

WHY ANTHONY GRAVES MUST BE SET FREE



He had no motive. No evidence linked him to the scene of the crime. The main witness against him took back his testimony. The prosecutor kept vital facts away from his defense team. Fourteen years after he was arrested a federal court awarded him a new trial. After more than seventeen years in the shadow of death, Anthony Graves must be set free.

*A summary of Anthony Graves' case,
by friends in France, Germany, Sweden
and Switzerland.*

Introduction:

What Anthony Graves means to us

From a letter of February 2, 2009:

“I was able to watch the Presidential inauguration. A very moving experience for me. I had tears in my eyes as I watched this black man become the President of the United States. I was born right around the Civil Rights era, and I remember my whole world being black. From my first year or two in school.”¹

The letter is by Anthony Charles Graves, born on August 29th 1965. It was sent from Burleson County Jail in Caldwell, Texas. Anthony has been behind bars since August, 1992.

This is the true story of a man and an injustice that concerns us, even if we live far away. He was accused of having taken part in the murder of six people, four of them children. He said that he was innocent, that he had not been near the scene of the murders. He has

1. Letter from Anthony Graves to Lars Åke Augustsson

said the same through all the years that he has been behind bars, twelve of these years on Texas Death Row.

Many people are locked up in the United States. It has more prisoners than any other nation in the world². Most of them come from low-income families, like Anthony’s. A disproportionate part of the people in prison are black, like Anthony. So what is so special about him?

One reason is that his innocence is obvious. A lot of prisoners claim that they are innocent, but in most of these cases there are facts that point to their guilt, or they have a previous criminal career. But Anthony was convicted solely on the basis of one piece of testimony by another convicted killer – a statement that was given reluctantly, under threat, and later retracted on several occasions.

Another reason that Anthony’s case is important is that his freedom is within reach. In

2. “Prison Population Around the Globe”, story in New York Times April 22, 2008

2006, twelve years after the trial in which he was sentenced to die, the judges in a higher court decided that this trial was not fair. They wanted him to have a new trial and took him off death row. Since 2006 Anthony has been waiting, in a jail in a small town in Texas, for this new trial.

But should we care about what happens to this man, even if he is innocent? Can the case of this man, Anthony Graves, be of any importance to the big state of Texas in the big nation of the United States of America? Yes, it can and it will.

Texas is not just one of the richest and most powerful states in the U.S.A. It is also the stronghold of the capital punishment. If justice prevails and Anthony is set free, it will be an important demonstration, not just to Texas, but to the whole nation, of the flaws in the death penalty.

Anthony Graves is a living example of how easily an innocent man can be sentenced to die. That is why it is important for everybody

who is against capital punishment to know about his case, and to support his struggle for justice.

Behind this brochure are some of Anthony's friends in France, Germany, Sweden and Switzerland. We know that most things that happen in the United States also have an impact on us in Europe. If and when Anthony is set free, it will show everybody that Texas can change, and this change will benefit us all.

ISABELLE PERIN, France

MARINA VORLÄNDER, Germany

ANNA SPERBER, Germany

LARS ÅKE AUGUSTSSON, Sweden

NICK BELL, Switzerland

NB: This brochure is updated with what has happened in Anthony's case up to the end of 2009. Please check out

www.anthonygraves.org

www.desmainuines.com/anthonygraves2 and regular news sources for later developments.

1. A black man in Texas

On August 21, 1992 a police car pulls up beside Anthony Graves and an officer asks for his ID³. This is in Anthony's hometown of Brenham, situated on the Highway 290 between Houston and Austin, Texas. The police want to take him down to the station "for a few questions".

But why do they handcuff him? What the hell is going on? In the booking room he is told to empty his pockets. Four men from the Texas Rangers come in. With them is a woman, who once more asks Anthony for his name. Then she tells him that he is charged with capital murder.

Later on he learns that the woman is a magistrate, a kind of judge. He knows a bit about the Texas Rangers, the state-level law enforcement agency that investigates serious criminal cases. But right now he is all questions. "Capital murder? Who am I supposed to have murdered?" A Ranger makes him sit down in front of a tape recorder and says that Robert has told them everything. "Robert who?"

Robert Carter and the murders in Somerville

Robert Carter is married to Anthony's cousin Theresa, or "Cookie". But Anthony hardly knows the man. According to the Ranger this Robert accuses Anthony of having taken part in the murders in Somerville, a little town a short distance north of Brenham, on the night

of August 17, 1992.

The victims were Bobbie Davis, 45 years old, Nicole Davis, 16, and four little children: D'Nitra, 9, Brittany, 6, Lea Erin, 5, and Jason, 4. Three weapons were used: a knife, a hammer and a .22 calibre gun. To cover up the killings the house was set on fire.

Some days later Robert Carter, by this time a 27 year old prison guard, was arrested after having attended the funeral of one of his sons, Jason, who was one of the victims. Carter had burn marks on his face and hand. Also, it was known that Jason's mother, Lisa Davis, who was the daughter of the victim Bobbie Davis, and Carter had had a troubled relationship. After hours of questioning Carter confessed to the crime, and after still more hours he named Anthony Graves as his accomplice.

"Mom, I'm going to jail!"

After further questioning, with no lawyer present, Anthony is brought to Houston for a lie detector test. After the test he is told that he has "failed", meaning that he has lied, but does not get to see the test results. Then he is taken from Houston to the jail in the small town of Milan. There he finally gets to make a phone call to someone from his family, his mother Doris.

