THE FINAL CHAPTER OF THE TROY DAVIS CASE

Author: Donald E. Wilkes, Jr., Professor of Law, University of Georgia School of Law.
Published in: Flagpole Magazine (October 27, 2010) (online edition).

I shall ask for the abolition of the punishment of death until I have the infallibility of human judgment presented to me.–Marquis de Lafayette

It is as much [the] duty [of a prosecutor] to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.–U.S. Supreme Court Justice George Sutherland

It is the general habit of the police never to admit to the slightest departure from correctness.–Patrick Devlin

The Troy Davis case is one of the best known and most important Georgia criminal cases in history. The case is now a cause celebre all around the world. There is a Troy Davis website.

In 1991 after a 12-day trial and 2 hours of deliberation, a jury convicted Troy Davis of the 1989 murder of Mark McPhail, an off-duty Savannah police officer shot three times with a handgun in a parking lot while working a late-night, part-time security job at a Greyhound bus station in downtown Savannah. Davis, who has maintained his innocence since his arrest, has been on death row nearly 20 years.

Both Troy Davis and an acquaintance named Sylvester Coles, Jr., were present in the parking lot at the time the policeman was murdered. Both men enjoyed a reputation for violence. Both men just before the murder accosted, and one of them pistol-whipped, a homeless man in the parking lot who had just bought some beer. Both men each possessed a

handgun the night of the murder. Both men fled the scene. One of them almost certainly killed the officer. The question is, which one? Was it Davis, who took the stand at his trial and testified that Coles shot MacPhail? Or was it Coles, who testified at the trial and as one of the chief witnesses for the prosecution fingered Davis?

At that trial the prosecution's theory, which the jury bought, was, based on eyewitness identification testimony, that the two individuals who accosted the homeless man in the parking lot were wearing white and yellow shirts respectively; that these two individuals were Davis and Coles; that it was the individual in the white shirt who struck the homeless man in the head with a handgun; that shortly afterward this same individual in the white shirt shot and killed Officer MacPhail; that the man in the yellow shirt did not do any of the shooting; and, finally, that it was Davis who was wearing a white shirt and Coles who was wearing a yellow one.

In 2009, the U.S. Supreme Court, in response to a habeas corpus petition in behalf of Davis filed originally in that Court, unusually and surprisingly ordered that Davis be given an evidentiary hearing in the federal district court in Savannah so that he could produce the evidence which he said would show that he is an innocent person who has been sentenced to death for a crime he did not commit. Justices Scalia and Thomas dissented vociferously, claiming that the district court was being sent "on a fool's errand."

The evidentiary hearing mandated by the Supreme Court took place last June 23 and 24, with U.S. District Judge William T. Moore, Jr., presiding. Davis and his pro bono attorneys were present, as were lawyers from the Georgia attorney general's office, who represented the state and opposed Davis' claim of innocence.

Judge Moore's Decision

On August 24, Judge Moore handed down his 172-page decision, which

rejected Davis' claim of innocence and denied all relief. The judge concluded devastatingly:

"Mr. Davis vastly overstates the value of his evidence of innocence. . . . [W]hile Mr. Davis' new evidence casts some doubt on his conviction, it is largely smoke and mirrors. The vast majority of the evidence at trial remains intact. . . . [The] Court is left with the firm conviction that while the State's case may not be ironclad, most reasonable jurors would again vote to convict Mr. Davis of Officer MacPhail's murder. . . . Mr. Davis is not innocent.

Judge Moore did, however, in a key portion of his decision, importantly rule that it would be a violation of a provision of the Bill of Rights, the Cruel and Unusual Punishments Clause of the Eighth Amendment, to execute an innocent person. On this issue after lengthy discussion the judge announced:

"[T]he execution of those who can make a truly persuasive demonstration of innocence fails [the constitutional test]. It can be said, then, that executing the "actually innocent" violates the cruel and unusual punishment clause of the Eighth Amendment of the United States Constitution."

