

Of Interest

- According to a new report issued by Amnesty International, the United States is among four countries that carried out the vast majority of the 3,797 executions around the world in 2004.
- Amnesty's Annual Death Penalty Report states that the nations carrying out the most executions last year were China (3,400), Iran (159), Vietnam (64), United States (59), Saudi Arabia (33), Pakistan (15), Kuwait (9), Bangladesh (7), Egypt (6), Singapore (6), and Yemen (6).
- The report notes that the increase in executions in China is partly due to a new way of estimating the number of executions, as the government does not publicly release this information.

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President's Column

The Bali "Nine" and the AFP

Nine Australians have been arrested in Bali for alleged drug trafficking activities. Four of them may face the death penalty. As an organisation, we have no argument with Australian law enforcement authorities co-operating with international agencies in the fight against organised crime. However, we do object to the Australian Federal Police effectively handing over Australians to their Indonesian counterparts, knowing that their prosecution in that country would raise the spectre of the death penalty.

The Australian Government defends the actions of the AFP on the grounds that co-operation between nation states in the global fight against drugs is imperative. And so it is. However, that defence does not broach, nor answer, a more important question: why didn't the AFP or Australian Government obtain an undertaking from the

Indonesians that should the provision of information lead to the arrest and charge of Australian nationals, the death penalty would not be sought? To the extent the laws of Indonesia comply with recognised international human rights standards, they are to be respected. However, the Australian Government should not, and must not, be complicit in the practice of state-sponsored execution.

Lorilei in London

I have recently returned from London after a very successful staging of the theatrical production, developed with the assistance of this organisation in 2003, *Lorilei – A Meditation on Loss*. As the director, I was in London briefly to oversee rehearsals, staging and the opening nights of the work. It was extremely gratifying to see the full houses over the first four nights at the Old Red Lion theatre in Islington. Of greater inspiration was the quality of after-show speakers and the enthusiasm from the assembled English public.

The critical response to

the production was extraordinary – there were 13 reviews and barely a criticism. The show received Critics' Choice in *Time Out* and attracted the likes of the following from major reviewers:

"An extraordinary evening": The Guardian

"A tour de force of restraint ... an absorbing 60 minutes": The Times

The season sold out and was an enormous success.

This success in London was largely the result of the exceptional efforts of Annabel Harris from *RepriveUK* to organise and produce the show from the London end, ably assisted by Amanda Telfer. Special thanks must also go to Anna Galvin and Raul Sanchez Inglis who travelled from Canada (with baby Bianca) to stage the work.

The production has subsequently been offered a space at the Pleasance in Edinburgh for the Edinburgh Fringe later this year.

Playing co-producer with Annabel in London made

The President's Column (cont'd)

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me realise that the various 'Reprives' should be working closer together to get our message out. We look forward to even closer ties with *RepriveUK* in the future.

Returned Interns

Another batch of interns have recently returned from a three-month tour of duty – inspired, weary, more informed, less innocent. We recognise and applaud the generous contribution made by them all – Lucy Spencer, Claire Gallagher, Angie Wong, Nicholas Chandler and Mark Gibson. The reports from the offices in Louisiana and Texas have been positive. Each intern has made an invaluable contribution to anti-

death penalty work in the southern USA.

Our intern program continues to grow. By the time you have read this, Rachel Walsh will have addressed university students in Sydney about the intern program, and we will have interviewed 6 more applicants. So many interviews so early in the year is unheard of. We hope for a bumper crop of interns to leave our shores this November 2005. If you are interested, or know people who are interested, please contact us. The offices in the US remain under-resourced and overloaded with work.

Roper v Simmons

And finally, the recent decision of

the US Supreme Court in *Roper v Simmons* is cause for celebration. By majority, the Court ruled the execution of a person who committed a capital offence when a juvenile constitutes cruel and unusual punishment in breach of the eighth amendment of the US Constitution. The test of the evolving standards of decency was applied, as it was in the *Atkins* decision in 2002. The US Constitution has once again proved an effective shield against barbarism. I commend to you the article discussing *Roper* in this newsletter by Mimi Marcus.

Nick Harrington
President

Intern Update

Last summer's crop of interns have made it safely home, after a challenging three months in Louisiana and Texas. You hear from two of them, Angie Wong and Nick Chandler, in this newsletter.

Slightly out of season, an 'autumn 2005' intern, Nadia Harrison, has just started a three month stint at the Gulf Region Advocacy Center (GRACE) in Houston, Texas.

