criminalist Gregonis might have contaminated or tampered with the evidence in August of 1999. However, his unsupported assertion in this regard ignores the consistent DNA test results that were obtained from the hand-rolled cigarette butt found in the Ryen vehicle after its recovery in Long Beach (DOJ-5, crime lab item V-12) and from faint blood smears/spatters on the T-shirt (DOJ-6) found near the Canyon Coral Bar. The partial DNA profiles obtained from these items (DOJ-5 and DOJ-6) match the corresponding portion of the full DNA profile obtained from A-41A major donor and Cooper's DNA profile. All these items were in the custody of the San Diego Superior Court Exhibit Clerk from 1984 until 2001, when they were shipped directly to the DOJ Berkeley DNA Laboratory for analysis. Gregonis has had no contact since the time of trial with either the hand rolled cigarette butt (DOJ-5, crime lab item V-12) or the portion of the T-shirt on which the blood smears matching Cooper's partial DNA profile were obtained (trial exhibit 169). Cooper cannot explain the consistent DNA test results which have been obtained from evidence Gregonis had no contact with in 1999, and as to which he has had no contact since the time of Cooper's trial. The items that have remained in the custody of the San Diego Superior Court Evidence Clerk operate as an

independent control on the DNA results obtained from the items that were in the custody of the Sheriff's Department.

Criminalist Gregonis also provided a declaration and testified at the evidentiary hearing held before Judge Kennedy on June 23, 2003. (See P. Ex. No. 22; Declaration and Motion Testimony of Dan Gregonis pp. 97, 99-107,110-117,122-123, 128-129, 131-133.) Mr. Gregonis explained in detail in his declaration and during his testimony that the reasons for his check on certain items of evidence were because he was requested to determine if they were still available for testing. He located some of the items, while others were later determined to be in the San Diego Superior Court Exhibit Room. He testified he never tested nor contaminated any of the items. (P. Ex. No. 22, Gregonis Declaration Motion Testimony.)

Judge Kennedy found at the end of the hearing that there was no evidence that any law enforcement personnel tampered with or contaminated any evidence in the case. Judge Kennedy's discussion of this issue in his ruling is set forth below.

> However, at the hearing Respondent called several San Bernardino law enforcement personnel to establish the chain of custody of the evidence in question. Gregonis testified that Mr. Kochis requested that the certain pieces of evidence be cataloged. Gregonis explained that Petitioner had submitted requests for nuclear DNA analysis concerning specific items of evidence and Mr. Kochis wanted to determine if these items still existed. He further testified that he checked out the evidence on August 12, 1999 and returned the evidence on August 13, 1999. While the evidence was in his custody, he testified he did not open the individually packaged pieces of evidence and did not contaminate or tamper with any piece of evidence. In addition, William Nicks, a San Diego Superior Court Exhibit Clerk, testified that the shirt and the cigarette butts at issue have been in continuous possession of the San Diego Superior Court. Nicks further testified that the shirt and cigarette butts had not been checked out or looked at by anyone prior to the nuclear DNA testing. (P. Ex. No. 6, Judge Kennedy Order pp. 10.)

Cooper contends he would not have sought DNA testing unless he was innocent.

His argument cannot withstand the slightest scrutiny. Cooper has spent his time portraying himself as a martyr, enlisting the support of Josh Ryen's grandmother, developing a following as an African American man unjustly on death row.
Despite this false narrative, demanding DNA testing is completely consistent with the con and manipulation that Cooper has been working. If the State continues to refuse his demands, it lends him a basis to play upon people's sympathies and desire for justice. If the State agrees, or a court orders the testing, then Cooper also wins further delays as tests take time for a condemned man whose conviction was final in 1991. Even if the results come back inculpating Cooper, he can still delay things by claiming that the police tampered with the evidence and the testing was not fair (even though months were spent reaching a detailed agreement with Cooper's attorneys over precisely what would be tested and how). He can demand more tests. As Judge Huff noted, the testing Cooper claimed in 2004 would prove his innocence did nothing of the sort.

In short, not surprisingly, Cooper believed he could continue to try and manipulate the criminal justice system as long as he was permitted to do so. It is against this backdrop that it is obvious why Cooper, knowing his guilt, nevertheless persisted in demanding post-conviction DNA tests.

The testing procedures bought Cooper several additional years of continuances before a new execution date was set. It was time the victims never had, and time to which he should not have been entitled. The imposition of Cooper's sentence should not be delayed further for any additional testing.

VI.

THERE IS NO NEW EVIDENCE THAT COOPER IS INNOCENT OR DESERVES CLEMENCY

A.

LAW ENFORCEMENT FOCUS ON COOPER AS SUSPECT

The trial judge, the California Supreme Court, United States District Judge and the

Ninth Circuit Court of Appeals all held that the investigators acted in good faith. (P. Ex. No. 1, *Cooper, supra,* 53 Cal. 3d at p. 811 and P. Ex. No. 3, *Cooper v. Calderon, supra*, 255 F.3d at p. 1113) As the California Supreme Court pointed out, numerous pieces of evidence linked Cooper to the murders, including telephone records, one of the murder weapons, strong shoeprint comparison evidence, cigarette and tobacco evidence, blood comparison evidence, hair evidence, and footprint comparison evidence. (P. Ex. No.1, *People v. Cooper*, pp. 795-800, 836-837) Sheriff's investigators would have been negligent not to pursue this evidence and follow up on the person to which it pointed.

Cooper's own expert, Dr. Thornton, testified at trial that the Sheriffs' investigators appeared to be open minded in their investigation of the case. (P. Ex. No. 31, Trial transcripts pp. 7574-7575.) Dr. Thornton's testimony on this issue is set forth below.

> Question: Dr. Thornton, in your opinion, based upon the reports and the collection of evidence, in your opinion, as in this case, did the Sheriff's Department maintain an open mind in pursuing investigative leads after the arrest of Kevin Cooper?" (P. Ex. 31,Trial Transcript pp. 7574.)
> "Answer: I have no reason to believe that the Sheriff's Office hasn't been open-minded in the investigation. (P. Ex. No. 31, Trial Transcript p. 7575.)

The fact that investigators pursued the collection of evidence that continued to establish Cooper's guilt should not entitle him to clemency.

B.

LAW ENFORCEMENT INVESTIGATION OF OTHER PERSONS AND ESCAPEES

Cooper's Clemency counsel asserts that the San Bernardino Sheriff's Department focused their attention only on Kevin Cooper after they learned of his escape. They are incorrect. There were three inmates who escaped from CIM or the Boys Republic shortly before the Ryen/Hughes murders. Those inmates were Michael "Fasthorse" Martinez, James Alvardo Knori, and Kevin Cooper, aka David Trautman. All three were eventually captured. Blood and saliva samples were taken from all three escapees. Scientific testing, including serology, excluded escapees Martinez and Knori from the crime scene. (P. Ex. No. 34 crime lab report Aug 10, 1983 and subsequent analysis chart.) Both Martinez and

Knori provided detectives with statements establishing their whereabouts away from the crime scene.

Further, none of the evidence collected ever connected Martinez or Knori to either the stolen Ryen station wagon or the Lease/Lang hideout house. However numerous pieces of evidence, including blood, saliva, shoe prints, foot prints, fingerprints, plant burrs, murder weapons, pubic hair and tobacco connected Cooper to either the Lease/Lang house/ Ryen home and/ or Ryen station wagon.

Sheriff's detectives also investigated and interviewed Calvin Booker, who initially claimed to be involved in the Ryen/Hughes murders. However, Booker admitted he lied to authorities about his involvement in these crimes and admitted he obtained his information about the case from newspaper and magazine articles. (P. Ex. No. 53 Booker interview by Det. Roper) Booker told detectives he confessed to the crimes because he wanted to be punished and was fed up with living. Booker eventually admitted he had never even been to Chino.

Sheriff's Detectives investigated and interviewed Lee Furrow. (P. Ex. No. 26 Judge Huff pgs 126,127.) Lee Furrow provided detectives an alibi as to his whereabouts the day and evening of Saturday, June 4, 1983. Furrow first assisted a friend, Mike Darnell, in getting out of jail and then he attended a music concert in Devore that evening. He told detectives that he and Debbie Glasgow got a ride home to Mentone from a couple after the concert, and then he and Debbie rode to San Diego on a motorcycle.

Sheriff's detectives also investigated and interviewed Kenneth Koon. (P. Ex. No. 2, pgs 71,72.) Detectives had previously interviewed inmate Anthony Wisely who was incarcerated at a state medical facility in Vacaville. Wisley, claimed another inmate, Kenneth Koon, confessed that he was involved in the Ryen/Hughes murders. Wisley, told the investigators both he and Wisley were wasted on marijuana at the time of this conversation. Detectives determined this information was not accurate after interviewing Koon, who denied any involvement in the Ryen/Hughes murders.

C.

CANYON CORRAL BAR WITNESSES

Counsel for Cooper suggests that new evidence indicates that the real killers were three white men who were seen drinking at the Canyon Corral Bar the night of the murders. The bar is located approximately two miles from the Ryen home. This information is not new because it was presented and rejected at trial in 1984/1985. Nor does it entitle Cooper to clemency. Employees who worked at the Canyon Corral bar the night of the murders testified at Cooper's trial.

One of these employees, the bartender Ed Lelko, was called to testify at trial by Cooper's original attorney. (P. Ex No. 26, Huff Order pgs. 96-104.) Lelko testified three men entered the bar the night of the murders but left after being refused service for being too drunk. He did not notice any blood on the men.