But, the judge further ruled, such an Eighth Amendment claim can succeed only if the death row inmate satisfies an extraordinarily heavy burden: he must prove by clear and convincing evidence that no reasonable juror would have convicted him of the murder in light of the newly discovered evidence. It was this burden, Judge Moore determined, that Troy Davis had failed to meet. Habeas corpus relief was therefore denied.

In holding that executions of the innocent are unconstitutional, Judge Moore acted courageously and humanely, and deserves our praise. In officially deciding that the Bill of Rights bars executing the innocent Judge Moore became the first federal court to so hold. Amazingly, the

U.S. Supreme Court has so far never decided the question of whether it is unconstitutional to convict and then either execute or imprison an innocent person. It has, however, hinted that if a case properly presented the issue it might well conclude that putting innocents to death is unconstitutional. On the other hand, Justices Scalia and Thomas have over the years stubbornly clung to the position that executing the innocent is constitutionally permissible. In a 1991 case they even wrote: "There is no basis in text, tradition, or even in contemporary practice (if that were enough) for finding in the Constitution a right to demand judicial consideration of newly discovered evidence of innocence brought forward after conviction." Their cynical view is that our Constitution is not perfect and that "the unhappy truth [is] that not every problem was meant to be solved by the United States Constitution, nor can be." Yes, they really said that. The "problem" of executing innocent people is not meant to be "solved" by the Bill of Rights!

Remaining Options for Troy Davis

Now that Judge Moore has made his ruling, Troy's Davis' case is entering its final phase. The case now goes back to the U.S. Supreme Court, which after reviewing Judge Moore's decision almost certainly will dismiss Davis' habeas petition with prejudice and dissolve any existing federal court stays of Davis' execution. This probably will occur within a month or so. Once that happens, Troy Davis will find all courts, federal and state, deaf to any further requests to postpone his execution. The Superior Court of Chatham County, where Davis was tried, convicted, and sentenced, will then fix an execution date and around two weeks later Davis will be put to death by lethal injection. Right now it appears doubtful that Troy Davis will be among the living on January 1, 2011.

There is one nonjudicial avenue still open to Davis–the Georgia Board of Pardons and Paroles, which has power to commute his death sentence to life imprisonment. The Board previously denied Davis clemency, however, and will probably do so again. The Board is not sympathetic

to the claims of prisoners. In an example of the regulatory capture which permeates the criminal justice system, the five-member Board, which is supposed to protect against law enforcement abuses, is loaded with law enforcement-types. Its chairman, James E. Donald, is a former Commissioner of Georgia's Department of Corrections; Albert Murray, the vice chairman, is a former Deputy Commissioner of the Alabama Department of Corrections and former Commissioner of Georgia's Department of Juvenile Justice; Gale Buckner is a former police officer and GBI agent; Robert Keller is a former district attorney and former executive counsel for the Prosecuting Attorneys Council of Georgia; and Terry Barnard is a former Georgia legislator who oversaw bills affecting the Georgia Department of Corrections and was the guiding force behind this state's Sex Offenders Registry and its Sexual Predators Review Board.

As Troy Davis' options narrow, as his rendezvous with death approaches, as it increasingly appears that no court or government agency will now step in to block his execution, what are some of the conclusions to be drawn about the Troy Davis case?

Problems with Judge Moore's Decision

I question Judge Moore's decision to deny relief to Troy Davis.

First, I am concerned about the judge's practice of methodically accepting the police versions of disputed events while simultaneously rejecting citizens' versions of these events. This verges on what is called "copsuckery"–slavish or excessive deference to law enforcement personnel–and may be another manifestation of regulatory capture in the criminal justice system, under which many judges view themselves not as protectors of the rights of citizens but as cheerleaders for police and prosecutors. The judge also seems not to have given adequate consideration to the corrupting influence of evident law enforcement misconduct on the entire case against Troy Davis.

Second, Judge Moore strangely underestimates the significance of the numerous confessions to killing Officer MacPhail that Sylvester Coles has allegedly made over the years to various persons. The judge also, without hearing from Coles, inexplicably suggests that even if Coles did make the confessions of murder, he probably was not telling the truth. Now how could the judge possibly know that?