Nadia is an Arts/Law student at the University of Melbourne, with a keen interest in both international law and international systems of justice, and an ambition to work as

a public interest lawyer.



Nadia Harrison, our newest volunteer intern at GRACE

Nadia speaks Spanish, which, given Houston's proximity to Mexico, could come in rather

handy over the next few months. In recent years, she has also done volunteer work at the Asylum Seeker Resource Centre in Melbourne.

As always, our thanks go to those who've just returned from their tour of duty - along with Angie and Nick, there was Lucy Spencer, Claire Gallagher and Mark Gibson. The work they did and the time and effort they've put in makes an enormous difference.

Pia Di Mattina

Humanity Has a Greater Weight Than Violence – *Roper v Simmons*

On 1 March 2005 the Supreme Court of the United States, by a vote of 5-4, handed down a landmark decision in *Roper v Simmons*, finding that executing child offenders violates the Eighth and Fourteenth Amendments of the US Constitution. The immediate consequence of the Court's decision has been to end the execution of juveniles throughout the US, regardless of state law.

The Eighth Amendment provides: "*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*" This provision is applicable to the States through the Fourteenth Amendment.

As the Court explained in *Atkins*, "*the Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions. The right flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense. By protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons'*".

At issue was whether 16-17 year olds who commit capital offences may be executed, or whether this would be cruel and unusual punishment banned by the Constitution's Eighth Amendment. The US Supreme Court has long recognised that the definition of cruel and unusual punishment is not static, but rather moves with the times. The constitutional

practice with the cruelty standard is to consider it against "evolving standards of decency that mark the progress of a maturing society," as Chief Justice Warren first put it in 1958 in *Trop v Dulles*.

In 1989, in *Stanford v Kentucky*, the Supreme Court last examined those standards of decency regarding juvenile execution. Then the Court, by a 5-4 vote, affirmed execution in the case of a 16-year-old Kentucky youth convicted of murder. The majority acknowledged age as a mitigating factor in considering the death sentence, but, in the opinion written by Justice Scalia, said the national climate did not rule out the death penalty simply because of the age of the offender. Previously, the Court had already ruled in *Thompson v Oklahoma* that executions of offenders aged 15 and younger at the time of their crime was prohibited by the Eighth Amendment to the US Constitution.

On 23 August 2003, the Missouri Supreme Court reopened the inquiry into society's evolving standards of decency. Using *Simmons'* case, the state's highest court found "a national consensus had developed against the execution of juvenile offenders". The 6-3 majority opinion, written by Judge Smith, cited 12 state laws banning all executions, five laws creating a minimum age of 18 for the death penalty and a number of statistics that speak to the rarity of such a sentence in this day and age. The Missouri Supreme Court set aside *Simmons'* death sentence and re-sentenced him to "*life imprisonment without eligibility for probation, parole, or release except by act of the*

Governor."

The dissenters, in an opinion written by Judge Price, deferred to the higher court's 1989 ruling in *Stanford*, saying:

"The United States Supreme Court has not overruled Stanford, even in the light of its decision in Atkins v Virginia. This court is bound by the United States Supreme Court decision in Stanford v Kentucky and simply has no authority to overrule that decision."

This was the crux of the Missouri Attorney General's argument when he sought review from the US Supreme Court by way of certiorari.

The State had charged *Simmons* with burglary, kidnapping, stealing, and murder in the first degree. He was tried as an adult, and the State sought the death penalty. As aggravating factors, the State submitted that the murder was committed for the purpose of:

1. receiving money;
2. avoiding, interfering with, or preventing lawful arrest of the defendant; and
3. involved depravity of mind and was outrageously and wantonly vile, horrible, and inhuman.

It is convenient at this point to quote the majority in their opening joint judgment in relation to the proceeding at the State trial:

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Humanity Has a Greater Weight Than Violence – *Roper v Simmons* (cont'd)

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"During closing arguments, both the prosecutor and defense counsel addressed Simmons' age, which the trial judge had instructed the jurors they could consider as a mitigating factor. Defense counsel reminded the jurors that juveniles of Simmons' age cannot drink, serve on juries, or even see certain movies, because "the legislatures have wisely decided that individuals of a certain age aren't responsible enough". Defense counsel argued that Simmons' age should make "a huge difference to [the jurors] in deciding just exactly what sort of punishment to make." In rebuttal, the prosecutor gave the following response: "Age, he says. Think about age. Seventeen years old. Isn't that scary? Doesn't that scare you? Mitigating? Quite the contrary I submit. Quite the contrary."