None of the persons originally known by law enforcement to be in the Canyon Corral Bar the night of the murders noticed any blood on the three white men. Those persons were interviewed by law enforcement during the original investigation and at least two testified at Cooper's trial. Canyon Corral employees and patrons who either were interviewed after the murders or testified at trial included: Ed Lelko, the bartender; Shirley Killian, the manager; Kathleen Royals, a waitress; Virginia Mansfield, another waitress; Lester Land, the maintenance man; and patrons Linda Paulk and Pamela Smith. All these persons testified at the evidentiary hearing held in Judge Huff's courtroom in 2004 after clemency was denied. All testified that they saw three young men in the bar the night of the murders. All testified that they did not see ANY blood on the men's clothing or on their persons. (P. Ex. No. 26, Judge Huff Order, pgs. 97-100.)

Judge Huff also listened to the testimony of several people who later claimed to have been in the Canyon Corral Bar the night of the murders or the day before the murders. Some of these persons came forward almost twenty years after the crimes. Mr. Stark testified that he did remember seeing three men in the bar the night of the murders and one had what appeared to be grease, mud or blood on his clothing. Stark did not think this was significant even after he learned of the murders the next day. Stark said he has

not thought about it until defense investigators visited him in 2004. He was not even sure if this incident happened the night of the murders. (P. Ex. No. 26, Judge Huff, pgs. 100-102.)

Judge Huff determined in 2005 after listening to the testimony of all these witnesses that the credible version of the three men in the Canyon Corral Bar came from those who were interviewed at the time of the crimes. Those persons included the manager, bartender, two waitresses who were employed at the bar, and three patrons from the bar who were all interviewed close in time to the murders. (P. Ex. No. 26, Judge Huff Order, pg. 99.) Judge Huff further found that the accounts given by Stark, Mellon-Wolfe and Slonaker were belated, inconsistent and not credible. (P. Ex. No. 26 Judge Huff at pg. 103.)

Finally, as discussed previously, Ms. Mellon-Wofle described the coveralls she saw that night on one of the men as tan in color. (P. Ex. No. 26 pg 102.) Diana Roper described the coveralls she found as green or very dark blue. (P. Ex. No. 50b, Diana Roper interview by Det. Stalnaker.) Her father, William Kellison, described the coveralls as dark green in color. (P. Ex. No 51, William Kellison interview by Det. Woods). Her mother, Kathie Kellison, described the coveralls as dark green in color. (P. Ex. No. 52 Kathie Kellison interview by Det. Woods.) Deputy Eckley also described the coveralls Diana found as dark green in color. The coveralls Ms. Roper found in her closet were not the ones Ms. Mellon-Wofle claimed to have seen. None of the witnesses from the Canyon Corral Bar saw any of the three young white men wearing dark green coveralls. All the employees and all the patrons interviewed in 1983 did not see any of the men wearing coveralls at all. Again, Ms. Mellon-Wofle described the coveralls she saw on one of the men as being tan in color.

D.

POST-CLEMENCY DNA TESTING REQUESTS

DO NOT ENTITLE COOPER TO CLEMENCY OR A HEARING

Cooper's counsel claims that results from the additional DNA testing that was conducted in 2004 after clemency was previously denied entitles him now to clemency. After clemency was denied the first time in 2004, Cooper requested testing of the hair found in Jessica's hands and EDTA testing, claiming it would once and for all establish his innocence. Cooper's execution was stayed, and the case was returned to Judge Huff to preside over the requested testing.

Judge Huff subsequently conducted a lengthy evidentiary hearing in which she heard from forty-two witnesses, and ordered mitochondrial DNA and EDTA testing. Experts examined 1,000 hairs collected at the original murder scene. After reviewing the results of all these tests and listening to the testimony of all forty-two witnesses and the arguments of Cooper's attorneys, Judge Huff determined that Kevin Cooper alone was responsible for the murders and attempted murder in this case. Judge Huff also determined once again that the defense claims of evidence tampering regarding trial exhibit no. 169, the tan t-shirt, were unfounded. (P. Ex. No. 26, Judge Huff Ruling/Order 5/27/2005 pp. 57, 63-67, 68)

Judge Huff summarized the results of the EDTA testing conducted in 2004 as follows, "If Petitioner's theory were correct, there would be spiked levels of EDTA in the subject stain on the shirt relative to the levels of EDTA found in the background material. Dr. Ballard's testing revealed the opposite: that the subject stain contains a level of EDTA (1) lower than most of the controls on the T-shirt, and (2) dramatically lower than the level of EDTA expected in a tampering scenario involving blood from a purple-topped tube. (P. Ex. No. 26 pg 65, see chart on pg. 64.) (Trial exhibit no. 169, the tan t-shirt, was introduced by the defense at trial. The prosecution never argued at trial that the t-shirt was connected Cooper to the murders. Post-conviction DNA did establish that the tan t-shirt linked Cooper to the Ryen/Hughes murders.)

1.

2004 TESTING OF HAIRS FOUND IN JESSICA'S HANDS

Dr. Ed Blake, Cooper's defense expert during both his 1984-85 trial and subsequent 2001-2001 post-conviction DNA testing, and Steven Myers from DOJ testified before Judge Huff as to the examinations conducted on the hair removed from the victims' hands. This was done in efforts to identify the assailant. (P. Ex. No. 26 Judge Huff pgs 48-50.) Dr. Blake and Mr. Gary Sims looked at approximately 1,000 hairs visually and microscopically. Dr. Blake concluded that the vast majority of these hairs were either animal hairs or cut and broken hairs that came from the victims not any assailant. (P. Ex. No. 26 Judge Huff pg 48-50)

Judge Huff ordered mitochondrial testing of hairs recovered from Jessica's hands as well as small number of hairs from the hand of Doug Ryen and Chris Hughes. The testing was conducted by Dr. Melton. The hairs recovered from Jessica's hands were determined to be either animal hairs (the Ryen family kept dogs in the house) or hairs from Jessica or her family. The hairs removed from Doug and Chris were also determined to belong to the victims. Judge Huff specifically found that the testing conducted in 2004 failed to identify any assailant, and further proved that Cooper's purported clutching theory had no merit. (P. Ex. No. 26, Judge Huff, pgs 51-53.) Judge Huff determined that the mitochondrial DNA testing failed to show that someone other than Cooper committed the murders. (P. Ex. No. 26, Judge Huff, pg. 53.)

2.

COOPER'S CONTINUED SALACIOUS AND UNSUPPORTED ALLEGATIONS OF EVIDENCE TAMPERING DO NOT ENTITLE HIM TO CLEMENCY

Cooper continues to falsely allege that evidence was planted in his case. Specifically, Cooper now alleges that Cooper's blood found inside the Ryen home in the hallway outside the master bedroom where he committed the murders and on a t-shirt

found on the side of a road over a mile from the Ryen neighborhood were all somehow planted by law enforcement 10-15 years before DNA testing became widely available. These claims have been repeatedly rejected and found unsupportable.

Extensive evidentiary hearings were held before Judge Kennedy in 2003, and Judge Huff in 2004, regarding these claims made by Cooper. Judge Kennedy and Judge Huff independently heard the testimony of numerous witnesses pertaining to these issues. Both Judge Kennedy in 2003, and then later Judge Huff in 2004, determined that claims Cooper made about evidence tampering and planting were without merit.

Judge Kennedy specifically found after listening to the testimony of numerous witnesses and arguments of counsel that that Cooper, "[H]as not made any showing that law enforcement personnel tampered with or contaminated any evidence in his case." (P. Ex. No. 6 Judge Kennedy ruling July 3, 2004 pg. 10.) (Portions of both Judge Kennedy and Judge Huff's decisions are attached as exhibits.)

E.
SHOE PRINT EVIDENCE DOES NOT ENTITLE COOPER TO RECEIVE CLEMENCY

Cooper's clemency counsel falsely argues that an inaccurate picture of the shoe print evidence was presented at trial. Cooper's counsel states that the manner in which the shoeprint evidence was presented "successfully narrowed the universe of possible suspects to essentially one- Mr. Cooper." This is an inaccurate version of the evidence and testimony that was presented to the trial jury. Cooper also claims that new evidence from former CIM Warden Midge Carroll also undermines the shoe print evidence presented at trial. Judge Huff also took extensive testimony on this issue during the 2004 evidentiary hearing and determined Cooper's claims were unfounded.

Judge Huff listened to the testimony of former warden Midge Carroll, Lt. Don Smith, a former investigator at CIM under Midge Carroll, Don Luck, a former executive and sales manager for the Stride Rite Corp., who manufactured Pro-Keds Dude tennis

shoes, Sandra Coke, investigator for Cooper, inmate James Taylor and San Bernardino Sheriff's Detpartment Det. Derek Pacifico. (P. Ex. No. 26 Judge Huff at pg. 112.)

Judge Huff made the following determinations following the testimony of these witnesses and reviewing records of evidence that was presented at Cooper's trial:

> Former Warden Midge Carroll was known to the defense at the time of the trial;
>
> She permitted Cooper's investigator to go through her records in December of 2001 and gave an interview to defense investigators in November of 2001;
>
> She did not personally conduct any investigation into the Pro-Ked tennis shoe issue but asked her staff to do so; and
>
> CIM associate warden Bob Bales and Lt. Don Smith from CIM testified they were never asked by Midge Carroll to conduct such an investigation. (P. Ex. No. 26 Judge Huff pgs 112,113,118.)