Third, despite the errors of Davis's lawyers, the judge should have reopened the evidentiary hearing to permit Sylvester Coles to be put on the witness stand. The judge should never have decided the case in the absence of testimony by Coles, whatever the blunders of Davis' attorneys.

Fourth, the judge should not have excluded the testimony of witness Quiana Glover, who sought to take the stand and tell the judge that Sylvester Coles, not Troy Davis, murdered Officer MacPhail. (Judge Moore excluded Glover from testifying because Davis' attorneys had failed to put Coles on the stand.)

Chatham County Police and Prosecutors

Everyone should be aware that since the death penalty was reinstated in 1973, it is indisputable that here in Georgia a total of five innocent persons have been sentenced to death for a murder they did not commit, and two of them, Earl Charles and Gary X. Nelson, were convicted in Chatham County, the county where Troy Davis was convicted. Troy Davis was tried and sentenced to death in a county with a proven record of sentencing innocent persons to death, the county where forty percent of Georgia's exonerated death row inmates were convicted. Moreover, two of Georgia's recent (noncapital) DNA exonerees–Samuel Scott and Douglas Echols–had been convicted in Chatham County. (Charles, Nelson, Scott, and Echols are, like Davis, black men.) It is undeniable fact that police and prosecutors in Chatham County have sought and obtained convictions of innocent people. It is not fanciful to suggest that in the investigation and prosecution of Troy Davis the Savannah

police and the Chatham County district attorney's office may have made a calamitous mistake once again.

Weak Circumstantial Case Against Davis

The evidence that Troy Davis murdered Officer MacPhail is and always has been weak, and Judge Moore was understating it when he acknowledged that the state's case against Davis is not "ironclad." Davis has always denied committing the murder. He made no confession to the police. There is no physical evidence he is guilty. There is no blood or DNA evidence tying him to the crime. There is no ballistics evidence linking him to the firearm used to kill the policeman, and the weapon itself was never located. There is no fingerprint evidence. The case against Davis is entirely circumstantial. It rests on eyewitness testimony and on incriminating statements Davis allegedly made to acquaintances.

The Eyewitness Testimony

Eyewitness identification testimony is notoriously unreliable, and mistaken eyewitness testimony is universally recognized as one of the chief causes of convicting the innocent. These misidentifications nearly always result from police identification procedures which are unfair in that they are conducted suggestively. Sometimes the suggestiveness is unintended; sometimes it is deliberate.

When people experience an important event they do not record the event in memory like a camcorder. The human sensory apparatus is fallible and everyone is subject to being persuaded that he or she saw something that in fact never occurred. Numerous studies show that the accuracy and completeness of eyewitness testimony is affected by factors relating to (1) the duration and circumstances of the event and the effects the event had on the observer, (2) the length of time between the event and the identification, and the effects on the identification of postevent information which the observer becomes aware of, and (3) the

techniques used by investigators to obtain the identification from the observer.

American police routinely ignore the dangers of what psychologists call the Experiment Expectancy Effect by suggesting to a witness, usually covertly, which suspect they want identified or which suspect they think the witness should have identified. If the police are in fact wrong about whether that suspect is guilty, their conduct may have the effect of erasing the witness' previous memory, with the result that the witness actually comes to believe in good faith that his or her identification, although in actuality mistaken, is reliable. And when police display confidence in this mistaken identification, the result is the Confidence Malleability Effect–the tendency of the eyewitness to enhance his or her confidence that the misidentification was correct, making it extremely likely that a trial jury will convict.

Suggestive police identification procedures, whether unintentional or in bad faith, may induce an observer to make a positive but erroneous identification of a suspect–and the books are full of examples of this type of thing happening. Samuel Scott and Douglas Echols were both tried together and wrongfully convicted of a rape based principally on mistaken eyewitness testimony which may well have been induced by suggestive identification procedures (including photo displays) conducted by Savannah police.

In the Troy Davis case there are disturbing indications that the testimony of the innocent bystander eyewitnesses implicating Davis–and these witnesses, it needs to be emphasized, did not know Davis or Coles at the time of the murder–is questionable.

