



County of San Bernardino
Office of the District Attorney
JASON ANDERSON, District Attorney

March 17, 2021

Governor Gavin Newsom

Catherine E. Lhamon
Legal Affairs Secretary

Kelli Evans
Chief Deputy Legal Affairs Secretary

Office of the Governor
1303 10th Street, Suite 1173
Sacramento, California, CA 95814

Re: Kevin Cooper- Response to Letter Submitted by the NAACP & LDF, Dated March 11, 2021,
Supporting Cooper's Request for an "Innocence Investigation"

Dear Governor Newsom:

I took office as the San Bernardino County District Attorney in December 2018. At the time, I was not very familiar with the Kevin Cooper (Cooper) case. Not long after I took office, and shortly after you ordered expanded testing and retesting in this case, Cooper's defense team reached out to me to discuss the testing and all other issues they have repeatedly raised on Cooper's behalf. I spent a significant amount of time listening to them, as I believe very firmly that the gravity of the crimes, prosecution, and judgment compel serious contemplation at every step. I also spoke at length with The New York Times opinion writer Nick Kristoff and read his various position pieces about Cooper.

Unlike outside commentators offering opinions on the case, I also read most of the Cooper trial transcripts, including Cooper's testimony on his own behalf. I further read every controlling court opinion on the case that was written over the past thirty years. Finally, I reviewed the recent letters between Cooper's defense team and the prosecutors in my office. As we have made every effort to satisfy the concerns raised by both yourself and former Governor Edmund G. Brown, I also reviewed the current testing results from Bode Laboratories (Bode). I felt that my perspective of having been a defense attorney and having represented numerous defendants against murder charges (including five jury trials), would give me a different perspective than my predecessors in viewing the Cooper case and its evidence.

In every case in which my clients were charged with murder or other violent crimes, I challenged the integrity of the police investigation, took issue with cases where it appeared that the police rushed to judgment against my clients, pointed out handling of evidence that may have been seen as sloppy and bungled, pointed out situations where law enforcement arguably engaged in suggestive identification procedures, advocated the presence of possible bias against my clients, challenged the relevance of

my clients' criminal history as it related to my clients' credibility, and examined the presence of other suspects and the lack of motive my clients had for committing the charged offenses. In some cases, I enjoyed success in these arguments. In others, I did not. This experience allowed me to scrutinize the Cooper case from a unique perspective.

I provide that background to say this: Cooper's claims and defenses are not new or novel, and they have been repeatedly examined and tested for more than thirty-five years. The record in this case and subsequent examination establishes that Cooper is guilty of the murders of Douglas, Peggy and Jessica Ryen, and Christopher Hughes, particularly in light of the extraordinary due process he has received over and above virtually any other defendant convicted of murder. Please recall that Cooper has never been able to explain how his blood was found at the crime scene before anyone knew Cooper had escaped from prison, and how his blood and the blood of victim Douglas Ryen was found on the tan t-shirt that was never introduced by the prosecution at his trial. And please consider that Cooper perjured himself at trial and that the jury rejected his testimony as incredible. Cooper's silence on these issues speaks volumes.

Cooper has been prosecuted and convicted for numerous crimes in both the states of Pennsylvania and California because of his conduct, not due to the color of his skin. His lengthy criminal history includes crimes of theft, burglary and violence against victims in both states. He escaped from custodial settings approximately ten times from his confinement in both states to avoid responsibility for his crimes. After his last escapes in Pennsylvania and California, he committed acts of reprehensible violence against unsuspecting victims.

The letter submitted by the NAACP/LDF ignores the findings of the trial jury, trial judge, California Supreme Court, post-conviction state and federal court evidentiary hearing findings and reviewing Federal Appellate Court decisions. As Ninth Circuit Court of Appeal Circuit Judge Rymer stated in 2001, "[T]he district court, and all state courts, have repeatedly found, evidence of Cooper's guilt was overwhelming. The tests he asked for to show his innocence 'once and for all' show nothing of the sort. Indeed, the opposite is true.

Truth and reliability are bedrock principles in the criminal justice system. Both state and federal courts have consistently found both through decades of review of the evidence in Cooper's case.

The NAACP/LDF letter also ignores the recent DNA test results that confirm Cooper's presence inside the victims' home at the time of the murders, perhaps due to having not been provided those results by Cooper's defense team. Those results also exclude Cooper's proclaimed prime suspect in that a sample purported to be from that suspect match no items of evidence tested by Bode.