"Mom, all I know is that this boy lied on me and now I'm going to jail for something I don't know nothing about." She tells him not to worry about it, they can't put nothing like this on him!

³. Details from the arrest from Anthony Graves own account: *Lies and Deceit: The Horror Of an Injustice*, written in 2005, unpublished.

Then, at 3 o'clock in the morning, he sits totally bewildered in a cell. All he has is a solitary blanket, a hard-looking plastic pillow and his thoughts. His girl-friend Yolanda will be waiting in vain for him at the club tonight. Who is this man that is accused of a crime too brutal to even think about?

Who is Anthony Graves?

Anthony Charles Graves, born in Brenham in 1965, is the oldest of five children of Arthur and Doris Curry. (Since his parents were not married at the time of his birth, he has the surname from his mother, while his siblings have the surname Curry.)

His parents divorced in the 70's. His mother had to work long hours to support the family, and many of the responsibilities for the home fell on Anthony. His sisters Demetria and Dietrich remember him as very protective towards them during their childhood. His brothers Derrick and Arthur Jr. remember him as someone who made them clean the house but also was their big hero⁴.

Sport was his favorite pastime while in High School. In baseball he was regularly selected for the Brenham All Stars team, he did well in matches and tournaments with other teams in the Austin area and is mentioned numerous times in the local paper *Brenham Banner-Press*.

And he was a charmer, very much a ladies' man. At only 15 he became a father for the first time! Terrell Graves was born in 1980,

Terrance Williams was born in 1983, Alex Graves born in 1984 and his daughter Shetricka Scott in 1987. All four by different mothers, but all of them acknowledged by Anthony.

In his happy-go-lucky-ways, he was not much different from other young men. Which

4. Interviews with L Å Augustsson, April 2007.



From left to right: Arthur, Yolanda and Dietrich.

means that he also did some really stupid things, like trying to make a fast buck by peddling marijuana – as it turned out to an undercover cop, which resulted in a suspended prison sentence.

But he was never a violent man. There were no guns in the Graves/Curry home. Apart from the usual parties and dances at weekends, life was mainly hard work. Anthony Graves worked as a machinist in a shop in Brenham and then at Dell computers in Austin. In the summer of 1992 he was laid off. Money was in short supply and that is why he lived in his mom's apartment together with his sister Dietrich and his brother Arthur. This is where he spent the night before his arrest. His girlfriend at the time, Yolanda, was also there.

So how could this young guy with so many friends and not too many worries in the world come to be behind bars accused of being an accomplice to multiple murders? Part of the background is that he is a black man in Brenham, Texas, U.S.A.

A black man in Brenham

Brenham was given its name after a local doctor in the 1840s. While a lot of the free people

were immigrants of German origin, there were also a significant number of slaves. According to the first census, in 1860, the population consisted of 600 white people and 300 slaves⁵.

After the South's defeat in the Civil War the slaves were freed and Brenham was for a while occupied by soldiers from the North. But in 1866 the Ku Klux Klan was established and soon imposed its own kind of order.

The black population was also organized. This manifested itself among other things in its Juneteenth Celebrations – in remembrance of June 19th 1865, when Texas finally abolished slavery – the last of the United States to do so. People came by special trains from as far as Beaumont, Galveston and Oklahoma City to Brenham.

After World War I, the Ku Klux Klan was reorganized. In 1921 about 400 members of the Klan paraded in their white sheets through the principal streets under the U.S. flag and a flaming cross and signs like: "Good law abiding Negroes need not fear" and "Get it right, an American is one who is for his country and against the world."

Nowadays, blacks and whites and Hispanics study and play together in schools and in sports. That is why Anthony could make the Brenham All Stars baseball team. People also meet in the shopping malls out by Highway 290. But Brenham is still, underneath its surface, in many ways a segregated town.

In the historic Downtown you will find some banks and antique stores, but very few black people except for the ones that are working behind the counters of cafés and

5. Robert A. Hasskarl: *Brenham Texas 1844-1958* (This account, written by a teacher at the local Blinn Junior College, and published in 1958 by the local paper *Brenham Banner-Press*, seems to be the only existing history of Brenham. It is also an interesting document of its time, and the attitudes of the white majority in times when Brenham and Texas was still segregated.)

restaurants. The African-American population have other places to meet, for example Henderson park on a Sunday afternoon. This is also where the revived Juneteenth Celebrations take place, with Anthony's sister Dietrich as one of the most active organizers.

That Anthony Graves was arrested and accused must also be seen in a nationwide context. A young black man with very limited economic resources is a description that fits thousands of thousands of the inmates in the U.S. prison system.

Being black in the U.S.A.

Recent research shows that, more than a century after the abolition of slavery and more than four decades after the civil rights struggles of the sixties, there still are huge differences between black and white Americans. ⁶

Less than 40 percent of blacks but more than 46 percent of whites have private pension plans, more than 12 percent of blacks but only 3 percent of whites in the big cities have to rely on public transportation, more than 24 percent of blacks and just over 6 percent of whites live beneath the poverty line.

Health is another area of inequality. 71 percent of whites but only 52 percent of blacks have health care paid for by their employers. Diabetes is twice as common among blacks as among whites, cancer is diagnosed later among blacks than among whites and, even more serious, death from heart disease is 50 percent more common among blacks than among whites. Death from liver diseases is also more common, because blacks have less access to advanced medical treatment like interferon or liver transplants. AIDS affects blacks and Latinos the hardest, 49 percent of HIV-positive Americans are black and 86

6. See for instance "The New African American Inequality" by Michael B. Katz, Mark J. Stern & Jamie Fader, *Journal of American History*, June 2005.

percent of HIV-positive children are black or Hispanic.

