



Story of an
injustice



Anthony Graves

Anthony Graves' case

Story of an injustice



*Anthony Graves leaving
the Court 2007*

In August 1992 Robert Earl Carter, a 27 year old African-American man, working as a prison guard for the Texas Dept. of Corrections, was served with a demand for a paternity test requested by his ex-wife Lisa Davis.

On the night of August 17, six members of the Davis family in the little town of Somerville, Texas, were murdered. Lisa Davis was not at home. The victims were Lisa Davis' mother, Bobbie Davis, 45 years old, Lisa's sister Nicole, 16, and the four sleeping 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. In an effort to cover up the killings the house was set on fire.



Davis family's house in 1992

Robert Carter's Confession

Some days later, August 22, Robert Carter was arrested after he had attended the funeral of his son, Jason.



Robert Carter, face covered with bandages

He was suspected and arrested because his face was covered with bandages and he had second-degree burns on his hands. He was questioned by Texas Ranger Ray Coffman at the Public Safety Office in Brenham.

At first Carter denied any connection with the murders in Somerville and said the burns came from a grass fire in his own garden. Later, realizing that no one believed his explanations, he admitted that he had been at the scene of the crime.



The police continued their questioning of Carter. Since their theory had been three people involved, they wanted to know who his accomplices were.



This theory was based on the number of victims and the three murder weapons – a gun, a knife and a hammer - but not on any specific physical evidence. The firearm was used against Nicole; Bobbie Davis was stabbed with a knife, and the hammer was used on the children. An autopsy showed that one of the smaller children actually died from inhalation of the smoke.

On the crime scene, in 1992

When the first murders were carried out, the children were sleeping. Since the house was so close to the railroad, they were used to sleeping despite the noise of the train. This explains that the crimes could have been committed by as few as one or two people.



The place where the Davis' house was located



Robert Carter's first police file

After 10 hours of questioning, Robert Carter gave the police a name of an accomplice: “*Anthony Graves*”, a cousin of his (Carter’s) present wife Theresa (also called Cookie).

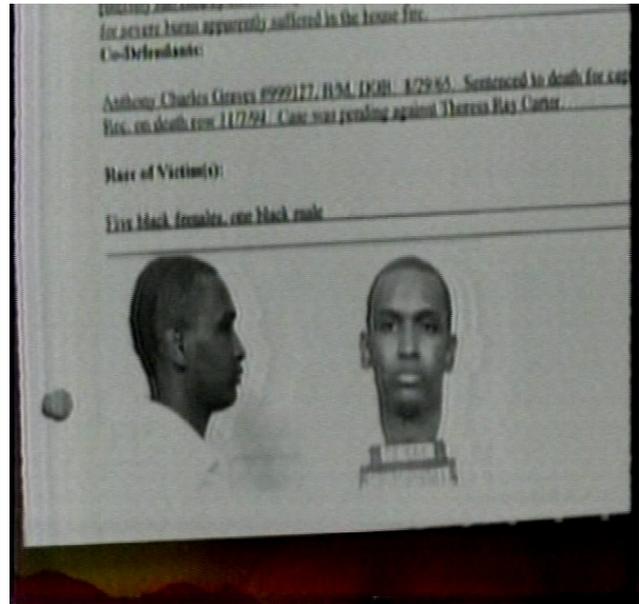
Graves was said to have come by Carter’s house in a red Suzuki Sidekick. Later investigation disclosed that this car belonged to a man named Kenneth Porter, who was working that night.

Carter said that he drove Graves to the Davis’ home, where he waited outside in the car while Graves was in the house. Then he heard shouting from inside the house, after which what happened in Carter’s own words to the Rangers: “*I get up to go to the door, I was kind of hesitant of going on. I was telling him ‘Kenneth, let’s go’.*” The fact that Carter now used another name whom he said was his accomplice did not cause any reaction from the Rangers; they just kept on with the questioning.

Carter also said that when he entered the house he ran into Graves and that made him stumble into the fire and burn himself.

After ten more hours of detention he admitted to having been present at the scene of the crime, but accused Graves of being responsible for the murders.

Of course, the fact that Carter had the burns made him a prime suspect, but he expressed his hopes of being rewarded for naming the killer of the Davis family.



Robert Carter police file

Possibly Carter was looking out for his wife, Theresa. The Rangers threatened to charge her with the crime if he did not name another accomplice. During the questioning, Robert Carter said : “ *I hope you don’t use this to lock me up, to lose my job or anything like that or lose my family. As one of the Texas Rangers put it, that they roll out the red carpet for me. I know you’re trying to do me a favor. At the same time I’m trying to do you one. You want to catch the guy*”. The Texas Rangers reminded him that his four-year-old son was killed and they asked him “*Is that one of the reasons you’re helping us, so we can catch the guy ?*”. Robert Carter reciprocated : “ *Yes, sir, and I don’t want to lose my other family behind this.*”

The Arrest of Anthony Graves and Carter's Vacillations



Anthony Graves (1985)



Anthony Graves (1990)

In the morning of May 31, 1992, Anthony Graves was arrested based upon the statements of Robert Carter...

Anthony Graves, a 27 year old African American from Brenham, had previously had jobs in a workshop in his hometown and at Dell Computers in Austin, but was unemployed at the time. In fact he had been at the unemployment office the same morning he was arrested.

The night of the crime he had stayed at his mother's apartment with his girlfriend, Yolanda Mathis, his 24 years old sister, Dietrich, and his brother, Arthur, 22 years old.

When facing the Grand Jury, Robert Carter changed his mind about what had happened and tried to exculpate himself.



From left to right : Arthur, Yolanda and Dietrich

He now claimed that he had not been at the crime scene at all. He had spent the night of the crime with Theresa and his stepdaughter. He told the Grand Jury that his accusations of Anthony Graves were false, and were the result of the pressure he was under from the Rangers to name an accomplice. He testified as follows ¹:

"I couldn't harm anybody, but during interrogation, between seven and eight hours or so, I was told they got enough evidence on me to give me the death penalty. I know I haven't done anything wrong. I know I wasn't in Somerville like they say I was. 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."

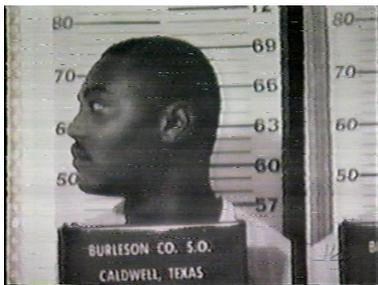
1 - Anthony Graves v Doug Dretke, March, 3 2006

And by being pressured, being hurt, confused and didn't know what to think, I said Anthony Graves off the top of my head."

Carter's wife Cookie stated before the Grand Jury that her husband told her that he named Anthony Graves as an accomplice because he (Carter) felt threatened by the Rangers and thought that Graves would be able to provide him (Carter) with an alibi.