- Witness Harriett Murray admitted at Davis's trial that (as Judge Moore puts it) "she was a little near-sighted and had trouble seeing long distances without her glasses, which she was not sure she was wearing that night." When police first showed her a photo spread, she did not recognize any of the individuals pictured; only later, at a second photo

spread, did she identify Davis as the man who shot the policeman.

- Witness Antoine Williams admitted at the murder trial that he identified Davis at a photo spread only after seeing a wanted poster of Davis. Williams, who at the trial claimed to have seen the murder from inside his car, testified at the recent federal hearing that once the shots had been fired, he ducked. "'I was in my car ducking and peeking,' he testified, adding that it was hard to see anything because it was dark and his car had three shades of limousine tint on the windshield," according to the Associated Press.
- Witness Dorothy Ferrell admitted at the state trial that she identified Davis at a photo spread only after seeing Davis on television and after seeing a photograph of Davis in a police car.
- Larry Young, the homeless man accosted by Davis and Coles on the night of the murder, picked out the wrong man when shown a photo spread by police, and then later told police his earlier identification had been erroneous.

Furthermore, as explained below, at Davis's trial various witnesses testified that their identifications of Davis in statements they gave to police were false and resulted from police pressure. There was similar testimony at the recent federal court hearing.

Police and Prosecutorial Misconduct

Quite apart from the flawed identification evidence, there are suspicious indications of police and prosecutorial misconduct in the Troy Davis case. This is unsurprising. Horrific crimes, such as the killing of a police officer, not infrequently motivate police and prosecutors to cut corners and abuse their power in order to convict the person they believe–perhaps erroneously–to be guilty of the terrible crime. The conducting of suggestive lineups, showups, and photo displays to persuade witnesses to identify a particular suspect who police believe is the perpetrator is one such abuse, and this, as previously noted, may have occurred in Davis's case.

In the Davis case there appears to be a pattern of improper law enforcement tactics to secure testimony against Davis. It includes but is not limited to the following:

- Larry Young, the homeless man accosted by Davis and Coles, submitted a recantation affidavit to the federal court saying that his murder trial testimony was false and that police refused to allow him medical treatment. He alleged that in his trial testimony he simply stated what police wanted him to say. (At the evidentiary hearing Young was on the witness list of Davis' attorneys, who decided, however, not to call Young to testify.)
- Witness Dorothy Ferrell submitted an affidavit to the federal district court saying that her murder trial testimony that she saw who shot the policeman was coerced, apparently by prosecutors. (Davis' attorneys failed to call Ferrell to the stand at the evidentiary hearing even though she was sitting just outside the courtroom waiting to be called to testify. According to Judge Moore, Ferrell "should have been [Davis'] star witness.")
- At Davis's murder trial witness Darrell Collins testified that police pressured him into identifying Davis as the gunman in an aggravated assault that occurred elsewhere in Savannah about two hours before the MacPhail murder. (At his trial Davis was convicted not only of murdering MacPhail but also of the aggravated assault.) Collins testified that the police pressure included threatening to charge him as an accessory to murder and give him a 10 to 12 year prison sentence. Collins also testified that police told him what to put in his pretrial statement to police. He stated he was taken to the police station, told that he was a suspect, provided no opportunity to call an attorney, threatened with jail time, and questioned prior to his parent's arrival (he was 16 years old at the time). He said he told the police what they wanted to hear because he was scared and did not want to go to prison. At the hearing in federal court, Collins claimed that some of his murder trial testimony had been false and the result of police coercion. He testified that he simply parroted what the police wanted him to say. "I was scared [of being accused as an accessory]. That's what they wanted

me to say. I thought that was the only way I could get out of it, " he testified. He announced that all his prior testimony incriminating Troy Davis was now presumptively false in his mind.

