

# Texas Lawyer's Death Row Record a Concern

By SARA RIMER and RAYMOND BONNER

Published: June 11, 2000

**HOUSTON, June 10**— On death row at the Terrell unit of the Texas state prison in Livingston, an hour's drive north of here, inmates and death penalty lawyers refer sardonically to a place they call the Mock Wing. This metaphorical prison enclave has housed at least a dozen death row inmates, some already executed, others awaiting their final punishment, who shared the same lawyer, Ronald G. Mock.

Mr. Mock, who was appointed by Harris County judges to represent indigent defendants in capital cases, says he believes he has had more clients sentenced to death than any lawyer in the country. One of those clients, Robert Anthony Carter, 34, was executed on May 31. On June 22, another client, Gary Graham, 36, is scheduled to die by lethal injection after a 19-year court battle.

In large part because Mr. Graham's conviction turned on a single eyewitness who saw him only fleetingly and at night, his new lawyers are insisting that he is innocent and are pressing for a postponement of his execution and for a new trial. In earlier pleadings, they also raised questions about Mr. Mock's competency as trial counsel.

Mr. Graham's is the latest high-profile death penalty case to focus attention on Gov. George W. Bush and how the death penalty is administered in his state. With their appeals exhausted, Mr. Graham's lawyers are asking the Texas Board of Pardons and Paroles to recommend that Mr. Bush grant Mr. Graham some form of clemency. Last week, Mr. Bush granted a 30-day reprieve to another condemned prisoner, Ricky Nolen McGinn. It was only the second time during his tenure that he has stepped in to stop an execution.

In addition to the innocence claim, what makes Mr. Graham's case particularly compelling is that his new lawyers, and other critics of the death penalty, are portraying it as a textbook example of how bad lawyering sends poor people to death row here and in other states across the country.

Mr. Mock, who boasted in an interview this week that he had flunked criminal law at Texas Southern University's Thurgood Marshall School of Law, called no

witnesses during the guilt phase of Mr. Graham's trial, which lasted two days. He did not challenge before the jury the testimony of the single eyewitness who sealed Mr. Graham's guilty verdict, although there were other witnesses who could have provided conflicting testimony. He called only two witnesses during the penalty phase, when his job was to persuade the jury to spare his client's life.

Mr. Mock, who had only three years of legal experience when he took on Mr. Graham's defense, acknowledged in the interview that he did almost no investigation of the case. He knew in his gut, he said, that none of the witnesses could help his client. Mr. Mock's investigator, Mervyn West, as well as his co-counsel, Chester L. Thornton, both say Mr. Mock had made it clear that he assumed Mr. Graham was guilty, an assertion Mr. Mock disputes.

Mr. Thornton said Mr. Graham's fate had haunted him for 19 years. It was his first and last capital case. "I have serious questions whether we presented a fair and adequate defense," he said.

Mr. Mock said that five of his clients on death row have petitions pending in court that accuse him of ineffectiveness of counsel. The Texas Bar Association has reprimanded him several times for professional misconduct. "I have a permanent parking spot at the grievance committee," Mr. Mock said.

In the 1980's, Mr. Mock, who drives a Rolls-Royce and a Harley-Davidson, was one of the top-earning court-appointed lawyers on death cases here, making by his estimation \$120,000 to \$130,000 a year. Mr. Mock said he stopped handling capital cases 10 years ago because there was not enough money in them.

Harris County, where he practices, tries more capital cases than any other county in the state. The county, which includes Houston, has 148 people, including Mr. Graham, on death row. Since executions resumed here in 1976, Harris County has put 62 people to death, making it the jurisdiction with the third-highest number of executions in the country. Only the state of Texas itself and the state of Virginia have had more.

Like most counties in Texas, Harris County does not have a public defender system. Thus judges, who are elected, appoint lawyers for the indigent. While standards have improved considerably, when Mr. Graham and many other death row inmates were being tried in the 1980's there were no guidelines for court-

appointed lawyers. Defense lawyers and former judges say that many judges routinely appointed lawyers who moved cases quickly, and that there was pressure on lawyers to contribute to the judges' campaigns.

