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NEWS SEPTEMBER 11, 2008

# The Chokehold of Time

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The Chokehold of Time

By Michelle Garcia



Demonstrators at an AIUSA rally in Atlanta, Georgia on May 17. AIUSA is planning another major rally for September 30.  
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*The bitter racial history of Savannah and the vagaries of time have closed in on Georgia death row inmate Troy Davis. Despite two decades of appeals, recanted witness testimony and serious doubts over his guilt, Davis now has just two*

*chances to save his life.*

**Prison Boulevard begins** on a lonely Georgia highway and sweeps across lush grounds and a serene lake populated with ducks. One might expect a sprawling ranch house at the end of this country road in Jackson, but there rises instead the Georgia Diagnostic and Classification prison, a mammoth institution whitewashed to a glare. To reach death row inmates, visitors traverse a series of yellow iron gates opened and shut in a chain reaction until they arrive at a guard holding open a heavy door. Inside the long, narrow cell waits Troy Anthony Davis—a man condemned for the 1989 murder of a Savannah police officer, and an international cause—wearing a prison-issue white and blue uniform, electric blue sneakers and a wide smile.

A smile alarmingly disarming, jarring even, amid the banging echoes from unknown corners. Davis, tall, broad and bald at age 39, settles on a stool and begins to speak with a Georgia drawl and gesticulate, and then he's drawing maps with his finger in the air and diagramming the August night two decades ago that landed him on death row.

"I have to remmber," says Davis emphatically. "Every day of my life, I have to

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remember, to save my behind."

Last year, just 23 hours before Georgia officials would have executed Davis by lethal injection, the Georgia State Board of Pardons and Paroles issued a temporary stay of execution amid doubts about Davis' guilt. By then The Savannah Morning News had gone to the presses with reports of Davis' final meal, the standard prison supper. Peach state and U.S. publications in other parts, however, published articles and editorials cautioning that Georgia was preparing to execute a possibly innocent man. The disparity in coverage mirrored the extreme regionalism characteristic of the death penalty debate and exposed growing fault lines between local support and attitudes across the rest of the state and nation.

**In Jackson**, Davis throws open his arms and invites, "Ask me anything; I have nothing to hide." He recalls the evening nearly two decades ago that changed his life, during a time when crack cocaine

In 1991 a jury sentenced Davis to death for the August 19, 1989, murder of Savannah police officer Mark Allen MacPhail in a Burger King parking lot. Without a weapon or any physical evidence, prosecutors relied largely on eyewitness testimony to persuade a jury that Davis was the killer. In the years since, seven witnesses—including eyewitnesses—have recanted or contradicted their earlier testimony. Some said they fingered Davis as the killer under pressure from police.

Since 2000, however, federal courts have denied his appeals for a new trial, saying they are hamstrung by federal legislation passed after his conviction that limits death row appeals. In March the Georgia Supreme Court rejected his appeal for a new trial. In the 4—3 ruling, the court said, "One who seeks to overturn his conviction for murder many years later bears a heavy burden to bring forward convincing and detailed proof of his innocence."

Davis' fate now falls to the Georgia Board of Pardons and Paroles, which can consider his appeal for clemency and commute his sentence to life without parole once an execution date is set, likely by the end of the year. His attorneys have also filed a habeas corpus petition with the U.S. Supreme Court, but as one of thousands of petitions the Court receives each year, his chance for a reprieve is remote.

Yet the Davis' case and its trajectory within the court system are drawing intense scrutiny from afar, especially since the publication last year of a 35-page report and a campaign by Amnesty International that propelled Davis from relative obscurity to a cause backed by celebrities, politicians and religious leaders, including the Pope. In July, the European Union Parliament urged the United States to grant Davis a retrial. Proponents of the death penalty, no less, have rallied against his impending execution. William Sessions, former director of the FBI, cautioned that executing Davis without considering his evidence would be "intolerable." Even former U.S. Representative and current Libertarian presidential candidate Bob Barr (R-GA) weighed in. "True conservatives, as much as the most bleeding heart liberals, should be unafraid to look carefully at such cases," wrote Barr in an August 2007 op-ed for The Atlanta Journal-Constitution. "Troy Davis' life is at stake; but so is the credibility of our criminal justice system."

But in Savannah itself, a coastal town of 130,000 where segregation persists, public support for Davis has been slow to ignite. Activists point to a local "don't rock the boat" sensibility rooted in a bitter racial history and deep smalltown ties.

After the Board of Pardons and Paroles issued the stay of execution in March, a Savannah Morning News editorial urged the need for "closure." Dave Gellatly, the white retired police chief and current county commissioner voices a commonly held view when he says, "We waited 18, 19 years. He's had every right to every kind of appeal. He's had every chance in the world. The fact of the matter is, it's gotten a lot of news coverage, and you've had international organizations getting involved. It had nothing to do with Savannah."