Yolanda Mathis stated that she was with Anthony the night in question. Neither Dietrich Curry Lewis nor Arthur Curry were called to testify before the Grand Jury, but both had made a deposition with the police in which they testified that they had been with their brother during the night of the crime.

No physical evidence linking Graves to the crime was presented to the Grand Jury. Nevertheless the prosecutor, Charles Sebesta, convinced the Grand Jury to charge Graves with murder.



Anthony Graves



D.A. Charles Sebesta



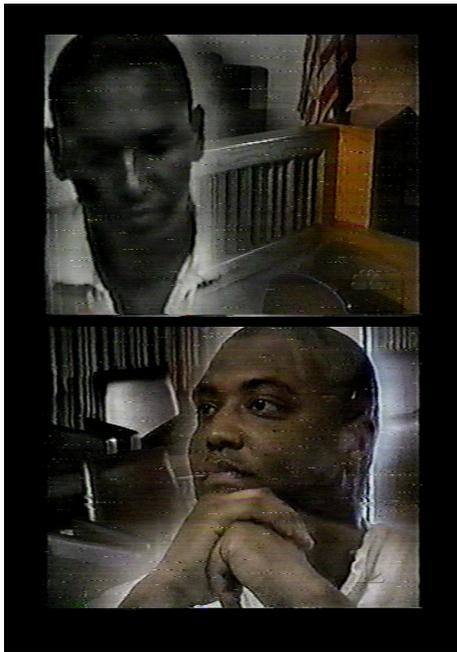
Robert Carter

Anthony Graves: a Black Man in an Unequal Society

Why Anthony was arrested and charged as an accomplice must be seen in the proper context. He was the "ideal" person to be charged with a crime: a young black man with very limited economic resources. That description fits thousands of inmates in the U.S. prison system.(see *APPENDIX 3*). Anthony Graves had no violent background (his only prior record was a suspended sentence for selling narcotics). But he lived in an unequal society where the inequality of treatment by the judicial system is particularly striking. Due to being black and too poor to get a good lawyer, it is but a small step to getting convicted for a crime he had nothing to do with.

Robert Carter's trial took place in February 1994. On February 23, 1994 he was convicted of capital murder.

Robert Carter
(above) and
Anthony Graves
(below)



After the sentence was imposed, the prosecutor kept on pressuring him to testify against Anthony Graves, but actually the State suspected that Cookie might be the accomplice.



Theresa Carter; "Cookie"

Carter, who at the time was trying to make a deal with the State that he would be given a life sentence if he testified against Graves, told the police that his accomplice was called "Red".

The Trial of Anthony Graves (1): The "Experts "and the Unreliable Carter

The trial of Anthony Graves began on October 20 1994. His first defense attorney, the highly qualified Richard DeGuerin, had by this time left the case, since the Graves family was unable to pay the fees he asked. The defense team of attorneys Calvin Garvie and Lydia Clay-Jackson, with no death penalty case experience, had replaced him.



Ranger Ray Coffman

Ranger Ray Coffman conducted three interrogations of Carter between September 1 and October 20 1994. A new story was told by Carter every hearing. At one time he admitted that he still had a close relationship with Lisa Davis. This relationship caused troubles in his marriage to Cookie. He wanted to end the relationship but Lisa threatened to sue him for alimony for Jason if he cut her off (Lisa had filed a paternity suit shortly before the crime).

At another time he repeated his accusations against Graves, possibly trying to cover up for Cookie, so she would not be charged as an accomplice. All in all, many of his statements were contradictory.

On the evening of October 21, one day after Graves' trial started, between 6 pm and 12 am, Sebesta met with Carter, who once again repeated : *"I did it all myself, Mr. Sebesta. I did it all myself"*.

The DA did not believe him, because of the number of weapons used.

Carter then said that he committed the murders with Graves and a third man called "Red", whom he had also named earlier in the murder investigation.

When Sebesta proposed that "Red" actually might be Cookie, Carter denied this and agreed to take a polygraph exam. But Carter changed his story one more time before the actual polygraph exam took place, now claiming that he had killed the Davis family together with Graves but without "Red". So when the polygraph test finally took place, Carter was asked:

- if his wife was with him at the murders.
- if "Red" actually referred to Theresa.

Carter answered "No" to both questions, but the polygraph examiner concluded that Carter was not truthful in either answer.

Confronted with these results, Carter now said that Cookie was involved in the murders with him and Graves, also that Cookie was sometimes called "Red", and, when asked by Sebesta if Cookie had used the hammer in the murders, Carter answered "Yes".

But experience had taught Sebesta that he could not be sure that Carter would testify against Graves during the latter's trial. It was crucial to make Carter testify, since there was no physical evidence to implicate Graves.



Prosecutor Charles Sebesta

Sebesta needed help to make Robert Carter testify the way the prosecution wanted.

He therefore summoned Robert's brother Hezekiah Carter to Angleton, where the trial was being held.

This brother was employed by the prison system in Texas, as a Custodial Lieutenant, and was also a Reserve Deputy Sheriff. Hezekiah's travel expenses and stay at the hotel were paid for by the State.

The very morning of the day Robert Carter was to appear in court he still refused to testify against Graves.

The prosecutor arranged for Hezekiah to have a private talk with his brother. But even after this talk Carter refused the prosecutor's offer: a review of Robert's sentence in exchange for testimony implicating Graves and Cookie.

It was only after 9 am that a deal was made: Robert Carter would testify against Anthony Graves and in exchange the State would not ask him any questions about Theresa Cookie Carter, and the State would not use any of the evidence provided in a future retrial.



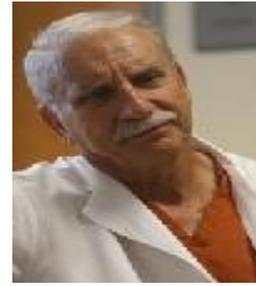
Robert Carter going to the court room for Anthony Graves' trial

During the trial, Robert Carter stated that Anthony Graves had been his accomplice.

But there was still no physical evidence that could link Graves to the crimes. No fingerprints and no weapons. The prosecutor then showed the court a switchblade knife made from a mail-order kit. This knife belonged to a former employer of Anthony Graves, Roy Allen Rueter, who had given Anthony a similar knife as "*a souvenir*".

Ranger Coffman, claiming to be a "knife expert", testified that this knife "*fit like a glove*" into the wounds of the victims.

The Travis County forensic surgeon Dr Bayardo, called as an expert witness, testified that a similar weapon was used to stab the victims ². Rueter's opinion was that the knives were of a very poor quality, too flimsy to inflict the approximately 75 stab wounds to the victims. Another forensic surgeon stated 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.



