I.

INTRODUCTION

A.

OVERVIEW

Kevin Cooper has been 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 clearly 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 had an opportunity to view the Ryen house, gather weapons of opportunity (a hatchet and knife) and plan his attack.

There was a sequence to the attack. The parents Doug and Peggy were attacked first. Jessica was attacked next very closely in time. The boys, Josh and Chris, who were awakened by screams, were the last to be attacked. They 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 survived in spite of receiving serious wounds to his head, throat and back. The terror and horror that the victims must have felt during this attack, particularly the 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. He had escaped from custody in Pennsylvania numerous times as well, making his escape from Chino Prison his 12th escape.

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. This event was, 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.

The California Supreme Court has found the evidence of Cooper's guilt to be "overwhelming." Recent post conviction DNA testing has revealed substantial additional evidence of Cooper's guilt, which in combination with the trial evidence, constitutes conclusive evidence of Cooper's guilt.

Current Counsel for Cooper now makes many of same arguments that his original attorney made during the motions and trial of the case. Ironically they complain about that attorney's performance while adopting his arguments and strategy at the same time. These arguments include: criticism of the crime scene processing and subsequent criminal investigation; extensive pretrial publicity; absence of motive; absence of eyewitness testimony; and the circumstantial nature of the evidence that established Cooper as the killer. All of these claims have been understandably rejected by the jury, the trial judge, the California Supreme Court and Federal Courts. Cooper also now complains about the evidence preservation and procedures of the post conviction DNA testing that has resulted in new highly incriminating evidence against him. This claim has also been rejected by the San Diego Superior Court after an evidentiary hearing.

The People will set forth below with specificity and support from the decisions and orders by the trial judge, California Supreme Court, Federal District Court Judge,

Ninth Circuit Federal Court of Appeals, the record of the case, declarations, letters from the victims' families and other attached exhibits why all of Cooper's claims are without merit and should not result in clemency.

Based upon the extreme violence and brutality of the murders of the Ryen family and 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.

B.

RESPONSE TO CLAIMS IN COOPER'S INTRODUCTION

1.

COMMUNITY REACTION AND PRETRIAL PUBLICITY

Any community would be shocked to learn that such a crime had occurred in their county. However, Cooper's trial counsel successfully obtained a change of venue and the trial was moved to San Diego. Neither the victims, the defendant, the investigating agency, nor the various witnesses had any ties to that community. Both the California Supreme Court and Federal District Court reviewed these issues and concluded that transfer of the case to San Diego County for trial protected the defendant from any adverse pretrial publicity. (People v. Cooper, 53 Cal.3d 795 (1991), P. Ex. No.1 & Federal District Court Judge Huff's Order of August 22, 1997, P. Ex. No. 2.)[1]

The California Supreme Court specifically noted that the size of San Diego County, the lessened publicity, and the fact that neither the defendant nor the victims were residents nor closely associated with that county protected the defendant's right to

[1] P. Ex. Refers to People's Exhibits submitted in this response.

a fair trial. (P. Ex. No.1 pp. 806, 807.) Federal District Court Judge Marilyn Huff also found that the publicity lessened over time, was not particularly inflammatory and that the trial judge was impressed with the overall caliber and fairness of the jurors. (P. Ex. No.2 pp. 34, 35.)

It is hard to imagine how Cooper, a state prison escapee, who was charged with brutal murders of a family and their houseguest would be popular anywhere in the country let alone the state. However, as the Courts above have stated, the transfer of the case to San Diego protected Cooper's right to a fair trial. Any pretrial publicity that the case received should have no bearing on Cooper's request for clemency, as it did not effect the fairness of his trial. The only relevance of pre-trial publicity to the question of clemency would be to show the understandable outrage of the community toward Cooper's brutal massacre, which is something that weighs against a grant of clemency.

2.

LAW ENFORCEMENT FOCUS ON COOPER AS THE SUSPECT

The trial judge, the California Supreme Court, Federal District Judge and the Ninth Circuit Court of Appeals all held that the investigators acted in good faith. (Peo. v. Cooper, P. Ex. No. 1, p. 811, Cooper v. Calderon, 255 F.3d 1104, 1113 (9th Cir. 2001) P. Ex. 3.) 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, Cooper pp. 795-800, 836-837) Sheriffs' investigators would have been negligent not to pursue this evidence and follow up on the person it pointed to.

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.

3.

COOPER'S CLAIM OF INNOCENCE

The People acknowledge Cooper has continued to claim innocence since his arrest. The consistency and repeated nature of Cooper's patently false insistence of innocence hardly weighs in his favor in the content of leniency, as it only underscores his complete and utter lack of remorse.

The trial jury, judge, California Supreme Court, Federal District Court Judge, Ninth Circuit Court of Appeal, have reached a far different conclusion based upon the evidence. (P. Ex. No.1 Cooper pp. 836-837, P. Ex. No. 2 Judge Huff's Order of Aug. 22, 1997, p. 1, Cooper v. Calderon, P. Ex. No. 3, p. 1110.) The California Supreme Court stated; "The 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 of established defendant's guilt overwhelmingly." (P.

Ex. No. 1 Cooper at pp 836-837.) Federal District Court Judge Huff, who reviewed the entire transcript of the trial proceedings, also found overwhelming evidence of Cooper's guilt. (Judge Huff's Order, Aug. 22, 1997, P. Ex. No 2 , p. 1.)

Recent post conviction DNA test results also provide strong evidence that Cooper is the killer and sole person responsible for the Ryen/Hughes murders. (P. Ex. Nos. 4, 5 DOJ Physical Evidence Exam Reports dated July 2 and September 24, 2002, pp. 1,2,3 of 8 and pp. 2,3,4 of 7.) Those results provide strong evidence of Cooper's DNA from blood inside the Ryen residence, from saliva on two cigarette butts recovered from the stolen Ryen station wagon and from blood on a tee shirt, found on the side of a road, that also contained victim Doug Ryen's blood. This powerful additional highly incriminating evidence when considered in combination with the overwhelming evidence of guilty presented at trial, leaves no conceivable doubt as to Cooper's guilt.

The evidence at trial also established that Cooper was a consummate liar. Cooper lied about his identity when he was arrested, charged and sentenced to state prison under the assumed name of David Trautman for two counts of residential burglary in Los Angeles County. He was also questioned about the use of this alias under penalty of perjury, and his deception as to his true identity in the Los Angeles County Courts. (P. Ex. No 1 Cooper at pp. 793, 822.)