"Cronyism was rampant," said Jay Burnett, who presided over capital cases as a district judge in Houston for 14 years and crusaded for the higher standards that are now in place in Harris County, including certification and training procedures for lawyers. But back when Mr. Mock was handling the Graham case in 1981, Mr. Burnett said, "They were appointing people who had no business doing capital cases."

With his easy manner and jokes, Mr. Mock became a favorite of a handful of Harris County judges, some of whom were impressed by the strong rapport he established with clients. Another reason judges appointed Mr. Mock, Mr. Thornton and other lawyers said, was that Mr. Mock is black, and with few African-American lawyers practicing criminal defense law in Houston in the 1980's, judges were interested in promoting what diversity they could.

Richard Trevathan, who was the judge in the Graham case and is now in private practice, said, "I always thought Ron Mock was a good lawyer."

But a review of Mr. Mock's legal career here shows that he was jailed during jury selection in one capital murder trial for failing to file court papers in another case on time for a condemned client's appeal. A federal judge who later reviewed the case during which Mr. Mock was jailed wrote that his confidence in the verdict was "completely undermined" because of Mr. Mock's performance. Mr. Mock's client, Anthony Ray Westley, 36, was executed in 1997.

Several clients filed complaints against Mr. Mock, with one claiming that he smelled alcohol on Mr. Mock's breath during their discussions. Mr. Mock at one time owned 11 bars, including Buster's Drinkery, a popular downtown hangout for judges and lawyers.

"I drank a lot of whiskey," Mr. Mock said, talking in his office in Houston, where the walls are decorated with portraits of the Rev. Dr. Martin Luther King Jr. and Malcolm X. "I drank whiskey with judges. I drank whiskey in the best bars. But it never affected my ability. It never affected my performance."

The performance of appointed lawyers in capital cases has become a subject of national concern. Here in Texas, which, with 468 condemned prisoners, has the second-largest death row population in the country (California has the largest), Mr. Bush has vigorously defended the fairness and professionalism of his state's judicial system. He insists that none of the 131 people executed during his tenure were innocent.

Governor Bush declined a request to be interviewed about the Graham case. His spokesman, Dan Bartlett, said: "Governor Bush takes every death penalty case very seriously. The governor's office conducts an exhaustive and lengthy review process of each death penalty case. Having said that, we believe it is inappropriate for the governor or his staff to grant an interview in the middle of this review process."

The Graham case has put a spotlight on the way Texas appoints lawyers to handle death penalty cases and the woeful performance of scores of local lawyers, two of whom slept through parts of several trials and others of whom have presented few if any arguments on behalf of their clients.

"I don't indict Ronnie," said Mr. Thornton, who rarely practices law these days and runs a small business exporting medical equipment. "I indict the system that creates Ronnie, and lawyers like him. Judges appoint lawyers who play along with the rules." Defense lawyers and judges say there are now a number of highly skilled court-appointed lawyers on capital cases in Harris County.

Roe Wilson, the Harris County assistant district attorney who is handling the Graham case, said: "I think Ron did a competent job. By law you are not guaranteed perfect or excellent counsel. You're guaranteed competent counsel."

Talking from a holding cell on death row in Livingston on Wednesday, Mr. Graham said the fact that Mr. Mock was also a black man had been reassuring. "I tended to trust him more," Mr. Graham said. "I felt like he would stand up and fight the system."

Mr. Graham, a high school dropout who grew up poor with a mother in and out of mental hospitals, was charged in May 1981 with fatally shooting Bobby Lambert, a 53-year-old white man, during an attempted nighttime robbery in the parking lot of a Safeway supermarket.

Mr. Graham was arrested after a weeklong crime rampage that followed the murder of Mr. Lambert, and he subsequently pleaded guilty to 10 aggravated robberies during which he terrorized his victims by pointing guns at them and threatened to kill them. He shot two of the victims; one of the men later lost a leg as a result. Rape charges against Mr. Graham were dropped.

Shortly after his arrest, a Harris County judge appointed Mr. Mock as the lead lawyer in his capital case. Mr. Thornton, who knew Mr. Graham and had represented him on some juvenile offenses, was appointed his co-counsel.

