

The Gulf Region Advocacy Center, 809 Henderson, Houston, Texas 77007; (713)869-4722; fax (713)880-3811; www.gracelaw.org



George Rodriguez with, from left, Aimee Solway, Danalynn Recer and Michel Bindels, just hours after his release.

GEORGE RODRIGUEZ FREED!!

GRACE staff attorneys Aimee Solway and Danalynn Recer were honored to assist GRACE board member Mark Wawro, with Vanessa Potkin and Barry Scheck of the Innocence Project, in securing the release of George Rodriguez from prison, where he served 17 years for a rape he did not commit. DNA testing performed in 2004 revealed that employees of the now-shuttered Houston Police Department Crime Lab had grossly erred in their interpretation of forensic testing results, and had put the wrong man behind bars. Faced with the indisputable evidence that George was innocent, the District Attorney's office reluctantly conceded that his conviction should be reversed and George was released on October 8, 2004 to be reunited with his family, including several grandchildren whom he had never met.

Unfortunately, that's not the end of the story. George's post-conviction writ is still pending with CCA and District Attorney Rosenthal insists upon pursuing a retrial despite overwhelming evidence of George's innocence.

Another Innocent Man Imprisoned by Crime Lab Incompetence

Another Texas victim of bad science, Brandon Moon, was released from prison this past fall after serving

INSIDE THIS ISSUE

George Rodriguez Freed	1
Update on Lab scandal	1
Pretrial Project: 2 to 0	2
Grace in Hunt County	2
Working on Many Fronts	3
We are Here to Stay	3
Troy Kunkle	4
Who We Are	5
Makeover Madness	6

16 years for a rape he did not commit. Moon was represented by Innocence Project attorney Nina Morrison, with GRACE staff counsel Aimee Solway assisting in the investigation. Just two weeks after his release, Brandon was back to testify before the Texas legislature in its investigation of incompetence in crime labs around the state. Brandon and George both appeared before the state Senate committee investigating the crime lab scandal at the invitation of Senator Rodney Ellis, who wanted to put a human face on the tragedy.

Fiction Science Update

The hearings were held in response to ongoing revelations of widespread incompetence and negligence in crime labs and police departments around the state that began in late 2002 with the discovery of evidence that exonerated Josiah Sutton, who had served 4 years for a rape he didn't commit. Additional problems were discovered in the ballistics and toxicology labs. Just when we thought it couldn't get any worse, 280 mislabeled boxes containing un-catalogued evidence were found in the HPD's property room. This evidence from thousands of cases, including cases where defendants have been executed or are awaiting execution, had been improperly tagged and lost, according to Chief Harold Hurtt, who suggested that problems with handling evidence may go back 25 years.

Fiction Science, cont'd.

Although several lawmakers have called for a moratorium on executions of Harris County defendants until the mystery evidence can be evaluated, the District Attorney has continued to set execution dates. The courts refused to intervene in the October 2004 execution of Dominique Green despite the possibility that errors may have been made in handling the DNA evidence. However, in an unusual step The Texas Board of Pardons and Paroles recommended that Francis Newton, convicted of killing her husband and two children in 1987, be granted reprieve. Governor Rick Perry granted a 120-day reprieve to Newton allowing for more time to have the ballistics evidence used at Newton's trial retested.

"The problems that were allowed to go on at the Crime Lab were both an embarrassment and a disgrace."

Michael R. Bromwich a former U.S. Justice Department inspector who has investigated scandals stretching from Iran-Contra to the FBI crime lab, has now been appointed to lead a probe of Houston's forensic problems.

VICTORY FOR MENTALLY-ILL CAPITAL DEFENDANT

GRACE attorney Danalynn Recer appeared in a Travis County Court in January to represent the interests of the Mexican government in the competency trial of a Mexican national on trial for his life. Through the Mexican Capital Legal Assistance Program (MCLAP), Recer, along with long-time GRACE intern George Blom Cooper, assisted counsel for David Diaz Morales, a severely mentally ill young man charged in the death of a former co-worker. The jury found, appropriately, that Mr. Diaz Morales was unable to participate in his own defense and the court remanded him to the custody of the State Hospital for treatment, as his attorneys and treating physician had requested.