As reflected in Cooper's Los Angeles County Probation Report, (Case No. A-386448, P. Ex. No. 44), Cooper did more than lie about his name as he went through the court system in Los Angeles County. Cooper also lied about his entire identity and much of his background. Cooper lied about his family history and who raised him and his prior criminal record. He has expressed no remorse for his conduct in the

burglaries. The Los Angeles County Probation Report is a perfect example of how Cooper lies to paint an inaccurate picture of himself to avoid responsibility for his criminal conduct. (See P. Ex. o. 44, pp. 1-10.)

Cooper also lied about his identity to Owen and Angelica Handy when he met them in Ensenada Mexico. He claimed to be Angel Jackson when he asked them for work. (P. Ex. No. 1 Cooper at p. 800.)

Cooper used aliases and lied about his identity to avoid responsibility for his criminal conduct that resulted in his confinement in Pennsylvania and California. It is hardly surprising that he continues to lie about his responsibility in the Ryen/Hughes murders.

Cooper's continued denial of his commission of these murders also demonstrates a complete lack of remorse. He continues to victimize the Ryen and Hughes families, including sole survivor Josh Ryen with his false claims of innocence. As reflected in the letters of support submitted on Cooper's behalf he has never really taken responsibility for his own actions, which is hardly the picture of someone who should be rewarded with clemency, especially with the pain and suffering he has caused. His continued denial of his responsibility for these brutal murders, which he unquestionably committed, only evidences the inappropriateness of a grant of clemency.

4.

FAILURE TO PRESERVE BLOODY COVERALLS

Federal 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.
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> "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

[1]"[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). " (Judge Huff's Order pp. 51 fn. 2 People's Ex. No. 2.)

> that nothing in the record suggests that these coveralls had any exculpatory value at the time they were destroyed.
>
> . . . . .
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> "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 Dep. Eckley testified at both a pretrial hearing and at the 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.

5.

ALLEGED THIRD PARTY CONFESSIONS

Cooper contends "police" investigators failed to follow up on alleged confessions of two separate third parties. Judge Huff pointed out that such was not the case. (P. Ex. No. 2, Judge Huff's Order pp. 27, 71, 72.) As to the alleged confession, suspect as it was, by Kenneth Koon, Judge Huff described how it was investigated by Sheriff's

detectives and turned over in a timely fashion to the defense. Judge Huff's description of the "materiality" of this information is set forth below.

> "On December 18, 1994 San Bernardino Deputy Sheriff Gary Woods conducted an interview with Inmate Anthony Wisely at the mental health facility in Vacaville, California on December 18, 1984. At this interview, Wisely allegedly told Deputy Woods that his fellow inmate Kenneth Koon confessed to him that he was involved in the Ryen/Hughes murders. Following this up, on December 19, 1984, Deputy Sheriff Woods conducted an interview with Kenneth Koon. Although petitioner concedes that this information was turned over to defense counsel on January 2, 1985, he now claims that this two-week delay constituted a Brady violation.
>
> "This court disagrees. Respondent has pointed out that the two-week delay was attributed to the Christmas-New Year's holiday period, an explanation that this court finds to be reasonable. Similarly, the record shows that this information was not provided to the *prosecutor* until the morning of January 2, 1995, and that as soon as he received it, he provided a copy of this material to defense counsel. 97 RT 5325. Upon defense counsel's request, the trial court granted him an hour to read the 15 pages he was presented, and that after that delay, counsel decided to proceed. Id. The record shows that defense counsel did *not* ask for any additional time, nor was he pressured in any way by the trial court to proceed, but rather that counsel made the decision to proceed. 97 RT 53220-326. Given the nature of this 'confession' and its source, this court finds trial counsel's decision to proceed to be sound. In summary, this court finds that this two-week delay in turning over materials does not constitute a Brady violation.
>
> "Alternatively, this court notes that the entire substance of this 'confession' consists of an interview with an inmate in the California Medical Facility who claimed that another inmate confessed to being involved in the Ryen murders while both inmates were 'pretty wasted with the use of marijuana.' In addition, when the actual inmate who supposedly earlier 'confessed' to the killings was interviewed, he denied having any involvement in the murders. As such, this court concludes that this information does not meet the standard of materiality as

> required by Brady. Bagley, 473 U.S. at 682 (evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different). Therefore, this court finds that even had defense counsel been provided this information two weeks earlier, there is no reasonable probability that the outcome of the trial would have been any different. In summary, given that the 'Koon confession' information was turned over to the defense counsel and in any event does not meet the standard of 'materiality' required to constitute Brady material, this court finds petitioner's Brady claim to be without merit." (Judge Huff's Order Aug. 22, 1997 pp. 27, 71, 72, People's Ex. No. 2.)

As to the alleged confession by Calvin Booker Judge Huff also commented on how that investigation was turned over to the defense as set forth below.

> "Petitioner alleges that trial counsel was ineffective for failing to object to the timing of the prosecution's production of police records which indicted that an incarcerated mental patient, Calvin Booker, allegedly confessed to the Ryen murders. However, the record shows that petitioner and his counsel had this information prior to the completion of the guilt phase of the trial, such that trial counsel had an opportunity to consider this evidence and decide whether to call Mr. Booker, an incarcerated mental patient, as a witness. Under the circumstances, this court finds that petitioner has not shown a constitutional violation." (Judge Huff's Order Aug. 22, 1997 p. 27 P. Ex. No. 2.)

Detectives from the Sheriff's Department investigated the statements of both Kenneth Koon and Calvin Booker. Those investigations and statements were turned over to the defense in a timely fashion as noted by Judge Huff. Judge Huff commented on the lack of materiality of the Koon "confession" based upon the factors and circumstances surrounding the statements. The Koon and Booker statements provide no evidence that entitles Cooper to clemency.

6.

TESTIMONY AND STATEMENTS OF SURVIVING VICTIM JOSH RYEN

Contrary to Cooper's claims Josh Ryen's statements were not transformed into testimony at trial that he had no substantive memory of the crime.

> "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.
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> "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 "[j]ust 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." (Cooper, emphasis added, at p. 801 P. Ex. No. 1.) (See also, P. Ex. No. 43, 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. (Cooper at p. 801 P. Ex. No 1.)