The economy also provides unequal treatment. Blacks and other minorities are denied loans for housing much more often than whites with comparable incomes. Blacks pay more when borrowing money to buy a car than whites with a similar credit background. The major social reforms that took place during the 1930s under *The New Deal*, as well as support to the veterans returning from World War II after 1945, benefited whites much more than blacks.

When federal institutions like the Federal Housing Administration and Veteran Administration financed nearly half of all housing in the suburbs in the 1950s and 1960s, they gave whites loans on more favorable terms than blacks. Thus, with help from the government, whites have been able to accumulate substantially more wealth than blacks – blacks have actually supported whites, not the other way around.

According to a recent survey, *The Mobility Project*⁷, the income gap between black and white families has increased during the latest 30 years; in 1974 the average income for blacks was 63 percent of the white average, but in 2004 the typical black income was 58 percent of the typical white income.

An important part of the explanation for these differences is that black men make a lesser contribution to the family's income since so many are caught in a vicious circle of unemployment often leading to incarceration – and with a prison record you are still less likely to get a job. There is a strong racial bias in the U.S. prison system. Professor Bruce

Western⁸ finds that while the relative difference between blacks and whites is 2 to 1 in unemployment, 2 to 1 in infant death, and 1 to 5 in net wealth, the difference is 8 to 1 when you look at the prisons.

Will this change now that the United States has an African-American president? Nobody knows yet.

But what is obvious to someone like Anthony Graves in 1992, although he came from a hard-working family and had no violent background – only a suspended sentence for selling narcotics – is that he lives in an unequal society and a town where black people are taught their place early on. What soon becomes just as obvious is that you get as much justice as you can pay for.

7. Published November 2007 by Pew Charitable Trusts, with contributions from well-known institutions like American Enterprise Institute, Brookings Institution, Heritage Foundation and Urban Institute.

8. Bruce Western: *Punishment and Inequality in America* (2006).

2. The trials

Somerville, where the murders took place, is in Burlison County. So Anthony Graves is subsequently brought to the Burlison County jail in the small town of Caldwell. There he will spend two years waiting for his trial. (This is the very same place where he is now awaiting his re-trial.)

In the cell right opposite his own he sees a man with bandages round his head. They have put him in the same corridor as Robert Carter, why? Anthony asks him: “Say man, why did you lie on me?” Carter just shakes his head and points to the speaker in his cell. Is this to indicate that someone might listen in on what is said? Anthony says: “I don’t care if someone hears me, all I want is to go home.”⁹

Anthony Graves is so sure he will go home as soon as this mistake is taken care of that he does not demand a lawyer to be present when he is questioned. Anyway it will most likely be a cheap lawyer that would take a case like his. And it would only mean a longer wait behind bars before he gets out.

He also agrees to meet the grand jury – which decides if there is enough evidence for a trial – without a lawyer. The prosecutor is district attorney Charles Sebesta. He has a tight grip over the judicial proceedings in Burlison County. He is not about to let Anthony leave. Not even when Robert Carter, the man that pointed out Anthony as his accomplice,

suddenly changes his mind. And not for the first time.

When Robert Carter is brought before the grand jury he claims¹⁰ that he – Carter – was not at the crime scene at all. He also says that all his accusations of Anthony were false. He was under pressure from the Rangers to name an accomplice: “They say they know that I didn’t do it, but I know who did it and they wanted me to give a name so I tried to tell them I don’t know anybody. And by being pressured, being hurt, confused and didn’t know what to think, I said Anthony Graves off the top of my head.”

“Get me a lawyer!”

But the district attorney pushes Anthony’s case ahead to a photo line-up. The witness has seen two guys buying gas on the night of the crime. The other people in the line-up are teenagers and Anthony’s handcuffs are removed after he has been brought in, so there is little doubt of which one the police intends to be identified as the criminal. Just as expected, Anthony is selected.

He is allowed one phone call to his mother. “I need you to call Roy Allen. Tell him I said to get me a lawyer.” Roy Allen Rueter, a white man, is Anthony’s former employer but also his friend. In the days that follow, several of the other inmates in the jail are questioned by

9. Anthony Graves: *Lies and Deceit*, etc

10. Quoted from: *Anthony Graves v Doug Dretke*, March 3, 2006, United States Court of Appeals for the Fifth Circuit

the Rangers, who are obviously trying to find someone who can tell them if Anthony has made any incriminating remarks while in jail.

Some days later, Anthony is visited by an attorney. Dick DeGuerin is a well-known and highly competent lawyer – and also very expensive. But Rueter has promised that he will pay his fee of \$150,000. DeGuerin tells Anthony that he will soon be out, since the district attorney has very little on which to base a case.

The bond hearing – which will decide whether Anthony will be set free while waiting for his trial – takes place a couple of weeks later. DeGuerin tells Anthony not to expect that a bond will be set. It is election year, and the judge does not want his opponents to accuse him of “letting a suspected killer out of jail”. Their best hope is that this hearing will allow them to file at another court which might grant Anthony a bond.

During this hearing the district attorney presents as witnesses some prison officers who claim they have overheard incriminating utterances by Anthony. DeGuerin does a good job in pointing out the inconsistencies in their testimonies. Also, he is not fazed by another witness for the prosecution, the famous Texas Ranger Ray Coffman. Coffman has to admit that he has not discovered anything that would link Anthony Graves to this case.