- At Davis' murder trial witness Craig Young testified that in his pretrial statement to the police regarding the aggravated assault charge he only repeated what police told him to say. He said police were yelling at him and coaching him on what to put in his statement.
- Witness Kevin McQueen, the jailhouse snitch who testified at Davis' trial that Davis had confessed to him, later testified at the recent evidentiary hearing in federal district court, not only that his trial testimony was entirely fabricated, but that he received favorable treatment from prosecutors to induce him to give his testimony. Davis "never told me nothing like this," McQueen said in federal court. "He never confessed to shooting anybody to me." He added: "There's no truth in it [referring to his own trial testimony that Davis confessed to him]. The man did not tell me he shot anybody, period." Although he rejected McQueen's claims of prosecutorial abuse, Judge Moore did find that McQueen's trial testimony had been completely false. (At his trial Davis had denied confessing to McQueen; here, at least, it can be seen that in regard to the jailhouse snitch's testimony Davis gave truthful testimony whereas the prosecutor's snitch witness did not. The McQueen incident also reveals that at least part of the prosecution's case consisted of perjured testimony.)
- Witness Jeffrey Sapp, who at the murder trial testified that Davis had confessed murdering the policeman to him, also testified that two days after the murder police came and pounded on the door of his house at 2 a.m.: "Yeah, beating on my door, woke me up, so you know, I just said a lot of stuff that I ain't even meant." Sapp subsequently recanted his claim that Davis confessed, saying that he fabricated the entire confession due to police harassment. At the federal court hearing he testified that he falsified Davis' entire confession due to police pressure. "I was so scared I told them anything they wanted to hear," Sapp testified at the federal court hearing. "'Just say Troy told you. Just say Troy told you,'" police said to him, Sapp added. At that federal hearing, according to the Associated Press, Sapp testified that "he gave false

testimony [at Davis's trial] because irate police officers pressured him on what to say and he was worried that he'd be charged for dealing drugs if he didn't."

- Another man, Monty Holmes, who did not testify at the murder trial, subsequently recanted a statement he gave to police which claimed that Davis had confessed murdering MacPhail to him. In his recantation Holmes said that the statement resulted from police coercion.

Problems in Proving Lawlessness in Law Enforcement

Judge Moore dismissed as unfounded the allegations of police and prosecutorial misconduct, in part because at the evidentiary hearing various Savannah police officers and prosecutors took the stand and solemnly denied everything. This is the typical result when citizens are victimized by police and prosecutorial misbehavior. Police who make illegal arrests, conduct illegal searches, coerce confessions, carry out suggestive identification procedures, threaten witnesses, plant evidence, use excessive force, or just plain beat up suspects, rarely admit the truth when they testify in court.

Similarly, prosecutors who practice invidious racial discrimination, intimidate witnesses, destroy or suppress exculpatory evidence, or manufacture or use false evidence–and these and other abuses committed by district attorneys and their assistants occur far more frequently than most people realize–hardly ever fess up in court. (Chatham county prosecutors, it bears noting, have a track record not only of convicting the innocent but also of intimidating witnesses in the process. In the Scott/Echols case, for example, prosecutors told defendant Echols that if he didn't turn state's evidence and testify against Scott he was "going to have the ride the bus" with Scott. Echols, of course, was innocent and knew that Scott also was innocent. Yet Chatham County prosecutors threatened an innocent man with a long prison sentence–which in fact was later imposed–because he would not help those prosecutors convict another innocent man. The prosecutorial intimidation failed, but the innocent man who refused to

succumb to the intimidation spent years in prison as a result, as did his equally innocent codefendant.)

The Dirty Little Secret

Corrupt police engage in what scholars call "the dirty little secret" of criminal procedure–"testilying," which is the widespread practice of police who have violated the rights of citizens to systematically commit perjury in court denying the truth of what they did or what happened. There is plenty of scholarly literature on police perjury. It demonstrates that police who violate the law typically lie in court about what happened, furnishing a false version of the facts which gives their conduct an appearance of legality. (This is by no means asserting all police lie in court; most police officers are honest and truthful. There are, however, far too many police who routinely lie about their improper conduct.) Much police activity occurs under what scholars call conditions of low visibility, with only the police and the subject present, and the issue of police misbehavior usually boils down to what is known as the swearing contest. Police who have misbehaved give a plausible but false version of the facts, the suspect or witness gives a different version, and the courts almost always resolve such credibility disputes in favor of law enforcement. At the recent federal court hearing, as previously noted, Judge Moore resolved every factual dispute between a Savannah law enforcement official and a citizen in favor of the police or prosecutorial version of events.