PRETRIAL PROJECT: 2 to 0

Our Harris County Capital Pretrial Project got off to a fantastic start with the life plea of Andre Washington, originally charged with capital murder. GRACE assisted his appointed counsel James Stafford and Sherra Miller-Brown in bringing about a plea to a reduced charge of non-capital murder. Since then the case of Kelvin Jackson has also been successfully resolved.

The Pretrial Project, led by Aimee Solway, was launched last September to provide pre-trial assistance to appointed defenders in capital cases. Because Harris County has no public defender's office, appointed attorneys get little support or assistance in legal research, motions practice, record collection and other key areas critical to success. Our project was designed to bring successful methods developed by the Louisiana Crisis Assistance Center and other capital trial offices to the aid of Harris County capital defenders. The project is supported by the Texas Bar Foundation, Equal Justice Works, the Sisters of Charity of the Incarnate Word, and other private donors.

GRACEFUL RESOLUTION IN HUNT COUNTY CASE

GRACE investigator Tena Francis logged yet another victory in April when she assisted attorneys for Lavace Morgan, originally charged with capital murder and facing death, to secure a plea to murder for a life sentence. Interns Francesca Delany, Michel Bindels and Caroline Morten provided invaluable assistance.

A Note on Our Investigation and Mitigation Services

Tena has begun to share her nearly two decades of investigative experience with Liz Vartkessian and our staff of volunteer interns. Aimee Solway, a native Houstonian, works almost exclusively on Harris County cases. Hilary Sheard, long-time defender in South Carolina and elsewhere has also joined us. Tena, Liz, Aimee, Hilary and Danalynn are all accepting mitigation and investigation appointments in Texas capital trial cases.

WORKING ON MANY FRONTS

Mexican Capital Legal Assistance Program

MCLAP is a program of the Mexican government charged with protecting the rights of Mexican citizens facing the death penalty in the US. Danalynn Recer is one of ten MCLAP attorneys providing assistance, including: monitoring treatment of the detainee; contacting family and investigating in Mexico; attending court; interceding with prosecutors to seek a lesser sentence; arranging visas for family and witnesses; acting as a “cultural bridge” between the national and the defense team or the local authorities; litigating violations of international law; funding expert witnesses or investigators where courts deny adequate defense resources; petitioning for clemency; and any other assistance necessary to ensure fair, equal and humane treatment.

Far more than just a conventional law office, GRACE is working on different ways to challenge the unfairness inherent in Texas’ current use of the death penalty. In addition to the already established Harris County Pre-Trial Project and the Mexican Capital Legal Assistance Program, GRACE has two new projects under its wing:

The Jurors’ Rights Project

This new project is a joint endeavor with the Houston ACLU to challenge discrimination in the selection of grand and petit juries in Harris County and to educate the public concerning religious freedom and the right to serve on juries.

The Diversity Network

Former GRACE intern Caroline Meyer has been granted a one-year fellowship by Reprieve, a UK based charity dedicated to protecting the rights of those facing the death penalty. Caroline will help start up The Diversity Network, a program designed to build an institutional relationship between the Thurgood Marshall School of Law and GRACE to bring students of color into the capital defense community. These students will be trained to liaise with minority clients and their lawyers, assist in raising and

litigating the chronic under-representation of minorities in Harris County grand and petit juries, and to make presentations for the Jurors’ Rights Project and perform community outreach work.

WE ARE HERE TO STAY. . . .

When GRACE began, in 2002, our staff of one attorney and three volunteer interns set up shop in a tiny attic apartment in an historic home near the courthouse. Two years later, with a staff of three lawyers, two investigators, several interns and an office manager, we were still operating out of this tiny little space, but that has finally changed. We have temporarily rented some extra rooms while we prepare for our big move into a place of our own!!!

