

LAMAR S. SMITH, Texas  
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin  
HOWARD COBLE, North Carolina  
ELTON GALLEGLY, California  
BOB GOODLATTE, Virginia  
DANIEL E. LUNGREN, California  
STEVE CHABOT, Ohio  
DARRELL E. ISSA, California  
MIKE PENCE, Indiana  
J. RANDY FORBES, Virginia  
STEVE KING, Iowa  
TRENT FRANKS, Arizona  
LOUIE GOHMERT, Texas  
JIM JORDAN, Ohio  
TED POE, Texas  
JASON CHAFFETZ, Utah  
TOM REED, New York  
TIM GRIFFIN, Arkansas  
TOM MARINO, Pennsylvania  
TROY GOWDY, South Carolina  
DENNIS ROSS, Florida  
SANDY ADAMS, Florida  
BEN QUAYLE, Arizona

ONE HUNDRED TWELFTH CONGRESS

# Congress of the United States House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

JOHN CONYERS, JR., Michigan  
RANKING MEMBER

HOWARD L. BERMAN, California  
JERROLD NADLER, New York  
ROBERT C. "BOBBY" SCOTT, Virginia  
MELVIN L. WATT, North Carolina  
ZOE LOPGREN, California  
SHEILA JACKSON LEE, Texas  
MAXINE WATERS, California  
STEVE COHEN, Tennessee  
HENRY C. "HANK" JOHNSON, JR., Georgia  
PEDRO R. PIERLUISI, Puerto Rico  
MIKE QUIGLEY, Illinois  
JUDY CHU, California  
TED DEUTCH, Florida  
LINDA T. SANCHEZ, California  
DEBBIE WASSERMAN SCHULTZ, Florida

September 20, 2011

Chairman James E. Donald  
Georgia State Board of Pardons & Paroles  
2 Martin Luther King, Jr. Drive, SE  
Suite 458, Balcony Level, East Tower  
Atlanta, Georgia 30334

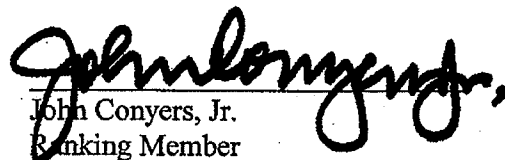
**RE: Troy Anthony Davis Pending Execution Scheduled for September 21, 2011**

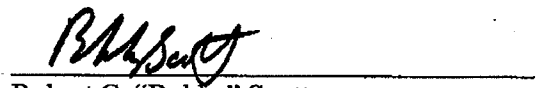
Dear Chairman Donald and Members of the Georgia Board of Pardons and Paroles:

We are writing to urge you to reconsider your decision to conclude Troy Davis' clemency hearing on September 19, 2011. It is our understanding that Mr. Davis' defense team was unable to finish presenting its evidence in support his request for clemency.

We understand that, due to time constraints, the Board was unable to hear from Dr. Jennifer E. Dysart, an expert on eyewitness identifications. We attach the letter written by the Innocence Project, which elaborates the myriad reasons that Dr. Dysart's testimony is critical. As you are well aware, the only evidence linking Mr. Davis to the crime is eyewitness testimony. Given the gravitas of the task with which you were charged, and what the research tells us about this type of evidence, we urge you to give new consideration to concluding Mr. Davis' hearing without hearing from this critical expert.

Sincerely,

  
John Conyers, Jr.  
Ranking Member

  
Robert C. "Bobby" Scott  
Ranking Member, Subcommittee on Crime,  
Terrorism, and Homeland Security

*Hank Johnson*

---

Hank Johnson  
Member

cc: Hon. Lamar Smith, Chairman



Barry C. Scheck, Esq.  
Peter J. Neufeld, Esq.  
Directors

Maddy deLone, Esq.  
Executive Director

Innocence Project  
40 Worth Street, Suite 701  
New York, NY 10013  
Tel 212.364.5340  
Fax 212.364.5341

[www.innocenceproject.org](http://www.innocenceproject.org)

