

**Congress of the United States**  
**Washington, DC 20515**

May 22, 2009

The Honorable Eric Holder  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Holder:

We, the members of the Congressional Black Caucus, write to you out of deep concern about a case from Chatham County, Georgia, that we wish to bring to your attention. Troy Anthony Davis faces imminent execution by the State of Georgia for a crime he may not have committed. A wealth of newly-discovered evidence has come to light since Mr. Davis' trial in 1991 that strongly suggests that he is innocent. In a 4-3 decision, the Georgia Supreme Court denied Mr. Davis a new trial over a dissent from Chief Justice Leah Ward Sears who found that, in light of the new evidence, a new jury would likely find Mr. Davis not guilty. In a 2-1 decision by the U.S. Court of Appeals for the Eleventh Circuit, Mr. Davis was denied an opportunity to present his innocence claim to a federal court over a sharp dissent by Judge Rosemary Barkett who called the pending execution "unconscionable and unconstitutional." As a result of these decisions and current state of affairs in Chatham County, no investigation of the salient new facts or alternative suspect has been undertaken and no court has held an evidentiary hearing to test the new evidence.

Mr. Davis's case seems to be exceptional. He was convicted and sentenced to death for the murder of Officer Mark MacPhail almost exclusively on the basis of eyewitness testimony. No murder weapon was found and there is no DNA evidence tying Mr. Davis to the crime. Since his conviction, the State's evidence has all but disappeared. Seven of the nine witnesses who originally testified against him have now recanted, many of them alleging that police pressure resulted in the presentation of false evidence at trial. Such an extensive pattern of recanted testimony, including recantations from innocent bystanders to the crime with no connection to Mr. Davis, is unprecedented in our memories.

The little remaining evidence against Mr. Davis is highly questionable. Of the two witnesses that have not recanted, one stated to the police only minutes after the crime that he would not be able to recognize the shooter if he saw him again. Yet, two years later at trial, the witness pointed to Mr. Davis - the only black man at the defense table - and identified him as the shooter for the first and only time.

The only other unrecanted witness is the police informant who Mr. Davis alleges is the actual murderer. We understand that it is undisputed that the informant was present at the scene of the shooting, was aggressively arguing with one of the victims who was assaulted by the shooter and was carrying a gun of the identical caliber used to murder Officer MacPhail. Among the several judges who have dissented to Mr. Davis' execution without further process, Judge Rosemary Barkett of the U.S. Court of Appeals for the Eleventh Circuit found that the new evidence suggests that after the informant pointed the finger at Mr. Davis "the police directed all of their energy towards building a case against Davis, failing to investigate the possibility that the [informant] was the actual murderer." Judge Barkett noted that that the informant was never considered an alternative suspect by the police, his picture was never shown to eyewitnesses and several new witnesses have sworn that the informant has confessed to the killing since Mr. Davis' trial. Indeed, it seems that the gun the informant was carrying on the night of the shooting - identical to the murder weapon - was never recovered for ballistics testing or even subject to a police search warrant.

Before it was revealed that the informant had been carrying a .38 caliber revolver or any eyewitness to the murder had been shown a photo array, the *Savannah Evening News* ran a picture of Mr. Davis under the headline "POLICE PUSH HUNT FOR KILLER," the police posted Mr. Davis' photo on wanted posters near where all the eyewitnesses lived or worked and Mr. Davis' voluntary surrender was covered on television and on the front pages of the newspapers.

Four judges who have reviewed Mr. Davis' case have concluded that his execution should not proceed without further investigation. Surely, when so much doubt has been cast over the evidence presented at trial, and when state and federal judges have split on whether relief should be granted, the prudent path forward is to re-open the case for further investigation, rather than sending a potentially innocent man to his death in the name of procedural technicalities. Such a result would be contrary to our most basic notions of fairness and justice and would call into question the very legitimacy of our criminal justice system.

Moreover, we have seen that additional investigation has yielded substantial results. For example, the Dallas County Conviction Integrity Unit has been investigating such cases for over a year and has already discovered and remedied over 15 wrongful convictions.

We urge you to take any action, open any investigation or simply use the persuasion of your office to ensure that a grave injustice is not done in Georgia. The tragic death of a white Savannah police officer by one of two black men brought the ire and rage of a city that still bore the scars of segregation, Jim Crow and the Civil Rights movement. We write not to excuse the guilty, but to battle the notion that the black man is monolithic or interchangeable in the criminal justice system. There are both good and bad men among us, but the innocent do not bear the burden for the guilty. One man cannot stand in the place of another to placate some generic cry for quick justice through abbreviated investigation.

We copy Chatham County District Attorney Larry Chisolm and Georgia Attorney General Thurbert Baker on this letter to likewise urge that the rush to judgment that may have occurred in Savannah many years ago, should now heed to rational deliberation before a great injustice is done in Georgia.

Thank you for your consideration of this critical issue.

Sincerely,

John Lewis

John Lewis  
Member of Congress

James E. Clyburn

DAVID SCOT

Alice d. Hastings

Coland W. Burris

Emanuel Lewis

Danny K. Davis

Sam M. Chittam

Greg L. Allen

Thelma R. Lee

Ray Scott

Bob Hunt

Barbara Lee

Elaine Hester

Arlene E. Watson

Samuel W. Bishop Jr

Corrine Brown

Donald Payne

Francis S. Judge

Ernest Jones

Yvette D. Clarke

Al Green

Samuel E. Edwards

Hank Johnson

Members of the U.S. House of Representatives and the U.S. Senate who signed the letter:

Representative John Lewis  
Representative James Clyburn  
Representative David Scott  
Representative Alcee L. Hastings  
Senator Roland Burris  
Representative Emmanuel Cleaver  
Representative Danny Davis  
Delegate Donna M. Christianson  
Representative Gregory Meeks  
Representative Sheila Jackson Lee  
Representative Bobby Scott  
Representative Melvin L. Watt  
Representative Barbara Lee  
Delegate Eleanor Holmes Norton  
Representative Diane Watson  
Representative Sanford Bishop  
Representative Corinne Brown  
Representative Donald Payne  
Representative Marcia Fudge  
Representative Gwen Moore  
Representative Yvette Clark  
Representative Al Green  
Representative Donna Edwards  
Representative Hank Johnson

cc:

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