Judge Huff noted that the contracts from Stride Rite for the CIM purchase of 1,390 Pro-Ked Dude shoes were admitted into evidence, as was the testimony of Stride Rite merchandise manager Dewey Newberry. Mr. Newberry testified at trial that to his knowledge, Pro-Ked Dude tennis shoes were not sold in California on a retail basis, such as to J.C. Penney, Montgomery Ward, or Fedco. Records were introduced by the prosecution at Cooper's trial that showed the Pro-Ked Dude shoes were also sold to the Naval Training Center, state hospitals, and numerous juvenile and correctional facilities. (P. Ex. No. 26 Judge Huff pg 115-116.)

Judge Huff also listened to the testimony of former Stride Rite Executive Don Luck. Mr. Luck testified he was positive there were no sales of Pro-Ked Dude tennis shoes during the 1980s to Sears or any other large retail companies or chain stores in the western United States. He could not rule out sales to small retail stores and that style of shoe was included in a retail catalogue. (Cooper's trial attorney was aware this type of shoe was in the Pro-Keds wholesale catalogue). (P. Ex. No. 26 Judge Huff at 116-117.)

Cooper's trial attorney also argued to the jury that the Pro-Ked shoes were available to the Navy, the Forestry Department and all kinds of different people besides

prisoners. What mattered was that the Pro-Ked-style shoes that a witness testified Cooper had at the prison and that Cooper admitted at trial he wore linked him to the hideout house and the murder scene. (P. Ex. No. 26 Judge Huff 123-124.)

The subsequent reviewing Ninth Circuit Court of Appeals also determined that, based upon the evidence presented at Cooper's trial and subsequent hearing in federal court before Judge Huff, that Midge Carroll's belief that Pro-Ked Dude shoes weren't available at CIM and were available at Sears was both mistaken and immaterial. The Court stated that the relevance of the Pro-Ked tennis shoe imprint evidence was that it linked Cooper, who never denied having a pair of such shoes, to the hideout house and the Ryen home. (P. Ex. No. 25, *Cooper v Brown, supra,* 510 F. 3d 870 (2007) pp. 878-880.)

F.

FAILURE TO PRESERVE COVERALLS DOES NOT ENTITLE COOPER TO CLEMENCY

United States District Court Judge Huff discussed this issue at some length in her written Order, dated August 22, 1997. (P. Ex. No. 2, pp. 51, 52.) As set forth below in Judge Huff's Order she determined the coveralls had no value to the case because they were received from a woman who had told others that she and other "witches" believed the coveralls were connected to the Cooper case based on a vision they received during a trance. Judge Huff wrote in this regard:

> Deputy Sheriff Frederick Eckley testified during the pretrial evidentiary hearing that on June 9, 1983, he was dispatched to the home of Diane Roper in Mentone, California, which was located approximately 40 miles from the Ryen home. Ms. Roper directed him to a closet, in which he found a pair of coveralls which had red splatters on them below the knee. Deputy Eckley testified that the coveralls were not heavily spotted, and the stains below the knee were dry and reddish in color, as opposed to the usually brownish color of dried bloodstains that he had seen in the past. 42 RT 3183-3184, 3205, 3211. Deputy Eckley also testified that the coveralls had hair, sweat, dirt, and manure on them.
>
> Although Ms. Roper did not know to who the coveralls belonged to, her father told Deputy Eckley that Ms. Roper felt that the coveralls had some importance to the Ryen case based upon a 'vision' she had, as opposed to

> anything she had actually seen. 42 RT 3204-3205.[2] After Eckley took the coveralls to the Yucaipa substation and tagged them, he called the San Bernardino homicide department and left a message but was never called back. Although he never spoke with homicide about the coveralls, Deputy Eckley testified that he did speak with defense inspector Forbush about the coveralls. 42 RT 3205-3205.
>
> In December of 1983, after he did not hear back from homicide, and believing that the coveralls 'had no value to the case,' Deputy Eckley destroyed the coveralls pursuant to normal office policy and procedure. 42 RT 3194. Deputy Eckley similarly testified about the coveralls at trial, such that the jury ... 102 RT 6545-6555. In summary, this court finds that nothing in the record suggests that these coveralls had any exculpatory value at the time they were destroyed.
>
> Regarding the coveralls, Deputy Eckley testified that he did not retain them based upon his belief that they had 'no value to the case,' a belief which this court finds he was certainly justified in holding. This is especially true given the fact that he had been told that Diane Roper and other witches believed the coveralls were connected to the Cooper case based on a vision they received during a trance. In summary, based upon its own through review of the record, this court agrees with the trial court and with the California Supreme Court that all law enforcement authorities acted in good faith, and that there was no destruction of material evidence. Cooper, 53 Cal.3d at 811. (People's Ex. No.2, Judge Huff's Order pp. 51, 52)

It is important to note that Cooper's trial attorney, Dave Negus, raised this issue at the pretrial hearing and trial. Deputy Eckley was called to testify at both a pretrial hearing and at Cooper's trial. Both the trial judge and jury were aware of the facts pertaining to the coveralls. More importantly, the issues of guilt, innocence and sentence should never be decided on information obtained from persons who believe they are "witches" and believe an article of clothing is connected to a crime because of a "vision" they receive during a "trance". Such speculative and unreliable information does not support a grant of clemency.

---

[2] In his traverse, petitioner attaches a copy of the interview between Deputy Eckley and Defense Investigator Forbush held on May 26, 1994. Although Deputy Eckley told Forbush that Diane Roper had given him reliable information in the past, he also stated that Ms. Roper's knowledge regarding the connection between the coveralls and the Ryen/Hughes murders was obtained after she and some other "witches' went through" some kind of trance" which caused her to 'just know' that they were worn by someone involved in the murders. (Traverse, Exh. A. pp. 6-7)." (P. Ex. No. 2, Judge Huff's Order pp. 51 fn. 2.)

Prior to Cooper's trial, four persons were interviewed as to the color of the coveralls Diana Roper found in the closet. Diana Roper herself described them as dark green or blue in color. (P. Ex. No. 50a, 50b.) Her father, Richard Kellison, described the coveralls as dark green in color. (P. Ex. No. 51.) Her mother, Kathie Kellison, also described the coveralls as dark green in color. (P. Ex. No. 52.) Finally, San Bernardino Sheriff's Department Deputy Eckley described the coveralls as dark green in color. (P. Ex. No. 50a.)

Mary Mellon-Wolfe testified before Judge Huff in federal court in San Diego in 2004. Ms. Mellon-Wofle testified she was in the Canyon Corral Bar on June 4, 1983, and saw three young men involved in a disturbance. One of the men was wearing what she described as tan coveralls zipped down to his waist. (P. Ex. No. 26 Judge Huff ruling pp. 101, 102, also 6/28/04 HRT 121-22).

Diana Roper, Richard Kellison, Kerri Kellison and Deputy Eckley all described a coverall much different in color than the one described by Ms. Mellon-Wolfe. .

After conducting an additional lengthy evidentiary hearing in San Diego in 2004/2005, Judge Huff determined, "The discovery of the disposition report does not cast doubt upon the testimony of Deputy Eckley and does not undermine the findings and conclusions of both this Court and the California Supreme Court that the coveralls were not material exculpatory evidence in Petitioner's case." (P. Ex. No. 26 Judge Huff Order dated May 27, 2005 pg. 136.)

Judge Huff further commented on the evidence of Cooper's guilt as follows: "In sum Petitioner has had ample opportunity for review in both the state and federal courts, exploring every possible avenue of challenge to his conviction. All of these challenges have come back the same and there is overwhelming evidence that Petitioner is the person guilty of these murders." (P. Ex. No. 26, Judge Huff Order 2005, pg. 133.)

The Ninth Circuit Court of Appeals also agreed with Judge Huff's conclusion that there was overwhelming evidence that Cooper is the person guilty of these murders. (P. Ex. No. 25, *Cooper v. Brown, supra*, 510 F.3d 870 at pp. 885-886). The majority of the 9th Circuit Court of Appeals also agreed with Judge Huff's analysis that Cooper's claims of evidence tampering and withholding lacked merit. (P. Ex. No. 25 *Id,* pp. 886-887)

The majority of the judges on the Ninth Circuit concluded, "As the district court, and all state courts, have repeatedly found, evidence of Cooper's guilt was overwhelming. The tests that he asked for to show his innocence "once and for all" show nothing of the sort. (P. Ex. No. 25, *Id.* at pp. 887-888)

VII.
REVIEWING COURTS HAVE AFFIRMED COOPER'S GUILT AND CONVICTION SINCE COOPER'S 2004 CLEMENCY DENIAL

A.
NINTH CIRCUIT COURT OF APPEALS

Cooper's case was again reviewed by the Ninth Circuit Court of Appeals after his clemency was denied in 2004 and again after Judge Huff wrote her lengthy decision in 2005. That court rendered its opinion in 2007, three years after Cooper's clemency was denied and two years after Judge Huff wrote her decision. Judge Rymer concluded in writing for the Ninth Circuit Court of Appeals concluded that the tests Cooper asked for to show "once and for all" his innocence show[ed] nothing of the sort". (*Cooper v. Brown, supra,* 510 F.3d 887.)

The Court concluded that Cooper's claims of evidence tampering and withholding lacked merit.

The Court also found that the evidence of Cooper's guilt was overwhelming. (P. ex. No. 25. *Ibid.*)

B.
JUDGE FLETCHER'S DISSENT IS UNPURSUASIVE

Cooper premises portions of his current Petition for Clemency on Judge Fletcher's dissenting opinion. Judge Fletcher did not preside over Cooper's trial, nor was he present during any of the evidentiary hearings conducted in Cooper's case over the past twenty-thirty years.

