

Holidays 2002
Volume 1, Issue 1

State of GRACE

The Gulf Region Advocacy Center (713) 869-4722

Special Announcements

- We have moved into our new office!
- We have two full-time interns from Australia!
- We have hired our first full-time staff person!



Happy Holidays from the Gulf Region Advocacy Center!

Inside, you will find the first installments of what we hope will become regular features of our monthly newsletter: Case Updates, "Meet the Interns" and "Fall from Grace." But, I also want to use this first edition to reflect on our short but chaotic history and to thank the many folks who have made it possible.

The first six months of our existence have been an amazing experience.

Though GRACE had been in the planning for some time, the return of Calvin Burdine [see story below] to Harris County for retrial instantly turned a long term plan into a short-term foot race. Initially, it looked like Calvin was in for a repeat of his 1984 experience, until an amazing coalition of lawyers came together to make sure the retrial will be a fair fight. GRACE emerged from this process.

Our warmest thanks to: The Texas Criminal Defense Lawyers' Association; The Harris County Criminal Lawyers' Association; The Texas and Houston Chapters of the ACLU; and The Louisiana Crisis Assistance Center.

Several individuals must be mentioned by name: Jay Burnett; Rick Hagen; Troy McKinney; Cynthia Henley; Keith Hampton; Robert McGlasson; Clive Stafford Smith; David George; Annette Lamoreaux; Richard Bourke; Alison Myers; and Adaku Orgawu.

Yet, we cannot rest on our laurels. We must use this unique moment to:

- 1) Make sure that Calvin gets a fair trial.
- 2) Encourage the District Attorney not to seek death.
- 3) Use the momentum we have achieved to get GRACE off the ground.

Calvin Jerold Burdine

Everyone has heard of "the sleeping lawyer case." But, you may not know that Calvin was convicted after 12 hours of testimony and a 17 minute deliberation by the jury on the guilt phase. He was sentenced to death by the jury after a penalty phase hearing which ran for just minutes and in which his lawyer made no submission on his behalf whatsoever. His lawyer made no objection to the prosecution's blatant use of homophobia throughout the trial, and even used disparaging epithets against his own client.

For almost 20 years, the state of Texas defended this illegal conviction while Calvin lived under horrific conditions on death row, the victim of repeated beatings and torture. Calvin's co-defendant, on the other hand, served 8 years in jail and has now been released.

Luckily, Calvin was represented by Robert McGlasson in post-conviction. Robert fought for Calvin for over 15 years and is still doing so.

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Burdine, cont'd.

"Mr. Burdine's retrial offers not only a second chance for Mr. Burdine, but also a second chance for this County to demonstrate that we are not asleep on the job, that our courts do take the rights of individual citizens seriously, that our system does work most of the time to effectively seek justice rather than simply be expedient, and that when mistakes happen, as they will in any human endeavor, we are willing to redress them. Instead, the events that have unfolded since Mr. Burdine returned to Harris County . . . have led us to believe that his retrial may suffer from some of the same constitutional infirmities as the 1984 debacle."

---Open Letter from the Harris County Criminal Lawyer's Association to the Harris County Criminal Judiciary

In 1999 federal district court Judge Hittner granted Calvin a new trial because his attorney had slept through substantial portions of his trial. But, even then, the State of Texas challenged this ruling in both the 5th Circuit and the US Supreme Court for the next two and a half years. Finally, on June 3, 2002, the Supreme Court denied Texas' petition for a writ of certiorari without opinion.

Calvin was quickly returned to Harris County, where the judge immediately removed the lawyer who won the new trial, and set the trial for October 7, 2002, which would have been the fastest capital trial in Harris County history.

Protecting the Attorney/Client Relationship: "Bakesale Justice" for Calvin Burdine

Public outrage at the notorious "sleeping lawyer case" in part led the 2000 Texas legislature to enact the Fair Defense Act, establishing standards for the appointment of capital counsel and providing funds to improve the quality of indigent defense. [For a detailed exposition of how that Act has been gutted by the Texas Court of Criminal Appeals, see the Texas Defender Service publication *Lethal Indifference* at www.texasdefender.org.]