Lawless Law Enforcement and the Troy Davis Case

Was Judge Moore correct in believing police and prosecutorial denials of citizen claims of law enforcement abuses?

One of the truths of the Troy Davis case is that there is a suspiciously large number of witnesses saying that police and prosecutors did commit excesses. Here the smoke suggests fire. It is likely that misconduct did occur and that the misconduct contributed to Troy

Davis' conviction. Moreover, other misconduct may have occurred about which we now know nothing.

I suspect that there has been police and prosecutorial misconduct in the Troy Davis case–perhaps a lot of it–which we have not yet heard of.

Davis' Alleged Confessions to Associates

At Davis' trial, the state put on the stand two witnesses who claimed that Davis had told each of them that he had killed Officer MacPhail. One of these witnesses was Jeffrey Sapp, who at the federal court hearing testified that he falsified Davis' entire confession due to police pressure. The other witness was Kevin McQueen, the jailhouse snitch, who at the federal court hearing testified that his trial testimony resulted from (police or prosecutorial) pressure and was entirely fabricated. (Judge Moore found that McQueen's testimony had in fact been false.)

Doubleplus Ungood Lawyering

Troy Davis' attorneys plumbed the depths of ineptness at the hearing in the district court in Savannah. I will not repeat what I said in my short June 30 Flagpole article *The Stupidest Lawyering Ever*. I will say that, having read Judge Moore's decision, which fills in the details of what those attorneys did or omitted doing at the hearing, it is patent that the able, experienced, hard-working attorneys from the Georgia attorney general's office ran rings round Davis' hapless attorneys.

It is true that Davis' defense team commendably did convince Judge Moore to hold as a matter of law that executions of the innocent are unconstitutional. This was a notable legal victory. But otherwise the story is grisly. The catastrophic error in failing to subpoena Coles. The disastrous failures to put available witnesses on the stand. The shocking incompetence, the inexplicable blundering, the foolish assumptions, the disastrous tactical and strategic lapses, the innumerable missteps, and the almost preternaturally bad judgment of Davis' lawyers is (to borrow

a powerful metaphor) as obvious as a tarantula on an angel food cake. *These are the lawyers who thought it sensible not to subpoena Sylvester Coles, not to put him on the stand, and not to vigorously examine him!* Their performance at times bordered on moronic. The harm they did to their poor client is colossal. There is reason to believe that Troy Davis may be innocent and that the truth about this has not come out because of the sheer stupidness of his own lawyers. With the best of intentions, surely, and without fully realizing the lethal consequences of their wrong decisions, they veered in the direction of helping dig their own client's grave–the most unpardonable, the most unforgivable, the most indefensible sin any defense lawyer can commit as a lawyer.

In Orwell's Newspeak, Troy Davis' postconviction counsel's performance would be called doubleplus ungood.

Executing Persons Whose Guilt is Not Certain

As we watch the death penalty continue along its course of irreversible decline, as we witness its growing unrespectability, and as we ponder the significance of the astonishing recent exonerations of innocent death row inmates, some of whom came within an eyelash of being executed, I say we have reached the point in this country that no one should be put to death unless the evidence of their guilt is certain. Proof beyond a reasonable doubt may be sufficient to convict someone of a capital crime, but it is no longer adequate to support executing the convicted person. Refusing to permit capital punishment where guilt is not a matter of certainty greatly reduces the possibility of executing the innocent.

Putting to one side the question of whether Troy Davis' guilt of murdering Officer MacPhail has been proved beyond a reasonable doubt, *I say unquestionably and unequivocally that it is not certain that Troy Davis is guilty of the murder*. Assuming that there was adequate evidence to convict him in the first place, life imprisonment, not death, is the appropriate punishment for Troy Davis.