Mr. West, a former police officer, was brought in as the investigator.

While defense investigators in capital cases routinely spend months searching for any shred of evidence that might save their client's life, Mr. West said in an interview this week that he wrapped up his work on the Graham case in less than a week. "I had a couple of quick talks with eyewitnesses and went over the police report," he said.

Mr. Mock said Mr. Graham was unable to tell him where he had been on the night of the murder. "His position was that he was on a drug and alcohol binge, and didn't remember where he was," Mr. Mock said. During the trial, two witnesses went to the courtroom to tell Mr. Mock that they wanted to testify that they were with Mr. Graham the night of the murder. Mr. Mock said this week that he was too busy to talk to them, but that he knew they could not have helped his client. This contradicts an earlier affidavit, used by the state to deny Mr. Graham a new trial, in which Mr. Mock denied knowing of these witnesses.

At least two witnesses who might have helped Mr. Graham were named in the police report. Sherian Etuk, a child protective services worker, and Ronald Hubbard, a postal worker, were working at the Safeway at the time of the murder, and both said they saw the killer.

Ms. Etuk and Mr. Hubbard, whose affidavits are included in Mr. Graham's clemency petition, both said in interviews this week that Mr. Graham was not the man they saw. Mr. Graham is just under 5 feet, 10 inches tall. Both Mr. Hubbard and Ms. Etuk said that the man they saw was under 5-foot-5.

Ms. Wilson, the assistant district attorney, said Ms. Etuk and Mr. Hubbard were sincere but mistaken.

Mr. Mock said this week that he did not bother to interview the other eyewitnesses because if he had put them on the stand, it would have allowed the prosecution to tell the jury about Mr. Graham's other crimes. But Ms. Wilson said that Mr. Mock was wrong about the law, that such testimony would not have given the prosecution that opening.

No forensics evidence connected Mr. Graham to the murder, and the police report contained ballistics evidence showing that the .22-caliber revolver with which Mr. Graham was arrested could not have been the same .22-caliber gun that killed Mr. Lambert.

The case came down to one eyewitness, Bernadine Skillern, a former school secretary who has never wavered in her identification of Mr. Graham over the years. "She was stronger than an acre of garlic," Mr. Mock said this week, repeating an assertion he has made many times. He did not attack Ms. Skillern's identification before the jury, and in his closing arguments he said she deserved a standing ovation for her bravery in testifying.

"He put on no defense," said Jack B. Zimmermann, who is working with Richard H. Burr on Mr. Graham's case before the board of pardons and parole. "If he didn't attack the mistaken identification, there was nothing for the jury to do but come back with a finding of guilt."

The United States Supreme Court warned in a 1967 case against "the vagaries of eyewitness identification," arguing that "the annals of criminal law are rife with instances of mistaken identification."

Because Mr. Mock had known of the eyewitnesses and the ballistics report, legal technicalities prevented the lawyers who followed him from getting a hearing on that evidence.

"Gary Graham's case lies on the fault line of the Texas death penalty system," Mr. Burr said. "He had abysmal trial counsel, who failed to present stark evidence of his innocence based on exonerating eyewitnesses and forensics evidence. Thereafter, when this evidence was discovered, the courts all decided that this evidence was presented too late to be heard."

With the execution of his former client approaching, Mr. Mock said he had no regrets about his work on the Graham case. "There's nothing I could have done that would have changed the result," he said.

#### One Lawyer's Clients and Death Row

##### Executed

CARTER, Robert Anthony. Executed 2000; black male.

WILLIAMS, Willie. Executed 1995; black male.

WESTLEY, Anthony. Executed 1997; black male.

JOHNSON, Curtis Lee. Executed 1992; black male.

BARNEY, Jeffrey Allen. Executed 1986; white male.

NELSON, Peter Daniel. Died awaiting execution.

##### Facing Death Penalty

GRAHAM, Gary. Black male.

PIERCE, Anthony LeRoy. Black male.

SMITH, Roy Gene. Black male.

NEWTON, Frances Elaine. Black female.

HUGHES, Preston. Black male.

McGOWEN, Roger. Black male.