

Groups say death penalty flaws merge in Georgia case

Contributed by Ian Swanson
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Troy Davis is scheduled to be executed the week of July 17 even though he was convicted solely on the basis of eyewitness testimony and six of nine prosecution witnesses have since recanted their statements, according to groups pushing for his clemency.

In total, seven witnesses have now recanted or offered contradictory evidence, according to Davis lawyer Jason Ewart of Arnold and Porter. An eighth witness, Sylvester "Red" Coles, has confessed to the 1989 killing in Savannah, Ga., of off-duty police officer Mark Allen MacPhail, according to statements from three people submitted as part of an appeal filed by Davis.

No murder weapon was introduced in trial, but Coles told police he had a .38-caliber handgun - the caliber believed to have been used in the crime. Coles said he gave the gun to a friend shortly before the killing.

Unfortunately for Davis, much of this evidence has not been vetted fully in court because of a 1996 federal law intended to make it more difficult for Oklahoma City killer Timothy McVeigh to lengthen his appeals. The law has made it harder to offer evidence of a death row inmate's possible innocence, according to Davis's attorney and representatives of activist groups trying to convince members of Congress to call for commuting Davis's sentence.

"The rules regarding new evidence are more restrictive than common sense says it should be," Rep. Artur Davis (D-Ala.) said. Freshman Rep. Hank Johnson (D-Ga.), an attorney who once successfully guided a client off death row, said it might be time for Congress to reexamine the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA).

Under AEDPA, Davis has to show a federal court that there was a good reason why evidence suggesting his innocence, including the new statements from witnesses, were not introduced during his appeal to the state. District and federal courts so far have ruled that Davis should have submitted this evidence at his state trial, and as a result have not allowed him a new court hearing to introduce the evidence in full.

If Davis had DNA evidence of his innocence, it would be easier to introduce under AEDPA, according to his attorney. But it is more difficult to get a hearing on the recanted testimony, particularly since courts have traditionally been skeptical about such evidence.

"Both [AEDPA] as well as the federal habeas process rely too heavily on DNA evidence to exonerate the wrongfully convicted without safeguards for those who have non-DNA evidence that proves their evidence," a press statement issued by Ewart said.

Georgia officials, however, consistently have said courts have looked at Davis's arguments, and the state's attorney general's office has indicated it is comfortable with the decision to carry out the death sentence.

This is the first time the National Coalition to Abolish the Death Penalty has asked for clemency in a specific case, according to State Policy Director Gregory Joseph.

"If you look at the death penalty as a whole, you'll see every problem in this case," Joseph said.

Almost 50 percent of those on the federal death row are, like Davis, black, Hilary Shelton of the National Association for the Advancement of Colored People testified last week to a Senate committee.

Legal representation is another issue. One reason Davis didn't submit the new evidence earlier is that the legal center representing him lost more than half of its annual funding in 1995 due to congressional cuts, which his attorney at the time said made it impossible to represent Davis effectively.

Davis's case also illustrates how difficult it can be to generate interest among members of Congress and the media on a specific death penalty case, even one that highlights systemic issues with the death penalty.

"We're asked by congressional people why there isn't more media interest, and media people ask us why there isn't more congressional interest," Sue Gunawardena-Vaughn of Amnesty International USA said.

She said Rep. Jesse Jackson Jr. (D-Ill.) has signed a letter calling for clemency, and Democratic presidential long-shot Rep. Dennis Kucinich (Ohio) and Rep. John Lewis (D-Ga.) are expected to do so. Bishop Desmond Tutu and entertainer-activist Harry Belafonte have also submitted letters to the Georgia Board of Pardons and Paroles, which represents Davis's last hope for clemency. The Supreme Court rejected his request for a review last week.

Paulson and Rep. Artur Davis were unaware of the Troy Davis case when asked about it last week, as was freshman

Rep. Keith Ellison (D-Minn.), a death penalty opponent. "It's hard to get the word out," said Ellison, who wrote Davis's name down after being asked about the case.

Congressional oversight of the death penalty has shown some signs of intensifying with Democrats in charge of Congress.

For example, the Senate Judiciary Committee last week held its first oversight hearing on the federal death penalty in six years, and Sen. Russ Feingold (D-Wis.) in his opening statement said Congress had been asking too few questions about how the death penalty is implemented.

The hearing was highlighted by testimony from former U.S. Attorney Paul Charlton, who said he disagreed with Attorney General Alberto Gonzales's decision to seek the death penalty against a convicted drug dealer accused of murdering his supplier because of a lack of physical evidence.

Rep. Danny Davis (D-Ill.), however, said that while opponents of the death penalty may have picked up some supporters in Congress, he didn't see a sea change. "I think there's a great deal of sentiment, pretty much among the groups that have always been opposed to the death penalty," he said.

Reps. Artur Davis and Johnson said they saw little appetite in Congress to take on AEDPA. "I've heard absolutely no discussion about it," Johnson said, while Davis said he had "no idea how much stomach there is to revisit the habeas laws."

Polls and a steep decline in the number of death sentences handed out by juries suggest public opinion on the death penalty has shifted, partly in light of DNA exonerations, according to Richard Dieter, executive director of the Death Penalty Information Center. Yet at the political level, it can still be risky to oppose the death penalty, which polls show is still supported by a majority of Americans, according to Dieter.

"Political wisdom is don't go out on a limb with the death penalty," Dieter said. At the same time, he noted that several governors who personally oppose the death penalty, including Tim Kaine in Virginia and Martin O'Malley in Maryland, recently won election.

The last Democratic presidential nominee, Sen. John Kerry (Mass.), was against the death penalty, but the three leading contenders for the Democratic nomination this year support capital punishment, although all three have also lobbied for some reforms, according to the Pew Forum on Religion and Public Life.