Ironically, Judge Huffman has used the Act to prevent Robert McGlasson, who has represented Burdine for the last 15 years, from defending him at the retrial. Although he is a leading capital defense advocate, and clearly meets the requirements of the Fair Defense Act, McGlasson is not on the local Harris County appointment list. The Texas Criminal Defense Lawyers Association and the National Association of Criminal Defense Lawyers filed an unsuccessful writ of mandamus with the Court of Criminal Appeals in Austin, challenging Huffman's removal of McGlasson. The Texas Chapter of the American Civil Liberties filed a federal civil rights suit against Judge Huffman, but District Court Judge Hittner found that he lacked

jurisdiction, a decision which is being appealed to the US Court of Appeals for the 5th Circuit.

However, with the help of many of you, we have at least slowed the death train. In a remarkable show of solidarity, the Harris County Criminal Lawyer's Association unanimously voted to write an open letter to the Harris County Criminal Court Judiciary protesting Judge Huffman's denial of Calvin's Motion for a Continuance [see excerpt in sidebar].

This letter, along with evidence collected and submitted by GRACE demonstrating that Calvin was being treated differently than any other capital defendant in Houston, resulted in a five month continuance. While we still have a long road to travel, this victory at least gives us a chance to get justice for Calvin.

Although the authors of the Fair Defense Act published an editorial clearly indicating that the Act was not meant to apply retroactively and not meant to be used to upset existing attorney/client relationships, Judge Huffman continues to insist that she is not permitted to appoint McGlasson.

Thus, regardless of the true spirit and purpose of the Fair Defense Act, the Burdine case shows how elected judges continue to show disregard for the quality of capital defense.

Throughout these travails, no one has seriously challenged the proposition that Robert is essential to Calvin's defense. With little hope that the courts will ever appoint Robert, we must find an alternative means to fund his participation. Even if we must hold bake sales on the courthouse steps, we at GRACE are committed to providing Calvin with the defense he deserves, including the services of the only lawyer he has ever trusted, the lawyer who kept him alive for 15 years and ultimately got him off death row – Robert McGlasson.



Gilda Anne Westbrook

This past fall, we received a call from the Boulder, Colorado Public Defender's Office concerning the extradition of a suspect in a 28 year old murder case in Newton County, Texas. As we learned the facts, we were outraged by the governmental overreaching that led to the complete disruption of Annie Westbrook's life, and have stepped in to represent her.

Annie was arrested in Boulder on a Texas Governor's warrant. This warrant was issued solely on the basis of a statement typed by a Lake Charles, Louisiana police officer in 1974 and apparently signed by 19 year-old Annie Westbrook describing the shooting of a rapist who was attacking her after she tried to stop him from raping and beating her unconscious friend.

Even cast in the worst possible light, the statement does not describe a murder. Indeed, the police who took the statement apparently did not believe a crime had occurred, as they did not even arrest Annie. They released her, and for the next 19 years she lived at the same address, easy for anyone to contact, but the case was never pursued.

Until August, 2002, when Chief Deputy Larry Folmar of Newton County Sheriff's Office claims he just happened to find this statement in an old file "in the back of the jail." Folmer used this statement to track Annie down in Boulder, Colorado, have her arrested and housed in the Boulder County jail, facing extradition to Newton County on 28 year-old murder charges.

Many people would probably be shocked to learn that a single police officer has the power to set in motion a process that will have a citizen arrested, jailed and transported across the country without any opportunity to challenge the facts of the case until after extradition.

Annie Westbrook was assaulted 28 years ago and now her life has been turned upside down by the overreaching of a law enforcement officer in a system where there are no checks or balances in place until after the defendant arrives in the county where they are charged.

Folmer later informed the news media that the case had never been pursued because it "got lost in the shuffle...the ball was fumbled".

When the Boulder Public Defenders called GRACE in despair at the prospect of Annie facing capital murder charges in the death penalty capital of the world, we agreed to represent Annie's interests in Texas while the extradition was being litigated in Colorado. In this capacity, we were able to secure a sworn statement from Newton County District Attorney A.W. Davis indicating that he would not seek the death penalty against Annie. With this assurance, Annie waived any further challenge to extradition and awaited transfer to Newton.