But as expected, the judge denies Anthony bail. And some weeks later Anthony is indicted. Dick DeGuerin is not surprised when they speak on the phone. “It doesn’t mean anything other than that they plan to take us to court.”

Then the lawyer asks if Anthony has heard anything from Roy Allen Rueter. DeGuerin is worried because he has still not received the fee that was agreed. This is really bad news. The lawyer never gets the fee that he was promised, because it turns out that Rueter is not able to find the money, and some weeks



D.A. Charles Sebesta

DeGuerin leaves the case.

To pay for a new lawyer, Anthony’s mother cashes in all the money she has saved for her retirement. And for \$10,000 one Calvin Garvie, who has no experience of death penalty cases, takes on the case with Lydia Clay-Jackson as his second attorney.

In one of their first meetings with Anthony they bring him an offer from Sebesta: if Anthony confesses having taken part in the murders he will get a life sentence and not risk the death penalty. Anthony indignantly rejects this offer. He affirms his innocence, as he has done in the past and will continue to do.

One witness and several stories

The trial of Anthony Graves begins on October 20 1994. The judge in the case has granted Sebesta a change of venue, so the trial is held in Angleton in another county. Robert Carter, who has already been sentenced to die, is the prosecution’s only hope of winning the case. He is questioned several times in the weeks before Anthony’s trial, and a new story is told at every hearing.

At one time Carter admits that his close relation with Lisa Davis, his ex-wife and Jason’s mother, caused troubles in his marriage to Cookie. Lisa threatened to sue him for alimony for Jason if he cut her off, and shortly

before the crime she also filed a paternity suit against him. But when the prosecutor tells him that Cookie might be charged as an accomplice to the murders, Carter repeats his accusations against Anthony Graves.

In the evening before the trial of Anthony is about to begin, Robert Carter claims that he committed all the murders by himself. Then he changes his story and says that he committed the murders together with Graves and a third man called “Red”. Carter agrees to a polygraph exam. This only indicates that he is not telling the truth. After that, Carter says that Cookie was involved in the murders with him and Graves, also that Cookie was sometimes called “Red”, and that she had used the hammer in the murders.

The situation is not good for Sebesta. To make sure that Carter testifies the way the prosecution wants, Sebesta summons Hezekiah Carter to Angleton. He is Robert’s brother and works for the prison system in Texas, as a Custodial Lieutenant, and is also a Reserve Deputy Sheriff. The morning of the day Robert Carter will appear in court, the prosecutor arranges for Hezekiah to have a private talk with his brother.

After 9 a.m. a deal is made. Robert Carter will testify against Anthony Graves. In return the State will not ask him any questions about Theresa “Cookie” Carter. This is exactly what happens.

The witnesses for the prosecution

But there seems to be no physical evidence that links Anthony to the crimes. No fingerprints and no weapons. The prosecutor then shows the court a switchblade knife, made from a mail-order kit. This knife belongs to Roy Allen Rueter, Anthony’s former employer and friend. Rueter testifies that he has given a similar one to Anthony, as “a souvenir”.

Ranger Coffman, now claiming to be a

knife expert, testifies that this knife “*fit like a glove*” into the wounds of the victims. The Travis County forensic surgeon Dr Bayardo¹¹, called as an expert witness, testifies that a similar weapon was used to stab the victims. But another forensic surgeon states that the wounds could have been caused by any kind of weapon with a blade at least two and one-half inches long and one-half inch wide.

(In fact, the knife used in the murders is never found. Robert Carter describes it, and this is one point where he does not change his testimony, as a medium-sized knife with a fixed blade, like one you would use for fishing. Some years later, in the 1998 State Habeas hearing, Dr. Gill-King, a forensic anthropologist, stated that the methods used by the Rangers and Dr. Bayardo to compare Rueter’s switchblade with the victims’ wounds were not only “unreliable” but might also have destroyed the original evidence.)

Carter says in his testimony that Anthony Graves’ motive for the murders was that Bobbie Davis had got a promotion that his mother Doris Curry had hoped for. The two women both worked at the Brenham State School. But the school manager states that there was no animosity between Davis and Curry¹².

Three employees at the Burleson County Jail, where Carter and Graves had both been held in cells not far from each other, are there to testify about discussions between Carter and Graves. But under cross-examination they admit that intercom system did not work

11. Dr. Bayardo’s status as an expert is nowadays doubtful. In the trial of Cathy Henderson, accused of killing a baby in 1994, the defendant claimed that the child’s injuries were caused by an accident. Bayardo stated that the injuries were the result of an intentional act. Henderson was sentenced to die. Just before she was going to be executed, Bayardo contradicted his previous statement and stated that the injuries indeed could be explained by an accident.

12. Bobbie Davis’ daughter Lisa Davis was a witness for the State in the trial of Robert Carter. She also worked at the Brenham State School and stated that she was not aware of any competition between her mother and Doris Curry.



Yolanda Mathis

properly, and since both TV and ventilation also were making noise, individual voices could not be definitely identified.

The witnesses for the defense

Yolanda Mathis, who had stated before the grand jury that she was with Anthony Graves in Brenham during the night of the crime, is prepared to give the same testimony here. But before she takes the witness stand, Sebesta tells the judge that Yolanda should be advised that she herself might be indicted as a possible suspect.

Calvin Garvie, with no previous experience of capital murder trials, does not protest this action by the prosecutor. And then Yolanda Mathis, the most important witness for the defense, leaves the court house without giving any testimony. The prosecutor says to the jury: “Where is this alibi witness that Mr. Graves claims to have been with? Why wasn’t she here to testify?”

