



Written by [Jack Kenny](#) on September 21, 2011

## Will Georgia Execute an Innocent Man?

A condemned man on Georgia's death row appears certain to die Wednesday night, despite strong evidence that his trial for murder 20 years ago was seriously flawed and key witnesses against him have since recanted their testimony. An appeal for clemency was denied by the state pardons board Tuesday morning and prison authorities early Wednesday morning turned away lawyers who wanted to administer a polygraph test in a desperate, last-minute attempt to show that Troy Davis is not the man who killed Savannah Police Officer Mark Allen MacPhail in 1989.



The planned execution has been met with national and worldwide protests. Amnesty International claims more than one million people have signed its petition for clemency and the NAACP has joined in condemning the execution planned for the 42-year-old African-American. Pope Benedict XVI, former President Jimmy Carter and [former FBI director William Sessions](#) are among those who have joined the international appeal for clemency. Davis is scheduled for execution by lethal injection at the state prison in Georgia tonight at 7 p.m.

"In moments of immense sadness, moments that shake the foundation of our faith in the justice system and in mankind, there are often no words that can adequately express one's grief and outrage," said [NAACP President and CEO Todd Jealous](#). "Despite overwhelming evidence pointing to his innocence, the execution will proceed and Troy Davis will live his last day on September 21."

Sessions, who was FBI director under Presidents Ronald Reagan, George H.W. Bush, and Bill Clinton, appealed to the pardons board last week to commute Davis's death sentence to life in prison. "Serious questions about Mr. Davis' guilt, highlighted by witness recantations, allegations of police coercion, and a lack of relevant physical evidence, continue to plague his conviction," Sessions wrote in an op ed article in the *Atlanta Journal Constitution*. In a similar appeal, former prosecutor and four-term Republican congressman from Georgia Bob Barr reminded the five-member board of a pledge made in 2007 that "it will not allow an execution to proceed in this state unless and until its members are convinced there is no doubt as to the guilt of the accused."

"I am a longtime supporter of the death penalty," Barr wrote in the *Savannah Morning News*. "I make no judgment as to whether Davis is guilty or innocent. And surely the citizens of Savannah and the state of Georgia want justice served on behalf of Officer MacPhail. But imposing an irreversible sentence of death on the skimpiest of evidence will not serve the interest of justice."

Seven of the nine prosecution witnesses who linked Davis to the killing at his 1991 trial have since recanted or significantly altered their testimony. Lawyers for the condemned man, who had already been scheduled for execution three times, obtained an extraordinary order from the U.S. Supreme Court allowing them to present evidence of Davis's innocence to a federal judge in June 2010. Several of the witnesses at the murder trial testified either that they were coerced by police to implicate Davis



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in the crime or they lied in order receive leniency in their encounters with the law. An affidavit presented by Davis's attorneys included a statement by a witnesses who said: "I am not proud for lying at Troy's trial, but the police had me so messed up that I felt that's all I could do or else I would go to jail."

In his 172-page decision, Judge William Moore pointed out that several of the eyewitnesses prosecutors used to implicate Davis were shown pictures by police identifying him as the suspect before being asked to identify the shooter from an array of photos. One key witness had told police investigating the crime that he not seen the shooter's face. At the trial two years later, he identified Davis as the killer. But Judge Moore ruled that post-conviction, the burden of proof is reversed. Lawyers for the convict must not only punch holes in the prosecution's case, they must prove their client's innocence.

"A federal court simply cannot interpose itself and set aside a jury verdict in this case absent a truly persuasive showing of innocence," Moore wrote. "To act contrarily would wreak complete havoc on the criminal justice system."

In announcing its decision Tuesday, the Georgia Board of Pardons and Paroles said it had carefully considered all the information in the case and before denying the appeal for clemency.

"The board members have not taken their responsibility lightly and certainly understand the emotions attached to a death penalty case," the board said in the statement it released. The five members have "considered the totality of the information presented in this case and thoroughly deliberated on it, after which the decision was to deny clemency."

This is the fourth time Davis has been only hours from his execution. He was scheduled to die in July 2007, but the pardons board granted a stay of execution fewer than 24 hours before he was to enter the death chamber. A year later, the U.S. Supreme Court denied execution only two hours before its appointed time. A federal appeals court stopped another planed execution a few months later. This time there appears to be no chance of another stay. Georgia's governor does not have the power to grant condemned inmates clemency and Chatham County District Attorney Larry Chisolm said he has no authority to withdraw an execution order for issued by a Superior Court judge.

That will be a relief to Anneliese MacPhail, mother of the slain police officer, who wants no more turning back by the state from the execution of the man convicted of murdering her son.

"We've been here three times before," she said. "We are ready to close this book and start our lives. This has been a long haul."

*Photo: Protesters hold signs in support of death row inmate Troy Davis outside the Georgia Board of Pardons and Paroles hearing in Atlanta, on Monday, Sept. 19, 2011: AP Images*



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