



‘FALLIBLE’ LEGAL SYSTEM MUST AVOID INJUSTICE

By Judge William S. Sessions

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The release of 124 death row inmates in the United States has made clear that the administration of the death penalty is not infallible. When there are important questions about whether someone facing execution is actually guilty, those questions must be examined and resolved by the courts or, as a last resort, by the executive branch.

Troy Anthony Davis has been on death row in Georgia for more than 15 years for the murder of a police officer, and related violent crimes. I was the director of the FBI under Presidents Reagan, Bush and Clinton, and I believe that there is no more serious violent crime than the murder of an off-duty police officer who was putting his life on the line to protect innocent bystanders.

That being said, we must be convinced that the right person has been convicted. Serious questions have been raised about Davis' guilt. The murder weapon was never found, and other important physical evidence was missing. Key witnesses made inconsistent statements, and seven out of the nine non-police witnesses have now recanted or changed their original testimony, some stating that they had been pressured by the police to implicate Davis. One of the two witnesses who has not recanted his testimony has now been implicated as the real murderer by two witnesses at trial and four new witnesses. In addition, concerns have been raised about the conduct of the police and prosecutors.

Finally, it appears that the quality of legal representation Davis received during trial was, by his own lawyer's account, seriously deficient. While Davis' case proceeded through the courts, the budget of the Georgia Resource Center, which represented him, was dramatically cut. A lawyer from the Resource Center stated in an affidavit that "We were simply trying to avert total disaster rather than provide any kind of active or effective representation."

The courts considering Davis' case properly administered procedural rules that prevent those courts from considering claims that were not raised at the right time or in the right manner. However, these rules can be too restrictive and can prevent the courts from dispensing justice. They can stop the courts from hearing even claims of innocence, such as in Davis' case. They can prevent the courts from hearing these claims even if the reason they were not properly raised was because of an overburdened lawyer with insufficient resources, such as in Davis' case. As a result of



these procedural obstacles, no court has examined the claims Davis' current legal team has raised.

I am a member of the Constitution Project's bipartisan Death Penalty Committee, which includes supporters of the death penalty, like me, as well as opponents. We condemned the kinds of procedural barriers that prevented the courts from addressing the merits of Davis' case, and we recommended that they be eliminated. Second, we insisted that capital defendants have competent lawyers with adequate resources.

Former Chief Justice William Rehnquist once wrote that the judicial system, "like the human beings who administer it, is fallible." I agree. Especially when it comes to a human life, the courts should always be able to examine claims of innocence.

But the matter is no longer before the courts, since the U.S. Supreme Court recently decided not to hear Davis' case.

It would be intolerable to execute an innocent man. It would be equally intolerable to execute a man without his claims of innocence ever being considered by the courts or by the executive.

Georgia's Board of Pardons and Paroles can consider the issues raised by Davis. I urge that body to immediately do so and to grant clemency.