

Of interest

- Australian aid workers Peter Bunch and Diana Thomas who had been facing the possibility of the death penalty in Afghanistan have returned to Australia.
- However, David Hicks, the Australian citizen captured by the Northern Alliance, apparently fighting for the Taliban now faces the possibility of execution. Under President Bush's executive order of 13 November 2001 Mr Hicks may face charges which would expose him to execution at the hands of a US military tribunal.

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President's Column

It has been a busy and momentous time since our last newsletter. Much has happened and much has been achieved.

11 September 2001

The terrible events of 11 September 2001 will resonate for a long time into our future. Notwithstanding the sadness, anger, shame and complexity evoked by these events, cool heads and clear vision are required from the political and military leaders of all nations. As a general proposition, the meeting of violence with violence has never solved ongoing and complex geo-political problems. Particularly, given the nature of our organisation, we stand against the implementation of the death penalty for any person at any time as a means of 'penalty' or 'solution'. We are, no doubt, living in troubled times. Nevertheless, our humanity is both a shield and a sword. September 11 was a terrible event. However, there is still much injustice in the world and this organisation stands committed to the abolition of the death penalty, no matter how terrible the crime.

'This is a True Story' tours to London

The monologue piece telling the story of the life of Howard Neal, the man with an IQ of 54 who has been on Mississippi's death row for almost 20 years was invited to London by Reprive (UK) in October.

The season was a great opportunity to raise the profile of the work done by Reprive and the plight of Howard and others like him. For more details on the London season see the article inside this issue.

Commencement of intern program

Our over-riding ambition in establishing this organisation was to provide real and practical assistance to people on death row the world over. With that in mind, it was our ambition to facilitate the passage of local people to centres and organisations providing 'frontline' assistance to the dispossessed on

death row. Personally, I thought it might take 18 months to 2 years to achieve this lofty ambition. However, I am extremely proud to say that after only 6 short months in existence, the first 5 interns are already working in legal centres in New Orleans, Louisiana, USA. They are all profiled in this edition and we hear in particular from Ash Halphen of his first impressions as a **RepriveAustralia** intern.

Reprive has now realised one of its early, but significant ambitions. It is no small achievement and one of which all members should be proud. By your membership and support, you have all contributed to these interns journeying to the USA for a once in a lifetime experience. I also express my admiration and respect for the first 5 interns for their commitment, dedication and endeavor. We hope they will benefit both personally and professionally from this experience.

The intern program could not have been established and accomplished in such a professional manner if it had not been for Richard Bourke's tireless labour. We wish Richard well for 2002, for he leaves in January to work at the LCAC with Clive Stafford Smith & Co.

On a final note, we are happy to announce the establishment of Reprive (US). This organization has been established as a charity in New Orleans. It will assist in the placement of foreign interns. Richard Bourke will assist in the running of the organisation in 2002.

It has been a fantastic first six months. Thank you to all of our members for their support. You have made our organisation a strong, vibrant and successful one.

Nicholas Harrington
President
RepriveAustralia

The Innocence Project of New Orleans

Even amongst those who are willing to accept the use of capital punishment there are many who are concerned at the possibility that an innocent person may be executed as a result of an error in the justice system.

The potential innocence of prisoners on death row has received a great deal of attention in the media, particularly in the United States. However, little thought has been given to the innocence of prisoners sentenced to life imprisonment by that same justice system.

In September 2000 ex-pat Australian, Emily Bolton, established the Innocence Project of New Orleans (IPNO) with funding from the National Association for Public Interest Law. The IPNO was set up to provide representation for those prisoners serving sentences of life imprisonment with no possibility of parole who have demonstrable claims of innocence.

Emily had spent a number of years in New Orleans working on capital cases but was moved to establish the IPNO to deal with the plight of the thousands of prisoners sentenced to a living death in Louisiana's prisons.

To put the problem in context, in Australia the State of Victoria is larger and has a population greater than that of Louisiana. In Louisiana there are 3,462 prisoners serving sentences of life without parole. In Victoria there are less than 10. In fact, there are more people in Louisiana serving life without parole than there are in the whole Victorian prison system.

In Louisiana, life prisoners have no right to State funded representation for post-conviction appeals and as a result, the IPNO must gather its funding from private foundations and individual donors. It also relies heavily on volunteers to perform its work.

A large number of those serving sentences of life without parole were, at one time, facing the death penalty and many have had to accept plea deals to avoid the risk of execution.

