

## Of Interest

- Of the 63 death sentences handed down since New Jersey reinstated capital punishment in 1982, 47 have been overturned.
- A US federal judge recently overturned one of California's oldest death sentences based on his finding that the 1979 trial of Earl Lloyd Jackson was tainted by unreliable jailhouse informants and poor representation.

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## President's Column

### New Crop of Interns

They continue to put up their hands for the challenge, and we keep on sending them over to the deathbelt. So far, another 7 people are set to head for the US to do internships in Louisiana and Texas in the coming months. We'll keep you posted on their achievements in the next newsletter. We continue to recruit interns throughout the year to go and do this critical work for a minimum of three months at a time – so if you know anyone who might be interested, ask them to contact us at [contact@reprive.org.au](mailto:contact@reprive.org.au)

### The Death Penalty in Iraq

It was announced in August that Iraq is to restore the death penalty. Perhaps taking the lead from its American sponsor, which imposes capital punishment for murders, among other violent crimes, why would Baghdad be any different?

However, it appears that Iraq will execute not only those convicted of murder but also anyone found guilty of either distributing drugs or the ambiguously broad crime of "endangering national security". That sounds like an executioner's picnic. Who knows what might be branded a danger to national security, with the perpetrator, upon conviction, sentenced to death. It seems the situation in Iraq has a long way to go before "mission accomplished" can sound anything but tragically hollow.

### Ban on Extradition to Face Capital Punishment Abandoned?

It was recently reported in the *Courier Mail* that a long-standing convention not to extradite people from Australia if they face the death penalty has been abandoned by the federal government.

This has arisen in the context of air marshal operations, and an apparent agreement with the US government that extends to the possibility of handing over suspected terrorists on capital charges if they are arrested en route to or from the US.

This move appears to flout current Australian law that prohibits the extradition of a person to a foreign country if they were likely to face execution there.

In recent times there seems to have been much selective watering down of Australia's previously firmly expressed and principled opposition to the death penalty. We are told this is necessary to fight the war being waged against a new breed of international terrorists.

This weakening of our collective resolve to respect fundamental human rights is ironic, given that it is occurring in an environment where we are supposedly fighting to protect our way of life and the ideals of respect for human decency and fundamental human rights. Such moves should be condemned.

**Nicholas Harrington**  
President

## Ryan Matthews—115th Death Row Inmate to be Freed in the US

In August, Jefferson Parish prosecutors finally dismissed all charges against former Louisiana death row inmate Ryan Matthews, who, according to the Death Penalty Information Center, is the 115th death row inmate to be freed in the US.

Ryan, sentenced to die in 1999, spent nearly five years on death row before DNA evidence helped clear him of a murder that occurred just two weeks after his 17th birthday. (The US Supreme Court will consider whether death sentences for 16 and 17 year olds are constitutional in October.)

A black teenager with severe learning difficulties, Ryan had spent almost five years contemplating how the state was going to take his life by strapping him to a gurney and administering a lethal injection, while all the while professing his innocence.

However, in June this year, Ryan was released to his family on bond after prosecutors received results from seven DNA profiles

completed on the mask, shirt, and glove worn by the gunman in the crime for which Ryan was wrongly convicted.



Ryan Matthews

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*“Matthews, sentenced to die in 1999, spent nearly five years on death row before DNA evidence helped clear him of a murder that occurred just two weeks after his 17th birthday”*

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Prosecutors began to re-examine the case after each of the genetic profiles found no trace of Ryan’s DNA on evidence recovered from the murder scene. The DNA tests did link the evidence to another

man who is in prison in Louisiana for an unrelated killing that occurred just a few blocks from the murder in Ryan’s case.

Ryan Matthews is the third death row inmate to be freed in 2004, and the seventh to be exonerated in Louisiana since 1981.

*Reprieve UK* became closely involved in funding and supporting some of the work done on Ryan’s appeal, and *ReprieveAustralia* volunteer interns Barnaby Johnston and Eleni Antonopoulos contributed much to the successful outcome in his case. Barnaby did a great deal of organisational work and met with several witnesses and Eleni worked on a number of aspects of the case and particularly befriended Ryan. She is currently back in the US doing further volunteer work for the Louisiana Crisis Assistance Center and continues to keep in touch with him following his release from prison.