Josh was severely injured during the attack including 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. (Cooper at pp. 794, 795 P. Ex. No. 1.)

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 (Josh Ryen, June 14, 1983 interview 3 pp., P. Ex. No. 38.)

Josh told investigators back 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 looked into the bedroom and saw his father over 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 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.)

It was Kevin Cooper who eliminated other witnesses and thought he permanently silenced Josh as well. His partial success stemming from Josh's injuries and memory loss certainly do not support a grant of clemency.

7.

CRIME SCENE PROCESSING

Cooper claims the manner in which 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 lengthy trial, and the California Supreme Court and Federal District Court and Appellate Court after a very 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. 2, Cooper pp. 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.) (Cooper at pp. 810, 811, P. Ex. No. 1.)
>
> "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." (Cooper at p. 810, 811 P. Ex. No. 1.)

Judge Huff reviewed the entire state court proceeding and reached the same conclusion 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 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. (Cooper v Calderon 255 F.3d 1104 (9th Cir. 2001) P. Ex. No. 3.)

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. That Court also noted that any additional evidence that might have been discovered and preserved would have been "much more likely" to inculpate Cooper. They were proven correct, as the recent post conviction DNA tests results do just that.

The manner in which the crime scene was processed does not entitle Cooper to any consideration for clemency.

8.

POTENTIAL NUMBER OF MURDER WEAPONS

Counsel for Cooper argues the theory of 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 fled. (Trial transcript Dr. Root pp. 3931, 3951-54, P. Ex. No 32, Cooper, at pp. 795, 797 P. Ex. No. 1.)

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.

9.

REQUEST FOR FURTHER DNA TESTING

Despite the California Supreme Court's finding of "overwhelming evidence" of Cooper's guilt the People entered into a post conviction Joint DNA Forensic Testing Agreement on May 10, 2001. (Judge Kennedy Order, July 1, 2003, P. Ex. No. 6, p. 2, Joint Forensic DNA Testing Agreement, May 10, 2001, P. Ex. No. 23.) This was done, in part, to minimize the further delay (in a case that had already spanned 15 years of post conviction ltigation,) inherent in litigating whether Cooper was legally entitled to

post conviction testing. Numerous items of evidence were shipped to the crime lab at DOJ Berkeley from two locations; the San Bernardino County Sheriff's Property Division and the San Diego County Superior Court Evidence Locker. (Judge Kennedy Order pp. 2, 4, P. Ex. No. 6; DOJ Lab Reports July 2, 2002 pgs 1-8, Sept. 24, 2002 pgs 1-7, P. Ex. No. 4, 5.)

These DNA results provided additional evidence of Cooper's guilt. Specifically the results established that Cooper was the donor of the DNA found on the following items; a bloodstain in the Ryen home near the master bedroom where the victims were attacked, two cigarette butts found in the stolen Ryen station wagon when it was recovered in Long Beach, and on a tee shirt found on the side of a road within two miles of the Ryen home. Partial DNA profiles matching that of two of the victims, Doug and Peggy Ryen were found on the same tee shirt. The DNA profiles of blood taken from the hatchet that was taken from the house where Cooper hid matched that of several of the victims including Doug, Jessica and Chris Hughes. (DOJ Crime Lab Report Sept 24, 2002 pp. 1-4, P. Ex. No. 5.)

Cooper requested a hearing regarding evidence contamination and further DNA testing after the testing agreement was signed. A hearing was held in San Diego on June 23, 2003 through June 25, 2003. Three of the original crime scene criminalists, persons from the San Bernardino Sheriff's Property Division, a Supervisor from the Diego Superior Court Exhibit Room and DOJ criminalist Steven Meyers all testified. (Judge Kennedy's Order dated July 1, 2003. P. Ex. No. 6, pp. 2, 4.) Judge Kennedy listened to the sworn testimony of various law enforcement personnel, including criminalist Dan Gregonis and determined that, "Petitioner has not made any showing

that law enforcement personnel tampered with or contaminated any evidence in his case." (Judge Kennedy Order, July 1, 2003, p. 10 P. Ex. No. 6.)

Judge Kennedy, after reviewing written motions filed by both sides, listening to the testimony presented by both sides and hearing arguments, denied Cooper's request for further DNA testing. (Judge Kennedy Order, July 1, 2003, pp. 10, 11. P. Ex. No. 6.)

Over twenty years have passed since Cooper killed the victims, over eighteen years have passed since the jury and judge determined death to be the appropriate sentence in this case. Cooper should not be entitled to a reprieve. The victims and their families should not have to wait any longer for justice.

10.

JURY'S DETERMINATION OF GUILT & DEATH SENTENCE

Counsel for Cooper mentions the length of time the jury took in their deliberations. 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." (People v. Cooper at p. 837 P. Ex. No. 1.)

The length of the jury deliberations do 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. (Judge Garner Sentencing May 15, 1985, pp. 8144-8150, P. Ex. No. 7.) 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 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 manner in which Cooper killed the victims, the circumstances of the crimes and the nature of the wounds, coupled with Cooper's violent conduct in Pennsylvania with the rape victim and his prior felony convictions in Los Angeles County made the death sentence appropriate in this case. (Judge Garner comments May 15, 1985, pp. 8150, 8750, P. Ex. No. 7.)

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. (Judge Garner, p. 8151, P. Ex. No. 7.)

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 get out of 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. (Judge Huff's Order Aug 22, 1997 pp. 22-25 P. Ex. No. 2.)

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 which 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." (Judge Huff Order, Aug. 22, 1997, pp. 22-25, P. Ex. No. 2.)

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, Section 8.)

11.

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. 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. 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 is entitled to have carried out after placing their faith in the legal system for over 20 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 twenty 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 that a jury carefully arrived at and every reviewing court has repeatedly upheld.

Last but not least, 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.

II.

RESPONSE TO COOPER'S SECOND CLAIM. THERE IS OVERWHELMING EVIDENCE OF COOPER'S GUILT

Counsel for Cooper claims there remains doubt that Cooper committed the murders in question. Based upon the evidence presented at trial there is NO such doubt.

A.