The jury recommended the death penalty after finding the State had proved each of the three aggravating factors submitted to it. Accepting the jury's recommendation, the trial judge imposed the death penalty. Simmons obtained new counsel, who moved in the trial court to set aside the conviction and sentence. Part of the submission was that Simmons was "very immature", "very impulsive", and "very susceptible to being manipulated or influenced". The experts testified about Simmons' background including a difficult home

environment and dramatic changes in behavior, accompanied by poor school performance in adolescence. Simmons was absent from home for long periods, spending time using alcohol and drugs with other teenagers or young adults. The contention by Simmons' post-conviction counsel was that these matters should have been established in the sentencing proceeding."

The Decision

The majority (Kennedy, Breyer, Ginsburg, Souter and Stevens JJ) rested its decision on three rationales:

1. that 'evolving standards of decency' which led the Court in 2002 to ban the execution of mentally retarded people in the *Atkins* decision are similar with respect to juveniles;
2. that the brutality of a juvenile's crime makes it all too likely that mitigating factors based on youth, such as vulnerability and immaturity, would be overlooked; and
3. that the overwhelming weight of international opinion against the juvenile death penalty provides confirmation that the penalty is disproportionate punishment for juveniles.

In writing for the majority, Justice Kennedy stated at page 20 of the joint judgment:

When a juvenile offender commits a heinous crime, the State can exact forfeiture of

some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.

Evolving Standards of Decency

The Court relied on the reasoning articulated in *Atkins* as its basis for its findings in relation to the constitutionality of executing juveniles.

The Court had to determine whether a particular punishment violates society's evolving standards of decency by referring to objective evidence of a national consensus as expressed by statutory enactments and jury practices. To that end, the majority found:

1. 30 States had prohibited the juvenile death penalty, including 12 that had rejected it altogether;
2. 18 States had maintained the juvenile death penalty, but by express provision or judicial interpretation, excluded juveniles from its reach; and
3. of those 20 States without a formal prohibition, the execution of juveniles was infrequent.

The Court did note that the rate of change reducing the incidence of juvenile death penalty, or in taking specific steps to abolish it had been less dramatic than in *Atkins*. The slower pace was explained by the fact that the impropriety of executing juveniles between 16 – 18 years old

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Humanity Has a Greater Weight Than Violence – *Roper v Simmons* (cont'd)

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gained wide recognition earlier than the impropriety of executing the mentally retarded.

At page 13 of the majority judgment, the Court opined:

In the words of the Missouri Supreme Court: "It would be the ultimate in irony if the very fact that the inappropriateness of the death penalty for juveniles was broadly recognized sooner than it was recognized for the mentally retarded were to become a reason to continue the execution of juveniles now that the execution of the mentally retarded has been barred." 112 S. W. 3d, at 408, n. 10.

In addition to considering the evidence of a national consensus, the Court applied its own independent judgment, ruling that juvenile offenders "cannot with reliability be classified as among the worst offenders". It therefore recognised the diminished culpability of juveniles and by doing so differentiated between juveniles and adults, as follows:

1. Juveniles lack maturity and have an underdeveloped sense of responsibility, which often results in impetuous and ill-considered actions and decisions.
2. Juveniles are more vulnerable and susceptible to negative influences and outside pressures, including peer pressure.
3. The character of a juvenile is

not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.

Furthermore the Court concluded that:

...neither retribution nor deterrence provides adequate justification for imposing the death penalty on juvenile offenders.

Ultimately as in *Atkins*, the Court found:

*The objective indicia of national consensus here – the rejection of juvenile death penalty in the majority of states; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice – provides sufficient evidence that today society views juveniles, in the words *Atkins* used respecting the mentally retarded, as "categorically less culpable than the average criminal".*

International Confirmation

The Court also relied on the weight of international treaties and opinion opposing capital punishment for juveniles as confirmation of the Court's own conclusion that the death penalty is a disproportionate punishment for juveniles between the ages of 16-18.

In recent years, the USA had become the only country in the world to openly acknowledge

executing child offenders and to claim for itself the right to do so. In the last ten years, the US has executed more juvenile offenders (17 in total) than all other nations combined (9 in total), and with greater frequency. Juvenile executions comprise approximately 4% of all executions in the US in the last 10 years. However, juvenile executions comprise approximately .04% of all executions in the rest of the world during the same time. Since 2000, four other nations in the world are known to have executed juveniles: China, Democratic Republic of Congo, Iran and Pakistan. However, China's law forbids executing juveniles, Pakistan recently abolished the death penalty for juvenile offenders, and Iran has publicly stated that it does not use the punishment and intends to outlaw it.