Of course, our U.S. Supreme Court disagrees with the view that absolute certainty should be required before there can be an execution. As Judge Moore wrote in his decision:

"If state prosecutors in Georgia are comfortable seeking the death penalty in cases of heinous crimes where their proof creates less than an absolute certainty, and the people of Georgia, through their validly enacted laws, allow such a system knowing that it may occasionally result in the erroneous imposition of punishment, [recent U.S. Supreme Court decisions suggest] that the Constitution will not interfere."

Such is the sorry state of affairs in regard to the views of the death penalty held by members of our nation's highest court.

Life Imprisonment for Troy Davis

Imprisoning Troy Davis for life in a high-security prison will, under the circumstances, constitute adequate punishment. If it later turns out that he is innocent, he can be released. If, on the other hand, he is executed and his innocence later is demonstrated, what then? What will those who sought, obtained, or applauded his execution say then? But even if his exoneration never occurs, he will remain in prison for his entire life, and we will have the satisfaction that results from adhering to a civilized rule that in the long run will significantly reduce the likelihood, as long as capital punishment persists, that innocent people will be put to death,

The Vatican supports commuting Troy Davis' sentence. In July 2007 an envoy for Pope Benedict XVI sent a letter to Georgia Gov. Sonny Perdue urging consideration of the special circumstances in the case, specifically that Davis' "conviction was not based on any physical evidence, and the murder weapon was never found." The envoy added: "The Pope continually exhorts all people, and especially those men and women who serve in government, to recognize the sacredness of all human life."

The envoy's letter was forwarded to the Georgia Board of Pardons and Paroles, which rejected the Pope's earnest request for mercy.

The Guilt of Troy Davis is Not Certain

The tragic murder of lamented police officer Mark MacPhail was a sudden, violent, startling event that occurred unexpectedly around 1 a.m. and lasted only seconds. Punctured disorientingly by the loud popping of gunshots, the shock of explosive concussion waves, and the haze of smoke clouds, it was an unreal, unusual occurrence.

The bystander eyewitnesses, not all of whom claimed to have witnessed the murder, did not know Davis or Coles. The police investigating the murder were (understandably) overexcited and inclined to rush to judgment. Prosecutors doubtlessly felt it necessary to support the police, whatever investigatory mistakes had been made. No scientific or physical evidence of Davis' guilt was ever procured. The eyewitness testimony against him is suspect. The entire case against him was circumstantial and less than compelling, and many of the witnesses who testified against him at his trial subsequently recanted in whole or in part. The evidence that Davis confessed to acquaintances is not believable. Part of the prosecution's case was perjured jailhouse snitch testimony. Police and prosecutorial abuses–committed for the purpose of building a case against Davis–appear to have occurred. Judge Moore appears to have given insufficient weight to the strong evidence that Sylvester Coles is violence-prone and on several occasions with different people has confessed to shooting Officer MacPhail. Despite never hearing from Coles, Judge Moore's decision also is curiously wedded to the notion that even if Coles did make the confessions, Coles was probably not telling the truth! Finally, the lawyers for Davis tasked with the job of adducing the evidence of his innocence botched it.

Judge Moore himself must think that Troy Davis' guilt is not certain. He admitted in his decision that the case against Davis was not ironclad. He acknowledged that "Davis' new evidence casts some doubt on his

conviction." Also, he found that as a result of the newly discovered evidence "most reasonable jurors would again vote to convict Mr. Davis of Officer MacPhail's murder." Stated differently, the judge thinks that now in light of the new evidence at least some of Davis' jurors, acting reasonably, might not again vote to convict. Is this not an indication that in the eyes of Judge Moore Troy Davis' guilt is not certain? And if some of the reasonable jurors, based on the new evidence, reasonably would no longer vote to convict, is this not proof that Davis's guilt is not certain?

Taking all this into consideration, should Troy Davis, based on the trial jury's verdict, be imprisoned for the murder of Officer MacPhail? Yes, I suppose, even though I suspect the jury erred in finding Davis guilty beyond a reasonable doubt. But should Troy Davis be strapped down and lethally injected? No! *Troy Davis' guilt is not certain*.