JUDGE GARNER RULINGS AND CONCLUSIONS

The trial judge, Richard Garner, made an independent determination of Cooper's guilt at sentencing. (Judge Garner's rulings at sentencing May 15, 1985, pp. 8144-8150, P. Ex. 7.) 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; I 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." (Judge Garner, p. 8146.)

Judge Garner further discussed the evidence linking the Ryen house to the Lease house where Cooper had hid, 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. (Judge Garner pp. 8147-8148.)

B.

CALIFORNIA SUPREME COURT OPINION AND FINDINGS

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

> "[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." (*Cooper, supra*, 53 Cal.3d 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 in the Lease Home, the closest house to the Ryen's residence for several days immediately prior to the murders.

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 Bilbia, 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 Bilbia 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)." (Cooper 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.“ (Cooper at p. 796, P. Ex. No. 1.)

4. A bloodstained 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. Hair removed from the shower in that bathroom was 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." (Cooper 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." (Cooper 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." (Cooper at 797.)

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." (Cooper 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." (Cooper p. 799.)

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 bose 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.” (Cooper at pp. 799-800.)

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 Illa 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 Illa 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." (Cooper 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. 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 B and 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." (Cooper pp. 798-799, P. Ex. No. 1.)

The People contend that based upon the evidence presented at trial there is no doubt that Kevin Cooper and he 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.

C.

FEDERAL COURT FINDINGS AND CONCLUSIONS OF OVERWHELMING EVIDENCE OF COOPER'S GUILTY

Both Judge Huff, the Federal 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". (Judge Huff's Order, Aug. 22, 1997, pp. 1-3, 49-50, 104-105, P. Ex. No. 2; Cooper v. Calderon 255 F.3d 1104, 1114-1115 (9th Cir. 2001), P. Ex. No. 3.)

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." (Judge Huff Order p. 49 P. Ex. No. 2.)

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. (Judge Huff Order p. 24, P. Ex. No. 2.)

The People urge the Governor to respect and adopt the findings of both Federal Courts cited above in denying Cooper clemency.

D.

ADDITIONAL INCRIMINATING EVIDENCE POST CONVICTION DNA RESULTS

Notwithstanding the volume and consistency of the overwhelming evidence at trial of Cooper's guilt (*Cooper,* at pp. 836-837, P. Ex. No. 1.), subsequent to the

passage of Penal Code § 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. (Joint Forensic DNA Testing Agreement, P. Ex. No. 23.)

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. (Judge So Order, May 10, 2001, P. Ex. No. 33.) 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). (Judge So Order, May 10, 2001, P. Ex. No. 33.) 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. (DNA Testing Agreement at pp. 2-5, P. Ex. No. 23.)

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. (DNA Testing Agreement at p. 11, P. Ex. No. 23.) The "blind"[2] 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. (*Id*. at pp. 11-12, P. Ex. No. 23.)

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. Nos. 4 & 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 blood smears on the T-shirt found near the Canyon Corral Bar. Cooper's 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

[2] "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 second; the known blood samples from the victims and suspect are tested to determine their genetic profiles.

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. (*Id*.) 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 (Dr. Blake Letter July 24, 2001, p. 4, P. Ex. No. 24), 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. 22, 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 A-41A 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 he

denied ever "approaching the Ryen house." (*Cooper,* 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-41places 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 has particular significance when considered with the other evidence introduced at trial. It establishes 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 house in an unsuccessful attempt to get help so he could escape from the Chino Hills. (*Cooper,* 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. (*Cooper,* p. 832, P. Ex. No. 1.)

The STR Profiler Plus DNA results obtained from the T-shirt found by the roadway near the Canyon Corral Bar provide new and extremely 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-1B) 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 which 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.

Cooper attempts to undermine the recent DNA testing results by claiming 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 which 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 which 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. Nos. 20, 23.) Declaration and Motion Testimony of Dan Gregonis pp. 97, 99-107, 110-117, 122-123, 128-129, 131-133.) Mr. Gregonis explained in great detail in his Declaration and during his testimony in that hearing the reasons for his check on certain items of evidence; he was requested to determine if they were still available for testing. He was able to locate some of the items; 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. (See Gregonis Declaration motion testimony, P. Ex. Nos. 20 & 23.)

Judge Kennedy found at the conclusion 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. 20, 23.)

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.

Demanding DNA testing is completely consistent with the con 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 as tests take time and every day is a reprieve for a condemned man whose conviction was final in 1991. Also, maybe there will not be

enough material to permit DNA testing, or the results will be inconclusive. 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.

In short, not surprisingly, Cooper believed he could continue to try and manipulate the criminal justice system as long as he is 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 he should not have been entitled to. The imposition of Cooper's sentence should not be delayed further for any additional testing.

E.

CLAIM OF ABSENCE OF MOTIVE

Counsel for Cooper claim the absence of motive and the senseless nature of the murders somehow raises questions as to his guilt. However both the California Supreme Court and Federal District Court found evidence of two motives for Cooper. The first was to steal the Ryen family car to get transportation out of the area and second for killing the family, to facilitate the theft and gain time to perfect the escape. (Cooper at 832, P. Ex. No 1, Judge Huff Order p. 50, P. Ex. No 2) Judge Huff also found there were obvious similarities between the Pennsylvania offenses and the Ryen/Hughes crimes. (Judge Huff Order, p. 20, P. Ex. No. 2.)

These similarities also provide some insight into the senselessness of the murders in this case. In Pennsylvania, as in California, Cooper escaped from a custodial setting he found himself in as a result of criminal misconduct. In both cases he eventually needed a car to facilitate his escape out of the immediate are. In both cases he stole a car. However in both case he committed gratuitous acts of violence that were not necessary to accomplish the car thefts.

When Cooper was in the process of the burglary in Pennsylvania he did not have to open the door when the teenage victim knocked to visit her friend. But he did. Once he kidnapped her and had possession of her car Cooper didn't have to rape her and threaten to kill, her but he did. (Cooper p. 840, P. Ex. No. 1, Trial Transcript pp. 7956-7966, P. Ex. No. 27, St Claire Police Reports, P. Ex. 28, pp. 1-3). Cooper's conduct in the Ryen/Hughes homicides was really just an escalation of the criminal conduct he demonstrated with his teenage victim in Pennsylvania. 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 he got were he wanted to go.

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 but, he was also facing serious consequences for the matters pending in Pennsylvania. These included those criminal matters pending when he escaped in that state, which were compounded by his burglary, kidnap, robbery and rape of Lori S. after he escaped there.