Every time the IPNO proves a client innocent, it highlights the fallibility of the criminal justice system and the immorality of its systems of punishment.

Dwight's Case

In 1997, Dwight, a 24 year old black man with no prior convictions, was convicted of the first-degree murder of a man found shot dead in a car in New Orleans. The murder was thought to be drug related. The only witness to the killing was the owner of the car, who gave evidence naming Dwight as the killer.

Dwight had an alibi – he was in a restaurant on the other side of town, eating dinner with two members of his family.

Originally facing the death penalty, he was spared execution by a hung jury at the penalty phase of his trial. As a result, he received a mandatory sentence of life without parole.

Following his conviction, investigations revealed that the eyewitness, the owner of the car in which the body had been found, had lied about his true identity. He was, in fact, a man with an extensive criminal history and involvement in illicit drugs. At the time of the killing he had outstanding warrants for offences involving firearms and cocaine. In giving a false name and naming Dwight as the killer, he avoided both becoming a suspect and an inevitable arrest for his own outstanding warrants.

At the original trial, Dwight's lawyer had failed to discover the true identity of the eye witness and did not present evidence of Dwight's alibi.

The IPNO filed a 90-page application for relief and the conviction was reversed on the basis of the perjury of the sole eyewitness. Two months later, in October 2001, the prosecution dropped the charges.

Dwight was convicted of a crime he didn't commit, almost sentenced to death and condemned to a life behind bars. He is now a free man.

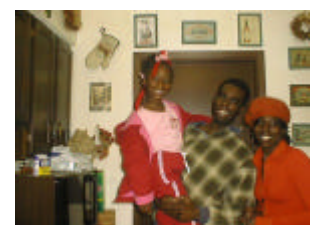
RepriveAustralia is proud to support the work of the Innocence Project and is including the IPNO in the list of bodies for whom we are seeking volunteer interns.

Richard Bourke
Secretary
RepriveAustralia



Dwight following his release with Candace and Heather—two volunteers from the IPNO

there are more people in Louisiana serving life without parole than there are in the whole Victorian prison system.



Dwight at home for the first time in over four years— with daughter Paris and sister Dewanda

No more death penalty for East Timor

After the referendum for independence in August 1999, the United Nations Transitional Administration for East Timor (UNTAET) became responsible for providing security and maintaining law and order in East Timor.

The legal regime in East Timor is complex: UNTAET regulations coexist with Indonesian law which continues to apply except to the extent that it conflicts with international human rights standards. These standards specifically include the International Covenant on Civil and Political Rights and its Protocols, the second of which prohibits the death penalty.

After consultation with the East Timorese in 1999, the first regulation passed by UNTAET abolished capital punishment in East Timor (Regulation No 1999/1). Accordingly, on 11 December 2001, in the first convictions by the Special Panel of Serious Crimes for crimes against humanity committed in the wake of the referendum, the 10 members of the pro-Jakarta Alfa militia who wreaked havoc in the Lautem district did not face the death penalty. In the most serious case, a former militia member was sentenced to 33 years imprisonment.

With the abolition of the death penalty, East

Timor became only the 8th nation of 26 in the Asian and Oceanic region to have abolished the death penalty. Nations in the region which retain the death penalty include China, Singapore, Japan, Vietnam, Thailand, Taiwan, Indonesia, Laos, Malaysia, Burma, the Philippines and South Korea. Of these, 4 feature in the top 12 executors in the world.

Nations that retain the death penalty for extraordinary circumstances only include Fiji and the Cook Islands. Those who have retained the death penalty but have not executed anyone for more than 10 years or who have given an international commitment not to use the death penalty include Papua New Guinea, Samoa, Tonga and Brunei Darussalam.

Having abolished the death penalty, East Timor joins Australia, New Zealand, Cambodia, the Solomon Islands, Tuvalu, Hong Kong and Vanuatu.

Susan Brennan

Susan is Treasurer of RepriveAustralia and is a Melbourne barrister. She spent time in East Timor in early 2001, volunteering with Oxfam International.

After consultation with the East Timorese in 1999, the first regulation passed by UNTAET abolished capital punishment in East Timor



The war on terrorism – Another ‘New World Order’?

In the horrific wake of September 11, we have all read and heard about the “war” being waged by the US government on terrorists “and those who harbour them”. An aspect of this war that has received perhaps less media attention than the armed conflict in Afghanistan is the issuing of the US Executive Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism issued by President George W. Bush on 13 November 2001. A conviction under this order can carry the death penalty.

