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## Clemency for Troy Davis

Donald E. Wilkes Jr.

*University of Georgia School of Law*, [wilkes@uga.edu](mailto:wilkes@uga.edu)

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## CLEMENCY FOR TROY DAVIS

By Donald E. Wilkes, Jr.

On March 28, 2011, Georgia death row inmate Troy Davis' final appeal in the courts failed, and Davis will soon be executed unless the Georgia Board of Pardons and Paroles commutes his sentence to life imprisonment without parole.

The case against Troy Davis is weak. The evidence of Davis' guilt is entirely circumstantial. Many of the witnesses who testified against him at his murder trial have recanted their testimony in whole or in part. There was misconduct by the overzealous police and prosecutors who sought and procured Davis' conviction and sentence. There is no fingerprint, DNA, ballistics, or other physical evidence of Davis' guilt.

I therefore question whether Davis' guilt stands proved beyond a reasonable doubt. But even assuming I am wrong on this point, Davis' guilt has not been proven to a certainty, and under the evolving standards of decency that mark the progress of civilization, no person should be put to death unless that person's guilt is certain.

The death penalty—a vestige of past penal barbarities which is slowly, surely vanishing from civilized societies—is unique in its severity and irrevocability, and in modern society there is heightened concern about the horrible possibility of executing even a single

innocent person. The enlightened view, therefore, is that even though the evidence of guilt is adequate to support a murder conviction, it may nonetheless be inadequate to support a death sentence. Specifically, proof beyond a reasonable doubt may support a murder conviction, but a death sentence is not supportable unless guilt is certain. This humanitarian principle that no person should be executed if there is any doubt about his or her guilt must be the master rule for pardon boards vested with authority to grant clemency to death row inmates.

The Georgia Board of Pardons and Paroles accepts this moral principle. In 2007 it announced that it would not allow an execution to go ahead “unless and until its members are convinced that there is no doubt as to the guilt of the accused.”

Troy Davis' guilt may be probable, even likely, but it is not certain. In addition to the reasons given above for questioning whether Davis has been proven guilty beyond a reasonable doubt, consider the following:

- The federal judge who recently denied Davis a new trial because Davis had failed to meet the extraordinarily high standard of proof of innocence required by U.S. Supreme Court decisions, acknowledged that the evidence of Davis' guilt was “not ...

ironclad.”

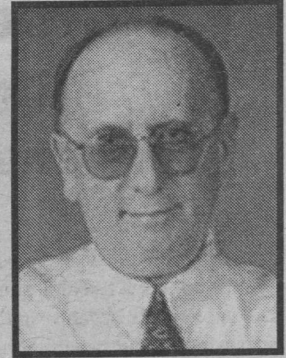
- The judge also concluded, based on the new evidence presented by Davis, that at least some of the jurors who voted to convict Davis at his murder trial might not do so now.

- Some of original trial jurors who found Davis guilty and fixed his sentence at death say that now they would not have sentenced him to death and recommend that his sentence be commuted.

- At the recent hearing before the federal judge, important evidence pointing to Davis' innocence was never introduced into evidence because of the bungling of Davis' well-meaning but inept attorneys who, in some of the stupidest lawyering on record, failed even to subpoena or put on the witness stand the individual who, with good reason, they (as well as many others familiar with the case) maintain is the person who actually committed the murder for which Davis was convicted.

- Two of the five innocent persons released from death row in Georgia since 1973—that is, 40%—were convicted in Chatham county, where Troy Davis was tried.

- Of the 138 innocent persons in 26 states (including Georgia) released from death row since 1973, almost all had been wrong-



fully convicted at trials involving mistaken eyewitness testimony, police or prosecutorial misconduct, or erroneous inferences from circumstantial evidence—or some combination of these factors.

Reducing Troy Davis' sentence to life without parole hardly means that he escapes punishment. He has been imprisoned since 1989 and on death row since 1992. He has previously been scheduled for execution three times and suffered the unimaginable horror of coming within two hours of execution. He will spend the rest of his life in a maximum security facility.

Executive clemency, while not a matter of right, is a keystone of criminal justice. In the context of capital punishment it is the traditional “fail safe” to prevent executions of the innocent.

The Georgia Board of Pardons and Paroles should, in the name of decency and humanity, commute the sentence of Troy Davis, whose guilt is not ironclad. It should never stain the honor of Georgia by authorizing the execution of a person whose guilt is not certain.