Around town, the name Troy Davis triggers a range of responses: the blank stare, the quiet nodding, the "Oh-thatcase." Young people who were infants when Davis went to prison 17 years ago know the name and the story as part of a generational history passed down from their elders. Brandon, 20, a bellhop at a touristy hotel who heard about the case from his barber and his uncle, says, "They said he didn't



Troy Davis' sister, Martina Correira, speaking at AIUSA's May 17 rally in Atlanta. © AI

kill no cop."

To Davis' family and supporters, local reticence has had significant influence in the case, and that remains so as his execution date approaches once again. Martina Correira, 41, Davis' sister and AI anti-death penalty ambassador says, "If African American political leaders had stepped up, it would have made a difference. They would have got a lot of black people to listen, and they are voters. White people came out and said what they had to say: 'Hang'em high and kill him.' Black people didn't do anything about it."

**On July 4**, the Davis family is gathered for a barbeque at Troy's boyhood home in Cloverdale, a solidly middleclass neighborhood of African American families. Virginia Davis, Troy's mother, tends to the low country boil on the stove (Cajun-spiced seafood and sausage), and Lester, his younger brother, is on the grill cooking up ribs. Davis's absence looms large, especially since rumors have swirled that the district attorney might set an execution date later in the month.

"Sixty seconds," yells DeJuan Correira, Davis' 14-year-old nephew who shares his uncle's taste for shiny blue sneakers. Troy Davis is on the telephone, and his 15 minutes are nearly up. Kim, his younger sister, cradles the receiver. "Well don't hang up until you have to," she says, and then: "You be sweet."

Before the AI report, the Free Troy Davis rap songs and the YouTube videos, in the years after Troy's conviction, there was only whispering. "I held my head up, but my heart was burning down," said Virginia, 63, looking away. "It was like you were fighting all by yourself, like nobody else cared. But never have we given up." Support from afar has helped sustain her and the family. "A lot of people all over the world, whom we don't even know, they get the address and write to Troy. A lot of people just sign the petition."

State Senator Regina Thomas, however, demurs from signing when she visits the Davis family barbeque during a neighborhood walk to drum up support for her bid—ultimately unsuccessful—for U.S. Congress. She nods sympathetically when Virginia shares the disappointing news about the latest loss in court and says, "It's very easy to convict a person of color without hard evidence, just like with Troy." But signing the petition would make her vulnerable to all the other causes out there, she says. "When you start, they want you to sign everything. I can't make it a habit." Besides, that's not her job as legislator, she says. "I do follow up."

Savannah is a big small town where families settle and roots grow long. Networks and family ties inevitably cross, which can prevent some from tugging too hard at connections. Two blocks from the Savannah River, a stout steeple rises above the First African Baptist Church, its spare polished brass and hardwood floors built by slaves in 1773. On a summer morning, the Rev. Thurmond Tillman delivers an electrifying sermon to a packed congregation of burly cops, fan-waving women and young men with long braids. After the two-hour service, Tillman slips away from the reception and reveals that he was the one to deliver the news of the shooting to MacPhail's wife nearly 20 years ago.

Tillman, who also serves as a police chaplain and cuts a long, imposing figure, says his is a proactive church intent on social change. "We teach people not to run, to respect law enforcement, not to be disrespectful. I'm not a proponent that we have a fair system but, it's a system we have to live with," he says.

His associate pastor is a police lieutenant, and that proved a difficult situation, he says, when the Davis family asked to hold a rally at the church with civil rights firebrand the Rev. Al Sharpton. Tillman declined so as to avoid asking a police officer to host the event.

"It was not as if I were taking a stance against anything; that's not what happened," he says. "I can handle myself."

**Davis and his family** are living on the knife edge between past and present. Davis was born in 1968, just four years after the official end of Jim Crow laws that banned African Americans from the charming park squares of twisted oaks cloaked with Spanish moss that are the pride of Savannah. Presbyterian minister Ernest Risley told Time magazine in 1965: "I believe that integration is contrary to God's will."

Before integration, Montgomery Street, on the far west side, was a thriving boulevard of black-owned shops, doctors' offices and one of the largest black-owned banks. It now houses the Ralph Mark Gilbert Civil Rights Museum. Heru Iman, a docent at the museum, considers the anemic local support for Davis despite the national spotlight, and lays it out like so: "If you want to know why people have been hesitant to speak out"—he pauses to quote from a tome on local history—"keep in mind that 'lynchings were once so commonplace they were barely spoken about.'"

A small sign for the Kress department store hangs over a downtown storefront,

the site of 1960s lunch-counter sit-ins, in a business district that was subsequently abandoned. One generation later, a downtown revival is in full bloom. Outside a Starbucks, former assistant district attorney Larry Chisholm, who is African American, maps out the local racial schism in public attitudes toward justice.

"The majority of African Americans don't see police or prosecutors as friends. They aren't as hawkish. They are more concerned with crime solutions and fairness," says Chisholm. "In the white community, they are on board with long sentences for serious felonies. They are on board with two strikes you're out. Their emphasis is not so much on fairness." To them the system works just fine, he says. "I don't think that's changed [since the Davis trial]."