The Order removes the distinction between the executive and judiciary, by creating a system of military tribunals to try those suspected by the US Government of being terrorists. In essence the government has become investigator, prosecutor, judge, jury and executioner in its own court.

The Order applies to non-citizens that the US Government “has reason to believe” are a threat to national security:

- by being or having been a member of the Al Qaida network, and
- having engaged in, aided or abetted, or

conspired to commit, acts of international terrorism; or

- by having harboured such an individual.

The Order appears to allow for the arrest and indefinite detention of suspects without charge. And there is no indication of the status of that fundamental tenet of the US and our own Westminster system – the presumption of innocence.

The Order also dismisses “the principles of law and the rules of evidence generally recognised in the trial of criminal cases in the United States district courts”. Such strictures are deemed “not practicable” to apply in military tribunals.

The Order does not require:

- that detained individuals be told the reason for their arrest;
- that detainees be promptly informed of the charges against them;
- that detainees be afforded the right to bring their detention before a judicial authority to review the legality of that detention; or

In essence the government has become investigator, prosecutor, judge, jury and executioner in its own court.

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Reprive Australia Interns: November 2001

On 16 November the **RepriveAustralia** internship program commenced in earnest with the first of our interns arriving in the United States to begin their volunteer placements with capital defence offices in New Orleans.

Five Australian interns arrived over that weekend and commenced work at two offices, the Louisiana Crisis Assistance Center (LCAC) and the Capital Post-Conviction Project of Louisiana (CPCPL). Four are law students and one a practising barrister. Each will stay for three months and work full time as volunteers.

The feedback from the interns has been terrific and, just as importantly, the attorneys in Louisiana are delighted with their work. After being provided with a couple of days of intense training they are now working 60-70 hours a week doing work that otherwise could not be done.

The following is a snapshot of who they are and what they are doing:

Olivia Henderson

Starting final year in law at Monash next year, Olivia has come up from Warrnambool to study and now to work at the LCAC. Olivia is spending a lot of her time working on a major review of grand jury proceedings in Jefferson Parish. It is believed that people with criminal histories have been excluded from service on grand juries, in breach of the Louisiana Constitution. If this can be shown to be the case, it may lead to several indictments being quashed with an opportunity for reconsideration of the charges laid or, at least, retrials for those already convicted.

Marissa Dreher

A professional music teacher, Marissa has returned to study to take up a law degree at Monash and is working at the CPCPL with another Australian intern, Kara Murray. Marissa and Kara started their work as volunteers driving out to Shreveport in the north-west of the State to interview jurors from a capital trial to investigate concerns about misconduct in the jury room. Since then, she has been, in her own words, 'doing legal research on the effects of certain drugs'.

Ashley Halphen

Ashley is a barrister practising in criminal law in Melbourne and is volunteering at the LCAC. Ashley is working with a team of lawyers and investigators on an appeal from a death sentence imposed following allegations of an armed robbery gone wrong. The case centres around the identification of the defendant by the surviving victim of the armed robbery. The victim completed a composite sketch at the time of the offence that looks nothing like the defendant but a year later identified him from a photo board containing the exact same photo of the defendant that she had seen on TV and in the newspapers. It has now emerged that the prosecution failed to disclose hundreds of pages of investigators notes identifying a number of other suspects in the shooting. Amongst other things, Ash will work with LCAC staff to investigate these alternative suspects.

Kara Murray

Kara is beginning final year law at Deakin university in 2002 and is spending her summer working as an intern at the CPCPL. After interviewing jurors from a capital trial, she has been investigating exhibits in another capital case to test the probity of the identification process undertaken by the police. Improper identification procedures are a common cause of error in criminal trials and a major point of argument in many capital appeals.

Nick Button

Nick has worked extensively in community programs in Victoria before commencing a law degree and now spending time in Louisiana as an intern. Nick is working at the LCAC and presently working on a number of cases in Jefferson Parish, including a relatively unusual capital rape case. He has also been travelling to Mississippi to interview witnesses in another case.



RepriveAustralia's November 2001 interns: Kara Murray, Nick Button, Ash Halphen, Marissa Dreher and Olivia Henderson (clockwise).

For information about **RepriveAustralia's** internship program or to apply to participate in the program please check out our website at:

www.reprive.org.au

or email us at

contact@reprive.org.au

An intern's first glimpse . . .

The iconic St. Charles street-car motions along its grass covered rails - another day in New Orleans. People here are friendly, children play in the streets, traffic is always light. Nothing is more than ten minutes away. Is it a small city or a big country town? I wonder.