Judge Rymer who concurred with the majority of the federal appellate judges in affirming Cooper's convictions in 2009, made the following comments on Judge Fletcher's dissenting opinion,

> ". . . The dissent improperly marshals the facts in the light most favorable to Kevin Cooper, yet the evidence was resolved against Cooper at trial — after he took the stand and testified — and at each step of the post-conviction proceedings. The dissent also approaches the issues as if they were new, yet the same issues have been on the table since day one (except for DNA testing which didn't exist at the time and which has turned out to be inculpatory).... All were known at the time of trial and have been litigated in one forum or another, unfavorably to Cooper, for the last 24 years." (Cooper's Ex. No. 1, p 42, *Cooper v. Brown*, (9th Cir. 2009) 565 F.3d 581, 637.)

Judge Fletcher also ignored the fact that Cooper testified at trial and the jury did not believe his implausible story about what he did at the hideout house and how he left for Mexico. Judge Fletcher's dissent implies--without any support--that San Diego Superior Court employees planted evidence against Cooper after he was convicted. It is interesting to note that Dr. Blake, Cooper's own forensic expert at pre-trial, trial and in the post-conviction DNA testing, has never supported any allegations of evidence tampering.

Reviewing courts have repeatedly affirmed Cooper's convictions since his initial clemency request was denied in 2004. The People request that the Governor respect the decisions of those reviews courts and again deny Cooper's request for clemency.

VIII.

A.

CLEMENCY AND LINGERING DOUBT IN OTHER CAPITAL CASES

Cooper discusses grants of clemency and lingering doubt in other cases. Anecdotes about grants of clemency to other condemned inmates tells us nothing about Cooper's background, his character or the terrible crimes he committed against a family and several children in this case.

The People urge the Governor to make his decision here based upon Cooper's

prior long history of criminal conduct, the facts of this case, the decisions of the jury, trial judge, all the reviewing courts, and the importance of this decision to the community, the victims and their families.

IX.

COOPER SHOULD NOT BE GRANTED AN ADDITIONAL INVESTIGATION NOR FURTHER TESTING

Cooper is asking for an independent investigation and further testing as part of his third Clemency application. The People contend that neither should be granted in this case for the reasons set forth below.

A.

COOPER HAS ALREADY RECEIVED EXTENSIVE POST CONVICTION TESTING

Cooper first received the benefits of post-conviction DNA testing in 2001. Cooper's trial defense serologist, Dr. Blake, was selected by his habeas counsel to join with the Department of Justice to conduct the testing. Defense expert Dr. Blake was instrumental in choosing which items of evidence should be tested. He worked on the case in 1983-1984 and was very knowledgeable about the various items of evidence that were collected. He proposed the items to be tested, stating, "The most relevant biological evidence in the case is contained within the blood and cigarette butt evidence described above." (P. Ex. No. 24 pg. 4.) Dr. Blake specifically selected A-41, the drop of blood recovered from the hallway outside the Ryen master bedroom, V-12 and V-17, cigarette butts recovered from the Ryen station wagon after the murders and CC/trial ex. 169, blood-stained beige T-shirt along the side of a road a mile or two from the crime scene.

Dr. Blake further noted in his selection of these items that according to the State, A-41 could have originated from Cooper but not the victims, that the cigarette butts held potential significance in that none of the Ryen family members smoked. He selected the

shirt to determine if the blood stain came from one or more of the victims and if "habital wearer" evidence could reveal genetic information concerning the assailants.

Blind testing was employed in the post-conviction DNA testing in the Cooper case. Items of evidence collected in the case were tested first and the results determined. Then the known blood samples taken from the victims and Cooper were tested and the results were compared.

The post-conviction DNA testing firmly established that Cooper was in the Ryen home bleeding at the time of the murders. It also firmly established that Cooper was in the stolen Ryen station wagon. (P. Ex. No. 4 and P. Ex. No. 5.) The testing also established that the T-shirt found on the side of a road contained the blood of both Cooper and victim Doug Ryen.

Blood that was previously collected from the hands and arms of the victims and one of the murder weapons, the hatchet, was also subjected to DNA testing. The testing established that these various blood samples all came from the victims. This testing did not establish the presence of any mystery or unknown assailant.

Not satisfied with the results of the post-conviction testing, Cooper again pivoted tactically when the DNA pointed to his guilt and filed a motion in Superior Court claiming--without support—that evidence must have been tampered with and demanding additional DNA testing. An evidentiary hearing was subsequently held in San Diego Superior Court. Numerous witnesses were called to testify. After the hearing, Judge Kennedy ruled that Cooper failed to make any showing that the evidence in his case was tampered with or contaminated. (P. Ex. No. 6, pg. 11.) Judge Kennedy also denied Cooper's request for further testing.

After Cooper's execution was stayed in 2004, he again received the benefit of additional post-conviction scientific testing. He also received the benefit of an evidentiary hearing to evaluate his claims as to potential third-party assailants, and issues pertaining to some of the circumstantial evidence that linked him to the murders.

Judge Marilyn Huff presided over the hearings in United States District Court in San Diego. Cooper received the benefit of a hearing in which forty-two witnesses were called.

Experts examined, visually and microscopically, approximately 1,000 hairs collected from the bodies of the victims and at the crime scene. Judge Huff ordered EDTA testing on the tan t-shirt, which was introduced by the defense at trial. She later determined that the EDTA testing did not establish that blood was planted on the t-shirt. Judge Huff also determined that the evidence regarding Pro-Ked tennis shoes that was introduced at trial was accurate and that the belated testimony of witnesses who claimed to be at the Canyon Corral Bar did not undermine the strength of the evidence presented at trial. Judge Huff concluded yet again that Kevin Cooper alone was the person responsible for all the murders and attempted murder committed in this case. Her decision in the case was affirmed by the reviewing Ninth Circuit Appellate Court. (P. Ex. No. 25, *Cooper v Brown, supra.*)

Cooper next filed a motion in San Diego Superior Court on August 12, 2010, seeking further DNA testing. Judge Kenneth K. So also determined that Cooper did not produce any evidence to support his tampering theory and denied the defense request for further DNA testing. (P. Ex. No. 54, Judge So's Ruling/Order, pp. 1,25,26,29.)

Several federal and state courts have already dealt with, and denied, Cooper's request for post-conviction DNA testing and additional investigation. Cooper has already been afforded extensive additional scientific testing and the opportunity to present evidence of other 3rd party assailants. The post-conviction DNA testing provided strong additional evidence of Cooper's guilt to the exclusion of anyone else. Reviewing courts have also concluded Cooper's claims of evidence tampering and 3rd party assailants to be unfounded.

The People urge the Governor not to grant Cooper additional testing or investigation.

B.

PROPOSED FURTHER TESTING OF ITEMS UNDER DEFENSE EXHIBIT C WOULD NOT PRODUCE MEANINGFUL RESULTS

Cooper requests that the hatchet, hatchet sheath, green button and tan t-shirt all be subject to further testing for touch DNA. Cooper's theory is that this testing could

reveal the DNA of persons other than Cooper and the victims and this would shed some light on the case. Cooper and his attorneys ignore the history and the evidentiary significance of the four items above.

The murders, the investigation and trial of the case occurred before the advent of DNA testing. All four items mentioned above and in defense exhibit C were entered into evidence at trial. The hatchet, hatchet sheath and green button were moved into evidence by the prosecution, the tan t-shirt by the defense. All these admitted items of evidence were sent into the jury room during deliberations. There were no restrictions placed upon the jury in their viewing and examinations of these items. The jurors could visually inspect, touch and hold all these items. It would be presumed that DNA from these jurors could potentially be on these items. Not all the trial jurors are alive today, which presents issues for obtaining a DNA sample from them.

Testimony taken at trial established that all these items were handled by persons not involved in these murders. The tan t-shirt was originally taken in evidence by Det. Scott Fields. Det. Fields has been deceased for over twenty years. Case agent Sgt. William Arthur, who had access to these exhibits, has been deceased for over twenty years also. Neither Det. Fields nor Sgt. Arthur are available to provide DNA samples. The hatchet was handled at various times prior to trial by Richard Sibbits, Roger and Virigina Lang, Larry Lease and other guests at the Lease/Lang house.

The DNA data bases that currently exist contain the profiles of certain convicted felons. Law abiding citizens are not required to submit DNA samples to law enforcement. Law enforcement DNA data bases are significantly more limited and restricted than fingerprint data bases, for example. Therefore, the vast majority of residents of this country do not have their profile in any DNA data base.

Cooper did not have any lawful ownership or possessory interest in the items mentioned above, but others did. Those persons who did have lawful access to the items and who handled those items would not be in any DNA data base.

C.

COOPER'S CRITICISM OF CASE INVESTIGATION AND CRITICISM OF TRIAL COUNSEL DO NOT ENTITLE HIM TO CLEMENCY OR ANY FURTHER RELIEF AND MIRROR CLAIMS HE ALREADY MADE AT TRIAL, WHICH WERE REJECTED BY THE JURY AND ALL REVIEWING COURTS

Current clemency counsel argues that the way this case was investigated, coupled with the performance of Cooper's trial counsel, entitles him to clemency. One of the many ironies of this approach is that the defenses now put forth by clemency counsel (i.e., way the case was investigated, processing of the crime scenes, allegations of mishandling of various pieces of evidence, possibility of other assailants including the three men at the Canyon Corral bar, Lee Furrow, Kenneth Koon, the destroyed coverall[s] were *all defenses created and raised by Cooper's original trial attorney* and rejected by the jury and all subsequent reviewing courts.