**Pia Di Mattina**

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## Ryan Matthews— A Defense Attorney’s Tale

Ryan Matthews got out of jail this summer after seven years on death row.

I became his lawyer three years ago, when I was twenty four, a few months after I graduated from law school. I was assigned to write Ryan’s appeal from his death sentence and first-degree murder conviction. To say that I was way over my head would be an understatement. I didn’t know what I was doing or what I was supposed to do. I had never written an appeal before, even for

a shop-lifting conviction, and here I was writing an appeal for someone facing the death penalty. I was horrified and almost paralyzed with fear.

I felt shamefaced before Ryan and his family because of my inexperience but tried to hide it because I knew that they deserved better and I didn’t want to let them know that they had less than they deserved.

The first time I met Pauline Matthews, Ryan’s mom, I wore my

best suit and tie, hoping to at least dress like a lawyer and not look like a kid. I remember looking at her and finding it impossible to imagine what all of this must have been like her. She had been a witness for her seventeen year old son at his trial and begged for his life and then sat in the courtroom weeping when the jury sentenced him to die for a crime she was certain that he did not commit.

I decided that the only way to do Ryan and his family justice, to make

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## Ryan Matthews— A Defense Attorney's Tale (cont'd)

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up for both the myriad societal failures that had put Ryan on death row and my own inadequacies, was by bringing boundless enthusiasm and energy to the case. Even if I had nothing else, I had this to offer. I struggled through the transcript of Ryan's trial, attempting to note and research all of the legal issues that arose. There were many. Blacks were systematically removed from the jury of this young, black man; the indictment charging Ryan was improper based on recent United States Supreme Court cases; and the judge had improperly forced the jury to deliberate until 5 am. The deeper I got into the record in the case though, the less significant these issues became and the more misguided my arguments about them seemed. The central and glaring fact from the record in Ryan's case was that the evidence against him seemed unbelievable and completely insufficient. Given his possible innocence, I didn't care if the system had been fair, I suspected it was wrong.

The murder that put Ryan on death row happened at Comeaux's, a grocery store in Bridge City, Louisiana. Everyone in Bridge City shopped at Comeaux's and its owner, Tommy Vanhooose, was universally loved for cutting people some slack when they were short on money and for making good po-boy sandwiches. On 7 April 1997, around sunset, a man wearing a ski mask entered Comeaux's and ran to an office in the back of the store demanding money from Vanhooose, sticking a gun in his face. Vanhooose refused and the man shot him several times, killing him.

Anthony Garabold, an old guy everyone calls "Tadpole", was just outside the office, saw the robbery and ran yelling that "Mr. Tommy" was getting robbed. Moments later the shots rang out and the other employee and a handful of customers ran out of the store. Candice Meza, a woman who had been shopping at the store, turned toward the store when she reached her car and saw the gunman at the front counter inside the store. She told police that she saw him lift his mask briefly before pulling the mask back over his face and running out of the store while firing shots towards her as she used her body to attempt to shield her baby in a car seat.

The gunman then fled on foot to a waiting car. An old Hyundai was slowly turning the corner as the gunman approached. The gunman fired at the Hyundai and then jumped into the getaway car through the passenger window. The getaway car then pulled behind the Hyundai, and the gunman again shot at it as Brent Cheramie, the driver, attempted to prevent them from passing him.

Brent later told police that he had seen the face of the gunman twice. He also saw the gunman throw several items out of the window of the car, and so drove back to that spot. He found the mask, gloves and shirt worn during the robbery. He then returned to River Road where he attempted to find the getaway car but, despite spotting the car in the distance, he was unable to catch up with them. He then returned to Comeaux's where he gave the police the items he'd found.

Several hours later, based on a description of the getaway car as a mid-eighties gray Oldsmobile

Monte Carlo or Ford LTD and the fact that the gunman was black, police stopped Ryan and Travis Hayes driving in a gray 1981 Pontiac Grand Prix in Harvey, Louisiana, twenty minutes' drive from the crime scene. Brent was brought to the scene by detectives to look at Ryan and Travis after being told that they had arrested the guys who did it.

Brent identified the car as the getaway car and identified seventeen year old Ryan, standing handcuffed with a police light in his face, as the gunman. On this basis, Ryan and Travis were arrested and taken in for questioning.