Dr Bayardo

Later, in the 1998 State Habeas hearing, Dr. Gill-King, a forensic anthropologist, stated that the methods used by the Texas 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. In fact, the blade weapon has never been found and Robert Carter always described it throughout his numerous questionings as a medium-sized weapon with a fixed blade, like a knife used for fishing.



Robert Carter at the trial

During the trial, Robert Carter also said that Graves' motive for the murder was resentment towards Bobbie Davis. Davis worked at the same place as Anthony Graves' mother Doris Curry, the Brenham State School, where Davis had received a promotion that Curry had hoped for. But the school manager stated there was no animosity between Davis and Curry because of this promotion. During Carter's own trial, Bobbie's daughter Lisa Davis, who was a witness for the State and also worked at the Brenham State School, also said that she was not aware of any competition between Bobbie Davis and Doris Curry.



At the trial

² A note on Dr Bayardo's claims to be an expert: in 2007 he recanted his crucial testimony in another capital case, that of Cathy Henderson. She was arrested in 1994 for murdering a baby. At her trial Bayardo stated that the child's injuries were the result of an intentional act and not, as she claimed, the result of an accident. Henderson was subsequently sentenced to death. Just before she was going to be executed Bayardo stated that new evidence suggested that the infant's injuries could indeed have been caused by an accident. Henderson's execution was stayed on June 13 2007.

The Trial of Anthony Graves (2): The Tricks of a Prosecutor

The prosecutor also introduced testimonies from three employees at the Burlson County Jail, where Robert Carter and Anthony Graves both had been held in cells not far from each other. They should have been able to hear through the intercom system any discussion between Carter and Graves – if only the intercom had worked properly. But they admitted that this was not the case, and since four other inmates were also talking at the same time and the TV and ventilation was noisy, individual voices could not be discerned. Two of them stated, moreover, that they had never heard Graves speak, so they would not be able to recognize which voice was his. Also a former county jailer swore later in an affidavit that he never heard any incriminating statements over the jailhouse intercom. Robert Carter said during an oral examination that Anthony Graves tried to talk to him, but he didn't want to talk. *“I can understand that because of the fact that he was innocent and he wanted some answers to his questions,”* Robert Carter said at this examination.

The main witness for the defense was Yolanda Mathis. She had stated before the Grand Jury that Anthony Graves was with her at the apartment of Anthony's mother in Brenham on the night of the murders.



Yolanda Mathis

But just before she was to be brought to the witness stand, the DA told the Judge that Mathis should be advised that she was a possible suspect and could be indicted herself. When Calvin Garvie, who was Graves' attorney and had no previous experience of capital murder trials, informed Mathis about this threat, she fled the court house in a state of *“panic”* without giving any testimony. After this trick had worked as planned, the prosecutor told the jury: *“Where is this alibi witness that Mr. Graves claims to have been with? Why wasn't she here to testify?”*

That the only motive for this operation was to scare Yolanda Mathis is evident. She was not then and has not since been charged with having anything to do with the crime. She still maintains that Anthony Graves was with her during the night the murders were committed.



Angleton court house

Arthur Curry stated at the trial that his brother Anthony Graves was at his home with his sister Dietrich Curry Lewis, Yolanda Mathis and himself on the night of the killings. Curry stayed up until 3 am on the phone with his girlfriend Kay Vest, who for a while spoke to Graves, too.

Although the prosecutor knew the Grand Jury had been informed about this, at the trial he said *“This is the first we’ve heard about that.”* Anthony Graves’ previous attorney, Dick DeGuerin, had questioned Kay Vest, who confirmed having spoken briefly to Graves, around 1 am on the night of the murders.

Arthur Curry speaking to a reporter in 2007³:

*« I know he's innocent. How do I know he's innocent ?
Because we were at home. He was at home where I was that
night. I know for certain that he never left...Nobody has never
come and he never left »*



Dietrich Curry Lewis, who also had told law enforcement officers that she had been at home with her two brothers and Yolanda Mathis on the night in question, was not called to testify.

The prosecutor did accomplish his main objective, namely to make Robert Carter testify against Anthony Graves. And he did not inform either the defense team or the jury about essential facts in connection with Carter’s testimony: 1) that Carter up to the last minute hesitated to name Anthony Graves as an accomplice, and 2) that Carter had first said that he alone committed the murders, and later said that his wife Theresa also took part. If the prosecution had informed the defense team and the jury about these facts, the jury might have doubted that Graves had anything to do with the murders and the defense might also have pointed out to the jury the questions remaining about Cookie's role. Neither the DA nor the Texas Rangers have brought any charges against Cookie.

Once Carter’s testimony was on the record, the rest was more or less routine for Sebesta, especially in view of the fact that his opponents were inexperienced. The decisive mistake by the defense was in not reacting properly to the prosecutor’s threats against Yolanda Mathis. Later, when appealing the sentence, the defense committed other serious errors. The prosecutor's misconduct and the incompetence of the defense were pointed out in the appeals process, but the higher courts did not take them into account for a long time.

3 Documentary *« Innocence Files »* Kurtis productions.LTD - 2007

Some 10 years after the trial one of the jurors, Jim Hahn, wrote an affidavit ⁴ stating that he had hesitated a lot before his decision. He believed that Graves was innocent and that the prosecutor used him simply because he “*needed someone to take a fall*”. But he had finally agreed to the guilty verdict because he concluded that the other jurors would never change their minds, and because he believed that Graves would get a new trial on appeal.

Anthony Graves did not have a fair trial. On November 1, 1994 he was found guilty and was sentenced to die.

He was subsequently brought to Death Row, which at this time was situated at Ellis Unit outside of Huntsville ⁵.



*Ellis Unit in Huntsville, Texas
which houses the death chamber*



Polunsky Prison, Livingston (Texas) where the inmates sentenced to capital punishment are incarcerated. Anthony Graves stayed there around 8 years.

Robert Carter Comes Clean – Too Late

Almost immediately after Anthony Graves’ conviction, Robert Carter retracted his testimony, and said that he alone committed the murders and that Graves was not at the crime scene. He stated this to his defense attorneys and to Graves, as well as to two other inmates, Alvin Kerry and Kerry Max Cook, and to his “*second mother*”.

⁴ *Juror regrets role in capital conviction - A new trial could be ordered if judge in Galveston finds evidence hidden* By HARVEY RICE Houston Chronicle - Oct. 29, 2004 - http://www.chron.com/CDA/archives/archive.mpl?id=2004_3814190

⁵ In 1999 Death Row was moved to Polunsky Unit outside of Livingston, and to much harsher conditions. The inmates spend all the time alone in their cells, except for 1 hour of recreation per day. There are no work programs; no TV is allowed. Currently – December 2008 – there are 354 inmates on Death Row.

