

17 July 2007

Further information on UA 170/07 (AMR 51/116/2007, 03 July 2007) – Death penalty / Legal concern

USA (Georgia) Troy Anthony Davis (m), black, aged 38

On 16 July, less than 24 hours before Troy Davis was scheduled to be executed in Georgia, the state Board of Pardons and Paroles issued a stay of execution, to be not longer than 90 days, "for the purpose of evaluating and analyzing" the information submitted to it during the clemency hearing earlier in the day.

Troy Davis has been on death row for more than 15 years for the murder of a police officer which he maintains he did not commit. Many of the witnesses presented by the prosecution at the trial have since recanted or contradicted their testimony. Among the thousands of people who have appealed for clemency are Archbishop Desmond Tutu, former FBI Director William Sessions, and the Secretary General of the Council of Europe. The case has also generated substantial coverage in the media, with widespread recognition that the evidence against Troy Davis, as an editorial in the *Los Angeles Times* put it, is "shaky".

In its order staying the execution, the parole board wrote that its members "will not allow an execution to proceed in this State unless and until its members are convinced that there is no doubt as to the guilt of the accused". It further noted that "those representing Troy Anthony Davis have asserted that they can and will present live witnesses and other evidence to the members of the Board to support their contention that there remains some doubt as to his guilt". It ordered that the execution be suspended until midnight on 14 October 2007, or earlier if the board issues another order lifting the stay.

Troy Davis was convicted in August 1991 of the murder of 27-year-old Officer Mark Allen MacPhail (note corrected spelling), who was shot and killed in the car park of a Burger King fast food restaurant in Savannah, Georgia, in the early hours of 19 August 1989. Troy Davis was also convicted of assaulting Larry Young, a homeless man, who was accosted and struck across the face with a pistol immediately before Officer MacPhail was shot. At the trial, Troy Davis admitted that he had been at the scene of the shooting, but claimed that he had neither assaulted Larry Young nor shot Officer MacPhail.

There was no physical evidence against Troy Davis and the weapon used in the crime was never found. The case against him consisted entirely of witness testimony. In affidavits signed over the years since the trial, all but three of the state's non-police witnesses have recanted their testimony. One of the three non-recanting witnesses is a man who has not been located for interview by Davis's appeal lawyers. Another, while not recanting, has contradicted her trial testimony. The third non-police witness who has not recanted his testimony is Sylvester Coles, who was the principle alternative suspect, according to the defence at the trial, and against whom there is new witness testimony implicating him as the gunman.

Others have recanted their testimony against Troy Davis. In 1989, Kevin McQueen was detained in the same jail as Davis. McQueen told the police that during this time Troy Davis had confessed to shooting Officer MacPhail. In a 1996 affidavit, McQueen retracted this statement, saying that he had given it because he wanted to "get even" with Davis following a confrontation he said the two of them had had. Monty Holmes testified against Troy Davis in a pre-trial hearing, but did not testify at the trial because, according to a 2001 affidavit, he did not want to repeat this false testimony. Jeffrey Sapp testified that Troy Davis had told him that he had shot the officer. Recanting his testimony in a 2003 affidavit, he stated that under "a lot of pressure" from police, he had testified against Troy Davis.

At the trial, eyewitness Dorothy Ferrell identified Troy Davis as the person who had shot Officer MacPhail. In a 2000 affidavit, she stated that she had not seen who the gunman was, but testified against Davis out of fear that if she did not, because she was on parole at the time, she would be sent back to jail. In a 2002 affidavit, Darrell Collins, 16 years old at the time of the crime, said that the day after the shooting, 15 or 20 police officers came to his house, and "a lot of them had their guns drawn". They took him in for questioning, and "after a couple of hours of the detectives yelling at me and threatening me, I finally broke down and told them what they wanted to hear. They would tell me things that they said had happened and I would repeat whatever they said .I testified against Troy at his trial ..because I was still scared that the police would throw me in jail for being an accessory to murder if I told the truth about what happened ..".

Larry Young, the homeless man who was accosted on the night of the murder, implicated Troy Davis as the man who had assaulted him. His affidavit, signed in 2002, offers further evidence of a coercive police investigation into the murder of their fellow officer: "After I was assaulted that night ..some police officers grabbed me and threw me down on the hood of the police car and handcuffed me. They treated me like a criminal; like I was the one who killed the

officer ...They made it clear that we weren't leaving until I told them what they wanted to hear. They suggested answers and I would give them what they wanted. They put typed papers in my face and told me to sign them. I did sign them without reading them." In his 2002 affidavit he said that he "couldn't honestly remember what anyone looked like or what different people were wearing."

Antoine Williams, a Burger King employee, had just driven into the restaurant's car park at the time the shooting occurred. At the trial, he identified Troy Davis as the person who had shot Officer MacPhail. In 2002 he stated that this was false, and that he had signed a statement for the police that he could not and did not read: "Even today, I know that I could not honestly identify with any certainty who shot the officer that night. I couldn't then either. After the officers talked to me, they gave me a statement and told me to sign it. I signed it. I did not read it because I cannot read. At Troy Davis's trial, I identified him as the person who shot the officer. Even when I said that, I was totally unsure whether he was the person who shot the officer. I felt pressured to point at him because he was the one who was sitting in the courtroom. I have no idea what the person who shot the officer looks like."

Due to the procedural obstacles facing a death row inmate seeking a hearing on post-conviction evidence, Troy Davis has had no such hearing on the current state of the witness testimony. At oral arguments in front of a three-judge panel of the federal 11th Circuit Court of Appeals in September 2005, one of the judges expressed concern that Troy Davis had not been granted a federal hearing to present the post-conviction evidence. She asked, "If these people say, 'I was coerced by the police,' how could [the lower federal judge] reject that without a hearing?" She reportedly suggested that without the testimony of the various trial witnesses who had now recanted, the state appeared to have no case. However, in September 2006, the 11th Circuit Court upheld the federal judge's ruling, and on 25 June 2007 the US Supreme court refused to intervene. For a full report on this case, see *USA: 'Where is the justice for me?' The case of Troy Davis, facing execution in Georgia*, February 2007, <http://web.amnesty.org/library/index/engamr510232007>.

FURTHER RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- welcoming the Board's decision to stay the execution of Troy Anthony Davis to consider the evidence of his claim of innocence;
- noting the widespread concern that this case has generated inside the USA, reflecting the greater recognition and concern today around the country about the potential for irrevocable error in capital cases;
- reiterating that many of the witnesses whose testimony was used against Troy Davis at his trial have since recanted their trial testimony, and that there is new evidence against an alternative suspect in the case;
- noting that the power of clemency in capital cases exists as a failsafe against irreversible error;
- calling on the Board to take the extra step and to commute the death sentence of Troy Davis.

APPEALS TO:

State Board of Pardons and Paroles, 2 Martin Luther King, Jr. Drive, SE, Suite 458, Balcony Level, East Tower, Atlanta, Georgia 30334-4909, USA

Fax: +1 404 651 8502

Email: Clemency_Information@pap.state.ga.us

Salutation: Dear Board members

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.