Ryan steadfastly maintained his innocence. Travis, also seventeen years-old and mentally retarded, after hours of questioning without a lawyer or his parents, told police that he had gone with Ryan to Comeaux's but that he did not know that Ryan intended to rob the store. Travis has since retracted this statement and asserts his innocence saying that he only gave the statement because he was interrogated for hours throughout the night without food or use of a bathroom and just broke down and gave the police what they wanted to hear. Regardless, the "confession" pretty much did them in.

Police took a photograph of Ryan that was shown to Candice Meza as part of a photo array. She was not able to make a positive ID. Instead, she said that Ryan could have been the shooter but said that she could not be sure. At trial, however, Meza later testified that she was certain that Ryan was the gunman. (When I looked into Meza's background, I found that she had pending criminal charges with the same district attorney in the same court

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## Ryan Matthews—A Defense Attorney's Tale (cont'd)

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for child abuse for biting her child and prostitution.)

Given all of the false confessions, misidentifications, and wrongful convictions in the news, my knowledge that Travis was a mentally impaired kid who was so scared that he could have been talked into anything, my complete disbelief that some guy driving for his life was going to be looking into his rearview mirror checking out the guy shooting at him, and my knowledge of how persuasive the police can be in refreshing people's memories when they are at risk of getting their kids taken away, the State's case against Ryan just didn't add up.

On top of that, even the evidence they presented to the jury strongly suggested he was innocent. Of all of the people present at the scene of the crime, only Meza and Cheramie ever claimed to be able to identify the shooter. But several other witnesses saw the masked gunman. They described the gunman as being fairly short, between 5'6" and 5'8". Ryan is more than six feet tall. People are sometimes wrong about someone's height but you don't confuse a tall guy for a short guy.

In the course of their investigation, the police found a fleck of skin on the inside of the mask and they had it DNA tested. DNA from the skin and other DNA found on the mouth area of the mask all conclusively excluded Ryan. The defense didn't know whose DNA it was at the time of the trial. It was also clear that the passenger-side car window in Travis' Grand Prix had been broken for a long time and could not be rolled down. The previous owner explained that he had been

in an accident and had replaced the door but never could get the window to work.

At Ryan's trial, the state's case was that its two eyewitnesses identified Ryan as the killer. The defense case was that the DNA did not match either Ryan or Travis and that the broken car window made it impossible that anyone would be able to jump through the window of Travis' Grand Prix.

The jurors ignored the DNA, the car window, and his mother's tears, and convicted Ryan, sentencing him to die.

I didn't care what the jury said. I believed that Ryan was innocent. I knew this belief was possibly absurd and certainly naive. I was just a Yankee fresh out of law school.



**Billy Sothern while in Rome with Ryan's mother Pauline in 2003 for an audience with the pope on the issue of juveniles facing the death penalty**

When you are in law school, dreaming of your future ahead as a criminal defense lawyer, you imagine your big case. You aspire to be Clarence Darrow in the Scopes trial or Bill Kunstler representing the Chicago Seven or Leonard Peltier. You may never make any money but you will do something more than assist in the merger of Petsmart and Petco like almost all of your other classmates will. From the beginning, it was clear to me that Ryan's case was

my chance to do something good, to do something important. The alternative was to allow an injustice to go uncorrected, to allow Ryan to be executed for something he didn't do.

While I was writing Ryan's appeal, I heard rumors that another man, Rondell Love, had been bragging about killing Vanhoose while in prison on another murder charge. I put his name into Lexis and discovered that the murder he had committed was right around the corner from Comeaux's. I found out that he had slashed the throat of a nineteen year old woman in a robbery for drugs and left her in a pool of blood where she was found by her young son. Love plead guilty to the lesser charge of manslaughter after the main witness against him died and was sentenced to 20 years in prison.

Technically, evidence which didn't come up at trial is not admissible on appeal. Had I known how to write an appeal, this might have prevented me from going to the courthouse the next day and pulling the file on Rondell Love's murder case. I dug through tons of paper, none of which seemed to be of any use to Ryan. However, I then found a motion from Love's lawyer seeking to suppress DNA evidence in his case. It listed as an exhibit a DNA report from the same lab that had done the DNA testing in Ryan's case. I asked the clerk if the exhibit was in the file and she told me that exhibits, until they are destroyed, are housed at the archive across the street.