This conduct also ties in with his car accident. As mentioned above 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 their keys in the station wagon. But as his conduct in Pennsylvania demonstrated sometimes simply stealing a car wasn't enough.

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

F.

HAIR EVIDENCE

Cooper claims there are unanswered questions as to the hair found in the hands of some of the victims. This issue was previously litigated during the evidentiary hearing in Judge Kennedy's courtroom in June of 2003. After the briefing, evidentiary hearing and arguments of counsel Judge Kennedy summarized the arguments and his findings is denying Cooper's request for further testing as follows.

> "At the hearing, petitioner argued that the mtDNA testing is material to the identity of the perpetrator. Petitioner's theory is that during the attack, the victims may have grabbed and pulled at the assailant or assailants' hair when trying to defend themselves. He argues that this would explain the presence of hairs in the victims' hands. He claims that mtDNA testing of these hairs would exclude him as the donor of the hairs, therefore showing that someone else had committed the crime.
>
> "Respondent agued that if Petitioner's theory were accurate, the hairs found in the victims' hands would have roots or sheaths attached as a result of being pulled from the head of the assailant or assailants. However, Senior Criminalist Myers testified that of the one thousand hairs available for testing, none had sheath material present and only three had a root still attached. He further testified that many of the hairs recovered from the hands of the victims were animal hairs. In addition to Myers' testimony, several San Bernardino criminalists testified that the condition of the home and the carpet was extremely dirty, therefore the number of possible donors of shed hair in the home would be quite large. Myers testified that mtDNA testing cannot identify the donor of the hairs unless a reference sample is

> present. He stated that mtDNA testing is less discriminatory than nuclear DNA testing and concluded that in this case mtDNA testing would not provide useful results. (P. Ex. No. 6, p.6.)
>
> "Based on the above, even if Petitioner was excluded as the donor of the hairs recovered from the victims' hands, the condition of the Ryen home and the carpet would decrease the effectiveness of mtDNA testing. . . .(P. Ex. No. 6, p. 6.)
>
> "Petitioner argues that the results of mtDNA testiming may exclude him as the donor of the hairs recovered from the hands of the victims. He argues that if mtDNA testing had excluded him as the donor of the hairs recovered from the victims' hands at the time of trial, the outcome would have been different. Further, at the hearing, Petitioner also went on the argue that if through mtDNA analysis, one unknown individual was the donor of hair located in the hand of every victim, this would be material and would tend to show that he did not commit the crime. However, Criminalist Myers concluded in his expert opinion that this was not a realistic possibility. Further, the dirty condition of the home, which resulted in the hair-laden environment, would reduce the reliability of such a result. (Judge Kennedy Order, P. Ex. No. 6 pp. 6-7.)

This was a crime scene that was extremely bloody due to the attack on five victims with a hatchet and a knife. All the victims bled extensively. As Judge Kennedy indicated the criminalists who helped process the crime scene testified to the condition of the carpet and the home. As Judge Kennedy noted Criminalist Meyers testified hair could have been shed by a large number of people. Some of the hair in the hands of the victims was animal hair. Clearly the dogs and cats in the house had nothing to do with the crimes. The victims had hair in their hands because there was a lot of hair on the carpet and as the victims bleed and moved on the floor during the attack hair from the carpet and their heads (as it was chopped off) stuck to their hands. DOJ Criminalist Steve Meyers testified though that hair can get to a particular location a number of ways

and that hair can remain at the location for weeks, months, even years. (Meyers testimony June 24, 2003, pp. 282-284, 286-288, P. Ex. No. 39.) Meyers testified one would need hair samples from all the neighbors, family, friends, and other visitors to the Ryen home within months prior to the murders as well as samples from all the emergency and law enforcement at the scene to exclude them as donors of the hair found in the victim's hands. (P. Ex. No. 39, pp. 286-288.)

The blood on the hair was washed off and then subjected to DNA analysis. The profiles of that blood matched those of the victims. (P. Ex. Nos. 5, 6, DOJ Crime Lab Reports dated July 1.) Judge Kennedy determined that Cooper was not entitled to any further testing of this hair because it would not be material to the issue of the identity of the perpetrator. (P. Ex. No. 6, Judge Kennedy Order July 1, 2003 p. 6.)

Further tests would reveal nothing additional in terms of Cooper's criminal and moral culpability for his crimes. His punishment is just and should be carried out without any further delay.

The People urge the Governor to respect the reasoning and decision of Judge Kennedy and not delay the imposition of sentence any further.

G.

CIGARETTE BUTTS FOUND INSIDE RYEN STATION WAGON

Counsel for Cooper claims there is an issue with the discovery of the cigarette butts found in the stolen Ryen station wagon and subsequent chain of custody. He also claims there are no reports documenting this event. He is incorrect on both counts. The typed evidence collection 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. (See pp. 9, 10 of P. Ex. No 34.) Attached as People's Exhibit Number 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 trial as to the recovery of these items from the Ryen car. The California Supreme Court never did discuss chain of custody as an issue as to these items. (Cooper at 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. (Motion Transcripts June 24, 2003, P. Ex. No. 36 pp. 188-193, 217, P. Ex. No. 37, pp. 223-229, P. Ex. No. pp. 36, 37.)

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. That 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. Nos. 36, 37.) Judge Kennedy commented in his order that chain of custody was established as to the items in question that included the cigarette butts from the Ryen car. (Judge Kennedy order p. 10, P. Ex. Nos. 6.)

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.

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 time, to which he was not entitled.

H.

TEE SHIRT

Cooper for Cooper attempts to raise issues as to the tee shirt found by the side of the road in this case. Post conviction DNA testing has established that garment contains the DNA genetic profile of Cooper and two of the victims, Doug and Peggy (P. Ex. No. 5, pp. 1-7.) Cooper claims there is no explanation for the cut out piece taken from the tee and that if the cut out portion was previously tested those results were never disclosed to the defense. (Cooper Clemency Petition, p. 5.) He is incorrect.

The serological test results from a portion of the tee shirt are attached in Peoples Exhibit Number 34, trial discovery page 1726. That report was completed August 10, 1983. Ironically Cooper's counsel include a copy of the same document of these tests results under their defense exhibit number 24.