Naturally the Court noted that the execution of juvenile offenders violated several international treaties, including the United Nations *Convention of the Rights of the Child* and the *International Covenant on Civil and Political Rights*. Specifically the Court said at page 21 of the ruling:

"Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty."

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Humanity Has a Greater Weight Than Violence – *Roper v Simmons* (cont'd)

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Conclusion

The result of this long overdue and groundbreaking decision has been to finally bring the United States into line with international law prohibiting the execution of children for crimes they committed when they were juveniles.

The Court's ruling has affected 72 juveniles in 12 states. To quote a good friend of mine, Ursula Price (who works at the Louisiana Capital Assistance Centre in New Orleans, fighting the death penalty and providing effective legal representation to the impoverished accused):

"And I just have to add. This is not just about cruelty y'all. This is about fairness. This is about a class of citizens that

are not allowed to vote, to marry or to determine their own destiny in any legally recognized way being subject to the harshest penalty our government can conceive. This is about children whose only crime was being born poor being shuffled into foster care and then pipelined directly into the prison system and labeled monsters before their voices even change. This is about the rights of our children and the content of a national character that, thank the Lord, has finally joined the rest of the world in recognizing that HUMANITY has a greater weight than violence.

Seriously y'all, I'm all choked up. No news this good has come down since they stopped executing retarded

people. It's a good day for us here. I hope all of y'all can share our happiness."

Mimi Marcus

Mimi is a former Reprive Volunteer Intern who spent the summer of 2002/2003 working at the Louisiana Capital Assistance Center in New Orleans. Mimi is now a member of the Reprive Executive and is a solicitor at Maddocks.



Mimi Marcus

If you would like to receive a version of this casenote with footnote references, please email us at contact@reprive.org.au

US Conservatives Have Their Say...

Conservative leaders who recently met in Washington for a conference on "Confronting the Judicial War on Faith" have decided that Supreme Court Justice Anthony Kennedy, who delivered the decision for the majority in *Roper V. Simmons*, should be impeached, or worse.

To cheers and applause from the gathered conservative throng, doyenne Phyllis Schlafly proclaimed Kennedy's opinion outlawing capital punishment for juveniles "is a good ground for impeachment." Schlafly said that Kennedy had not met the "good behaviour" requirement for office and that "Congress ought to talk about impeachment."

Next, Michael P. Farris, chairman of the Home School Legal Defense Association, said Kennedy, a Ronald Reagan appointee, "should be the poster boy for impeachment" for citing international norms in his opinions. "If our congressmen and senators do not have the courage to impeach and remove him from office, they ought to be impeached as well."

But there's more.

Another lawyer told the group that Justice Kennedy should be impeached because his philosophy, evidenced in his opinion striking down legislation that criminalized homosexuality, "upholds Marxist, Leninist, satanic principles drawn from foreign law." Ominously, Edwin Vieira continued by saying his "bottom line" for dealing with the Supreme Court comes from Joseph Stalin. "He had a slogan, and it worked very well for him, whenever he ran into difficulty: 'no man, no problem,'" Vieira said.

Whether his neglect to call on the full quote was deliberate or

not, here it is: "Death solves all problems: no man, no problem." Reprive would like to think that Vieira had in mind something less extreme than Stalin's approach and was not actually inciting the murder of Justice Kennedy...

The conference was organized by the Judeo-Christian Council for Constitutional Restoration. It is a little concerning that this is no collection of fringe dwellers. The two-day program listed two House members; aides to two senators; representatives from the Family Research Council and Concerned Women for America; conservative activists Alan Keyes and Morton C. Blackwell; Alabama's "Ten Commandments" judge, Roy Moore; and House Majority Leader Tom DeLay (a Republican from Texas), who cancelled at the last minute to attend the Pope's funeral.

Vieira, a constitutional lawyer who wrote "How to Dethrone the Imperial Judiciary," turned up the heat, saying a Politburo of "five people on the Supreme Court" has a "revolutionary agenda" rooted in foreign law and situational ethics. Vieira, his eyeglasses strapped to his head with black elastic, decried the "primordial illogic" of the courts.

Vieira delivered Stalin's "no man, no problem" line twice for emphasis. "This is not a structural problem we have; this is a problem of personnel," he said. "We are in this mess because we have the wrong people as judges."

But let's allow Ms Schlafly to have the last word: "The Constitution is not what the Supreme Court says it is," she cried, apparently to wild applause...

Pia Di Mattina

Why Do a Volunteer Internship?

