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Ty Alper, left, associate director of the death penalty clinic at Boalt Hall, helped Walter Rhone win his release from prison last February with the help of Jamie L. Popper, a former Boalt Hall student.

Legal Lesson Wins Man's Freedom

Ex-Inmate Meets Boalt Hall Benefactors Who Toiled for His Justice

By Tim Hay
Daily Journal Staff Writer

SAN FRANCISCO -- At the age of 26, Walter Lee Rhone felt his life was over. The father of three had good reason to believe he would never see his sons again without a glass partition between them, or see the sky except through razor wire.

In Alabama, a life sentence means just that.

"I slept on a little cot that was just like a coffin," Rhone said. "All it was missing was the lid closing over you."

But nine years after being convicted of capital murder, Rhone is visiting Boalt Hall School of Law at UC Berkeley. He's meeting for the first time students and faculty who finished the le-

gal battle he started in the dingy law library at Holman State Correctional Facility, the fight that set him free last February.

Rhone cannot legally call himself an innocent man. He eventually reached a deal to plead guilty to manslaughter after his appellate court battles failed to resolve most of the misconduct allegations that he claimed made his 1998 trial unfair.

And though Rhone regretted pleading to something he says he did not do, it was his only ticket to the world outside of prison, he said.

"You fight for something every day, you wake up wanting to fight, but still you're doubtful," Rhone said. "The day I walked outside, it was overwhelming. I was afraid that day would never come."

Rhone is spending much of his first-ever trip to California with Ty Alper, associate director of Boalt Hall's death penalty clinic. It was Alper — who in the late 1990s was working for the Southern Center for Human Rights in Alabama — who first took an interest in Rhone and his solitary legal struggle.

But the interest wasn't mutual. "It was a lawyer who got me to prison, so I didn't really trust lawyers," Rhone said. "But then I saw that (Alper) was a common person. And when he said 'pro bono,' man, I couldn't believe it."

Alper was unfazed when Rhone at first gave him the cold shoulder.

"His own lawyers didn't do

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him any favors," said Alper, who moved to his job at Boalt's death penalty clinic in 1998. "They didn't investigate his case. But (Rhone) was smart enough to know he needed lawyers, and desperate enough to trust a stranger."

Rhone's 1998 trial and conviction was, according to Alper, a "smorgasbord of unconstitutionality," where misconduct by prosecutors, the judge and the jury marred any chance at a fair trial. One prosecutor on the case and the trial judge both on Thursday adamantly denied any wrongdoing.

Rhone was sentenced to life without parole after a witness identified him as the driver in a drive-by homicide.

"Hearing the verdict was like having all the air sucked out of my body," Rhone said. "Everything you once knew just stops."

Sent to one of the country's most violent prisons, Rhone — a high school dropout — began filing his own appeals in his case, all without the benefit of a legal education or use of the Internet.

Though he didn't know it at the time, his efforts would eventually change Alabama's legal system — not to mention set him free.

Rhone tried unsuccessfully to have his conviction thrown out on the grounds that his trial lawyer was ineffective. When he submitted an amended complaint to the state's Court of Criminal Appeals, jurists there responded in 2002 by severely restricting the right of inmates to amend their petitions. *Rhone v. State*, CR 99-0011.

It was then that Alper and the Southern Center for Human Rights took notice.

"That obscure procedural ruling had a profound impact on how Alabama death-row inmates get their day in court," Alper said.

After meeting with Rhone in prison, it was

agreed that Alper would appeal the ruling to the Alabama Supreme Court, as well as put an investigator on Rhone's case.

Alabama's high court in 2004 overturned the lower court's decision, and granted broader rights to inmates wanting to amend their petitions. *Ex parte Rhone*, 900 So. 2d 455 (Ala 2004).

In an interview Thursday, the investigator, Celia Perry, said she found "unbelievable misconduct around every turn."

"The most flagrant violation of (Rhone's) rights was the fact that the one witness was a woman who was arrested just before the trial," Perry said.

Rhone's defense attorneys never mentioned to the jury that the eyewitness had a lengthy rap sheet filled with drug offenses, and that — although she entered court through the front door wearing street clothing — she was actually in custody at the time of Rhone's trial.

According to Alper and Perry, the witness, who is not named in court documents, told Perry that prosecutors offered her a deal in her own case in exchange for testifying against Rhone. She recanted her story, Alper said.

"I saw that woman recently," Rhone said. "I know her from the neighborhood. She's a drug addict who just walks around. I saw her at a gas station, and she asked me for a dollar. She didn't even know who I was."

Bill North, a Jefferson County assistant district attorney who prosecuted Rhone, conceded his star witness was a "crackhead," but strongly denied she was offered anything to testify.

"I was there," North said in a phone interview Thursday. "There was never any offer made. We're not going to risk compromising a case like this by offering tainted evidence or influencing a witness' testimony. We

play straight up. ... We were satisfied her description was accurate and truthful."

North said prosecutors had evidence against Rhone aside from the witness statement, but that he no longer recalls what it was.

Perry, the investigator, also heard from jurors that Jefferson County Circuit Court Judge Douglas "Mack" Parsons held an informal sit-down with the jury while they deliberated — a clear violation of the law.

Judge Parsons firmly denies this.

"I know without any equivocation that I did not go into the jury room during deliberations," Parsons said Thursday. "I commonly go into the courtroom after the verdict, and see if they have any questions. ... There was never a judicial finding that I did that (during deliberations)."

The defense investigator also learned of a startling event that happened during Rhone's trial, but was not mentioned in court: Several jurors took it upon themselves to visit the scene of the killing, to see what information they could glean on their own. An Alabama circuit judge later found that fact to be sufficient to win Rhone a new trial.

In the midst of the legal wrangling, in 2004, Alper was offered the associate director's position at the death penalty clinic at Boalt. Rather than abandon the Rhone case, Alper brought it with him.

Soon Boalt students were poring over trial transcripts. They were drafting pleadings and writing briefs, not to please a teacher, but to get a man out of prison.

"As a law student, I never had another experience like this. It was great," said Jamie Popper, who was a student of Alper's in 2004 and 2005, and who now works for Appellate Defenders Inc. in San Diego.

Popper met Rhone and his family for the first time on Thursday.

"I went to law school with the goal of a career in criminal defense," she said. "Because of this experience, I grew immensely. Writing the briefs, I would go through draft after draft after draft, which improved my writing and analytical skills. It was hard. But when you take the time and put in the effort, it really is possible to help people."

With the 2004 Alabama Supreme Court ruling on their side, Alper amended Rhone's complaint to add the information dug up by the investigator and his students.

About a year ago, Jefferson County Circuit Judge John E. Rochester ordered a new trial for Rhone based on juror misconduct, and declined to look into the other allegations of misconduct.

Soon after, Rhone — who still maintains his innocence — pleaded guilty to manslaughter, and was sentenced to time served. Translation: He walked out of Holman prison a free man.

"I didn't feel good about (pleading to manslaughter), but I had to get out," Rhone said. "I have three sons."

Rhone, now 34, said he wants to do "anything that brings some money in."

"I might get myself a paralegal license, or become an investigator," he said. "(Alper and his students) didn't even charge anything to help me, and I want to give something back. I met a lot of guys who didn't get a fair trial. A lot of guys in prison need the same kind of help that I received."

Even the prosecutor who helped put Rhone away doesn't begrudge the Berkeley death penalty clinic its victory.

"I don't fault them for doing what they do. I'm not happy with it, but I accept it," North said. "There is certainly a place for them in the legal system."

San Francisco Daily Journal

July 20, 2007

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