Just two days before Thanksgiving, Annie was put on a plane, handcuffed, and transported to Newton County. The next day, she was arraigned and a bail of \$100,000 was set.

The Sheriff's Office decision to reopen the matter after 28 years is extraordinary - even more so its decision to charge Annie on the basis of a dubious statement which at worst suggests that she acted in self defense in the course of a violent rape.

Its decision to incarcerate her over the holiday season, hundreds of miles from home, family and loved ones, is simply cruel. In a further act of cruelty, Deputy Folmer, who runs the Newton County Jail, has a policy of prohibiting female inmates from serving as trustees in the jail. As a result, Annie is confined alone to a day room with only a concrete bench to sit on all day, every day, whereas the male inmates have some limited mobility within the jail and trustees are deployed to tasks outdoors.





Meet James Sullivan



James Sullivan is originally from a small country town in the south east of Australia and moved to Melbourne to complete his tertiary studies. After spending some time living in Adelaide, James recently returned to Melbourne to complete his law degree.

James first became interested in the Reprieve Australia internship program following a talk provided at his University which featured interns from previous years recounting their personal experiences. He was particularly impressed by one instance in which an intern drove all over the back roads of Mississippi looking for a witness in a case where the client was set to be executed in a few days. James was shocked that such an important task had been left undone by previous counsel and intrigued with the idea that, as an intern, he could make such a significant contribution, doing work that literally would never be done otherwise.

James applied for the program with the expectation that it would be a unique opportunity to make a positive contribution in the area of social justice. In particular the working environment characteristic to GRACE presents a great challenge in embarking on capital defense work in Harris County, the epicentre of the death penalty phenomena.

"The way I see it, there are two issues – the morality of whether we should kill people at all, and then the legal system and how prejudicial it is. Even if you believe in the death penalty, you wouldn't want it to be so unfair."

On his return to Australia it is James' wish to increase the general awareness of the extent of the death penalty in America and encourage prospective interns to experience the benefits of the Reprieve Australia Internship Program.

"This is a moral question and moral questions are subjective -- they can't be conclusively answered. I believe it is wrong, but can't prove it. Nor can anyone prove it is right. So how can we do something so final as to kill someone when the moral question will never be resolved?"

--James Sullivan



"The Criminal Justice System here is manifestly weighted against the defendant."

--Rachel Walsh's report to ReprieveAustralia

Meet Rachel Walsh

Rachel literally lives at the office.

During her three month internship with GRACE, Rachel is billeted on a spare futon (donated by Jim Marcus) behind a wall of bookshelves in the office.

A graduate of the University of Melbourne, Rachel is a partner in the firm of Phillips Fox, where she has practiced for 10 years. Although she knew she would be living and working in the death penalty capital of the western world, Rachel was not prepared for the unfairness and unprofessionalism she has witnessed. She has been particularly shocked by our discovery practices, exorbitant bail amounts, and the lack of adequate separation between the District Attorneys' Office and the Courts. Rachel was incensed when one ADA candidly stated that she thought we would steal documents if she left us alone with the file, and explained that such unfounded accusations and lack of professionalism would be grounds for a bar complaint back in Melbourne.

Rachel is also Secretary of Reprieve Australia. Through Reprieve, she is developing a program to encourage more experienced attorneys to volunteer in the US as interns on indigent capital defense projects. In addition to wanting to volunteer with the Reprieve program, she has undertaken this internship in order to better understand the needs of projects such as GRACE, the expectations that the attorneys running the projects have of their interns and the level of contribution to be made by more experienced volunteers.

Rachel's internship has attracted wide interest in the Melbourne legal community and press, and she is using the opportunity to publicize the issues surrounding capital defense work in the US, particularly in Houston, and to call for future volunteers for the various capital projects with which Reprieve is associated.

Meet Irene Aguilar

Irene Aguilar is the newest addition to GRACE, beginning in January as our first full-time staff person.