I tried to act cool as I gave her the file back and walked across the street but my mind reeled with the possibility that this DNA report could set Ryan free if it was still

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## Ryan Matthews—A Defense Attorney's Tale (cont'd)

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there and if the DNA actually matched the DNA left by the gunman in the mask. I got to the archive and filled out a card providing the necessary information and handed it to the clerk. Though I knew it would take a few minutes for her to find the materials, I could not sit down. I paced the clerk's office like a madman. When the clerk finally called me back to the desk, she informed me that they had the exhibits from the case but that I would not be allowed to view them without an observer. I was told to go an appointed room and wait for someone to bring the materials. I went to the room and sat, or tried to sit, and waited. Eventually a man came in and handed me a folder. He stood in the corner of the room staring at me as I pulled it open and starting digging through the papers.

Within thirty seconds I spotted it. It was a DNA report looking very much like the one I had back in New Orleans in my office. I looked at the column of information expressing Love's individual, completely unique, genetic profile, and almost yelped like a happy puppy. While it was just a bunched of numbers and letters on a piece of ordinary paper, I was sure that this piece of paper could free Ryan. In my mind, I let myself become sure that it would. I attempted to be calm and not to betray my secret hope to the man who was watching me. I asked him for a copy of the report. My voice cracked.

I ran to my car with the report. I

sped back to my office. As I crossed the Crescent City Connection, the bridge over the Mississippi River from suburban, white-flight Jefferson Parish where Ryan was sentenced to die, to New Orleans, a city that I loved from the minute I laid eyes on it, a mad smile crossed my face. While I was aware of the scientific possibility that Love's profile would not match the DNA in the mask, it seemed to me entirely impossible. I worried that I would get into an accident and cruise off the bridge and the truth would remain hidden. I tried to slow down a little.

I got back to my office and mumbled confused thoughts to my co-workers. I couldn't, and didn't want to tell them what I thought I had. I ran into my office, closing my door behind me. I dug out the DNA report from Ryan's case. Rondell Love's DNA matched the DNA from the mask exactly.

For the rest of the afternoon, I walked around my office building, showing people the papers, and trying, mostly unsuccessfully, to describe what they meant. Anyone I spoke to that day could be sure of one thing, that something good had happened and that, as far as I was concerned, the world would never be the same.

If someone had told me that day that it would have taken another two years to get Ryan off death row and back home, I wouldn't have believed it. And even then, Ryan just barely escaped.

Ryan got out of jail earlier this year. He had just turned twenty four years old - the same age I was when I started working on his case.

These last three years have felt like an eternity for me - working on Ryan's case day in and day out, obsessing over tiny details that never even made it into our pleadings, containing anxieties that never even made it out of my mouth. However, while this time passed my life did as well. I was married. My friends bought their first homes. They had children. We built our lives. I have felt bad thinking about how this case affected me with its insufferable delay because I knew that each of the minutes really was an eternity for Ryan, sitting there on death row, his life not changing at all, except for the worse.

Now the eternity has passed and Ryan has only the rest of his life to make up for everything he missed.

### **Billy Sothern**

*Billy Sothern is an attorney at the Louisiana Crisis Assistance Center in New Orleans, and is involved in the placement and supervision of Reprieve's interns. Reprieve interns worked on Ryan Matthews' case, and helped bring it to this successful conclusion.*

## Life Sentences A Setback for Ashcroft

In August a Federal District Court jury in Manhattan unanimously rejected the death penalty for two Bronx heroin dealers convicted of murder, in a setback to Attorney General John Ashcroft's efforts to expand the application of capital punishment in the New York region.

The jury was unusually swift and united in its decision on the sentence for Alan Quiñones and Diego Rodriguez, who were convicted in July of the narcotics-related murder of Edwin Santiago, a police informant. The two defendants will now serve a mandatory sentence of life in prison without parole.

Mr. Ashcroft had overruled the recommendation of Mary Jo White, the US attorney who brought the indictment in the case, who had not proposed to seek the death penalty. Mr. Ashcroft has often overruled local prosecutors, ordering them to seek death penalties in over 40 cases nationwide, many of them in New York and Connecticut.