The Joint DNA Testing Agreement reflected that the tee shirt (trial Ex. No. 169 – stored at San Diego Superior Court since 1985) and the cut out portion of the tee shirt CC (stored at the SBSO Property Division) were kept at two separate locations. (P. Ex. No. 23, p. 3 and Appendix No. 2.) The DOJ Physical Evidence Examination report also

sets out the DNA results from the two separate items; the tee shirt now labeled DOJ-6 (aka Trial Ex. 169), and the cut out portion of the tee shirt now labeled CC-1.

As discussed previously Cooper's DNA profile appears in bloodstains from the tee shirt garment, trial exhibit Number 169, DOJ-6 which remained in San Diego since the trial. Dan Gregonis never had access to that tee shirt after the case went to the jury in 1985. (See also, P. Ex. No. 25, p. 123.)

Also as criminalist Gregonis testified on June 24, 2003, the vials of whole blood including Cooper's were sealed in 1995. (P. Ex. No. 25, pp. 125-126.) The seals on the whole blood, including Cooper's have not been broken. (See Testimony of Sgt. Meadows, P. Ex. No. 41, pp. 169, 170.)

Cooper's counsel attempts to raise issues as to the tee shirt where there are none. Nothing regarding this claim entitles Cooper to clemency.

I.

THERE IS NO DOUBT COOPER IS THE KILLER

The jury and trial judge, after a very lengthy trial in which Cooper's attorney extensively criticized the investigation, challenged the nature of the evidence, argued lingering doubt at the guilt and penalty phases and raised many of the issues counsel now raises at clemency, found Cooper to be the killer and that death was the appropriate sentence. Every reviewing court has determined that the evidence of Cooper's guilt is 'overwhelming.' The prediction by the California Supreme Court that if additional evidence had been collected it would more likely than not incriminated Cooper has been substantiated by the post conviction DNA testing results.

The People urge the Governor respect the decisions of the jury and reviewing courts as to Cooper's guilt. This issue certainly does not entitle him to clemency.

III.

RESPONSE TO CLAIM III - COOPER DID PRESENT HIS CASE

A.

COOPER TRIAL DEFENSE

Cooper's attorney conducted a lengthy pretrial evidentiary hearing and vigorously cross-examined all the prosecution witnesses at trial. As mentioned previously the California Supreme Court concluded that if additional evidence had been collected it "would have been much more likely to inculpate defendant than to exculpate him." (Cooper at p. 811, P. Ex. No. 1.)

Cooper testified at trial in great detail about his imprisonment at Chino State prison, his escape, hiding in the Lease house, his flight to Mexico and the subsequent events leading up to his arrest. He denied committing the murders. (Cooper at pp. 801, 822). He had the chance to tell his story. Cooper was also vigorously cross-examined at trial. (Cooper at p. 822, P. Ex. No. 1.) Nothing – except the consequences –kept him from telling the truth. The jury by their verdicts and the trial judge by his denial of Cooper's motion to modify the verdict rejected Cooper's trial testimony and his story.

B.

CLAIM OF LACK OF PENALTY PHASE INVESTIGATION

Counsel for Cooper claims no psychological testing or examination of Cooper was conducted and that little background investigation was done. The record shows they are wrong. Testimony and evidence taken at Cooper's Federal Habeas Hearing

established that his trial attorney hired two mental health experts, a psychologist and a psychiatrist, and both informed him they could not find any evidence that Cooper suffered from any mental deficiency. He also spent approximately $100,000.00 for investigation, copying, and the hiring of experts in the field of serology, pathology, psychiatry, etymology, criminology, and fingerprinting. His investigator, Ron Forbush, interviewed approximately 100 witnesses. He personally traveled to Pennsylvania and met with the treating physicians at the hospital Cooper escaped from. (Judge Huff Order Aug 22, 1997, pp. 21-23, P. Ex. No 2.)

Judge Huff found that Cooper was represented at trial by an experienced and able defense attorney. (Judge Huff Order, p. 1.) She denied Cooper's claim of ineffective assistance of counsel. (Judge Huff Order, p. 105, P. Ex. No. 2.) Some of Judge Huff's reasoning is set forth below.

> "Based upon trial counsel's testimony at the evidentiary hearing and the record itself, this court finds that trial counsel and his investigator conducted a very thorough and proper guilt and penalty phase investigation. Among other things, counsel testified that he spent seven days in Pennsylvania personally interviewing witnesses in the Pittsburgh area and doctors at the Mayview Medical Facility, a mental institution in which petitioner was previously detained. In addition, counsel stated that he spent approximately $100,000 for investigation, copying, and the hiring of experts in the field of serology, pathology, psychiatry, psychology, etymology, criminology, and fingerprinting. Trial counsel also stated that he hired Mr. Ronald Forbush as an investigator, a man who had previously had a very distinguished career with the San Bernardino Sheriff's Department, and had come highly recommended by one of the leading criminal defense lawyers in Southern California. Mr. Forbush testified at the hearing that he interviewed approximately 100 witnesses, and that in his view, trial counsel was the most detailed and thorough lawyer that he had ever worked with as an investigator.

"Trial counsel testified extensively at the evidentiary hearing that he made the tactical decision prior to trial, and based upon his investigation, that if a penalty phase was required, he would focus on lingering doubt and sympathy witnesses. Although he concedes that trial counsel did in fact argue lingering doubt and called various family members to testify on his behalf, petitioner now alleges that trial counsel's failure to investigate or raise a number of other issues during the penalty phase constitutes ineffective assistance of counsel.

. . .

"Even had there been no "bad facts" related to the potential mental deficiency claim, trial counsel explained at the evidentiary hearing that both of his hired mental health experts, a psychologist and a psychiatrist, informed him that they were not able to find any evidence that petitioner might suffer from a mental deficiency. . . . In addition to the opinions of his experts that there was no evidence of mental incapacity, trial counsel testified that he reached the same conclusion after personally traveling to Pennsylvania and talking with petitioner's treating physicians at the Mayview mental health facility. . .

"In addition to the fact that his experts could find no evidence of mental deficiency, and even if there was such evidence counsel did not want to open the door to damaging rebuttal evidence, trial counsel testified that yet another factor in his decision to not offer any evidence of mental incompetence was his belief that such evidence might undercut his lingering doubt argument by providing a 'missing motive.'

. . .