I had to really justify to myself why I should apply for a Reprive internship. I would have to sacrifice my entire summer holiday so that I could spend 3 months as a pleb in a law office, as well as lose a bucket of money just living in the USA without earning a cent. But these practical considerations didn't bother me so much as the opportunity cost. And I don't mean the economic kind. Sure, the use of the death penalty is heinous, but aren't there people in the world more needy of assistance? Doesn't the USA have enough resources to ensure that every citizen's civil rights are equally protected under their constitution?



Angie Wong

Two months into my internship with the Capital Post Conviction Project of Louisiana ("CPCPL") in New Orleans, I still stand by reasons that originally compelled me to apply. In my (rather portentous) application, I said *"the use of the death penalty represents perhaps the most heinous intersection of three aspects of the state: society, politics, and the justice system"*. Having never been to USA, I realized this was an assumption when I wrote it; an educated assumption, but an assumption nonetheless. But having lived in New Orleans for three months now, I've seen this assumption morph into an everyday reality, as

if the black-and-white portrait of America that I imagined has turned into a three-dimensional color animation.

I now see that the elements that comprise the death penalty are mutually enforcing, and together they create an almost omnipresent web. They can be experienced by walking to work each morning and saying "mornin" to the scores of homeless (predominantly African Americans) on the street; or hearing that medical costs are the largest cause of bankruptcy for Americans; or learning that if I walk a few blocks to the right down my street there is an affluent neighborhood full of glorious houses, but walking a few blocks to the left lands me in a dangerous and poor district.

Or noticing the blatantly obvious racial segregation between private and public schools, as if the 'separate but equal' doctrine had been legally overturned 50 years ago in *Brown* but is still upheld by economic forces; or knowing that the minimum wage is \$5.15 per hour yet university tuition fees can set you back tens of thousands of dollars; or being surprised that if you go to buy a sleeping-bag at the local Wal-Mart, you walk past the brightly lit display where guns can be purchased under your constitutional right to defend yourself; or seeing that a large statue commemorating the Confederates who fought to retain slavery in the South stands outside a Parish court house, whilst inside that same courthouse, predominantly poor and young African Americans are systematically sentenced to death - many using guns such as those sold at Wal-Mart.

Or hearing that these poor

defendants are having their appeals denied by US Supreme Court Judges who legitimise the use of the death sentence taking into their own hands an 'eye-for-an-eye' whilst conveniently ignoring the same religion's doctrines of forgiveness.

It is abundantly clear that the death penalty cannot be fought solely within the legal system, because its preservation has utility in controlling an entire population by maintaining and legitimising the most insidious aspects of capitalism, racism, and gaping holes in the state's provision of public education, health and welfare.

So, here is the essence of my opposition to the death penalty. In a Liberal Democratic system of rights and responsibilities, can a society (a) totally shift culpability onto an individual who has murdered and thus grossly breached their responsibility to that society, whilst (b) not acknowledging that often these individuals have themselves been the subject of rights abuses – the right to equal protection and freedom from racial discrimination, freedom from child abuse, freedom from poverty and neglect, and access to the basic conditions necessary to the "pursuit of happiness" as enshrined in the Declaration of Independence?

Between society and the typically indigent and horribly maltreated individual who is convicted of a horrible crime, how should culpability for the crime be distributed, and is a fair distribution of culpability reflected in the imposition of the death penalty? To me, the

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Why Do a Volunteer Internship? (cont'd)

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glaringly obvious answer is no.

I do not believe that certain people are born 'evil' with an innate predisposition to murder – if I did, then I would also have to believe that evil is a synonym for 'black' and 'poor'. (The arbitrariness of the imposition of the death penalty makes it a perfect tool of discrimination, something like 'legal lynching'.) Instead, I choose to believe that such crimes are predominantly a symptom of a neglectful society, rather than an act of a person with real and substantive choices in life.

The finality and totality of the death penalty, rendering someone incapable of rehabilitation and so un-human that they don't deserve life, does not acknowledge this, and shifts total blameworthiness to the accused. Aside from the highly dubious morality of a state killing its own citizens, the vacuum of hope and compassion intrinsic to the death penalty is corrosive to the legal and social system in which it is used. And I think these principles are relevant everywhere in the world, particularly in countries like Australia that are so influenced in many ways by USA policies.

All this theorizing about the death penalty makes great pseudo-intellectual conversation at dinner parties, but the reality for those who have been sentenced to death is more mundane - the tremendous gravity of what has happened is normalised to them after years of being incarcerated for 23 hours a day, many still waiting for legal representation for their appeals.