Yet political moods do shift and resettle, creating new opportunities and closing others for Troy Davis and his legal fight to save himself. Time has begun to soften some hard held ideas, and it has freed others from the grip of fear. It took years for Tonya Johnson to step forward, to shake off her fear of reprisal and tell Davis attorneys what she saw on the night of the murder.

Back then, Johnson, just 18, was sitting on the small porch at #1152 Yamacraw, a housing project behind the Charlie Brown pool hall, when she heard shots go off. Johnson, now 38, says, "You breathing in the wrong place," when asked about the case. She speaks in a hushed voice as she strolls through Yamacraw today, her eyes darting around.

She remembers her neighbor, Sylvester "Red" Coles, one of the two others at the crime scene with Davis, appearing at Yamacraw sweaty and anxious. "You could tell he done something," says Johnson. He tucked away a couple of guns in the vacant house next door, she says, and later snatched them away.

But she kept quiet. "He put a lot of fear in me," she says. Coles, who has consistently denied shooting MacPhail, is reportedly living in Savannah. It wasn't until 1996 that Johnson was able to sign an affidavit stating what she had witnessed.

It took nearly a decade for D.D. Collins, who was also at the scene of the shooting, to recant his eyewitness testimony; he had been just 16 when police took him in for questioning without his parents present. "I was scared as hell," he said in his 2002 statement. "They told me I would go to jail for a long time and I would be lucky if I got out."

And it wasn't until 2000 that Dorothy Ferrell, a convicted shoplifter who attorneys had argued provided compelling testimony against Davis, signed an affidavit recanting. "I had four children. I couldn't go back to jail," she said. "I felt like I didn't have any choice but to get up there and testify."

But Davis' lawyers say he is losing a race against time. By the mid-1990s, as Davis' lawyers prepared for his appeals in federal court, the national political winds had shifted decidedly rightward. Congress voted in 1996 to bring an end to "frivolous" appeals from death row by raising the bar for new trials. They slashed funding for state resource centers representing indigent death row inmates, and the money for investigators to track down witnesses dried up. (Georgia is the only death penalty state that does not provide legal counsel for habeas corpus appeals.)

It was 2000 by the time Davis had assembled the accumulated affidavits of witnesses recanting their testimony and began requesting a new trial from federal courts. Prosecutors have argued he kept the evidence in his "back pocket" until his execution date neared, and that time made people go back on earlier statements because they don't want to see a man die. The courts have ruled against Davis because they say he took too much time obtaining the testimony—a consequence, in part, of poor legal representation.

**When Davis went** to trial in 1991, Georgia juries chose the death penalty in one-half of eligible cases, according to a September 2007 investigative series published by the Atlanta Journal Constitution. Yet even this state—which has executed 42 people since the death penalty was reinstated in 1976, the seventh highest number of executions per state in the nation—has begun to feel the sociopolitical impact of shifting demographics, a change in political mood, even the prospect of a mixed-race president. In 1993, two years after Davis' conviction, lawmakers offered juries the option of life without parole; they have chosen that option over death in two of every three capital cases since 2000, according to the newspaper. DNA evidence has helped to exonerate seven inmates, triggering debate over the accuracy of eyewitness testimony.

Georgia Supreme Court Chief Justice Leah Ward Sears recently wrote, "I believe . . . it's time to examine whether Georgia's current method of enforcing the death penalty and its attending consequences are compatible with the dignity, morality, and decency of society's enlightened consciousness, and is reflective of a humane system of justice."

Some of this change has begun to seep into Savannah, where Larry Chisholm, the former assistant district attorney, muses over his decision to run for D.A.: if he wins, he will be the first African American district attorney in the city's history. Chisholm surveys the revived downtown through wire-rimmed glasses: The arts school has invigorated the old town with young students, and immigrants are shaking up the old order. He sees a door open, or at least ajar, to new ideas. The current D.A., Spencer Lawton, who has held the seat for nearly three decades, will not seek re-election. "This is a unique opportunity for African Americans to run for office," says Chisholm, with a nod to the Obama effect.

Chisholm doesn't oppose the death penalty outright; politicians with such views don't tend to get far in the South. Even so, Chisholm proposes some interesting strategies, such as the formation of a review committee of local leaders to weigh in before the district attorney seeks a death sentence. In July, Chisholm carried the Democratic primary, just days after the Georgia State Board of Pardons and Paroles issued a stay in Davis' case until the fall. If Chisholm wins the November contest, he could face Davis at the clemency hearing, where he will exercise his discretion in making an argument on the people's behalf.

Inside the prison, Davis casts his eyes toward the floor and admits he only knows "bits and pieces" of what has happened over the last 20 years, whatever people share with him. Yet his fate has turned on the sociopolitical ebbs and flows in Savannah and across the nation—distant and remote though they seem to him. He now has just two avenues of survival: the clemency of the Georgia Board of Pardons and Paroles or the unlikely possibility of having his petition accepted by the U.S. Supreme Court. Either way, his final appeal to spare his life will call upon Savannah's present to bear witness against its past.

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