"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. In addition, after reviewing the trial transcript, this court finds that defense counsel also presented a very credible lingering doubt argument. After reviewing the entire record and having the benefit of trial counsel's explanation of his actions at the evidentiary hearing, this court finds that trial counsel carefully weighed the potential benefits of petitioner's possible brain damage and/or mental incompetence compared to the detriments of a potential rebuttal case. This court also finds that trial counsel carefully considered the detrimental effect such evidence might have upon his 'lingering doubt' strategy. Finally, this court finds that trial counsel was justified in relying on the opinion of his mental experts that petitioner did not in fact suffer from any mental incapacity. Therefore, this court is convinced that trial counsel's decision to avoid the presentation of mental health or brain damage evidence at the penalty phase was *not* because of any omissions in his penalty investigation, but was rather due to his sound analysis that on balance, such evidence would ultimately do petitioner more harm than good." (Judge Huff's Order pp. 21-25, P. Ex. No. 2.)

As Judge Huff pointed out Cooper's trial attorney made legitimate tactical decisions to keep the jury from hearing the many negative factors in Cooper's background. The People contend that if the jury would have heard all these factors and learned a more complete picture of Cooper's background their decision would have been the same but their deliberations probably would have been shorter.

This issue does not entitle Cooper to any clemency consideration.

C.

SINGLE DEFENSE TRIAL COUNSEL

Counsel for Cooper now argues Cooper's original attorney decision not to engage a second defense attorney resulted in a disservice to Cooper.

Federal District Court Judge Huff evaluated this assertion in 1997 and reached a different conclusion. Judge Huff concluded the decision made by Cooper's trial attorney was a sound tactical one for the resons set forth below. (Judge Huff Order, Aug. 22, 1999, P. Ex. No. 2, pp. 8, 9.)

> "In this case it is clear that trial counsel who was at the time an experienced defense lawyer, made a strategic decision that delegating functions to a second counsel 'would be a disservice to Mr. Cooper.' 72-73 RT 6513-6519. As he explained to the trial court, defense counsel felt that there wasn't anything that he could 'delegate in this particular case,' unlike some other cases 'where you can delegate it.' Id.
>
> "In addition, trial counsel testified at an evidentiary hearing held before this court that throughout petitioner's trial, he consulted with other experienced defense counsel both inside and outside of his office. Moreover, trial counsel testified that he communicated very frequently with another member of the San Bernardino's Public Defender Office, a confidant with whom he would share ideas and strategy. In summary, this court finds that defense counsel's decision to forego requesting the appointment of second counsel was a sound tactical decision which clearly did not fall below a standard of professional reasonableness." (P. Ex. No. 2, p. 9.)

Judge Huff also set forth in her ruling the qualifications of Cooper's trial attorney that she took into consideration in reaching her decision.

> "Trial counsel's extensive educational background and prior litigation experience were more fully developed at the evidentiary hearing held before this court. Regarding his educational background, trial counsel informed this court that

> he received both his undergraduate degree, and a masters degree from the University of California at Berkeley, and that he received his law degree from the University of California at Los Angeles in 1973. Between the time he started with the San Bernardino Public Defender's Office in 1974, and approximately 1980, trial counsel estimated that he was lead counsel in over 130 trials, approximately 90 of them involving defendants who had been charged with a felony. Between 1980 and when he became counsel of record for petitioner in August 1983, trial counsel was involved in 12 longer, more difficult trials, including a capital case which concluded in May of 1983, several months before the trial commenced in this case.
>
> "In addition, trial counsel attended several death penalty seminars, received and reviewed publications on handling death penalty cases, and had personally handled a number of murder trials. Finally trial counsel testified that at the time he was appointed to represent petitioner, he was the most experienced capital trial lawyer in his division of the public defender's office. (Judge Huff, P. Ex. No. 2.)

As Judge Huff concluded Cooper received competent representation from an extremely experienced defense attorney at trial. Nothing about this issue entitles Cooper to any clemency consideration.

IV.

REQUEST FOR FURTHER TESTING

Cooper asks for a reprieve so that additional tests can be conducted because of the circumstantial nature of the evidence in his case. Cooper has challenged the evidence that was collected and used to convict him since his preliminary hearing in 1883 and 1984. He contested the manner and method of the collection of this evidence during his lengthy pretrial hearing and trial in 1984 and 1985 as described above. He challenged the evidence collection process in his subsequent direct appeal to the California Supreme Court who rejected his claims in 1991. He made similar challenges

to the evidence in Federal District Court and the Ninth Circuit Court of Appeals. Those courts rejected his claims in 1997 and 2001 respectively. He later challenged the collection and storage of certain items evidence of that were the subject of post conviction DNA testing. After an evidentiary hearing in June of 2003 that challenge was also determined to be unfounded.

Cooper has successfully stalled the imposition of his sentence for over eighteen years with his numerous challenges to the evidence. It is time for this process to stop. As recently as July, 2003 a San Diego Superior Court Judge determined that Cooper failed to present any showing that law enforcement personnel tampered with or contaminated any evidence in his case. (Judge Kennedy Order July 1, 2003 pg. 10 P. Ex. No. 6.)

The People urge the Governor to support the families of the victims, who have filed declarations and submitted letters in this case, and bring this process of continuances to an end. Cooper is not entitled to a reprieve for further testing for the reasons stated above.

V.

NON-CALIFORNIA CASES AND LINGERING DOUBT

Cooper spends eleven pages, one-sixth of his petition, discussing eight grants of clemency to condemned inmates in other states. 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, and the importance of this decision to the community, the victims and their families.

VI.

DEFENSE PENALTY PHASE STRATEGY DOES NOT JUSTIFY CLEMENCY

A.

LIMITS ON MITIGATION EVIDENCE

As previously discussed Cooper's attorney did present a number of Cooper's family members at trial who testified he was adopted yet loved and had a supportive family who cared about him. The jury also heard about his artistic abilities.

Judge Huff discussed at length the part of Cooper's background that the jury would have heard had he attempted to establish good character. The jury then would have heard evidence of Cooper's numerous arrests since the age of seven, his twelve prior escapes, his faking mental illness so he could get to a less secure setting and escape and his past history of violence. This more complete picture of Cooper's background would not have resulted in a different penalty verdict just a shorter deliberation period. This more complete picture of his background does not justify clemency.

B.