Dave Negus, Cooper's trial attorney, called numerous witnesses at the preliminary hearing, *Hitch* motion, and jury trial in Superior Court in an attempt to establish many of the defenses current clemency counsel raises and argues again. Cooper already had the benefit of defense expert witnesses who attacked the way the crime scenes were processed, and the scientific tests were performed. Trial defense counsel introduced testimony of the coveralls, their destruction, and the presence of the three men at the Canyon Corral Bar. The jury heard the testimony of Mr. and Mrs. Leonard, who claimed to have seen men, other than Cooper, driving the Ryen station wagon around the time of the murders. Cooper himself took the witness stand and denied his involvement in the murders. Again, all of this was rejected by the jury and the reviewing courts.

The People contend that Cooper has received extraordinary due process over the past thirty-five years. The materials submitted on his behalf in his third application for clemency do not undermine any evidence presented at trial and illuminated during further post-conviction DNA testing that establish his guilt. Nor do the materials presented in this third clemency application present any justification for any of the relief he now requests.

D.

COOPER'S CRITICIZM OF TRIAL COUNSEL DOES NOT ENTITLE HIM TO CLEMENCY OR ANY FURTHER RELIEF

Although Cooper's current clemency attorneys adopt each and every defense raised by Cooper's trial attorney they still criticize his performance. Current clemency counsel submits a declaration from defense attorney Adelson who comments on the defense provided Cooper through trial. Adelson mentions in his declaration the materials he reviewed in reaching his opinion. He does not mention that he reviewed any of the evidence presented during the case which established Cooper's guilt. He does not mention that he reviewed any of the testimony or physical evidence introduced at trial that established Cooper's presence at the murder scene in the Ryen master bedroom and in the stolen Ryen station wagon. He does not mention any of the serological results, hair analysis, murder weapons taken from the Lease/Lang hideout house, tobacco and plant burr comparisons that linked Cooper to the hideout house, Ryen home and Ryen car. He also makes no mention of any review or consideration of the post-conviction DNA testing that established Cooper's guilt by placing him inside the Ryen home and inside the Ryen station wagon.

Rather, Adelman criticizes trial counsel's handling of the issues related to Diana Roper and the dark green coverall. Yet this issue was presented by Negus at trial. Adelman fails to mention that Diana Roper, her father, her mother and Deputy Eckley all described the coverall as dark green in color and that Ms. Mellon Wolfe claims she saw a young man wearing a tan coverall in the Canyon Corral Bar. He also does not mention that several Canyon Corral patrons and employees all testified at trial that they did not see any patrons, including the three young white men, with blood on any of their clothing. No one, including Ms. Mellon Wolfe described any of the men wearing the same color coverall which Diana Roper found in her closet. He also leaves out key portions of Ms. Roper's interview, wherein she was still under the influence of drugs when she found the coveralls and had a feeling that they were involved in the Ryen case. He fails to mention

that Lee Furrow was interviewed and provided an alibi that was verified by detectives, or that Roper had a bias against Furrow who left her for her best friend. (P. Ex. No 26.)

Adelman discusses the importance he places on the tan t-shirt recovered on the side of Peyton Road, yet he fails to acknowledge that post-conviction DNA confirmed that both Cooper's and victim Doug Ryen's blood were on that t-shirt. He mentions a hatchet without discussing how witnesses identified the hatchet stolen by Cooper from the Lease house, and that was determined to be one of the murder weapons Cooper used, contained the blood of some of the victims.

Adelman discusses the presence of the three young white men in the Canyon Corral bar the night of the murders. This issue was raised by Cooper's trial counsel and presented to the judge and jury. It has already been litigated over the years in state and federal court.

Adelman fails to mention that the Canyon Corral bartender, waitresses and majority of the patrons interviewed in 1983 did not see any blood on the clothing of the three young white men who were in the bar that night. He fails to mention that none of the patrons, including Ms. Mellon-Wofle saw any of the men wearing dark green coveralls that matched the color of the dark green coveralls found by Diana Roper.

Adelman gives a very inaccurate account of the recovery of the stolen Ryen station wagon. He claims the station wagon was not "discovered" in the church parking lot until six days after June 5, 1983. As discussed in more detail below, witnesses and physical evidence introduced at trial established that the Ryen station wagon was already parked in the church parking lot in Long Beach prior to 11:00 a.m. on the morning of Sunday, June 5, 1983.

Witness Gordon testified at trial that he placed flyer advertisements for a hair salon on the windshield of the Ryen station wagon and inside the car through an open window the morning of Sunday, June 5, 1983 before 11:00 a.m, possibly as early as 10:00 am. Detectives found these flyers inside the vehicle when it was impounded. Other witnesses noticed the station wagon on the church parking lot on Tuesday, June 7, 1983, long before

defense counsel suggests it was found there. (P. Ex. No. 41, P. Ex. No. 42, P. Ex. No. 43 and P. Ex. No 44.)

Adelman discusses trial counsel's failure to follow up on an alleged blue shirt referred to in Sheriff's dispatch logs. Deputy Fields wrote a report regarding picking up a tan t-shirt (not a blue t-shirt) on the side of Peyton road on June 7, 2018. (P. Ex. No. 63.) This report was dated June 10, 1983. Deputy Fields was also called as a defense witness at trial. (P. Ex. No. 64.) He testified he picked up a towel and a t-shirt on the side of the Peyton road on June 7, 1983. Fields identified trial Exhibit 169 (the tan shirt introduced into evidence at trial and subsequently subjected to post conviction DNA testing) as the t-shirt he initialed, tagged with an evidence tag, collected and placed into evidence at the West End Substation. (P. Ex. No. 64 Vol. 101 pgs RT 6509-6513.) Fields did not originally find the t-shirt, rather it was brought to his attention by someone else. Adelman fails to mention the significance of the post-conviction DNA testing which established Cooper's and Doug Ryen's blood on the same tan t-shirt. The significance is that this DNA testing established that after the murders, as Cooper cleaned up, he wiped both his own blood and the blood of Doug Ryen off onto the same t-shirt.

Laura Epler testified in federal court before Judge Huff. (P. Ex. No. 26 pgs 148-150.) When contacted on August 3, 2004, about the shirt, she did not recall calling law enforcement about the shirt, did not recall the color of the shirt and did not recall where the shirt was found. She testified she vaguely remembered finding a blue shirt on her way home. She testified it was only after speaking with defense investigators and being shown letters by Cooper's attorneys about the case that she recalled anything about the shirt. (P. Ex. No. 26 pgs 148-150.) Attorney Adelman fails to mention any of the circumstances surrounding the evolution of Ms. Epler's memory in his declaration.

Adelman finds fault with the way trial counsel handled the report of an alleged confession by Kenneth Koon. This was investigated by Sheriff's Detectives. Kenneth Koon never confessed to any member of law enforcement that he was involved in the Ryen/Hughes murders. Kenneth Koon was interviewed by Sheriff's Detectives and he denied any involvement in the Ryen/Hughes murders (P. Ex. No. 26.) Information of this

alleged confession came from inmate Wisley, who admitted he was high on drugs when he heard or made-up the alleged confession.

The criticisms Adelman makes against trial counsel have been raised and litigated multiple times in state and federal Courts over the decades since Cooper's conviction and sentence. The reviewing courts have decided those claims against Cooper. These repeated allegations do not entitle Cooper to any further hearing or clemency.

E.

COOPER'S REPEATED AND CONTINUED CRITICISM OF THE CASE INVESTIGATION DOES NOT ENTITILE HIM TO CLEMENCY

The criticisms submitted in Cooper's Third Clemency Petition, by Thomas Parker of the case investigation do not entitle Cooper to clemency. Cooper's trial attorney made such arguments at prelim, the *Hitch* hearing, and at trial. Cooper's appellate counsel raised these issues in state and federal Courts. All the reviewing courts have decided these issues against Cooper.

Mr. Parker claims that investigators suffered from tunnel vision in their focus on Cooper. He fails to discuss or even mention the Sheriff's Detectives' investigation into the other escapees Martinez, Knori, and other persons such as Furrow, Koon, and Booker. All were eliminated after their alibis were verified by further investigation, and in the cases of Martinez and Knori, after serological testing eliminated them from the crime scene.

Mr. Parker envisions suspects such as the three young white men drinking in the Canyon Corral bar or Lee Furrow. These issues were raised by trial counsel based upon interviews conducted by Sheriff's investigators. These theories were presented to the trial judge and jury who rejected those theories. These theories and arguments have also been raised for decades in the reviewing courts and been rejected.

Mr. Parker bases much of his theories on his incomplete and inaccurate recounting of the facts of the case. For example, Parker represents Cooper was in Mexico for six days before the Ryen station wagon was discovered. However, the testimony and evidence

presented at trial established the station wagon was parked in Long Beach before 11:00 am on Sunday, June 5, 1983, less than fifteen hours after the murders. He suggests Cooper had no connection to the Long Beach area, ignoring Cooper's Los Angeles County contacts and Long Beach acquaintance. (P. Ex. No. 45 and P. Ex. No. 48.)

Parker criticizes the interview techniques of Det. O' Campo, the collection of evidence at the Lease/Lang hide out house, Ryen vehicle and Ryen home. These issues were all raised by Cooper's trial attorney and presented and rejected by the judge, jury and subsequent reviewing courts.

Mr. Parker criticizes the serological testing sequence of A-41 without any mention of the reasons behind that sequence. He fails to mention that the testing was temporarily halted in summer of 1983 to allow Cooper's defense team to retain a serologist, who was then allowed to participate in the joint testing of A-41. The defense retained expert Dr. Blake, who not only participated in the joint testing of A-41 in 1983, but subsequently participated in the post-conviction joint DNA testing of A-41 in 2001. Dr. Blake was not only present when the serological testing was performed on A-41, in 1983 he participated in the decision-making process as to which type of tests would be performed on that sample. Dr. Blake also performed his own independent testing of a sample of Cooper's blood before he participated in the joint serological testing of A-41 in 1983. Likewise, defense expert Dr. Blake participated in the decision-making process of which items of evidence had the most potential relevance for post-conviction DNA testing. (P. Ex. No. 4, P. Ex. No. 5, P. Ex. No. 23 and P. Ex. No. 24.)