In his book ⁶, Kerry Max Cook tells about meeting with Carter, and how shocked he was by Carter's confession that he implicated Graves in a deal he made with the prosecutor. Cook asked: *"You're telling me you implicated this man falsely? He's really totally innocent?"* And Carter said, *"Yeah, man."*



Kerry Max Cook (on the right) with a reporter of CBS News speaking of Anthony's case : Former inmate seeks justice March 7th, 2007- <http://www.khou.com>

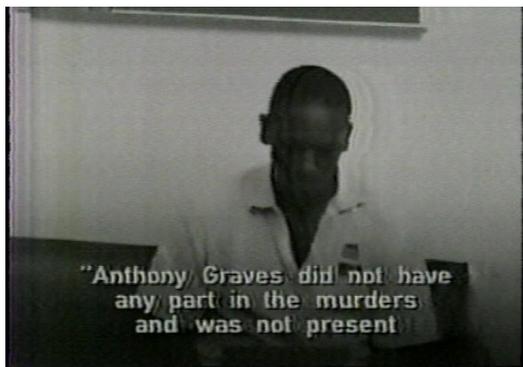


On May 18, 2000, 13 days before his scheduled execution, Robert Carter made an extensive statement in the presence of DA Charles Sebesta and Roy Greenwood, who was Graves' new attorney.

Carter repeatedly declared that he had told both the prosecutor and Texas Ranger Coffman:

Robert Carter and Roy Greenwood on May 18, 2000

"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."***



Robert Earl Carter filmed during his statement affirming Anthony Graves' innocence

Until his last breath Robert Carter sought to exonerate Anthony Graves: *"It was me and me alone. Anthony Graves had nothing to do with it. I lied on him in court."*

⁶ Kerry Max Cook was released from Texas Death Row in 1997 after 20 years in prison for a crime he did not commit. It took three re-trials before he got out, and he was finally exonerated by a DNA test in 1999. 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).

Robert Carter was executed on May 31 in Huntsville. This was his last statement ⁷

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. My wife don't know anything about it. But, I hope that you can find your peace and comfort in strength in Christ Jesus alone. Like I said, I am sorry for hurting your family. And it is a shame that it had to come to this. So I hope that you don't find peace, not in my death, but in Christ. Cause He is the only one that can give you the strength that you need.

And to my family, I love you. Ah, you have been a blessing to me and I love you all and one day I will see y'all, so I hope y'all find y'all peace, comfort, and strength in Christ Jesus alone, because that's where it's at. Abul, behold your son, and Anitra, behold your mother. I love you.

I am ready to go home and be with my Lord.



Pictures: from right to left : Death row unit Polunsky, Courthouse in Caldwell, Death chamber, Polunsky unit by night

Anthony Graves Struggles On

By then, Anthony Graves' struggle to be freed from the false accusations had gone on for nearly 8 years.

If a person is sentenced to death, he can appeal the verdict in two ways, which run concurrently. In *Direct Appeal* you ask an appeals court to review your sentence on the basis of what has happened in the trial; this kind of appeal is made within the state where you reside. In *Habeas Corpus* you want a review of whether your arrest and trial was lawful at all; in that kind of appeal you can go further to a federal court, if your appeals are denied in your state. Since the Habeas Corpus appeal is where you can raise questions on whether you were adequately represented, whether evidence was withheld from the jury etc., it is generally the best hope for a convicted person.

⁷ Texas department of criminal Justice - <http://www.tdcj.state.tx.us/stat/carterrobertlast.htm>

Anthony Graves' direct appeal to the Texas Court of Criminal Appeals was denied on April 23, 1997 (the Texas CCA almost never reverses a guilty verdict). After that, several Habeas Corpus writs were filed to the State Court and to the Federal Court, which in this case is the 5th Circuit Court which handles cases in the states of Texas, Louisiana and Mississippi.



Anthony Graves Prevails : the 2006 decision of the Federal Court

On March 3, 2006, three judges on this court decided to reverse Anthony Graves' death sentence and award him a new trial.

United States Court of Appeals
Fifth Circuit
FILED
March 3, 2006
Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-70011

ANTHONY GRAVES,
Petitioner - Appellant,

versus

DOUG DRETKE, Director,
Texas Department of Criminal Justice, Correctional Institutions
Division,
Respondent, Appellee.

Appeal from the United States District Court
for the Southern District of Texas

Before DAVIS, WIENER, and GARZA, Circuit Judges:
W. EUGENE DAVIS, Circuit Judge:

Petitioner Anthony Graves appeals the district court's denial of his writ of habeas corpus. Because we conclude that the statements suppressed from the defense were both exculpatory and material, we reverse the judgment of the district court with instructions to grant Graves' writ of habeas corpus.

I.

The judges of the Federal Court consider that the prosecution made deliberate attempts to mislead the jury

We disagree with the district court's conclusion that the defense did not exercise due diligence to discover the statement regarding Cookie's involvement in the crimes. Graves' counsel had specifically requested the information disclosed in the statement. We view Sebesta's statement regarding the polygraph, his discovery responses and questioning of Carter as misleading and a deliberate attempt to avoid disclosure of evidence of Cookie's direct involvement. At a minimum, Sebesta's minimal disclosure was insufficient to put the defense on notice to inquire further, particularly in light of the state's discovery disclosure.

Exculpatory?

Graves next challenges the district court's conclusion that the statement regarding Cookie's involvement is not exculpatory

The main reasons for this decision were that significant statements by the killer who had accused Anthony Graves were not disclosed to the jury. ***“These statements are particularly important 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.”*** For these reasons, the federal judges ordered the State of Texas either to set Anthony Graves free or provide him with a new trial.

The federal court said that the State of Texas had convicted Anthony Graves on false grounds; the court had not been informed of the relevant facts in the case. Since the federal court's ruling in effect constitutes a reversal of the conviction, it should have resulted in the release of Graves. (see *APPENDIX 1*)

However, the State of Texas, which has executed well over 400 inmates in the last 26 years, was not willing to set Graves free. Instead, on September 12 2006, they started proceedings to have him re-tried.

But they could not lawfully keep him on Death Row any longer, so he was brought back to Burleson County Jail in the small town of Caldwell, Texas, the same jail where he had awaited his trial 14 years earlier.

The hall of the Caldwell jail



DA Charles Sebesta had retired by this time. The case was now in the hands of the DA of Burleson County, Renee Muller. But she had served as an assistant to Sebesta during the trial in 1994, so had presumably been aware of his misconduct, and other members of her office had also been involved with Sebesta's way of doing things. The entire DA's office asked the presiding judge to be excused from the upcoming re-trial, which was granted.

Patrick Batchelor, former DA of Navarro County, was then appointed as special prosecutor by the judge. Batchelor has, like Sebesta, a reputation of doing everything he can to obtain a guilty verdict from a jury in a capital case. He 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 was corroborated by several experts ⁸, but he was still executed in 2004.