My first visit to death row in Angola was so surreal – it made me feel angry, joyous, distressed, frustrated and useless. But most of all (and this is quite selfish), I felt relieved. I felt relieved because the fundamental basis of my beliefs had been confirmed - that in spite of anything, each person is an individual and we all share inviolable human feelings and dignity. Despite the fact that we had absolutely nothing in common – class, race, nationality, gender - I got along with every guy I saw that day, which goes to show that all those boundaries are socially imposed. When all sense of normality is stripped away and you are placed in two rooms divided by a mesh screen, you have the choice to either talk like one human being with another, or sit in silence for the next 1 ½ hours. I found that really liberating, and I feel so privileged to have met them. For me, they were like a window to another world, and vice versa.

I'm still amazed by how young they are – two are only 26 both have been on death row for eight or nine years. One guy has taught himself mathematics, astronomy and Hebrew in pursuit of his religious studies. Another, whose best friend on death row was executed in 2002, devoted his time to learning French, practicing Wicca and helping a fellow inmate study for the equivalent of a high school certificate.

They were each so unique in their interests, but none of them found these pursuits futile just because they were on death row. It goes to show that everybody strives to maintain self-respect, autonomy and dignity, regardless of what kind of adversities one experiences. I am certain that if

any of them were to be executed, the state would be killing rehabilitated people. You just cannot ignore the totality of a person's experiences, contributions to the world and potential, and then reduce the worth of their life to the crime for which they have been convicted.

Working on a client's case and finding out about their lives is so absorbing, so I can see how it would be easy to sometimes forget that there is a real victim. I was struck by this the other day, while photocopying some graphic pictures of a hideous crime scene and the young mutilated victim. I was lucky I hadn't eaten lunch yet, because I was retching in front of the copying machine. It was just so visceral, and at that moment I felt like I understood the instinctive desire for retribution against the convicted killer.

To this end, one would think that prosecutors enjoy a natural rapport with the victim's loved ones, but when I was observing a 2nd degree murder trial one day, I realized that this is not necessarily the case. The prosecutor interrogated the victim's fiancée callously without empathy, and for it had no probative value whatsoever, proceeded to wave the victim's still-bloody clothes in front of his mother.

So, not only are the victim's family also victims of the perpetrator's acts, they are then made victims of opportunistic prosecutors who derive legitimacy for their bloodthirstiness and political ambition. A prosecutor's assumed entitlement to

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Why Do a Volunteer Internship? (cont'd)

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monopolize cooperation from the victim's loved ones is, as I came to realize, an unhealthy assumption for everyone except the prosecution. The extensive appeals that usually take place after a death sentence must continually re-victimize the victim's families and friends over and over again, allowing the state to feed off their festering wounds in the name of 'justice'. Ultimately, what I've learnt during my stint as a Reprieve intern at CPCPL is that nothing is simple – justice is a relative concept, no person is entirely good or evil, and everyone is driven by a complex combination of social influences and unique personal experiences. But the law is pulled in two usually opposite directions- to be rational, clear and uniform on one hand, and a reflection of a society filled with irrationalities on the other. In order to appear impartial, the law is fundamentally a collection of procedures and rules, which on closer inspection can be social prejudices and hidden interests masquerading as justice. That is

why the work of excellent, experienced, creative and doggedly tenacious lawyers is vital - the truth is rarely self-evident in a criminal trial – that's why a trial is conducted in the first place.

The integrity of procedures that comprise the law is premised on a healthy adversarial system, where competing theories and stories are advocated. Without a half-decent lawyer with adequate resources, an accused stands very little chance of a favorable verdict, no matter how innocent or undeserving of the death penalty. I've seen the work of many passionate and brilliant lawyers in CPCPL and The Justice Center in Louisiana, but I know that that is not enough to take on the tremendous resources and power of the state, as evidenced by the large numbers of people still on death row and who continue to be sentenced to death.

In fact, for the most disadvantaged and indigent people of USA, the justice system is so fragile that it often relies on the whims of rag-tag university students and volunteers. The effect of this is devastating, and

as complex as I believe the world to be, I've also seen that suffering caused by a failing justice system is not some kind of metaphysical abstraction over which you can debate its existence. Every life, as piddling as it may seem on the grand scale, is of enormous consequence to its owner. This is something that this world forgets far too often.

Angie Wong

Angie spent the summer as a Reprieve Volunteer Intern at the Capital Post Conviction Project of Louisiana, in New Orleans.