Mr. Parker conveniently relies on comments from a former colleague, who opines that there is little evidence that the victims were attacked sequentially. In doing so they both ignore the account of the attacks presented to the jury by surviving victim Josh Ryen. Josh told of a sequence to the killings. He recounted that he and Chris awoke to screams. After the screams stopped he and Chris walked down the hallway to the direction of the screams and his parents' bedroom. He saw Jessica down in the door way to his parents' bedroom. He and Chris retreated to the laundry room and hid. After a while Chris left the laundry room and walked down the hallway. Josh then heard Chris running in circles and calling

out his name. Then again there was silence. After waiting a while, Josh walked down the hallway, saw his sister down on the floor of the doorway to the master bedroom, entered the master bedroom and saw his mother nude on the floor. Then Josh lost consciousness as he was stuck from behind. This account outlines how Cooper lurked out of view after killing Peggy, Doug and Jessica and then killed Chris Hughes and attacked Josh last in sequence. (P. Ex. No. 1, *Cooper, supra,* 53 Cal.3d at pp. 800, 801).

Mr. Parker and his colleague also speculate--untethered to any evidence—and opine that the attacks on all victims were simultaneous, ignoring not only the account of the attacks provide by Josh, but the physical evidence as well. If the attacks were committed simultaneously by multiple assailants, the three child victims would never have been able to get out of their bedrooms. Under the proposed defense theory of a simultaneous attack by multiple assailants, Jessica would have been attacked and killed in her bedroom, Chris and Josh would have been attacked in Josh's bedroom. And Peggy and Doug would have both been attacked and killed in their bed. Doug Ryen would not have been able to travel as he did from his side of the bed across the room to the closet where his guns were kept. Peggy Ryen would not have been able to cradle Jessica in her arms as they both were attacked and killed.

Mr. Parker and his colleague fail to address the overwhelming evidence of Cooper's guilt outlined by the California Supreme Court and subsequent reviewing federal courts. Mr. Parker's criticism of the investigation and the theories of multiple assailants were all raised by Cooper's trial attorney and rejected by the trial judge, jury and subsequent reviewing courts. Subsequent post-conviction DNA testing has not only confirmed Cooper's guilt, it has proven the defense claims of other assailants to be unfounded.

Clemency counsel also submits a statement from an alleged new witness, who thirty-four (34) years after the fact claims to have seen the Ryen station wagon in the Claremont area the afternoon of Sunday, June 5, 1983. She claims the station wagon was occupied by three white men at the time. Testimony and physical evidence introduced at trial established the stolen Ryen station wagon was parked in a Catholic church parking lot before 11:00 a.m. the morning of Sunday, June 5, 1983.

Witness Gordon, as previously discussed, testified at trial that he placed flyer advertisements for a hair salon on the windshield of the Ryen station wagon and inside the car through an open window the morning of Sunday, June 5, 1983. He estimated the time before 11:00 a.m. possibly around 10:00 a.m. Detectives found those flyers with the vehicle when it was impounded. Other witnesses noticed the station wagon in the church parking lot on Tuesday, June 7, 1983. The belated story of this witness, which surfaced over thirty-three years after the murders, is not credible. (P. Ex. No.41, P. Ex. No. 42, P. Ex. No. 43 and P. Ex. No 46.)

X.

IMPACT STATEMENTS FROM LAW ENFORCEMENT

Letters from investigators of the Sheriff's Department are attached as exhibits and set forth the position of the agency as to appropriateness of the death sentence in this case. (Letters of Retired Det. Clifford (P. Ex. No. 55) Sgt. O'Compo, (P. Ex. No. 56) and Lt. Neely (P. Ex. No. 57.)

Retired SBSO Detective John Clifford's Letter

Det. Clifford, one of the original detectives assigned to the case, writes that he feels Cooper's death sentence should be carried out without further delay. Det. Clifford witnessed Cooper's brutality first hand when he arrived at the crime scene and saw the bodies of the Ryen family and Chris Hughes. When he interviewed Cooper's friends, family members and other witnesses in Mexico, Pennsylvania and Santa Barbara it became obvious to him that Cooper involved himself in a long and diverse life of criminal activities. Det. Clifford feels that Cooper's continuous denials are another indication of his callousness and lack of remorse. (P. Ex. No. 55.)

Retired Sgt. Hector O'Compo's Letter

Sgt. O'Compo, who was also one of the original detectives assigned to the case believes Cooper's death sentence should carried out. Sgt. O'Compo visited the surviving victim, Josh Ryen in the hospital after the attacks and witnessed first-hand the pain and suffering through which Josh went. Sgt. O'Compo also observed the tremendous violence that was inflicted on the deceased victims, Doug, Peggy, Jessica and Chris. Sgt. O'Compo

feels the death sentence is appropriate in this case due to the pain and suffering that was inflicted on the victims, the loss of lives and the negative impact it had on their families, the results of the recent DNA tests, Cooper's lack of remorse and lack of fear of the consequences of his actions. (P. Ex. No. 56.)

Retired Lt. Tom Neely

Lt. Neely was one of the supervisors assigned to the San Bernardino County Sheriff's Department Homicide Division. Lt. Neely speaks for the Sheriff's Department and sets out in his letter why his department believes the death sentence is appropriate in Cooper's case. In addition to describing the brutality of the attacks on the family and children in the sanctity of their home, Lt. Neely also mentions that Mr. Hughes, the father of Chris, discovered this horrible crime scene. (P. Ex. No. 57.)

It is not possible to imagine the additional tremendous life-long pain Bill Hughes suffers due to the memory of what he saw when he first looked into the Ryen master bedroom and saw his son and the Ryen family.

XI.

THE IMPACT OF COOPER'S CRIMES ON THE VICTIMS AND THEIR FAMILIES

The victims in this case were all special and unique individuals, each filled with their own set of hopes, dreams, and plans. They each had a right to live, to grow up and old together, and to enjoy all the many wonderful things life offers. They were in their own home at the time of these attacks, a place they had every right to feel safe. Their deaths were particularly senseless and brutal. Doug, Peggy, Jessica, and Chris were stabbed and hatcheted over two dozen times each. Josh was also brutally attacked.

Their deaths were not instantaneous, and there was a sequence to the killings. The pain, suffering, and terror they all must have all felt on that dreadful night defies imagination. To be awakened from your sleep, be attacked in the dark, struggle to protect

yourself and the children, and to lose everything in the process, conjures up the worst nightmares of anyone, and defines the last moments of their lives. This occurred all because Cooper needed a car and didn't want to be caught and sent back to state prison where he belonged.

And the victims' loss of life, even after all these years, has lasting implications. Each of the victims left behind loved ones who have struggled with their loss since that fateful morning in June of 1983 when Bill Hughes, Chris' dad, discovered his son and the Ryen family, his friends, dead.

The feelings and sympathies of the victims' families are set forth is their letters and declarations as (P. Ex. No. 8, P. Ex. No. 9, P. Ex. No. 10, P. Ex. No. 11; P. Ex. No. 12; P. Ex. No. 13, P. Ex. No. 14, P. Ex. No. 15, P. Ex. No. 19, P. Ex. No. 20, P. Ex. No. 21, P. Ex. No. 58 P. Ex. No. 59, P. Ex. No. 60, P. Ex. No. 61, P. Ex. No. 62, P. Ex. No. 65, P. Ex. No. 66, P. Ex. No. 67, P. Ex. No. 68, P. Ex. No. 69.) A summary of some of their thoughts and feelings are set forth below.

Josh Ryen's letter.

Josh Ryen was eight years old at the time of the attacks. Josh lost his entire family, his father, mother, sister and best friend. He also lost his innocence, his right to a normal family life, and upbringing. Josh carries deep emotional and physical scars to this day. His letter contains a small picture of the family that he lost. Josh writes about how wonderful life was before Kevin Cooper came to Chino Hills. (P. Ex. No. 9.)

Josh loved spending time with his family. His family raised Arabian horses and he loved everything about that, the riding, and the chores. He spent a lot of time with his best friend, Chris Hughes. They did a lot of things together that young boys do.

Josh remembers some things about the night his family and Chris Hughes were murdered but not everything. He outlines what he does remember about the barbeque and the ride home. He remembers being awakened by his mother screams. He remembers tripping over his sister as he entered his parent's bedroom. He remembers "one person with the bushy hair." He remembers waking up in the dark, seeing his

mom, putting his fingers by his throat to stop the bleeding and he remembers the eerie quiet and the terrible smell of blood. (P. Ex. No. 9.)

Josh remembers Bill Hughes coming to the sliding glass door and the look of shock on his face. He remembers his Incredible Hulk pajamas being cut off at the hospital and a policeman asking him questions and asking him to answer by squeezing his hand.

Josh believes that Cooper is guilty of these murders and believes Cooper should be put to death. Josh states;

> The day Cooper dies will be the first day of what is left of my life. He took everything from me when he took my family. I loved them and had fun with them and have felt completely empty since they were taken away. They surrounded me with their happy spirit and that is gone. My family was very family oriented and as a result I am as well.
>
> But I have no family. I have no family to share Thanksgiving dinner with. When other people invite me into their homes for family functions I have no family to bring ... If I ever marry, they will never attend my wedding. My children, if I ever have any, will not have grandparents. The last memory I have of my family is seeing my mother, naked, dead and bloody, lying next to me, and knowing from the smell that everyone else was gone as well.
>
> For twenty years I've had to hear and read about Cooper's proclamations of innocence. This actually drove me almost crazy because I am a fair minded and just person and I was too young at the time of the trial to know whether Cooper was guilty or not. Now I know for sure and beyond a shadow of a doubt that Cooper is the killer I really want him to die, not only for what he did to me and my family but because he tormented me so much with his claim of innocence. (P. Ex. No.9, pp 3,4.)