The judge is the daughter of the judge

The judge herself, Reva Towslee Corbett, is the daughter of Harold Towslee, who presided over the 1994 trial in which Graves was convicted.

In January 2007 a federal judge at a hearing in Galveston decided that Anthony Graves should be set free against bail. The bail was for the sum of \$50,000, which was paid by Graves' lawyers, but Graves 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 federal judge said that he "*personally believes that this is excessive and oppressive*" but had no authority to interfere with decisions by the State judge. The bail sum was later reduced to \$600,000, an equally impossible sum for Graves and his family and friends to raise.



After the visit with Anthony

Doris, (Anthony's mother), Terrell (Anthony's older son) and 2 students of Texas Innocence Network, go to visit Anthony in Burleson county jail

⁸ "Fire that killed his 3 children could have been accidental", Story by Steve Mills and Maurice Possley; Chicago Tribune, December 9, 2004

During later hearings, the judge has shown herself to be unresponsive to most appeals from the defense. One important example is the motion by Anthony Graves' attorneys that every statement by Robert Carter should be suppressed from the case, since he cannot be questioned any more. This is in accordance with the US Supreme Court ruling in 2004 ⁹ that deals with the rights of the State to use a witness who is unavailable during the trial.



*District Judge Reva
Towslee Corbett*

The judge denied the request without explanation, which means that the State can use the trial transcript including Carter's testimony.



The trial should have been held within a reasonable time; however, it was postponed throughout 2007 and a new date was scheduled for July 2008. Then a second date was scheduled for October 2009.

After the hearing of January 5, 2007; from left to right : Dietrich, Doris Curry (Anthony's mother) and Arthur Curry. In the background, Pastor Georges Nelson with a reporter of KPFT radio.

One of the reasons for the first adjournment was that law enforcement representatives did not know where the evidence material found at the scene of the crime was kept. It was found in an abandoned cell in the spring of 2007, whereupon the attorneys representing Anthony Graves demanded that items from this material be submitted to investigation using modern forensic technology. Since the original expert's reports stated that Graves' fingerprints had not been found, but did not state whether other fingerprints had been found on the crime scene, a new test might yield important information. Anthony Graves wanted every piece of evidence to be fully tested, however long it would take. Unfortunately the new tests, including DNA tests, were inconclusive, since the DNA was too contaminated after all these years of bad storage.

Judge Towslee Corbett has met one of the requests of the defense: the re-trial will not be held in Burlson County, where Graves might face too many prejudiced jurors, but will take place not far away, in adjacent Lee County and the Giddings court house.

The trial was postponed a second time because the defense appealed a refusal by Towslee-Corbett to cancel the trial and free Graves on the grounds that his attorneys would not be able to question Carter.

9 Crawford v. Washington – March 8, 2004 -

They argued that a new trial cannot be a fair trial because Robert Carter has been executed. He can never be put on the witness stand to testify to a jury. What is more, Anthony Graves should not have to go through a new trial, because his first trial was reversed by the federal court on the basis of intentional prosecutorial misconduct; according to the Fifth Amendment to the United States constitution and Texas law a person cannot be tried twice for the same crime. The Tenth court of Appeals he Texas Court of Criminal Appeals denied the appeals in 2008 and 2009 denied the appeal on November 5th, 2008 (*see APPENDIX 2*); an ultimate appeal on these issues is filed in the US Supreme Court.

Is it the end of the nightmare for Anthony Graves ?

The District Attorney, uncertain of being able to win the case, made an offer to Anthony Graves in April 2008: if he pleaded guilty to the charges he would get a life sentence. Anthony Graves declared openly in court, without hesitation, that he refused to plead guilty to a crime he did not commit.

Anthony Graves can still hope for an end to this nightmare he has been caught up in since 1992. Even if the State of Texas is a formidable opponent, known to never admit that it has made mistakes when sending someone to Death Row, the Appeal Courts have had more respect for objective facts, and by now Graves has a very qualified team of attorneys on his side (see the notice below).

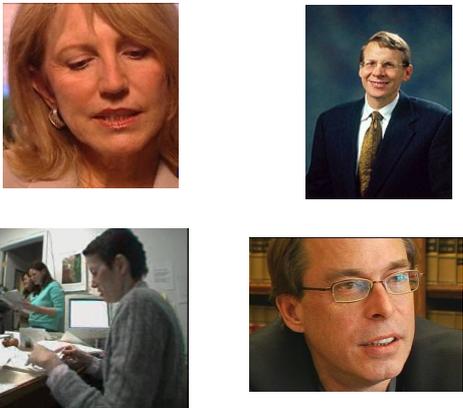
Competence and experience are essential to capital cases because they concern the worst crimes and the penal procedures are technically and legally complicated.

The inexperience of his first attorneys landed Anthony on death row in 1994. Today he can view the future with more confidence, thanks to the tenacity of Roy Greenwood, who believed in his innocence and who recorded testimony from Robert Carter on videotape.

Anthony has now five excellent lawyers, some of whom belong to the firm Mullin, Hoad & Brown from Lubbock, Texas, which has agreed to work for his case pro bono.

The case has been 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, Texas, started the investigation in 2001 for the Texas Innocence Network. Thanks to her and her students, the case has attracted the attention of the media and lawyers. Nicole Casarez is now part of Anthony's defense team.

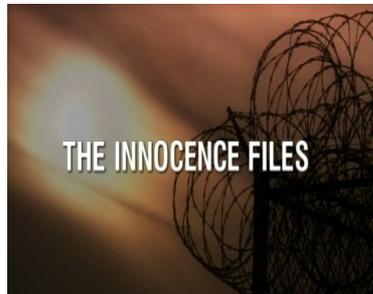


Four of Anthony's five lawyers - from the top: Katherine Scardino, lead counsel (Houston, Tx), David Mullin (Lubbock, Tx), Nicole Casarez and her students (Houston, Tx), Jeff Blackburn (Amarillo, Tx)- picture not available: Jimmy Phillips (Angleton, Tx)

The media, including press and publishers, have gradually shown more and more interest in Graves' case during recent years, since it seems so obvious that something is very wrong when a man can get the death penalty without any reliable evidence at all.



His case has attracted interest from national TV channels and has resulted in four documentaries ¹⁰.



Although the judge for a while tried to stop the attorneys commenting on the case in public by issuing a gag order in the spring of 2007, this order was later invalidated by an appeals court ¹¹.

So the dark 1990's, when the numbers of death sentences and executions soared, both under Presidents George Bush (the elder) and Bill Clinton, are over. The death penalty system is now being questioned in many parts of the United States, New Jersey has abolished the death penalty altogether, although Texas is still the infamous death penalty state N°1, where one third of all US executions in modern times have been carried out ¹².