September 20, 2011

Georgia State Board of Pardons & Paroles  
2 Martin Luther King, Jr. Drive, SE  
Suite 458, Balcony Level, East Tower  
Atlanta, GA 30334

Dear Chairman Donald and Members of the Georgia Board of Pardons and Paroles:

On behalf of the Innocence Network<sup>1</sup> and its affiliate the Innocence Project, we write to urge you to reopen Mr. Davis' clemency hearing in order to hear from Dr. Jennifer E. Dysart, a scientist and expert in eyewitness identification and memory<sup>2</sup> who was not able to testify due to time constraints imposed by the Board on Mr. Davis' legal team. In order for the Board to ensure that the clemency procedure functions as a true "fail safe" mechanism for the review of singular miscarriages of justice, all of the relevant evidence must be heard. As the Innocence Project made clear in its letter dated September 16, 2011, eyewitness identification evidence is the most common cause of wrongful convictions, as evidenced by the fact that it played a role in 75% of the cases of the 273 individuals who have been exonerated by DNA evidence in this country. Eyewitness identification evidence – much of it recanted, *all of it unreliable* – is now the only evidence that links Mr. Davis to the murder of Officer Mark MacPhail. The Board's

---

<sup>1</sup> The Innocence Network (the Network) is an association of organizations dedicated to providing pro bono legal and/or investigative services to prisoners for whom evidence discovered post conviction can provide conclusive proof of innocence. The sixty-six current members of the Network have represented over 300 people who have been exonerated post conviction, and represent hundreds of prisoners with innocence claims in all 50 states and the District of Columbia, as well as Australia, Canada, the United Kingdom, Ireland, and New Zealand. The Innocence Network and its members are also dedicated to improving the accuracy and reliability of the criminal justice system in future cases. Drawing on the lessons from cases in which the system convicted innocent persons, the Network advocates study and reform designed to enhance the truth-seeking functions of the criminal justice system to ensure that future wrongful convictions are prevented.

<sup>2</sup> We understand that a second expert witness was also excluded from the hearing due to time constraints. We urge the Board to also hear from this witness, to ensure that the clemency process is full and fair.

failure to hear testimony from a leading expert in the science of eyewitness identification and memory renders Mr. Davis' clemency hearing incomplete and marks its outcome as unreliable and unjust.

The Supreme Court has made it clear that "[i]t is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion." *Gardner v. Florida*, 430 U.S. 349, 358 (1977). In this case, the community – in the form of almost one million signatures on petitions supporting clemency in this case (including over 66,000 from Georgia residents) – has expressed its opposition to the imposition of the death penalty in this case. Those who have urged this Board to commute Mr. Davis' case include Nobel laureates including President Jimmy Carter and Bishop Desmond Tutu; 51 members of Congress (including Georgia Representative John Lewis); and others, including former Georgia Representative Bob Barr and former Chief of the FBI William K. Sessions. The vast range of life experiences and political positions among these individuals (many of whom support the death penalty, particularly for crimes involving the murder of police officers) make it clear that the imposition of the death penalty in this case would undermine public confidence in Georgia's judicial system as well as the ability of this Board to act as a true fail safe to ensure that gross miscarriages of justice – such as the execution of an individual whose guilt is substantially in doubt – do not occur. The Board should act now to reaffirm its unique role in Georgia's legal system.

Dr. Jennifer E. Dysart, a leading scientist and researcher in the study of eyewitness identification and memory, submitted an affidavit dated September 13, 2011 for consideration by the Georgia Board of Pardons and Paroles in connection with Troy Anthony Davis's Petition for Clemency. Dr. Dysart was also present at Mr. Davis' hearing and was prepared to testify before the Board, at which time she would have elaborated on the necessarily limited substance of her affidavit, answered any questions presented by the Board, and presented at least four new pieces of important information for the Board's consideration. Specifically, Dr. Dysart now reports in a second affidavit (enclosed herewith) that her testimony would have included information not contained in her declaration and therefore not known to the Board: (1) Dr. Dysart would have presented the Board with a letter from twenty-four scientists and university professors endorsing as accurate the Scientific Findings contained in the Initial Declaration<sup>3</sup>; (2) Dr. Dysart would have discussed the significance of the Georgia Peace Officer Standards and Training Council (POST) adoption in 2008 of an eyewitness identification training program in clear recognition that police officers require specific and systematic training to ensure the reliability of eyewitness identification evidence (the investigation into Officer MacPhail's murder failed to achieve the standards set forth by POST in 2008); (3) Dr. Dysart would have described the findings of a