Josh does not want any further testing. Josh states, "It is time for this cynical game to come to an end. The time has come for Kevin Cooper to pay for what he has done." (P. Ex. No. 9, Josh's letter, p. 4.)

Mary Ann Hughes's letter.

Mary Ann lost her son Chris in these attacks. Chris was eleven years old at the time. Her thoughts and feelings are discussed in several places in this response; as summarized in her letters of January 7, 2004, May 10, 2016, March 15, 2018 and in her Victim Impact statement on May 15, 1985.

No parent should ever have to bury their children. Yet Kevin Cooper forced the Hughes family to do just that.

> ...I am the mother of Christopher Hughes, one of the victims of the vicious attacks of Kevin Cooper on that day in June, 1983. Chris was only 11 years old with his whole life ahead of him. He had a family that loved him and who has been devastated by what happened that day.
>
> That day in June is still a nightmare to my family. My husband was the one who found our son and the members of the Ryen family on that day. He lives with the nightmares of what he saw. I attended almost every day of a 16 week preliminary hearing and much of the trial which was moved to San Diego. I live every day with the nightmare of what I learned happened to our son and our friends that day. Chris was my oldest child, my baby, and I will spend every day of my life missing him. A day does not go by that I do not think of the horror that Kevin Cooper put him through.
>
> I have never doubted that the right person was charged with this crime. The evidence was clear to me, as it was to the jury that convicted him of the crime 20 years ago. The DNA tests on evidence that were recently done only further showed that the murderer of my son was Kevin Cooper. He received a fair trial by his peers, and was sentenced according to the laws if this state. Twenty years later we are still waiting for this sentence to be carried out. The system failed Chris when it allowed the escape of Kevin Cooper from a local prison. It continues to fail him when 20 years later we still wait for justice.
>
> The execution of Kevin Cooper will not bring my son or our friends back. It will, however, mean an end to the constant torment we have had to live with as the media continues to sensationalize a vicious crime. My family has lived through 20 years of media coverage of Chris' death. You cannot imagine what it is like to open a newspaper or turn on a television or radio and have to relive your sons' death .....

> There is only one way for this to finally come to an end. The execution of Kevin Cooper is the only thing that can make some of this stop. I still will not get my oldest child back. He would be 32 years old now. I would probably be a grandmother. Instead, Chris never got the chance to go to high school, attend a prom, swim on a high school or college swim team, go out on a date, go to college, get married, and a million other things that he had a right to expect. He was robbed of all of this by Kevin Cooper.
>
> I have often heard the phrase that 'a parent should never have to bury their own child.' Every time I hear it, I know how true it is. I beg you, and all of the other people involved in this decision, to think about what I have said in this letter. My family has the right to some kind of closure to this. We have a right to be able to only remember all of the good things about an 11 year old boy and not the horror of his death. Please, help make that happen (P. Ex. No.8.)

Ms. Hughes also sets out in her declaration of December 20, 2002, that she does not want further DNA testing. (P. Ex. No. 19.)

William Hughes's letter.

William (Bill) Hughes is the father of Chris Hughes. Mr. Hughes discovered the crime scene and found his son, Chris, as well as Doug, Peggy, and Jessica, dead. His prompt actions in summoning help in the face of this shock undoubtedly saved the life of Josh Ryen. Mr. Hughes has had to live not only with the loss of his oldest son and friends, but with the memories of all the horror he saw when he first came upon the scene. Mr. Hughes writes:

> As the father of Christopher Hughes I must urge you to carry out the death penalty for Kevin Cooper. There is no doubt in my mind of his guilt and that the magnitude of the crime warrants the death penalty. I was the person who discovered the scene that Sunday morning, and how I handled the situation still amazes me. If someone had told me I would have to find my son with over forty stab and puncture wounds, his little friend Jessica dead and covered in blood in the hallway, Doug and Peg Ryan bloody and mutilated in their bedroom, and Josh Ryan still alive with his neck slit from ear to ear, I would have told them they were

> crazy. Mr. Cooper should be put to death and no remorse should be felt. I believe that everyone should have to pay for their actions and all Mr. Cooper has to give is his life.
>
> A parent should never outlive their children. The pain never goes away; you just have to learn to live with it each day. Chris was only eleven years old and was a very good boy, served at Mass of the Catholic Church, and was a competitive swimmer. Kevin Cooper has robbed me of his life. The only way I can wish him a happy birthday or a Merry Christmas is to go to his grave and that is not fair. He had no chance of defending himself and endured extreme pain and agony in his death.
>
> I testified in trial as to what I saw that Sunday morning and Mr. Cooper looked over at me and smiled. He was looking at the pictures of the murder scene at his table. He has not shown any remorse in twenty years for his actions of that day and I personally feel that the death penalty is warranted and must be carried out. This will not end my constant pain in having to deal with the loss of my son but it will help to heal some of the wounds. (P. Ex. No. 11.)

Mr. Hughes also sets out in his declaration of December 20, 2002, that he does not want further DNA testing. (P. Ex. No. 20.)

Bill and Mary Ann Hughes also set out in their recent letters of May 10, 2016, and March 15, 2018, that they are both still opposed to any grant of clemency or further investigation or testing for Cooper. (P. Ex. No. 58 and P. Ex. No. 62.)

Richard Ryen's letter and declaration.

Richard Ryen is one of the brothers of Doug Ryen. He lost his brother, sister-in-law and niece in these murders. Attached as exhibits are a letter and declaration submitted by Richard Ryen. (P. Ex. No. 21 and P. Ex. No. 29.) Richard Ryen expresses in these two exhibits that he feels the case has gone on long enough, that further DNA testing is not necessary and that clemency should not be "granted to Kevin Cooper.

Herbert Ryen's letter.

Herbert Ryen is another of Doug Ryen's brothers. His letter of January 6, 2004, is

attached as P. Ex. No 15. Herbert Ryen is opposed to further DNA testing and feels the death sentence is appropriate for Cooper. Hebert Ryen writes:

> ... Four lives were taken, and others changed forever through Kevin Coopers' murderous acts. My loss has been tremendous. The loss to my wife and two daughters has also been great.
>
> My brother, Doug Ryen lit up a room with love and laughter and he was my best friend. To lose him and his family in such a vicious manner is unpardonable. The day I saw their blood covering the walls and floor of their bedroom my heart broke and left me numb.
>
> During endless days and sleepless nights, the suffering and terrors they faced at the hands of Kevin Cooper come to mind and leave me very angry and sad. Through the years I have had the support of my wife, family and close friends in coping with this hideous crime.
>
> I have prayed for twenty years that this cold-blooded murderer would be put to death. I only wish that my brother and his family had these past twenty years of their lives that Kevin Cooper took away from them.
>
> In the last moments of his life, I pray Kevin Cooper feels the pain of his victims and the long suffering he has caused to all. Further, I pray that Doug, Peg and Jessica Ryen will finally rest in peace."

<u>Cynthia Ryen-Settle's letter</u>

Cynthia Ryen Settle is the sister of Doug Ryen. She sets out her feelings in the quotes below taken from her letter dated January 5, 2004 (P. Ex. No. 12.):

> My name is Cynthia Settle (Cindy) and F. Douglas Ryen (Doug) was my brother and I'm writing in regards to the Kevin Cooper Clemency Hearing.
>
> Doug was only 13 months older than I was. We were part of a very close knit family and shared a lot of wonderful times together, and many a phone call across the miles. I would have to say he was my best friend. That has all been viciously taken away and has left me with many a sleepless night and nightmares. I remember being out there for a week visiting Josh, my brother's son and only survivor, in the

> Hospital. Even before the funeral I was so paranoid that I had to call the Sheriff's office back home and have them drive out to the country by my house to see if everything was okay. To say nothing about how afraid my children were that something like this could happen to them.
>
> I believe in the death penalty if the proof is beyond a shadow of doubt. There was some doubt in my mind until Kevin Cooper had DNA testing done, which we were all for. Be what it may, Kevin Cooper has had some sort of a life for the last 20 years, while Doug, Peggy, Jessica and their neighbor Chris Hughes were all cheated out of theirs.
>
> After a trial of three and a half months a jury found Kevin Cooper guilty, and I trust that. Now with the DNA completed and exhausting all his appeals and to say nothing of the twenty years it has taken and probable millions it has cost. I believe it is time for closure for the Ryen family and denial of clemency for Kevin Cooper.

Jane Carlone's letter.

Jane Carlone, the aunt of Chris Hughes, submitted a letter dated January 7, 2004. (P. Ex. No. 14.) Ms. Carlone sets out in her letter the pain and suffering her family has experienced as a result of Cooper's actions. She mentions some of the things Chris never got to do because of his early death. Ms. Carlone also sets out her belief that the death sentence is appropriate in this case and that it's time for Cooper to pay for his actions.

Catherine Ryen's letter

Catherine Ryen, one of victim Doug Ryen's nieces, has submitted a letter describing the trauma and losses Cooper inflicted on her and her family. She is opposed to any clemency for Cooper (P. Ex. No. 70.)

Robert Olin's letters.