Justice gets a toehold in Harris County

We have purchased a permanent home and move in later this summer after some necessary repairs. Volunteer architects are designing an extension to maximize the potential of the existing property.



. . . WITH A LITTLE HELP FROM OUR FRIENDS!!

To make this possible, we raised \$75,000 by the end of March for the down payment and initial repairs. Thanks to your generosity, we now have a home but, still have some way to go to make it truly functional.

There are many ways you can help us:

- ✓ Make a donation by mail or on our website;
- ✓ Help us clean and paint;
- ✓ Donate furniture, lamps, shelves and other used items to set up our new home;
- ✓ Ask Liz for ideas: lvartkessian@gracelaw.org.

IN MEMORIAM: TROY KUNKLE

May 27, 1966 to January 25, 2005

Our client and friend, Troy Kunkle, was executed in January. Troy's death is notable not only because he was a friend whom we dearly miss, but also because of the brutal unfairness of the twenty-year process that took his life. Even more than most executions, his highlighted the ineffectiveness, injustice, futility and arbitrariness of capital punishment.



Troy's Remarkable Fight for Life

The Supreme Court stayed Troy's execution twice in the six months prior to his death – once in July and once in November – because the Texas Court of Criminal Appeals applied the wrong legal standard when it denied Troy a new sentencing hearing back in 1995. Both times, the Supreme Court found that it did not have authority to correct the mistake, but, as Justice Stevens noted, “[t]hat result is regrettable because it seems plain that Kunkle's sentence was imposed in violation of the Constitution.” Even the CCA was split 5 to 4 over Troy's case, with Judge Price objecting that “Kunkle will be executed, even though his sentence was obtained in violation of the United States Constitution.”

Though it is abundantly clear that his sentencing violated the constitution, Troy lost his fight for life due to procedural technicalities that prevent courts from reviewing the same issue in a case more than once. If a court gets it wrong the first time – as the CCA very clearly did in Troy's case – they are prevented from reconsidering their own opinions. And, worse, federal courts are prevented from stepping in to correct the mistakes of the State court.

There are many reasons Troy's execution should offend even those who favor capital punishment; he was just three months beyond his 18th birthday at the time of the crime; his jury wanted to sentence him to life but was denied the opportunity by an unconstitutional statute; his jury wasn't even told that he was schizophrenic; and the American courts completely ignored an international court judgment ordering that Troy not be executed. But, his execution offended those of us who knew Troy and worked on his case for another reason: because we cared for him and his family.

Caroline Meyer on her time with Troy:

I had only been an intern a few days when I met Troy. I was lucky that he was the first capital defendant I'd ever met because he was easy to talk to and wonderful to work with from the beginning. He made capital defense work a less daunting task to an intern still wet behind the ears. Troy's will to live and his determination to fight his death sentence never ceased to amaze me. On the eve of his July execution date, he told me about how he was trying to stay strong for his family and his friends. This epitomized Troy: his concern for others always overwhelmed his own needs. Projecting such strength must have taken an incredible toll on him but he never let on. When I think about the fact that he is no longer here, I try not to wallow in sadness, because Troy would never want that. He would want me to continue learning from and working with other death sentenced men. Troy told me that he would look after me from heaven and I have no doubt that he is; he was a man of his word.

Michel Bindels on his time with Troy:

Troy and I met in October 2004. It was my first visit to death row and I was quite nervous, but Troy was one of the kindest people I had ever met. We talked about every topic imaginable. It was upsetting to realize that such a fine man had been denied a fair trial. Troy had an execution scheduled for November 18, and did not get news of his stay until after finishing his last meal and after the scheduled execution time. The worst part was that this wasn't the first time this has happened to him. January 25, 2005 was his sixth execution date. The state of Texas is playing with human lives. I saw with own eyes what happens on death row and how people are treated. I last saw Troy on December 10th, before returning to Holland. I miss him.

