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## DEAD MAN WALKING

*Kevin Cooper has had his appeals. Guilty or not, he will soon meet his maker.*

*By Julius (Jay) Wachtel.* During the late evening hours of June 4, 1983 one or more persons slipped into a suburban Southern California home and brutally hacked to death a man, his wife, their ten-year old daughter and an eleven-year old neighbor boy who was spending the night. The couple's eight-year old son was grievously injured but survived.

A hatchet used in the brutal killings was located nearby. One week later the victims' station wagon was found abandoned in another city.

It took police only hours to identify the suspect. Two days earlier Kevin Cooper, an inmate doing time for burglary, had walked away from a nearby prison. Cooper had previously spent time in a mental institution and had also kidnapped and raped a teenager. Seven weeks later police in a coastal community ran across Cooper while investigating another rape. He had traveled to Mexico and was working on a sailboat.

Cooper denied killing anyone. But the evidence against him was compelling. A blanket with his semen was found in a vacant home only yards from the victims' house. He had used a telephone there to ask friends for money. Officers at the murder scene found a drop of blood on a wall. They also seized a blanket that was later found to bear a bloody shoe print. DNA was not yet in use, but a criminalist testified that in both instances the blood residue was consistent with Cooper's blood type.

Not everything pointed to Cooper. Four days after the crime a local woman turned over a pair of bloody coveralls that she said her ex-boyfriend, convicted killer Lee Furrow, left behind at her home on the evening of the murders. Police considered her a "scorned woman" and destroyed the coveralls without having them tested. Furrow was interviewed and denied everything.

The survivor's initial comments suggested that there were three assailants. A cop who accompanied him to the hospital said the boy indicated through hand-squeezes that three white men were responsible (Cooper is black.) The child later told a psychiatrist it was actually "three Mexicans." Another officer reported that the boy said it wasn't Cooper when his face was displayed on TV. A vehicle resembling the station wagon was seen leaving the area of the crime. It had three or four passengers. And so on.

Prosecutors vigorously challenged all explanations inconsistent with guilt. After all, Cooper was a violent man and a prison escapee; he was also in the area during the period when the killings occurred. It took five days and many ballots, but jurors ultimately convicted. The California Supreme Court turned Cooper away in 1991. Federal appeals were to little avail, and the U.S. Supreme Court declined to hear his case late last year.

Cooper is a dead man walking.

Actually, he would have been executed six years ago but for a [last-minute reprieve by the Ninth Circuit](#), which ruled that prosecutors had violated [Brady](#) by failing to turn over a potentially exculpatory statement. (This was Cooper's second go-round with the Ninth Circuit. His first appeal was rejected out of hand.)

Justices ordered a District Court review. By then DNA tests had been run on the blood drop on the wall, on a bloody t-shirt found near the scene, and on the blanket. Each positively identified Cooper as the donor.

Predictably, in 2005 a District Court judge gave Cooper a big thumbs-down. Back at the Ninth, a three-judge panel concurred. Disturbed by the many defects in the investigation, a justice asked that the Circuit hear the case *en banc*. They put it to a vote and a majority said no. So the justice wrote an exhaustive, bitter dissent in which three colleagues joined. Its opening sentence, "The State of California may be about to execute an innocent man," set the tone. Here are some of his points:

- At the trial a criminalist conceded that he changed his initial conclusion about the wall blood when he discovered that it excluded Cooper as a donor. (He explained it as an innocent mistake.)
- Internal lab records indicate that the wall blood was exhausted through other procedures well before DNA testing in 2002 linked it to Cooper. Curiously, the vial was checked out in 1998 for one day. Was it purposely replenished with a sample of Cooper's blood?
- Lee Furrow's bloody coveralls weren't destroyed as a matter of routine but on orders of a police supervisor who knew that they were potential evidence in a notorious murder case.
- Analysis of bloodstains on the t-shirt and blanket indicated contamination by EDTA, a preservative that's added to blood evidence prior to storage. Were these stains planted by police?
- A detective admitted that he disregarded the multiple suspects/"three Mexicans" theory because he was convinced of Cooper's guilt from the very start. Police reports distorted the eight-year old's initial statements to make it seem that only one attacker was involved. That carried into the trial, where prosecutors implied that the youth had been confused.
- At the end of the 2005 District Court hearing, the survivor, then 30, gave a long statement blaming Cooper alone. Defense lawyers were precluded from asking why he changed his mind.

Naturally, the prevailing justices didn't take the scolding lying down:

The dissent improperly marshals the facts in the light most favorable to Kevin Cooper, yet the evidence was resolved against Cooper at trial – after he took the stand and testified – and at each step of post-conviction proceedings. The dissent also approaches the issues as if they were new, yet the same issues have been on the table since day one (except for DNA testing which didn't exist at the time and which has turned out to be inculpatory).

Dissenters were also criticized for ignoring the constraints imposed by the [AEDPA](#). Among other things, it requires that Federal judges accept factual determinations made by state courts unless there is

clear and convincing evidence to the contrary. In other words, if the state didn't think evidence was planted, who are the Feds to disagree? The nay-saying justices were also challenged to name the "real" killer, if not Cooper:

In asserting that "[t]he State of California may be about to execute an innocent man," the dissent neglects to acknowledge the evidence tying Cooper to the murders, or the fact that, after all the testing that has been done post-conviction, no forensic evidence suggests that anyone else was at the scene of the crime or was the killer.

That's logical. Furrow's coveralls were destroyed. Since they can't be examined, he can't be the killer. Catch-22!

Furrow casts a long shadow over the case. Six years ago five concerned members of Cooper's jury sent California Governor Schwarzenegger a letter bringing up some of the same issues raised in the Ninth Circuit. Here's what one wrote: "I am bothered to know that a convicted murderer who years before had dismembered his female victim was near the scene at the time, that his hatchet was missing and that his girlfriend called police and turned in his bloody coveralls."

Had she and the others read the dissenting opinion before casting their votes things might have turned out differently. Unfortunately, the dissent wouldn't come for twenty years, and as we know time travel is impossible.

Alas, so is taking back an execution.