The trial revealed that Quiñones and Rodriguez had committed a brutal murder in 1999, tying up their victim, torturing and taunting him, suffocating him and then burning his body with petrol.

But the government's argument for the death penalty was undermined by the fact that two other defendants who might have faced death sentences pleaded guilty to avoid them and became witnesses

for the prosecution.

The jury rejected the prosecutors' arguments for death for Rodriguez on all points. They agreed with the prosecution on one point for Quiñones, but voted unanimously against execution anyway.

Judge Jed S. Rakoff made no secret of his "personal, albeit heartfelt, disagreement" with the Justice Department's decision to push for the death penalty. In a discussion in the courtroom with the lawyers, in the absence of the jury, Judge Rakoff denied a defence motion to dismiss the death penalty outright, but said he did so "somewhat reluctantly."



US Attorney General  
John Ashcroft

The Judge said he had no doubt "that the defendants committed a vicious murder." But he added, "There is also no doubt in the court's mind that a reasonable exercise of discretion by the powers that be would not have favoured seeking the death penalty in this case."

Debate over the Justice Department's approach raged

throughout the case. In an earlier motion, the prosecutors sought that the defence be barred from mentioning in front of the jury that the prosecution had not initially wanted to seek death sentences. The Justice Department has subsequently changed procedures to make it more difficult for defence lawyers to discern the recommendations of local prosecutors. All decisions to seek the death penalty must be approved by Attorney-General Ashcroft.

Justice officials have said they are bringing more capital charges in the New York region to ensure consistency regarding capital punishment across the country. No jury has delivered a federal death penalty sentence in New York State since the penalty was reinstated in that jurisdiction in 1988.

Of the 41 death penalty cases nationwide in which the Justice Department has overruled prosecutors, 13 defendants have gone to trial. Death sentences were imposed in three cases and life imprisonment in nine, with one defendant being acquitted.

In his almost four years as Attorney General, Ashcroft has consistently overruled prosecutors and forced them to seek the death penalty, including in Puerto Rico where the death penalty is in fact prohibited by the local constitution. So far he has had little ultimate success in his quest for more executions.

**Pia Di Mattina**



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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.

## Mental Impairment Ruling Saves Another Life

In July, a Texas judge ruled that that state's longest-serving death row inmate, Walter Bell, is retarded, and recommended that the Court of Criminal Appeals commute his death sentence to life in prison, a decision that will spare his life if upheld.

Bell, 50, who killed a couple in their home in 1974, had been on death row for an almost inconceivable 29 years.

On three occasions, Jefferson County spent countless hours of work and hundreds of thousands of dollars to prosecute Bell, who is mentally retarded, a diagnosis that makes him ineligible for the death penalty following the US Supreme Court's 2002 decision in *Atkins v. Virginia*.

Jefferson County District Attorney Tom Maness recently noted that the time-consuming and costly nature of capital punishment may lead to its demise.

Maness stated that if Texas juries had the option to sentence those

convicted of murder to life in prison without the possibility of parole and the state were to abolish capital punishment, protest from the state's prosecutors would be little more than a grumble. "It's so difficult. It gets more difficult all of the time," Maness has said of the time-consuming and stressful work associated with seeking death sentences.

Texas is one of two states that has the death penalty but does not offer the alternative sentence of life without parole.

Maness said the decision was expected given the Supreme Court guidelines on mental retardation, which he said do not allow judges and juries to give enough weight to the crime and its aftermath.

"There is no doubt Walter Bell is not a rocket scientist, as most criminals aren't. But he did have the mental capability to plan and commit one of the most horrible crimes in Jefferson County," he said.

However, Bell's attorney, William Christian, disagreed. "Walter Bell is exactly the kind of person the Supreme Court had in mind," he said.

As early as 1963, Bell was listed in school records as mentally retarded with an IQ in the mid 50s. The threshold for mental retardation has been accepted as 70. Prosecutors said IQ tests of that era have been criticized and could be flawed by as many as 15 points.

Jefferson County District Judge Charles Carver's ruling will automatically be appealed to Texas' highest criminal court. Both Christian and Maness said they expect the decision will be upheld, and Bell's sentence commuted to life in prison.

29 years on death row. A mentally retarded man who was 21 when he first went to prison. Sounds like he's already served a life sentence.

**Pia Di Mattina**