The highly respected Death Penalty Information Center (DPIC), whose main office is in Washington DC, published a report in 2007 ¹³ that showed diminishing confidence in the death penalty. The fairness of the system is very doubtful, after many examples of ineffective legal representation, misconduct by police and prosecutors, and discrimination against minorities and poor people.

¹⁰ "Deadly Justice", Geraldo Rivera 2001, "Final Judgment" David Bancaccio, PBS 2006 & 2007. Both of these documentaries are available here: http://www.pbs.org/now/thisweek/index_010606.html# and <http://www.pbs.org/now/shows/306/index.html> respectively; "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* (Plain View Press, 2004) and David R. Dow: *Executed On a Technicality – Lethal Injustice on America's Death Row* (Beacon Press, 2005).

Many press publications : www.desmainsunies.com/anthonygraves2/medias.htm

¹¹ Tenth court of appeals - March 21,2007

¹² By August 3, 2009, Texas had executed 439 males and females since 1982.

¹³ «A Crisis of Confidence: American's Doubt About the Death Penalty » : an October 2008 Gallup Poll found that overall support of the death penalty was 64 % (down from 80% in 1994). In 1994 32% favored Life Without Parole as an alternative to the death penalty; in 2006 the support for Life Without Parole had increased to 48%. See <http://www.deathpenaltyinfo.org/public-opinion-about-death-penalty>

The staggering costs of the death penalty system are also a factor that speaks against this form of punishment. Several years ago, in 1992, the total cost of one death penalty sentence in Texas was calculated at \$2.3 million, about three times as much as a sentence of life without parole ¹⁴. For the re-trial of Anthony Graves the State of Texas has already budgeted more than \$262,000.

But maybe the main concern about the death penalty system is the very real risk of killing someone innocent. During the “modern era” of the death penalty, since 1977, just over 1 171 persons have been executed. During the same time 131 persons have been taken off death row, since it turned out that they were innocent or at least did not qualify for the death penalty. That is an error margin of over 11%, which is very disturbing, considering that a wrongful execution can never be corrected (*see APPENDIX 4*).

“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 something like killing his own son? Was he really alone, or was his wife Theresa Cookie Carter involved in some way? Was there a deal which led the police and prosecutors to put the pressure on him to falsely accuse Anthony Graves of being an accomplice?



Victim's graves

14 Source : Dallas County, Dallas Morning News, March 8, 1992

The only thing that we know for certain is that Anthony Graves had neither the opportunity to participate in this crime, since he was at his mother's home in Brenham, nor any motive to be involved.

Despite this, he was sentenced to die, and the State of Texas still wants this sentence to be re-instated. Anthony Graves was asked this question by the reporter David Brancaccio 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 trial, there have been other proceedings to try to set the record straight. And the justice system still believes that he's guilty. What is 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.

Fifth Circuit Court Opinion of March 3, 2006

SUMMARY

On March 3, 2006, in a twenty-page opinion, the United States Court of Appeals for the Fifth Circuit granted Graves a writ of Habeas Corpus.

This opinion is based on two statements made by Robert Carter the night before Anthony Graves' trial and not disclosed to the defense and the jury by D.A. Charles Sebesta.

Before the federal court's opinion, the lower courts had concluded that, had they been heard, these statements would not have changed the verdict of the jury.

The three judges of the federal appeals court maintain the opposite.

First they recall that Robert Carter was an important witness for the State and that Graves made no self-incriminating statements to the police before his trial; before the Grand Jury he denied all involvement in the crime and explained where he was on the night of the murders.

Then the judges analyze the State's evidence submitted at trial.

The first evidence consists of statements allegedly made by Graves and heard over the jailhouse intercom system. The judges note that the employees who heard them were unable to recognize Graves' voice and are unable to report on the comments today.

The second piece of evidence, the only physical evidence, was a switchblade knife bought by Graves' former boss and identical to one that he had given Graves as a gift. The judges note the content of the expert's report: *“The medical examiner testified that the knife wounds on the victims were consistent with that knife or a knife with a similar blade. Graves' medical expert testified that a wide range of knives with similar dimensions to the switchblade were also consistent with the victims' wounds including holes in skull caps of some of the victims.”* The judges remark that none of the murder weapons were recovered and conclude: *“Thus, it is obvious from the record that the state relied on Carter's testimony to achieve Graves' conviction”*.

It is in this context that the judges examined the importance of the suppressed statements.

1. Robert Carter's First Non-Disclosed Statement: He Committed the Crime Alone

According to the appeals court, this statement was “*extremely favorable*” to Graves. It would have provided the defense with “*powerful ammunition*” to cross-examine Robert Carter. This statement was “*particularly significant*” because it was the first statement where Carter implicated himself without also implicating Graves. Before the Grand Jury, he claimed Graves wasn't involved in the murders but he also denied his own involvement.

The appeal judges recall that Robert Carter told the Grand Jury that he gave Anthony Graves' name to investigators because he was coerced: “*Before the Grand Jury, Carter testified as follows:*

I couldn't harm anybody, but during interrogation, between seven and eight hours or so, I was told that they got enough evidence on me to give me the death penalty. I know I haven't done anything wrong. I know I wasn't in Somerville like they say I was. They say that I didn't do it, but that I know who did it, and they wanted me to give a name so I tried to tell them that I don't know anybody.

And by being pressured, hurt, and confused I didn't know what to think, I said Anthony Graves off the top of my head.”

The judges note that the State faced a difficult job in persuading the jury that Robert Carter was a credible witness in spite of his many inconsistent statements.

The State argument was that Carter did not implicate Anthony Graves before the Grand Jury because Graves threatened him. But according to the Federal Court judges, if the jury had been aware of Carter's statements that he acted alone, this argument would have had less influence on the jury decision.”*Had the defense been able to cross-examine Carter on the suppressed statement, this may well have swayed one or more jurors to reject Carter's trial version of the events.”*

But “*even more egregious than District Attorney Sebesta's failure to disclose Carter's most recent statement is his deliberate trial tactic of eliciting testimony from Carter and the chief investigating officer, Ranger Coffman, that the D.A. knew was false and was designed to lead the jury to believe that Carter made no additional statement tending to exculpate Graves.”*

The judges show how the D.A used a set of questions to get affirmative answers from Carter and Ranger Coffman in order to keep Carter's statements to the Grand Jury from being heard. Thus he presented a picture of Carter's consistency in incriminating Anthony Graves.