Yolanda Mathis is never charged with having anything to do with the crime. Clearly, the threat to indict her as a suspect was just a trick to scare her away. (Yolanda still maintains that Graves was with her during the night the murders were committed.)

Arthur Curry testifies that his brother Anthony Graves was at home with his sister

Dietrich, Yolanda Mathis and himself on the night of the killings. At 3am on the night of the murders, Curry spoke on the phone with his girlfriend Kay Vest. She spoke for a while to Graves, too, which indicated that he was at home in Brenham. The grand jury had been informed about this but now the prosecutor said: “This is the first we’ve heard about that.”

How Sebesta won

Charles Sebesta does not inform the defense team and the jury about the contradictions in Carter’s previous stories, as he is obliged to do. He does not tell them that Carter up hesitated to name Anthony Graves as an accomplice to the last minute, nor that Carter first said he had committed the murders alone and later admitted that his wife Theresa also took part. (Theresa Cookie Carter is not investigated at all – either then or later.)

The defense shows its incompetence when it fails to act properly on the prosecutor’s threats against Yolanda Mathis. (The misconduct of the prosecutor and the incompetence of the defense was pointed out in the appeals process, but the higher courts did not take these facts into account for a long time.)

On November 1, 1994 Anthony Graves is found guilty and is sentenced to die. In Brenham Banner-Press of November 2, 1992, there is an interview with District Attorney Sebesta, where he admits that “We’ve had to present a case with less evidence than in any other capital case I’ve ever tried.”

This is only one of 328 death sentences passed in the United States this year, and Anthony is only one of the 43¹³ people that are sentenced to die in Texas in this dark year.

13. <http://www.deathpenaltyinfo.org/death-sentences-united-states-1977-2007>

3. One step forward...

“To the Davis family, I am sorry for all of the pain that I caused your family. It was me and me alone. Anthony Graves had nothing to do with it. I lied on him in court. My wife had nothing to do with it. Anthony Graves don’t even know anything about it.”

From the last statement by Robert Carter¹⁴ before he is executed, on May 31 2000.

Robert Carter comes clean

Soon after Anthony is convicted, Carter retracts his testimony. Instead he says that he committed the murders alone, and that Anthony was not at the crime scene. This is the story he sticks to during the rest of his life. He tells it to his defense attorneys and to other inmates, among them Alvin Kerry and Kerry Max Cook.

Cook tells about meeting with Carter in his book¹⁵. Carter confessed that he named Anthony Graves as an accomplice as a part of a deal with the prosecutor. “You’re telling me you implicated this man falsely? He’s really

14. <http://www.tdcj.state.tx.us/stat/carterrobertlast.htm>

15. More on Kerry Max Cook and his case in the next chapter(chapter 4) of this brochure.

totally innocent?” says Cook. Carter replies: “Yeah, man.”

On May 18, 2000, thirteen days before his execution, Robert Carter makes an extensive statement in the presence of district attorney Charles Sebesta and Graves’ new attorney Roy Greenwood. According to this statement, Carter told both the prosecutor and Ranger Coffman: “It was all me; but you said you didn’t want to hear it.” And further: “Anthony Graves did not have any part in the murders and was not present before, during or after I committed the multiple murders at the Davis home.”

Anthony struggles on

If a person is sentenced to death, he can appeal the verdict in two ways, which run concurrently.

In *Direct Appeal* you want a higher court to review your sentence on the basis of what has happened in the trial. This kind of appeal is limited to the state where you are convicted.

In *Habeas Corpus* you want a higher court to review if your arrest and trial was within the law. This kind of appeal can raise ques-

tions on whether you were adequately represented, if evidence was withheld from the jury etc, and is generally the best hope for a convicted person. If your Habeas Corpus appeal is denied by a state court you can take it further to a federal court.

Anthony's direct appeal to the Texas Criminal Court of Appeals is denied on April 23, 1997. (The Texas CCA almost never reverses a guilty verdict.) After that, several Habeas Corpus writs are filed to the State Court and to Federal Court, which in this case is the 5th Circuit Court, which handles cases in the states of Texas, Louisiana and Mississippi. After many years and many denials, the federal 5th Circuit Court finally gives Anthony a new chance.

Anthony prevails

On March 3, 2006, three judges on the 5th Circuit court decide to reverse Anthony Graves death sentence and to award him a new trial. The reason for this decision is that in the trial in 1994, the prosecution kept the jury and the defense in the dark about Carter's contradictory statements.

"These statements are particularly impor-

tant because Graves' conviction rests almost entirely on Carter's testimony and there is no evidence linking him with Carter or with the murder scene other than Carter's testimony." According to the judges this "could be taken to put the whole case in such a different light as to undermine confidence in the verdict".

The federal judges order the State of Texas either to set Anthony Graves free or provide him with a new trial. The State of Texas starts proceedings to have him retried. But since he cannot lawfully be kept on Death Row any longer, he is brought back to the very same jail where he was taken in 1992, in the small town of Caldwell, Texas.

Of course it is a great step towards justice for Anthony that a federal court invalidates the death sentence of 1994. But no victory in court can give Anthony back the years that he has lost behind bars. He went to prison a young man and is now middle-aged. He has missed out on seeing his sons grow up. They all have kids of their own now, four grandchildren that Anthony has hardly seen. And he is still not free.

4. ...but how many more to freedom?