COMMISSION OF THESE CRIMES IS *CONSISTENT* WITH COOPER'S BEHAVIOR BEFORE AND AFTER THE CRIMES.

Not only does Cooper have a history of escapes, thefts, residential burglaries and acts of violence there are definite similarities between his last Pennsylvania offenses and the Ryen/Hughes murders.

The victim in the Pennsylvania case was abducted after she unknowingly interrupted Cooper during a residential burglary in which he stole a car. These are definite similarities to the Ryen crimes. But there is more. In the Pennsylvania case there was also violence that wasn't necessary to accomplish either the burglary or the car theft. Cooper kidnapped, raped and threatened to kill the victim. He used a weapon of convenience, a screwdriver when he hit her in the face. The victim begged him not to rape her. And perhaps most chilling among his threats to the victim were his statements:

> "A. He just said that 'Girls like you do go the police if I left you off' …….. and
>
> "Q. Did he make any statement to you before he left you on the ground?
>
> "A. I should kill you." (Lori S. testimony trial transcript pp. 7956-7966, P. Ex. no 27.)

This type of conduct continued to bring Cooper to the attention of law enforcement and in fact led to his arrest in this case. Cooper was arrested after the Ryen/Hughes murders off the coast of Santa Barbara by Santa Barbara law enforcement officers and the United States Coast Guard after a woman reported that Cooper had raped and further sexually assaulted her while armed with a knife. That victim also told Santa Barbara investigators that Cooper had held a knife to her throat during the attack and threatened to kill her and her sleeping husband if she screamed out for help. (Santa Barbara Sheriff Report dated Aug. 1, 2, 1983, P. Ex. 40, pp. 1-3.)

It was the report to authorities by this victim on August 1, 1983 that led to Cooper's apprehension and arrest. While this victim was sitting at the Santa Barbara Sheriffs' Department being interviewed she saw a wanted poster of Cooper on the wall.

Cooper was subsequently arrested after jumping off a boat and attempting to swim away as officers attempted to apprehend and question him about the Santa Barbara sexual assault. (P. Ex. No. 40, pp. 104.)

Cooper has submitted numerous letters from family members who describe him as a loving and gentle man. Their letters are very sincere. One wonders how much time they could have spent with him when he already had eleven prior escapes from custodial settings before he fled to California over twenty years ago.

Even assuming he treated family members with respect, as these letters indicate, the manner in which he treated strangers was far different as reflected in his conduct with the Pennsylvania rape victim, the Ryens and Chris Hughes and the sexual assault in Santa Barbara that led to his arrest.

C.

COOPER'S ADJUSTMENT TO PRISON

Although it is nice to know a prison has been found that Cooper hasn't yet escaped from, that's hardly any consolation to the victims or their families. His appropriate behavior in a maximum security setting with a death sentence hanging over his head should be expected. He has limited opportunities to victimize society from inside San Quentin on death row.

The People suggest that the Governor's responsibility in this area extends beyond making sure Cooper stays locked up. It extends to upholding the verdicts and decisions of the jury, the Courts and bringing justice to the victims and their families.

Cooper's behavior in prison does not satisfy his debt to the victims' families, to the parents, grandparents, brothers, sisters, aunts and uncles who lost their loved ones

at the hands of Kevin Cooper. It does not satisfy his debt to society for his lengthy criminal behavior on two coasts and throughout Southern California. And it does not satisfy his debt to the victims, Doug, Peggy, Jessica, Chris and Josh for the lives he has taken and destroyed.

Letters from investigators of the Sheriffs' Department are attached as exhibits and set forth the position of the agency as to the appropriateness of the death sentence in this case. (Letters of Ret. Det. Clifford, (P. Ex. No. 16) Sgt. O'Compo, (P. Ex. No. 17), Lt. Neely (P. Ex. No. 18.)

Retired SBSO Detective John Clifford's letter.

Det. Clifford, one of the original detectives assigned to the case, writes that he feels Coopers'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 and it became obvious to him that Cooper had 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. 16.)

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 be carried out. Sgt. O'Compo visited surviving victim Josh Ryen in the hospital after the attacks and witnessed first hand the pain and suffering that Josh went through. 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 the fear of the consequences of his actions. (P. Ex. No. 17.)

Lt. Tom Neely's letter.

Lt. Neely is one of the supervisors assigned to the San Bernardino County Sheriffs' 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. 18.)

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.

The People contend Cooper's behavior in prison does not entitle him to clemency.

VII.

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 for the future. They each had a right to live, to grow up and old together and to enjoy all the many wonderful things life has to offer. They were in their own home, a place they had every right to feel safe, at the time of these attacks. Their deaths were particularly senseless and brutal. Doug, Peggy,

Jessica and Chris were stabbed and hatched 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, attacked in the dark, struggle to protect yourself and the children, and to lose everything in the process. All because Cooper needed a car and didn't want to be caught and sent back to state prison where he belonged.

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 Peoples Exhibit Numbers 8-15, 19-21. 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." (Josh's letter, P. Ex. No. 9 p. 4.)

Mary Ann Hughes' 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 two places; here as summarized in her letter of January 7, 2004 and later in the conclusion of this response 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 think 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 he 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)

<u>William Hughes' letter.</u>

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.)

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. Nos. 21 & 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 People's Exhibit Number 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."

Cynthia Ryen Settle's letter.

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 People's Exhibit Number 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 Sheriffs 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 & 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.

Robert Olin's letter.

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.

Caryn Rhiner's letter.

Caryn Rhiner was the babysitter for the Ryen family at one time. She writes in her letter what a wonderful family they were and how much she and Josh lost with the death of Doug, Peggy, Jessica and Chris. (P. Ex. No. 30.) She also writes about how much encouragement the Ryen family provided in her personal life. She also believes that the death verdict should be imposed in this, the Cooper case.

Surviving victims 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.

VIII.

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. 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. Some of those comments are set forth below: (P. Ex. No. 8.)

> "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 no 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."

For all the many reasons stated above the People urge the Governor to deny clemency or a temporary reprieve to Kevin Cooper. The People urge the Governor to allow Cooper's clearly deserved death sentence to be carried out.

Respectfully submitted this 21st day of January, 2004

MICHAEL A. RAMOS, District Attorney

By_____
John P. Kochis
Chief Deputy District Attorney
San Bernardino County