Notes

1. In Louisiana, the death penalty can also be imposed on a person convicted of rape of a child 12 yrs and under.
2. Of the 195 people who had their death sentences finally resolved in Louisiana since 1976, 7% were exonerated, 63% had their convictions and/or death sentence reversed or remanded and subsequently received a lesser sentence on retrial or through the agreement of the State. 2% died of natural causes whilst on death row and only 28% were executed. Finally resolved means that there are no further legal proceedings that can be pursued by the defendant relating to the death sentence.

Meeting the Houston Challenge

It is really difficult to sum up a Reprieve Internship in a few hundred words; like a shot of Southern Bourbon it was short, but what it lacked in length it made up for in punch. The three months I spent working at the Texas Defender Service in Houston were amazing. I expected to be challenged in different ways by the experience but could not have foreseen how enriching it turned out to be.

Unlike any other type of legal work I can think of that might be available to a law student, working in a non-profit capital

defence service embraced the professional, ethical and personal aspects of the law in a way that both brought home its importance and contested its effectiveness.

During my time in Houston I was involved in a little of everything that happens in a capital defence office preparing Federal and State Habeas Writs. This included preparing summaries and indexes of case material, drafting petitions, preparing investigative memos, visiting inmates, case related State archival investigation and witness location. I was also involved in

preparing a report that applied the Illinois Commission's recommendations on capital punishment to the Texas legal system.

Working with the Texas Defender attorneys was an education and a privilege in itself. Jim Marcus was a complete inspiration, someone who works hard to express the highest aspirations of the law within a hostile and difficult environment. As well as being a fantastic lawyer, Jim always encouraged the interns to have

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Meeting the Houston Challenge (cont'd)

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fun when we had some free time. With his constant refrain that the thirties were the best years of his life he sent us off to various bars to sample the local nightlife, a highlight being Ma Farelly's, where we sat spellbound in almost complete darkness as various senior citizens pawed each other on the couches and dusted off seductive moves that must have been pre-war.

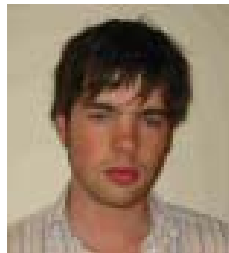
As well as being able to work for some amazing people, the Reprieve and Amicus programs also bring together a group of remarkable fellow interns. I really didn't expect there to be a tremendous social aspect to the experience, since I was the only Australian being sent to Texas, but I had the opportunity to make some fantastic friends during my stay. Working within such an environment is a real bonding experience and it would be wrong to portray the internship program as satisfying only from a professional perspective. Holed up in the swampy shambles of the intern house, in The Heights or Rice Village, or simply down at our local ice-house, the interns always seemed to have a blast. I would especially like to thank Paddy, who shared a room, an office, a gym, a car and two holidays with me without complaint.

Looking back I wish I could say that I had fully digested the experience, but even after having been back for almost two months the issues raised by my time in Texas have still not subsided in my mind.

If I jotted them down some of the most important would look like

this:

Working with the sort of material we were exposed to on a daily basis gave me an almost visceral hatred and resentment of the criminal act. Sifting through case after case brought home its futility, its irrationality and its selfishness. Often watching the dedicated attorneys at the service working themselves to the point of illness, I could not help but feel that their altruism was necessary to balance society's ledger against the narrow, all consuming egocentricity of their client.



Nick Chandler

However, the same material paradoxically reinforced my belief in society's responsibility for criminal acts. This is perhaps what I found most frustrating about the American legal and political system, its almost complete refusal to contextualise crime within a social framework that included poverty, drug and alcohol abuse, violence, social alienation and lack of social and educational services. After immersing oneself through casework in the history of an individual inmate the feeling that remained could never be less than a sense of pity at the waste and neglect that accompanied whatever crime they had committed.

One of the most pathetic experiences I had during my

internship was waiting in the Polunsky Unit visiting area to visit Thomas Miller-EI, whose case I had been working on, and watching Dennis Bagwell who was scheduled for execution a few hours later saying goodbye to his father. The quiet, tenderness with which this man parted from his son, a son who had killed his mother, half-sister, four year old niece, and killed and sexually assaulted his fourteen year old niece, after his mother refused to lend him money, came from a depth of forgiveness that I found almost unfathomable. How we would react as victims of capital crime was something that we discussed as interns (it was also something that was frequently asked of us by those who supported capital punishment) and it is a question that I am still unable to answer.

At the intern Reunion a few days ago Rachel Walsh said that she couldn't see how the entire experience could be anything but life changing. I really have to agree. In fact so 'real' is it, that returning to the hypothetical legality of university study has an almost surreal feel to it. Still I look forward to keeping involved with Reprieve Australia.