Originally from Spain, Irene came to the United States when her husband was transferred here last year, and expects to be with us for three more years. Irene is an expert in International law, and has

Our New Office!!

Thanks to the generosity of many of you, we officially opened our office in November. Located at 809 Henderson St., just a few blocks from the most deadly courthouse in the Western world, our little office provides workspaces to two staffers and two full-time interns, as well as law students and other volunteers.

This would not have happened were it not for **Clive Stafford Smith**, who donated a computer and several used desks, **Michael Boyette**, who donated phones and office supplies, **David George**, who lent us his firm's tech support, **Greg Siegel**, who has also

Our New Year's Resolution

GRACE is a charity recently established to provide quality defense services to capitolly-charged Texans. The Director, several of the Board members, and some volunteers are veteran capital trial lawyers who participated in building the Louisiana Crisis Assistance Center in New Orleans, Louisiana. The LCAC has developed an extremely successful method for investigating and presenting capital cases for indigent defendants. This method has been refined through dozens of capital cases in Louisiana, Mississippi, Alabama and Florida. No such office or organization has ever existed in Texas, however.

worked extensively with Amnesty International as their anti-death penalty coordinator.

Irene will be working in our office as a consultant in cases involving foreign nationals charged with capital crimes and also will assist in preparing international court pleadings, as well as helping with general legal research and investigation.

donated his own time and collected donations of used equipment from his clients. Special thanks, also, to **Linda Dantin** and **Emily Maw**, who assembled and organized our furniture, files, shelves and dozens of boxes and **Ron Pluylaar**, who is designing our website.

Even with the generosity of all these wonderful folks, we are still in need of a photocopier, two more licenses to use Microsoft Office XP, a laptop, and various other office supplies. If you have used equipment or office furnishings to donate, please call Rachel Walsh at (713)869-4722, or see our wishlist at www.Amazon.com under the nickname "Gracelaw."

Texas has never had a public defender system. Though the Harris County District Attorney's Office has long maintained specialized units for capital trial and appellate work, never has there been a defender's office devoted exclusively to capital trials of the indigent where public interest lawyers can work together, share skills and materials, benefit from economies of scale, engage in systematic impact litigation and become specialists in indigent capital trials.

GRACE will be such an office.





Fall from GRACE

In the future, this space will be used to announce our award for the most disgraceful behavior by a law enforcement official in the past month.

Our first recipient, however, is honored not just for one month of disgracing public office, but for a lifetime of achievement.

The January 2003 Fall from GRACE award goes to the Harris County District Attorney's Office, for consistent and graceless pursuit of victory at all costs.

Since the reinstatement of the death penalty in 1976, the Harris County District Attorney's Office has been responsible for more death sentences and more executions than any other prosecutorial agency in United States. Indeed, only a handful of countries have executed as many as Houston.

In pursuit of this dubious title, the Harris County District Attorney Office has been willing to argue that innocence is not grounds for a new trial, and that a

How to Make a Donation

If you would like to make a donation to GRACE, send a check or money order made payable to The Gulf Region Advocacy Center to:

809 Henderson Street
Houston, Texas 77007.

sleeping lawyer can provide effective representation, and has become notorious for seeking the death against the severely mentally ill, such as Andrea Yates.

Harris County prosecutors have sought death against children more often than any other agency in the world. Only 7 countries have executed children in the past decade. The US leads the world, with 21 executed children, compared to only 7 in Iran, 3 in Pakistan and one each in Nigeria, Saudi Arabia and the Congo. Since Pakistan and Yemen have both now outlawed the execution of children, and the Congo now has a moratorium, only Iran, Saudi Arabia and Nigeria share in our disgraceful practice. Predictably, among the United States, Texas leads the way, with 13 out of 21 juvenile executions. Again, Houston stands out, with 11 of the 25 children currently on death row in Texas.

A Call for Volunteers

GRACE wouldn't exist if it weren't for the many folks who have volunteered to do everything from assemble furniture to design our web page. Even if you have only a few hours to spare on the weekends, we could use your help!

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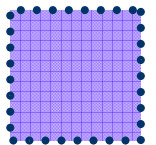
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