Bode *did* develop a unknown DNA profile from an orange towel recovered on the side of a road within two miles of the crime scene. However, that towel was never brought to court, nor was it identified in any proceedings as coming from the victims' home. The investigator who collected the towel is deceased, and therefore a DNA profile from him for comparative purposes is not available. Consequently, it is impossible to ascribe any significance to either the towel or the profile.

Cooper was only one of several persons of interest sought by the San Bernardino County Sheriff's Department during the early stages of the investigation. Three of those other persons of interests were also taken into custody and questioned. Each provided accounts of their whereabouts on the day of, and after, the murders. Investigators also followed up on the suspects' alibis and determined them to be accurate. Blood samples from all three persons of interest were obtained, analyzed and compared to evidence recovered during the investigation. Only Cooper's profile matched the blood recovered from the victims' hallway.

Cooper's jury trial was moved to San Diego County after his defense attorney filed a motion for change of venue to ensure confidence in the fairness of the proceedings. Each of the jurors was extensively examined, individually and collectively, to determine they would be fair and impartial.

Cooper's trial counsel was given wide latitude to attack the methods of collection and preservation of the evidence introduced against Cooper. Both the judge presiding over the preliminary hearing and the trial judge ruled that this evidence was admissible. Defense counsel was allowed to re-argue these issues to the jury.

In post-conviction proceedings, Cooper received the benefit of evidentiary hearings in state court in 2003, and two separate evidentiary hearings in federal court in 1995/1996 & 2004/2005. At the conclusion of all three evidentiary hearings each judge ruled that Cooper's claims of evidence tampering or planting were unfounded.

Additionally, Cooper has been granted three separate rounds of post-conviction DNA testing, and two separate extensive post-conviction examinations of hair recovered from the victims. The California Department of Justice (DOJ) laboratory, Cooper's own trial and post-conviction expert Dr. Edward Blake, and Bode all confirmed that blood recovered from the hallway of the victims' home belongs to Cooper. Furthermore, the DOJ lab and Dr. Blake also determined that Cooper's DNA was on cigarette butts recovered in Long Beach from the victims' stolen station wagon.

The NAACP/LDF letter refers to Cooper's allegations that unidentified persons claim another person made admissions to these murders. The defense has declined to provide the identities or contact information for those persons to law enforcement. They further fail to mention that Bode has excluded that purported prime suspect from the blood recovered from the hallway at the Ryen home and excluded that person's DNA from the hair recovered from the victims. They fail to mention that person came to the attention of law enforcement prior to trial and that he was investigated. Similarly ignored is that he provided an account of his whereabouts the day of, and after, the murders, all of which investigators corroborated.

No other convicted defendant has received the extensive post-conviction review that Cooper has. Few, if any, defendants have received the benefit of three separate rounds of post-conviction DNA testing and physical evidence examination. The recent letter refers to general studies that do not involve the level of scrutiny Cooper's case has received.

Finally, I must address the contention Cooper continues to make about Judge Fletcher's dissenting opinion. Dissenting opinions, particularly in light of the record in Cooper's case, have no controlling

relevance, particularly under circumstances that pre-date the current understanding of the evidence in the case by more than a decade. If dissenting opinions were relied upon Obamacare would not exist, same sex marriage would be illegal in many states, and suspects would not enjoy their *Miranda* warnings during custodial interrogations.

Cooper fashions his current request in the form of an ongoing application for clemency. Clemency was never intended to be a substitute for the determinations of the judicial system. Granting Cooper's request for an "innocence investigation" would amount to substituting unstructured findings of the executive branch for the criminal justice system in toto, from a verdict rendered by twelve jurors through appellate review, and state and federal habeas corpus.

Lost and forgotten in this recent letter from the NAACP/LDF letter are the victims. Douglas, Peggy, Jessica and Joshua Ryen were asleep in the sanctity of their home when they were attacked by Cooper. Chris Hughes was visiting his best friend for a sleep over when he lost his life. Cooper took their futures away from them so he could avoid capture and punishment for his outstanding crimes. Their families have been waiting patiently for justice for decades.

Each and every issue raised by the NAACP/LDF letter has been repeatedly addressed by reviewing state and federal courts. Cooper has refused to accept his responsibility for these murders, and likely always will. He is not entitled to any additional review of his groundless claims.

Respectfully submitted,



Jason Anderson
San Bernardino County District Attorney

Cc: (by e-mail) Samuel Spital, Esq. (sspital@naacpldf.org)
Norm Hile, Esq. (nhile@orrick.com)
Jacob Heath, Esq. (jheath@orrick.com)
Kelli Evans, Esq. (kelli.evans@gov.ca.gov)