---

<sup>3</sup> A twenty-fifth scientist, Dr. Siegfried Sporer, Justus-Liebig-University Giessen, affirmed the Scientific Findings in the early morning hours of September 20, 2011.

landmark scientific study published on September 19, 2011, the same day as Mr. Davis' clemency hearing, that affirms that double-blind sequential lineup presentation is superior to double-blind simultaneous lineup presentation (Troy Davis was identified by eyewitnesses through a non-blind (simultaneous) lineup); and (4) Dr. Dysart would have reported to the Board on scientific research that shows that jurors so value eyewitness identification testimony that they *do not disregard non-credible eyewitness identification testimony* but instead accord it nearly as much weight as credible eyewitness identification testimony.

This last point is of particular importance, given that we are aware that the Board heard from one of the original jurors in Mr. Davis' case and that she recalled to the Board that she and the other jurors did not credit the testimony of one witness, Dorothy Ferrell. Ms. Ferrell identified Troy Davis at his trial but later recanted that testimony. Scientific research conducted since Mr. Davis' trial has now definitively demonstrated that Ms. Ferrell could not have possibly seen the details of the perpetrator's face as she stood, in the dark, more than 120 feet from the crime. While the juror may honestly now believe that she did not credit this testimony, science teaches otherwise. Scientific research likewise teaches us that individuals are not consciously aware of all of the factors that contribute to their decision-making processes and that simply inquiring into whether individuals relied on illogical or unreliable information in making important decision will result in a negative response.

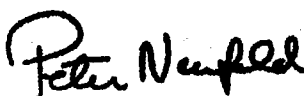
Dr. Dysart's testimony would have illuminated for the Board how this honest witness could misunderstand her own evaluation of the weight of Ms. Ferrell's testimony, and also how the cumulative effect of multiple eyewitnesses – despite their individual unreliability – would have caused the jury to vote not only to convict but also to impose the death penalty. Unfortunately, because the Board elected to terminate Mr. Davis' legal team's presentation after just under three hours and before hearing from two critical expert witnesses, the Board did not have an opportunity to evaluate this information. This is but one example of the assistance Dr. Dysart could have provided the Board in its decision making process. Unless the Board reopens Mr. Davis' clemency hearing in order to hear from Dr. Dysart and any other witness who may have been excluded so that its ultimate decision with respect to Mr. Davis' life is based on a review of all of the available evidence, its decision will be regarded by the public at large, now and for all time, as one that is fundamentally unjust. If Mr. Davis is indeed executed under these circumstances, there can be no assurance that the State of Georgia does not execute individuals where significant doubt about guilt remains.

In 2007, the Georgia Board of Pardons and Paroles nobly embraced its role as the ultimate fail safe, promising that it would “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.” Having failed to hear from all available witnesses at Mr. Davis' clemency hearing, the Board cannot reach a valid conclusion with respect to the remaining doubt about Mr. Davis' guilt.

Accordingly, we urge the Board in the strongest possible terms to reopen the Mr. Davis' clemency hearing so that it can evaluate all of the relevant evidence. We further urge the Board to commute Mr. Davis' death sentence given that Mr. Davis has steadfastly maintained his innocence, there is a viable and likely alternate suspect (who has since confessed to multiple uninvolved parties and has been identified as the perpetrator by a new eyewitness) and where the only remaining evidence connecting Mr. Davis to the crime are eyewitness identifications that have every indicia of unreliability.



Barry C. Scheck  
Co-Director,  
Innocence Project



Peter J. Neufeld  
Co-Director,  
Innocence Project



Keith A. Findley,  
President,  
Innocence Network



Karen A. Newirth  
Eyewitness Identification  
Litigation Fellow, Innocence  
Project