As long as the death penalty is upheld and executions continue regularly in a state like Texas, there is a risk that an innocent man will be killed by the law. Let us look at the cases of Kerry Max Cook and Gary Graham.

Kerry Max Cook

Kerry Max Cook, a young white man,¹⁵ was charged with the rape and murder of Linda Jo Edwards in Tyler, Texas in 1977. He declared himself innocent but was sentenced to death in 1978. After fourteen years on Death Row, and after the media had revealed some of the scandalous circumstances in his trial, he was re-tried in 1992. The result was a “hung jury” – a jury that could not reach a verdict. But a new trial in 1994 sent Cook back to Death Row. The Texas Court of Criminal Appeals then found all of these trials unsatisfactory. They gave Cook yet another trial, which took place in 1997. The result was a “no contest” deal, which meant that Cook was set free but was not exonerated. But in 1999 DNA tests proved that Kerry Max Cook was indeed innocent.

The state of Texas had taken about 20 years of his life for a crime he did not commit. But it could do worse if the accused was a black man with a previous criminal record.

Gary Graham

Gary Graham already had a criminal back-

ground when he was convicted of capital murder in 1981. (While in prison he changed his name to Shaka Sankofa but was and is better known by his original name Gary Graham.) His appeals were unsuccessful. But twelve years after this conviction, a new team of lawyers were able to show that the single eyewitness upon whose testimony Graham was convicted was mistaken.

In their new appeals they also showed that Graham’s defense lawyer in the trial had not investigated the case himself, because he was convinced that Graham was guilty. One vital fact that he missed was that the firearms expert from the Houston Police Department had concluded that the fatal bullet could not have come from Graham’s gun¹⁶.

Even with all this evidence, Gary Graham never got a new trial. Year after year he and his defense team tried to get his case before any court that would hear it. But evidence of real innocence was not enough. According to the new *Antiterrorism and Effective Death Penalty Act* of 1996¹⁷, Graham also had to show that his original lawyers could *not* have discovered the evidence of his innocence – but the incompetence of his original lawyers was

15. He has told his story in *Chasing Justice: My Story of Freeing Myself After Two Decades on Death Row For a Crime I Did Not Commit* (William Morrow, 2007).

16. “The Politics of Finality and the Execution of the Innocent: The Case of Gary Graham” by Mandy Welch and Richard Burr. This, the best summary of the case is, can be found in: David R. Dow and Mark Dow (ed): *The Machinery of Death: The Reality of America’s Death Penalty Regime*, 2002.

17. An excellent overview of this law, as well as a discussion of Anthony Graves’ case, can be found in Professor David R. Dow: *Executed On a Technicality – Lethal Injustice on America’s Death Row* (Beacon Press, 2005).

the ground for his Habeas Corpus appeal!

Gary Graham was executed in the summer of 2000 even though evidence pointed to his innocence. That summer was also Robert Carter executed, after having in his last words said that he had lied when he named Anthony Graves as an accomplice. Is it still that easy to put someone on Death Row? Is it still that hard to get justice?

Change and doubts

The world has changed in many ways since Anthony Graves first trial in 1994. Then the death penalty had much wider support in the United States, and one of its foremost supporters was president Bill Clinton. He also made it harder to appeal wrongful convictions, because the Antiterrorism and Effective Death Penalty Act was his creation.

At that time the governor of Texas was George W. Bush. During his six years in office he presided over 152 executions. During his subsequent eight years in the White House fear and war ruled the day, but Bush ultimately proved that you cannot rule by fear alone.

The president from Texas turned out to be one of the worst ever. After his mismanaged wars and his incompetence in handling the damage done by Hurricane Katrina and the crisis in the economy, a majority of the American people voted for change.

Even before that, people were increasingly calling the death penalty into question. One turning point was in 1999, when a number of men were exonerated from Death Row in Illinois – one was two days from his execution when some media students found the actual killer – and the governor of that state declared a moratorium on all executions.

The highly respected Death Penalty Information Center (DPIC), with its main office in Washington DC, published a report in 2007¹⁸

18. *A Crisis of Confidence: American Doubts About the*

that showed the diminishing confidence in the death penalty. People doubt that the system is fair. There have been too many examples of ineffective legal representation, misconduct by police and prosecutors, and discrimination against minorities and poor people.

The states of New Jersey and New Mexico have abolished the death penalty altogether. The use of the death penalty in Maryland has¹⁹ been restricted to cases that can be supported by DNA evidence and videotaped evidence. Etc, etc.

One of the main concerns about the death penalty system is the very real risk of killing someone innocent. Since 1977 have about 1150 persons been executed. In this period about 130 persons have been taken off death row. They were innocent, or at least they did not qualify for the death penalty²⁰. That is an error margin of over 10%. But taking a life is an “error” that can never be corrected.

Anthony gets heard

Anthony’s case has attracted more attention, not just from local papers in and around Brenham and in the press of major Texas cities like Houston and Austin, but also from national TV channels, resulting in four documentaries²¹. That a man can be sentenced to die without any reliable evidence at all, and that the prosecutor has kept relevant facts hidden from the court, is important and dis-

Death Penalty. An October, 2007, a Gallup poll found that overall support for the death penalty was 69 % (down from 80% in 1994). In 1994 32% favored Life Without Parole as an alternative to the death penalty; in 2006 the support for LWOP had increased to 48%.