2.The Suppressed Statement by Carter that Cookie Was an Active Participant

The night before the trial, after failing a polygraph, Carter admitted his wife's involvement in the murder and that she had the hammer, which was one of the weapons. It was agreed between Sebesta and Carter that the D.A. would not ask any questions about his wife if Carter incriminated Graves. Carter's statement about his wife's involvement was not revealed to the defense. But during the trial, Sebesta did disclose that Carter had failed the polygraph examination regarding Cookie's involvement. He also asked Carter to confirm their agreement. He said: *“There is something I need to put on the record from an exculpatory standpoint. It cannot be used, but last night at 8:30 Mr. Carter took a polygraph and the basic question involved his wife, Theresa. It shows deception on that polygraph examination. But, obviously, we can't go into polygraphs here, but I think Counsel is certainly entitled to know that.”* The defense had no evidence that Cookie was involved in the crime and viewed her indictment as the tool used by the D.A. to get Carter to testify. When the defense asked whether any of the information from the polygraph examination related to a party involved in the crime, Sebesta's response was: *“There were some names that were given”; “they're not necessarily parties to the crime but they are people who may have – may possibly have some information on those.”* And of course, when the defense cross-examined Carter about Cookie and who was in possession of the hammer at the time of the crime, his testimony was no longer the statement he gave Sebesta.

The federal judges consider *“Sebesta's statement regarding the polygraph, his discovery responses and questioning of Carter as a misleading and a deliberate attempt to avoid disclosure of evidence of Cookie's direct involvement.”*

They also find that the statement regarding Cookie's involvement in the crime is exculpatory for several reasons. At first, each party's point of view that more than one person was involved in the crime was based only on the number of persons killed and the numbers of weapons used. The defense thought that two persons were probably involved but it viewed Cookie's indictment as a prosecution tool to pressure Carter to testify against Graves.

Again, the court notes that if *“Graves had been furnished with Carter's statement, it could have provided him with an argument that those two persons were Carter and his wife rather than Carter and Graves”*. According to the judges, the deal between Sebesta and Carter *“provides a stronger argument to Graves that Carter was lying about Graves' involvement in order to save Cookie.”*

3.The Statements Considered Together

The statements taken together (the first one where Carter claimed that he did it himself and the second where he implicated Cookie) are very important.

“If both statements had been timely furnished to Graves, he could have persuasively argued that (1) the murders were committed by Carter alone or by Carter and Cookie ; and (2) Carter's plan from the beginning was to exonerate Cookie, but a story that he acted alone was not believable, so he implicated Graves so that the prosecution would accept his theory and decline to prosecute Cookie.”

The court states that if these two statements had been revealed, the defense's approach could have been different and *“probably highly effective”*.

The court therefore concludes that these two statements were important enough to free or to re-try Graves.

*“Carter made several inconsistent statements throughout the investigation and pre-trial period. In some he denied all involvement, in some he implicated himself and Graves, and then, just before he testified against Graves, he gave the statements at issue in this appeal, one accepting full responsibility as the sole murderer and another placing his wife Cookie as an active participant in the murders. If the defense had known about the statement placing Cookie at the scene, and given Carter's continuing condition that he would only testify if he were not asked about Cookie's involvement, the defense could have explained every statement implicating Graves as a means of protecting Cookie. As indicated above, these statements are particularly important in this case because **Graves' conviction rests almost entirely on Carter's testimony and there is no direct evidence linking him with Carter or with the murder scene other than Carter's testimony.** In addition, Carter's statement that he committed the crimes alone is important as the only statement he made exculpating Graves while implicating himself.”*

The judgment of the District court is reversed and the case is remanded with instructions to grant the writ of habeas corpus unless the state proceeds to re-try petitioner within a reasonable time.

Appeal in the Tenth Court of Appeals of Texas

Court of Appeals Number: 10-08-00189-CR

1 - The Brief Filed by the Defense

The defense presented two issues in this appeal:

“1- Under the United States Constitution and the Texas Constitution, are Anthony Graves' rights to protection from double jeopardy infringed by a retrial for the same offense when the first conviction was reversed on the basis of Brady for intentional prosecutorial misconduct?”

2- Under the United States Constitution and the Texas Constitution are Anthony Graves' due process rights violated when he is re-tried fourteen years after the original trial, when the delay was a result of intentional prosecutorial misconduct?”

The Double Jeopardy Clause¹⁵:

The double jeopardy clause protects a person from repeated prosecutions for the same offense. This clause is applicable in Anthony Graves' case because :

- his conviction was reversed because of intentional, covert prosecutorial misconduct,
- this misconduct was not only the failure to disclose exculpatory evidence but also the purposeful introduction of tainted evidence to the jury : the prosecutor introduced testimony that he knew was false.
- the misconduct was designed to avoid an acquittal that the prosecutor knew was otherwise probable.
- the prosecutor concealed the exculpatory evidence and his own fabrication of evidence for years after Anthony Graves' trial ended. This meant that a mistrial couldn't be requested earlier by the Defense.

15 - Fifth Amendment : « **No person... shall ... be subject for the same offense to be twice put in jeopardy of life or limb** »

- Texas Constitution art 1 § 14 « **No person, for the same offense shall be twice put in jeopardy life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction** »

Application of Due Process / Due Course of Law:

The due process clause can be raised in this case because Anthony Graves has suffered demonstrable prejudice that stemmed from the State's egregious prosecutorial misconduct.

The State withheld Robert Carter's statements made the night before Graves' trial, saying that he committed the murders alone and that his wife was an active participant. This meant that Robert Carter could not be cross-examined by Anthony Graves' counsel and a cross-examination is impossible now because Carter was executed in 2000. As a result, Anthony Graves will not get a fair trial, 14 years later, because Robert Carter, the primary witness, cannot be cross-examined.

2 – Opinion of the Habeas Court¹⁶:

According to the Appeals Court, double jeopardy bars a retrial when the prosecutor intended to avoid the possibility of an acquittal at the initial trial through deliberate conduct designed to hide exculpatory evidence. But double jeopardy can be raised only after a mistrial requested by the defense, and not a reversal on appeal.

The judges also overrule the due-process issue. They consider this issue as an attempt to bring a speedy-trial claim; they argue that *“a speedy-trial claim is not cognizable on a pretrial writ of habeas corpus”* and they note that they *“cannot say that Graves will not receive a fair trial”*.

The justices overruled Graves' issues.

3 – The Dissenting Opinion¹⁷:

Justice Bill Vance considers Graves' case as a specific case where the Double Jeopardy Clause bars his retrial. A retrial should be barred *“in those extremely rare cases where the State intentionally withholds Brady evidence and intentionally elicits false testimony relevant to that evidence with the intent to avoid the possibility of an acquittal, and the conviction is later reversed or set aside for the Brady violation”*¹⁸.

Because Graves did not learn of the exculpatory statement and prosecutorial misconduct for several years, his rights were violated and he was unable to move for a mistrial.