Finally, I would really like to thank everyone who I had the privilege of working with, or for, the people I lived with, or who helped me get over there in the first place, as well as all the kind Texans who took pity on me when I was looking a little lost.

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WEBSITE AT
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RepriveAustralia was founded in Melbourne in April 2001 by a group of Melbourne lawyers with the intention of assisting in the provision of effective legal representation and humanitarian assistance to impoverished people facing the death penalty at the hands of the state.

It is a sister organisation of *Reprive (UK)*, a UK based international human rights charity which was launched in December 1999 by Clive Stafford Smith OBE. *Reprive (US)* was also established in 2001 to assist in the placement of volunteer interns supplied by *RepriveAustralia* and *Reprive (UK)*.

RepriveAustralia's primary objective is to provide effective legal representation to impoverished people facing the death penalty at the hands of the state, by assisting a body of volunteers from Australia to travel overseas to work on death penalty cases and issues.

The Death Penalty and International Law in the US - *Medellin v. Dretke*

In a dispute testing the effect of international law in US death penalty cases, the US Supreme Court is considering whether Texas and other states can execute 51 Mexicans who claim they were improperly denied legal help from their consulates. In 2004 in The Hague, the International Court of Justice ruled that 51 convictions of the US Supreme Court violated the 1963 Vienna Convention. The case of Jose Medellin, who was tried and sentenced to death by a Texas court in 1994 without having had consular access, is seen as a test of how much weight the Supreme Court will give in domestic death penalty cases to the ICJ.

In recent times, divisions have emerged from within the Supreme Court over the role of international opinion in interpreting the US Constitution. In March, the Court ruled 5-4 to outlaw the death penalty for juveniles, relying in part on the strength of international views against the practice. The Vienna Convention, which requires consular access for Americans detained abroad and foreigners arrested in the United States, was ratified by the US Senate in 1969. The US Constitution states that US treaties "shall be the supreme law of the land," but does not make clear who interprets them.

The Medellin case also sets the authority of state courts against the Bush administration, which, uncharacteristically, recently ordered states to comply with the ICJ ruling and hold new hearings. At the same time, the administration said it was withdrawing from a section of the treaty so that the ICJ could no longer hear US disputes.

The administration has argued that it is a president's decision - and not the role of the judiciary - to determine whether the United States should comply with international law. Apparently, it is the administration that has, seemingly of its own motion, decided that new state hearings were appropriate.

In a document before the court, acting Solicitor General Paul Clement has stated that "Compliance serves to protect the interest of United States citizens abroad, promotes the effective conduct of foreign relations and underscores the United States' commitment in the international community to the rule of law".

Citing a 1998 Supreme Court case that suggested treaties were subject to each country's procedural rules, the New Orleans-based 5th US Circuit Court of Appeals last year sided with Texas, and ruled that federal relief for Medellin was barred because he failed at trial to raise objections that Mexico was not told of his arrest.

Medellin was one of five gang members sentenced to death for raping and murdering two teenage girls in Houston in 1993.

The court was told that Medellin's court-appointed lawyer was suspended from practising law for ethics violations during the case, and he failed to call any witnesses during the guilt phase of the trial. Lawyers for the Mexican Government say the country would have made sure Medellin had a competent lawyer had it known about the 1994 trial at the time.

Medellin is supported in his appeal by dozens of countries, legal groups and human rights organisations, as well as former American diplomats and the

European Union.

According to Amnesty International, the Mexicans on death row affected by the ICJ ruling are held in nine states, although some of their sentences have been recently commuted to life in prison. There are 27 affected prisoners in California, 15 in Texas, 3 in Illinois, and 1 each in Nevada, Ohio, Oklahoma, Oregon, Arizona and Arkansas. A total of 118 foreigners from 32 countries are on death rows across the United States.

A ruling in the Medellin case is expected by late June.

Pla Di Mattina

Life Without Parole ruled out as a Sentencing Option by the Texas Senate

Legislation that would have allowed those convicted of capital murder to be sentenced to life in prison without parole recently failed to win a key procedural vote in the Texas Senate, following significant opposition from prosecutors and pro-death penalty organizations who claimed it would result in fewer death sentences.

Notwithstanding the support of a strong majority of the senators and the people of Texas, the legislation needed a 2/3 majority in order to be debated.

The Senate's failure to pass the bill means that Texas and New Mexico remain the only two states in the US, among those that still have the death penalty, to not offer life without parole as an alternative sentencing option to the death penalty.

Pla Di Mattina