19. Story by J. Bykowicz, Baltimore Sun, March 4, 2009.

20. <http://deathpenaltyinfo.org/innocence-and-death-penalty>

21. “Deadly Justice”, Geraldo Rivera 2001, “Final Judgment” David Bancaccio, PBS 2006 & 2007. “Innocence Files”, Kurtis Productions Ltd. Anthony Graves’ case features in two books. Susan Lee Campbell Solar: *No Justice: No Victory – the Death Penalty System in Texas* by (Plain View Press, 2004) and David R. Dow: *Executed On a Technicality – Lethal Injustice on America’s Death Row* (Beacon Press, 2005).

turbing information.

But even more important than the reporting in media is of course the ability to argue his case before the courts. The inexperience of his first attorneys landed Anthony on death row in 1994. It was because of competent lawyers and investigators that he has been given a second chance.

Roy Greenwood believed in Anthony's innocence and recorded testimony from Robert Carter on videotape. His case was investigated by the Texas Innocence Network of Houston, managed by Professor David Dow. Nicole Casarez, attorney and professor of communication at the University of St Thomas in Houston, took part in the investigation and is now part of Anthony's defense team.

The defense team consists also of three lawyers from the law firm Mullin, Hoad & Brown from Lubbock, Texas, which has agreed to work for his case pro bono. Lead counsel is the very experienced Katherine Scardino, of Houston.

The judge is the daughter of the judge

The 2006 decision by the 5th Circuit Court was a loss for the state of Texas. But as shown in the cases of Kerry Max Cook and Gary Graham, it is hard for a convicted man to be set free, however thin the evidence might be.

The responsibility for a new trial fell on the same county that indicted Anthony in 1994 (even if the actual trial took place in Angleton). The judge appointed to handle the re-trial is Reva Towslee Corbett. She is the daughter of Harold Towslee, who presided over the 1994 trial and thus sentenced Anthony to die.

The District Attorney Charles Sebesta has retired. But the judge has appointed Patrick Batchelor, former DA of Navarro County as special prosecutor in this case. Not only is Batchelor a friend of Sebesta's; just like him he has a reputation of using questionable

methods to obtain a guilty verdict from a jury in a capital case²².

There are also other disturbing examples of where the judge's sympathies might lie. In January 2007 a federal judge at a hearing in Galveston decided that Anthony could be set free on bail of \$50,000. This was promptly paid by his lawyers. But Anthony was immediately re-arrested in the courthouse hallway by order of the State of Texas. The judge had raised the bail sum to \$1,000,000. (The bail sum was later reduced to \$600,000, which is still an impossible sum for Anthony and his family and friends to raise.)

The judge, also in the spring of 2007, forbade the attorneys to comment on the case in public. This "gag order" was later invalidated by an appeals court²³.

Still waiting for a trial

Anthony is still in the Caldwell jail, and still waiting for his trial. There are several reasons for this, some having to do with the state of Texas, and some with decisions by the defense team. The evidence material from the crime scene in Somerville could at first not be found by the state. When it was finally discovered, in an abandoned cell in the spring of 2007, the defense team demanded that this material should be tested with modern forensic technology. But new tests, including DNA tests, were inconclusive. The DNA was contaminated after this long period of poor storage.

Judge Towslee Corbett has met one of the demands of the defense, however. The re-trial will not be held in Burleson County but at another venue. It was set to begin in the sum-

22. Batchelor was the prosecutor in the case against Cameron Todd Willingham in 1992, who was charged with arson which resulted in the death of his three children. Willingham always argued that the fire was an accident, which also was argued by several experts, but he was executed in 2004.

See the story by Steve Mills and Maurice Possley; Chicago Tribune, December 9, 2004

23. 10th Court of Appeals, March 21 2007.



Doris (Anthony's mother and Terrell (Anthony's elder son) after visiting Anthony.

mer of 2008, but an appeal from the defense team argued that there should not be any trial at all, and that Anthony should be set free.

According to the appeal, a new trial would constitute a *Double Jeopardy* (a feature of the law that exists in the U.S. and many other countries like Canada, India and Mexico). It means that a defendant cannot be tried twice for the same crime on the same set of facts; the prosecution has one chance of getting a conviction and if it fails to do so, it cannot bring a person to court again. The decision by the 5th Circuit Court that the first trial of Anthony was not fair means that the State has had its chance and has lost it, the defense team argues. Thus Anthony should be set free.

The defense argued this view in a series of appeals but was unsuccessful. Its petition went all the way to the Supreme Court of the United States, which denied the petition on October 2009.

From time to time there have been indications that the state of Texas might be losing its nerve in the case. The District Attorney made an offer to Anthony Graves in April 2008: if he pleaded guilty to the charges he would get a life sentence. Anthony declared openly in court that he refused to plead guilty to a crime he did not commit.

Former District Attorney Charles Sebesta has, in an unprecedented move, paid over

2 600 dollars for advertisements in the local papers of Burleson County, where he complains about the media coverage of Anthony's case and states that there was nothing wrong with his trial²⁴.

Texas' flawed system under fire

Anthony's case will probably be decided in a new trial in early 2010. In these times, the flaws and shortcomings in Texas' death penalty system have become clear to an increasing number of people.

Take the case of Michael Toney, sentenced in 1999 for a bombing that killed three people in 1985. In December 2008 the Texas Court of Criminal Appeals overturned his conviction because, as in Anthony's case, the prosecutors withheld evidence from the defense during his trial. In September 2009 the Texas attorney general dropped the case and Toney was set free²⁵.