WHO WE ARE

GRACE has experienced tremendous growth over the past year. The staff now comprises Executive Director Danalynn Recer, investigator Tena Francis, staff attorneys Aimee Solway and Hilary Sheard, investigator/paralegal Elizabeth Vartkessian and most recently, our new office manager Hayley Shelton. Please refer to our website for further details, credentials and mugshots.

GRACE INTERNS: The Beat Goes On...

As always, GRACE would fold in a moment were it not for the energy and enthusiasm of our volunteer interns many of whom come to us through the charity Reprieve. We are currently enjoying the company – and the hard work – of no fewer than seven volunteer interns. Caroline Morten who traveled from Sweden to work with GRACE last November for five months, is now with us again until August. Ruth Hamann, a Londoner, has been with us for the last six months, and Marcella de Neve from Holland for three months: both are about to commence law school in their respective countries. Nadia Harrison from Australia returns to Melbourne in July to continue her legal studies, and Hiltje van der Ende, who has recently received her law degree in Holland, will return there in July to practice law. Nick Hearn is also about to leave us at the end of June after four months, to continue his training as a barrister in England, and Scarlett Granville, a fully-qualified solicitor, has spent five months with us and now returns to England to work in the non-profit sector.

We are also happy to have some home-grown Texans: Sarah Mendola from Lufkin has completed her first year at the University of Texas School of Law and has come to us for the summer, and sixteen year-old Corey Glenn, a student at Lamar High School, has also been volunteering in our office. Last but far from least, Houston resident Rhett Twining has proved a true friend to GRACE by providing many of our interns with accommodation, entertainment and food, and all of us with moral support.

For more information about Reprieve Internships, see

<http://www.reprieve.org.uk> or

<http://www.reprieve.org.au>

AND THE *FALL FROM GRACE* AWARD GOES TO.....

Dr. Park Dietz for his ‘expert’ contribution to Andrea Yates’ trial. Dietz, a consultant for NBC’s ‘Law and Order’ testified for the prosecution that an episode of the TV program – depicting a woman suffering from postpartum depression who drowned her children in a bathtub and was found not guilty by reason of insanity – probably influenced Andrea Yates’ actions. As it turned out, however, no such episode had ever aired. The Appeals Court concluded “that there is a reasonable likelihood that Dr. Dietz’s false testimony could have affected the judgment of the jury,” and overturned Ms. Yates’ conviction. *Oops!*

A CALL FOR VOLUNTEERS

GRACE wouldn’t exist if it weren’t for the many folks who have volunteered to do everything from preparing and painting our new building, moving furniture, making copies, filing documents, assisting with bookkeeping, and maintaining the web site. Even if you have only a few hours to spare on the weekends, we could use your help! Especially now, as our staff grows and as we prepare to move into our new, permanent space, we will need weekend volunteers to help fix up the new place and pack and move out of the old one. Call (713)860-4722

“To catch the reader’s attention, place an interesting sentence or quote from the story here.”

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809 Henderson

Houston, Tx 77007

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Fax: (713)880-3811

**A Charity for the Defense of the
Indigent**

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MAKEOVER MADNESS AT GRACE

As we "take it to the next level" its time to spiff up our image. Thus, we are having a logo creation challenge. We invite everyone to try their hand a creating a symbol that conveys our mission and character. Be as creative as possible, but keep in mind that this image will be placed on materials used for fundraising and correspondence. It should be easy to reproduce and highly recognizable. The winner of the challenge will receive either a copy of Sister Helen Prejean's new book "The Death of Innocents: an Eyewitness account of Wrongful Executions" or, if the artist is in prison, \$50 credit to order books through Amazon.com. Submissions are due by July 31, 2005 and will be reviewed by GRACE staff. Please contact Liz Vartkessian at lvartkessian@gracelaw.org for further information. Good luck!

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