

January 1, 2024

"What She Said and Why She Said It"

By Kevin Cooper

On December 14, 2023 Mary Smith, the President of the American Bar Association (ABA), sent a letter to California Governor Gavin Newsom on behalf of the entire organization that she represents. She did so because of their concerns about Due Process and Justice in my case. (You can read the entire letter from Mary Smith and the American Bar Association at www.freekevincooper.org)

In part of her letter to the Governor, Mary Smith quotes from the separate, but concurring opinion of 9th circuit court of appeals Justice M. Margaret McKeown.

Justice McKeown stated that because of the restraints of the Anti-Terrorism and Effective Death Penalty Act of 1996 she could not grant me relief.

That is why she wrote a separate concurring opinion which in truth read like a dissent. (Cooper v. Brown, 510 F, 3d 870,1004 (9th Cir.2007) (McKeown, J., concurring). Justice McKeown found merit in the numerous claims that my attorney's had made, and are still making, about the evidence: destroying of evidence, planting of evidence, tampering with evidence, including witnesses, withholding of material and exculpatory evidence, perjury concerning evidence, and many other illegal and unconstitutional things that have happened in my case since 1983. Because she could not grant me relief despite the merits of my claims, she wrote these words:

I concur in this opinion, but I am troubled that we cannot, in the words of Kevin Cooper, resolve the questions of his guilt "once and for all..."

Significant evidence bearing on Cooper's culpability has been lost, destroyed or left unpursued, including, for example, blood-covered coveralls belonging to a potential suspect who was a convicted murderer, and a bloody T-shirt, discovered along the road near the crime scene.

The managing criminalist in charge of the evidence used to establish Cooper's guilt at trial, was as it turns out, a heroin addict, and was fired for stealing drugs seized by the police. Countless other alleged problems with the handling of the evidence and integrity of the forensic testing and investigation undermine confidence in the evidence. Despite the presence of serious questions as to the integrity of the investigation and evidence supporting the conviction, we are constrained by the Anti-Terrorism and Effect Death Penalty Act of 1996...

In light of this demanding statutory barrier, I agree that Cooper has failed to qualify for relief. The habeas process does not account for lingering doubt or new evidence that cannot leap the clear and convincing hurdle of the AEDPA.

Instead, we are left with a situation in which confidence in the blood sample A-41 is murky at best, and lost, destroyed or tampered evidence cannot be factored into the final analysis of doubt.

The result is wholly discomfoting, but one that the law demands.

([The entire concurring opinion of Justice McKeown is here](#)).

Mary Smith of the ABA, as Justice Mekeown did before her, is speaking truth about the problems in this case and with the conviction of me. When is somebody going to listen to either or both of them as well as all the other 9th circuit Justices who dissent in my case over its lifetime in the courts?

How can the Governor turn a blind eye and a deaf ear to what is being said by prominent people such as those who would not lie for me or anyone else. While at the same time agreeing to uphold the non-innocence investigation that he order which was done not by prominent people, but by unqualified ex-law enforcement people who are pro-prosecution, bias and cannot...some of them, even testify in court to what they claim to be expert witnesses about in the innocence investigation that the governor ordered. An innocence investigation the Law Professors Lara Bazelon and Charlie Nelson Keever called a 'Sham Investigation' because in part the governor's hand picked people did not even look at the files of the San Bernardino county district attorney or sheriff's department to look at my claims and all the other issues that Justice McKeown and other Justices wrote about.

Whenever people like Mary Smith come out and say something on behalf of a person in my situation, being on death row, she must really have something to say that is very important for people to hear, especially the person she addresses her statement to. In this case, Governor Gavin Newsom...

We all hope that he really has his ears on, and listens to what she said, and understands why she says it.