And the possibly wrongful execution of Todd Willingham (see note 23 above) will not go away. After a well-documented and very disturbing story in the *New Yorker*²⁶ things have not looked good for Governor Rick Perry, ultimately responsible for the execution. In October 2009 Perry replaced four members of the Texas Forensic Science Commission, a state-appointed panel that was to review the case, a move that was severely criticized even by Perry's fellow Republicans, since it seems he is afraid of what they will find.

Meanwhile, Patrick Batchelor, who was appointed special prosecutor in Anthony's case (and was ultimately responsible for the handling of Todd Willingham's case) has stepped

24. See story in Houston Chronicle August 27, 2009: "Ex-DA turns to court of public opinion: Counters TV report on death case with big ad."

25. See stories on September 3 in Dallas Morning News (dallasnews.com) and Fort Worth Star-Telegram (star-telegram.com), respectively.

26. David Grann: "Trial By Fire", September 7 2009 (newyorker.com).

down for health reasons. He has been replaced as special prosecutor by Lance Kutnick.

One of Kutnick's first measures was to call for a Fort Bend County Deputy, Keith Pikett, and his dog team. These dogs are supposed to match a scent from a crime scene to a scent collected from a suspect, and according to Pikett the dog team linked clothing from the scene of the 1992 murders to Anthony Graves' scent during a lineup. Leading forensic experts dismiss the method as "junk science"²⁷ Pikett has previously pointed out a defendant who was later exonerated by DNA evidence, and has been sued in federal court.

Katherine Scardino, one of Anthony's defenders, calls the whole business "ludicrous"²⁸: the evidence was collected from a burned-out house 17 years ago and was part of evidence that was 'lost' for years. Moreover, the evidence was burned, so there would not be any scent on it. The Graves team has a nationally renowned FBI expert who will take this 'evidence' apart if it appears in court.

But Kutnick did not last long as a special prosecutor. On November 2, 2009, just as this brochure was nearly completed, the Attorney General of Texas asked District Attorney Bill Parham to take over the case. Since the judge once named a special prosecutor to replace a regular district attorney, this would mean that the case now has gone full circle; the trial will probably be delayed to late 2010.

I want to believe in the system"

What really happened in Somerville on that terrible night of August 17 1992 is still a mystery. The surviving persons in the family are still in shock. What made Robert Carter do

27. See stories in: FortBendNow.com, May 13th, 2009: "Fort Bend County Bloodhound Trainer Sued In Federal Court For Second Time in 11 Months; and CNN.com, Oct 5 2009: "Dogs sniff out wrong suspect; scent lineups questioned"

28. Story in Austin Chronicle, October 16 2009: " 'Junk Science' emerges in Graves' case"

something as terrible as killing his own son? Was he really alone, or was his wife Theresa Cookie Carter involved in some way? Was this the point where the police and prosecutors put the pressure on him to falsely accuse Anthony Graves of being an accomplice, although he and Graves hardly knew each other?

The only thing that we know for certain is that Anthony Graves had neither opportunity to take part in this crime, since he was at home in Brenham, nor any motive to be involved. Still he was sentenced to die, and still the State of Texas wants this sentence to be reinstated.

The State of Texas has stolen seventeen years from this man's life. His children have grown up without having him nearby. Anthony has now six grandchildren that he has never even held or touched. Still he refuses to be bitter and hateful.

Anthony was asked a most important question by a reporter in the PBS documentary *Final Judgment* on January 6, 2006:

David Brancaccio: *There are people who will watch you and say: But he's had full access to the criminal justice system. There's been a – a trial, there have been other proceedings to try to set the record straight. And the justice system still believes he's guilty. What's the answer to that?*

Anthony Graves: *Those are the people that really want us to believe in the criminal justice system. They don't want to believe that the criminal justice system is so fallible that an innocent man can go through a whole appeals process and still be executed. You know? And – and I understand that. Because I want to believe in my criminal justice system. I need to believe in it because if it actually works, then I'm going home.*

Conclusion:

What you could mean, not only to Anthony Graves

How long? Not long, because no lie can live forever.

Martin Luther King, Jr. in 1965.

When Anthony Graves was sentenced to death, not many people cared. There were so many being convicted all over the United States. He was an unknown black man from a small town in Texas and his family could not afford any good lawyers.

The trial took place in the little town of Angleton where Sebesta was pretty sure he would win. No reporters took notice of the fact that Robert Carter had changed his testimony from the one he had given earlier to the grand jury, or mentioned the prosecutor's threats to the defense witness Yolanda Adams.

Now the situation is different and much better. A dedicated team of lawyers are behind Anthony. In their appeals they argue that Anthony should be set free without a re-trial. But they are competent and will do their best even if the case goes to court.

On the other hand, the state of Texas has so far also shown itself determined not to let Anthony go without a fight. He would be an example for other wrongfully convicted persons, and it would make its prosecutors and police and Rangers look bad if the world heard about how they can put a man in prison by tampering with facts and witnesses.

The legal process will be decisive for what



happens to Anthony. But we who are outside that process can help in many ways. We can inform the press, other media and friends, and other people we meet about Anthony's history. We can keep a close watch on what happens in the future, and let the courts and prosecutors and judges know that we are paying close attention to what they do in the name of law.

Supporting Anthony Graves means not only helping one person in his struggle for justice and freedom, it also means supporting support a better Texas and United States of America. It is more productive to be interested, or even outraged, than to just be cynical.

We believe that, ultimately, it is good for Texas that people from other places are interested in what happens there. We believe that, ultimately, it is good for the United States that people from other countries demand fairness from its authorities. Because we all need a United States that upholds the rule of law – both internationally and at home.

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