16 - Ex parte Anthony Charles Graves -Tenth Court of Appeals - No. 10-08-00189-CR - opinion : <http://www.10thcoa.courts.state.tx.us/opinions/HTMLopinion.asp?OpinionID=9236>

17 - Ex parte Anthony Charles Graves -Tenth Court of Appeals - No. 10-08-00189-CR - Dissenting Opinion : <http://www.10thcoa.courts.state.tx.us/opinions/HTMLopinion.asp?OpinionID=9237>

18 - *Oregon v. Kennedy* provides a “narrow exception” to the general rule that there is no jeopardy bar to a retrial after a defense-requested mistrial : a defense -requested mistrial bars retrial only when the prosecutorial “conduct giving rise to the successful motion for a mistrial was intended to provoke [or goad] the defendant into moving for a mistrial” *Oregon v. Kennedy* 456 U.S. (1982)”. Dissenting Opinion

An Unequal Society

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 are still huge differences between black and white Americans¹⁹. 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 a further 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 is more often fatal, death from heart diseases 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 percent of HIV-positive children are black or Hispanic.

The economy provides further evidence of inequality. 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 1930's, known as *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 the Veterans 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*²⁰ the income gap between black and white families has increased during the latest 30 years; in 1974 the average income for

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

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

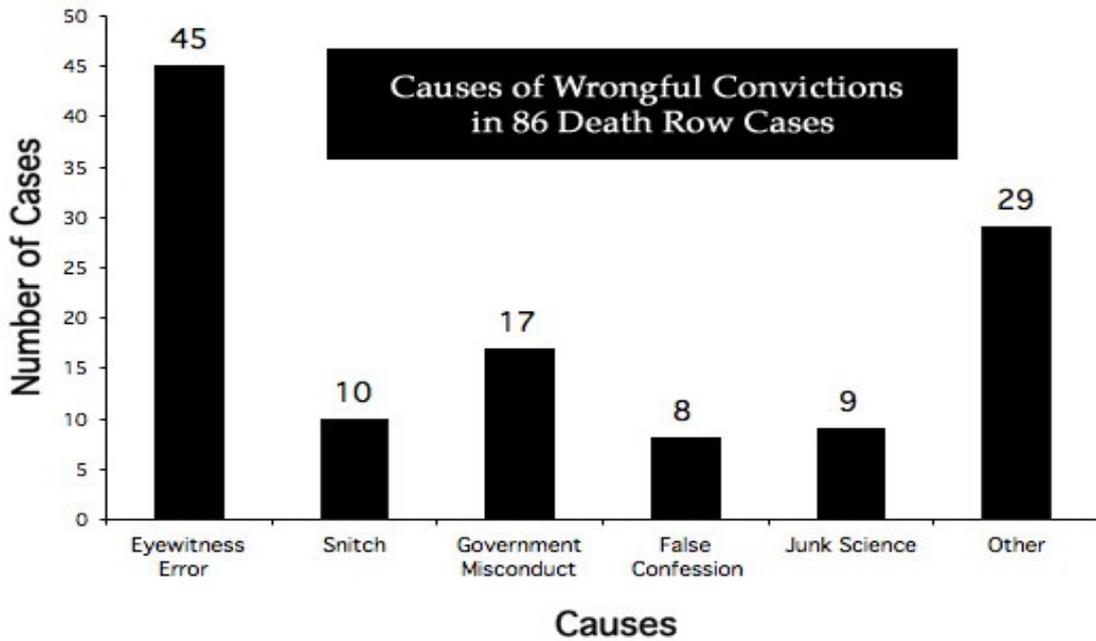
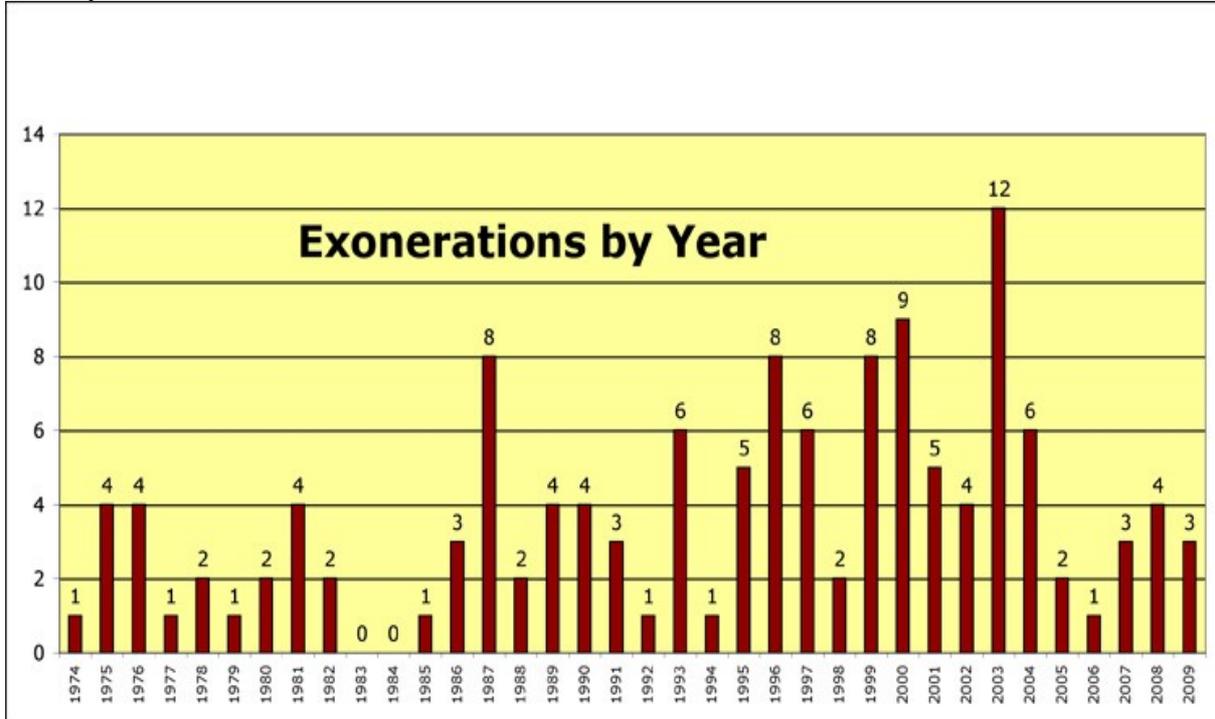
blacks was 63 percent of the white average, but in 2004 the typical black income was 58 percent of the typical white income.

An important part of the explanation for these differences is that black men make a smaller contribution to their 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 even less likely to get a job. There is a strong racial bias in the U.S. prison system. Professor Bruce Western ²¹, finds that while the relative difference between blacks and whites is 2 to 1 in unemployment, 2 to 1 in infant deaths, and 1 to 5 in net wealth, the difference is 8 to 1 when you look at the prisons.

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

The wrongful convictions

As of July 9, 2009 there have been 135 exonerations in 26 different States.



Source : Death Penalty Information Center : www.deathpenaltyinfo.org/

Contact :

isabelleprn@yahoo.com