Robert Olin, the uncle of Chris Hughes, sets out his thoughts and feelings in his letter dated January 8, 2004. (P. Ex. No. 13.) Mr. Olin recalls some of the very special times he spent with Chris and the shock he felt upon learning that Chris was killed. He

was very disturbed when he learned the gruesome details of how Chris died. Mr. Olin also feels that after sitting through the preliminary hearing in Cooper's case there was no doubt in his mind of Cooper's guilt. He believes the recent DNA tests further confirm Cooper's guilt. Mr. Olin feels that Cooper should pay for these crimes with his life.

Robert Olin submitted a subsequent letter in April 2018, expressing his opposition to any grant of clemency or further testing. (P. Ex. No. 65.) Robert Olin writes that because of Cooper's criminal record and the circumstances of the murders for which he was convicted that he does not deserve clemency.

Relatives Stacey Ryen Sheehan and Nico Lockhart have also submitted letters expressing their opposition to any grant of clemency for Cooper. (P. Ex. No. 68 and P. Ex. No. 69.)

Several members of the community, including Kim Zolotar, Denise Beno and David Beno have submitted letters expressing their opposition to any grant of clemency for Kevin Cooper. P. Ex. No. 59, P. Ex. No. 60, and P. Ex. No. 61.)

Surviving victim Josh Ryen and numerous other family members have expressed some common thoughts and feelings about this case. Those feelings include that Chris, Doug, Peggy and Jessica were all very special people who did not deserve to die at the hands of Kevin Cooper at all, and certainly not in the terrible manner in which they did. They also believe that Kevin Cooper alone is responsible for the deaths of their loved ones. They believe the litigation has been continued long enough and that it is time for Cooper's death sentence to be carried out. The People concur and urge the Governor to allow that justice be given to the families of the victims who have waited patiently for so long.

XII.

GOVERNOR'S ROLE IN CLEMENCY

The Governor does play a unique and critical role in ensuring justice in the clemency process. The Governor has the ability and discretion to consider all relevant facts and circumstances.

First, the People urge the Governor to consider the overwhelming evidence of

Cooper's guilt that was presented at trial and recounted by the California Supreme Court and subsequent reviewing federal courts. The People urge the Governor to consider the additional highly incriminating evidence developed through the post-conviction DNA testing results that placed Cooper inside the Ryen home at the time of the murders and in their station wagon after it was stolen. The People also urge the Governor to consider the 2005 Opinion and Ruling of United States District Judge Marilyn Huff who, after conducting a lengthy evidentiary hearing and ordering EDTA testing and further hair examination, determined that claims made by clemency counsel lacked merit and that Kevin Cooper alone was responsible for these murders and attempted murder.

Second, the People urge the Governor to respect and uphold the verdicts, finding and rulings of the jury, trial judge, California Supreme Court and subsequent reviewing federal courts. Cooper has received highly competent representation throughout this case. He received a very lengthy pretrial hearing, change of venue and trial. He has lived through a very lengthy appellate process and been allowed to live for an additional thirty-three years after the jury and trial judge imposed his death sentence. It is time for this process to end.

Third, the People urge the Governor to consider the importance of bringing justice to the families of the victims, and refuse to interfere with a punishment that is just and that the Ryen and Hughes families and their community are entitled to have carried out after placing their faith in the legal system for over thirty-four years. The pain and suffering of their unbearable losses are reflected in the letters of parents Mary Ann and William Hughes who lost their son Chris; Richard, Cynthia and Herb Ryen who lost their brother, sister-in-law and niece; and Josh Ryen who lost his entire family and best friend. They have all waited patiently for over thirty-four years for justice, respecting the rules of law that society has established. As expressed in their letters they have the right to expect that this case comes to the end at which a jury carefully arrived, and which every reviewing court has repeatedly upheld.

The People urge the Governor to consider bringing justice to the victims, to Doug, Peggy, Jessica, Chris and Josh for the pain, suffering and terror they received at the hands of Kevin Cooper.

Fourth, the People urge the Governor to reaffirm the decision that was made in January 2004 by Governor Schwarzenegger regarding Cooper's initial Clemency Application.

As Governor Schwarzenegger stated in his January 30, 2004 decision, p. 2:

> A responsible jury, after hearing all the evidence, determined that Mr. Cooper murdered two adults and two children and that he attempted to murder another child. To date, all state and federal courts have affirmed his conviction and death sentence. I can find no reasonable or compelling reason to disagree with these thorough evaluations of Mr. Cooper's case.

And at p. 3:

> I have sworn to uphold the Constitution and the laws of the State of California, and I am deeply committed to that solemn duty. My respect for the rule of law and my review of the facts in this case lead me to my decision. Kevin Cooper's request for clemency is denied.

(P. Ex No. 30.)

XIII.

CONCLUSION

Kevin Cooper had a significant history of criminal conduct and escapes before he arrived in Chino Hills on June 2, 2004. He has attempted to avoid responsibility for his crimes whenever possible. He committed the most horrendous, atrocious crimes imaginable against the victims while they were in the sanctity of their home. He killed a family and two little children just to steal a car, avoid detection and a much-deserved return to state prison in both California and Pennsylvania. The pain the victims suffered and the terror and horror the victims must have felt before their deaths is simply beyond imagination.

The loss Cooper inflicted on the families of the victims is exemplified by the

comments of Mrs. Hughes on May 15, 1985, at the time of Cooper's sentencing, and later the statement Josh Ryen made in federal court on April 22, 2005. Some of those comments are set forth below: (P. Ex. No.8.) (P. Ex. No. 16-18)

> MRS. HUGHES: In June of 1983, our son, Chris, was eleven and a half years old, and he wasn't just a statistic in some murder case, he was just a little boy, who was a good student, had had lots of friends, he was on a swim team, he had a room full of trophies, his friends liked him, he liked sports. Where he went to school there is a tree that stands there now that says, 'To our friend Christopher Hughes.
>
> The last thing that I did with him was I took him to see the last 'Star Wars' picture, and I can still remember I spent more time watching the looks on his face than watching the picture. All this changed when a mistake sent Mr. Kevin Cooper to Chino Institution for Men, where he could simply walk out of a prison.
>
> We were never told that Kevin Cooper escaped from CIM or our son would have been home with us that night; he would have not been out with the Ryens, and instead Kevin Cooper went to the Ryen home and murdered four innocent people.
>
> It is impossible, I think, for anybody to imagine the kind of horror that had to go on in that house at the time our little boy was put in a situation that he could have only known terror, and we know he had to have some idea of what was going on. Josh heard him screaming, he knew there was something wrong.
>
> My husband is always going to remember what he saw in that house that morning, and I will always be remembering that I let my boy go up to spend the night that night. I will always think of what went on there. The Ryens and Chris were killed in a manner that is not even as human as we use to kill animals.
>
> JOSH RYEN: What I think is that I would like to be rid of Kevin Cooper. I would like for him to go away. I would like to never hear from Kevin Cooper again. I would like Kevin Cooper to pay for what he did.
>
> I dread happy times like Christmas and Thanksgiving. If I go to friends' houses on holiday, I look at all the mothers and fathers and children and grandchildren and get sad because I have no one. Kevin Cooper took them from me.
>
> I get terrified when I go in any dark place like a house before the lights are on. I hear screams and see flashbacks and shadows. Even with the lights on, I see terrible things. After I was stabbed and axed, I was too

> weak to move and stared at my mother all night. I smelled the overpowering smell of fresh blood and knew everyone had been slaughtered.
>
> Every day when I comb my hair, I feel the hole where he buried the hatchet in my head. And when I look in the mirror, I see the scar where he cut my throat from ear to ear and I put four fingers in to stop the bleeding, which they say saved my life. . .
>
> I feel guilty and responsible to the Hughes family because I begged them to let Chris spend the night. If I had not done that, he wouldn't have died. I apologize to them, and especially Mr. Hughes, for having to find us and see his own son like that . . .

Josh Ryen's April 2018 letter

Josh Ryen has also provided an updated three-page handwritten letter dated April 20, 2018, expressing his opposition to any grant of clemency or further testing for Cooper. (P. Ex. No. 66.) Josh explains that he had a family that he loved, a best friend and wonderful life in Chino Hills before Cooper murdered his father, mother, sister and best friend. He explains how the crimes Cooper committed have affected his life, and how he thinks about the crimes every day and how it is a nightmare that he relives every day.

Josh describes how he was awakened by screams that night coming from his parents' bedroom. He describes tripping over his dead sister in the hallway to his parents bedroom and after he awoke from the attack looking all night at his dead mother who laid next to him on the floor of the master bedroom. Josh describes that he was unable to move when he regained consciousness and eventually heard Mr. Hughes banging on the sliding glass door trying to enter the bedroom. Josh describes the look of shock and horror on Mr. Hugh's face as he looked into the room.

Josh states, "He (Mr. Hughes) left and I heard the front door bashing in and Mr. Hughes in the room cradling his son and sobbing and moaning which will always echo in my ears."

Josh expresses his frustration over the attention Cooper continues to receive in spite of all the lies he has told over the years, as well as his continued demands for additional DNA testing in spite of all the DNA testing he has already received.

Joshua Ryen, the sole survivor of Cooper's brutal attack requests that Cooper be denied clemency and denied any further testing.

For all the many reasons stated above the People, urge the Governor to deny Kevin Cooper any further testing, investigation, Clemency Hearing or Clemency. The People urge the Governor to allow Cooper's clearly deserved death sentence to remain in place so that it may be carried out soon after executions resume.

Respectfully submitted this 17th of May 2018.

MICHAEL A. RAMOS
District Attorney

By _____
John P. Kochis
Chief Deputy District Attorney (Retired)

By _____
Robert C. Bulloch
Supervising Deputy District Attorney
San Bernardino County