This workable harmony however is shadowed by the malignancy of racism. Its expression is sometimes very public and obvious but is usually masked by a civility that allows for separation both in and amongst the community. Its most disturbing form lies at the very heart of a legal system that sanctions the death penalty.

What appears as a complex network of state and federal appeal avenues is really a framework to kill. Even more confronting is the acceptance and support for such a mechanism. An eye for an eye has left everyone blind! There is an exception. The staff at the Louisiana Crisis Assistance Centre stand vehemently opposed to the death penalty. As such, they virtually live in this state as though in exile. Their commitment is unequivocal and I have the

privilege of working with them for the next three months.

Since my arrival on 17 November 2001, I have been involved in case investigation. In a racist society that holds on tightly to a legal system where no-one can be trusted, everything and everyone must be thoroughly investigated. This means that the lives of witnesses, jurors, police, district attorneys, even judges must be scrutinised microscopically.

The skills necessary to extract information from reluctant and even hostile individuals, often during a home visit, are complex. Training has been intensive and focused towards a specific project – this is an investigation of the extent to which individuals with prior felonies have been automatically and unconstitutionally excluded from jury service. If a favourable court ruling is ultimately made on this question, it will have a sweeping effect on many of the inmates currently on death row.

There is a great deal of work to be done...

Ash Halphen

What appears as a complex network of state and federal appeal avenues is really a framework to kill.



Ash Halphen

Ash is a Melbourne barrister, who is one of Reprive's first set of volunteer interns spending the summer working with the Louisiana Crisis Assistance Centre in New Orleans.

'Union Confidence Justice'

Some sat at the bar table. Others whispered almost mischievously by the bench to the Judge. Prisoners sat doggedly in 'the box'. One amongst them sat upright and alert. He is on death row.

Section H of the 24th District in Jefferson Parish is the Judge's court. There is even a portrait of him on the wall. All persons present in court were white, except the prisoners and their families, the latter scattered across the body of the court.

The bright orange overalls captured my immediate attention. Then I noticed the handcuffs. The shackles became apparent only when the bailiff removed the prisoners. They were chained to one another.

The silence was broken by the collusive utterings at the bench. I reminded myself that proceedings were conducted in open court. Cases were called in rapid succession, whilst informal exchanges criss-crossed the room.

My gaze settled on the only individual who may some day know the precise time and location of his own death. His handcuffs were different. Most likely to effect an even higher degree of restraint, they were also a signature of his unique status. His father sat with immense dignity and read over the motions that might save his son's life or at least prolong his death. When introduced, I was greeted with a forced smile. I understood.

A name was called by the clerk of court. A man automatically stood. The prosecutor asked to revoke the man's probation, then continued chewing mercilessly on his gum. The man said his attorney was outside. The hearing continued anyway.

Shortly after that, the public defender requested a continuance on behalf of her client who had been charged with second degree murder. She stressed that no police report was yet forthcoming. Her client had been wearing his orange overalls almost four months. I awaited the court's

As I left the courtroom I read the three words inscribed on the emblem resting between the United States and Louisiana flags - *Union Confidence Justice* – and drew a wry smile.

The war on terrorism

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- that those unlawfully detained have an automatic right of redress or enforceable right to compensation.

The Tribunal will control the handling of, the admission into evidence of, and access to materials and information under consideration. There are no guarantees that judgments let alone trials will be made public. Media access (and through it, of course, the wider community) to any such military tribunal proceedings will also be controlled by the Tribunal, with a view

to protecting classified information in the interests of national security. And there is no requirement for a unanimous verdict - a suspect can be found guilty and executed on the vote of only two-thirds of the tribunal members.

There will be no appeal rights as such. The submission of the record of the trial, including any conviction or sentence, will only be to the President or the Secretary of Defense for review and final decision. The order stipulates that the accused will have no recourse to other courts of the US or any other

nation, or any international tribunal.

All this is another blow to the pretence that the US respects international standards and norms at least in its own territory. With the anti-Muslim backlash in the USA reaching terrible new heights, and reports of an immigrant prisoner being tortured to death in a New Jersey lockup, international opinion makers, politicians and the wider community need to make a serious stance against this unacceptable assault on civil liberties.

Pia Di Mattina

Calls for reintroduction of the death penalty in Australia

Following calls for the reintroduction of the death penalty in Australia for the crime of treason, on 21 December 2001 the Herald Sun published a reply prepared by **RepriveAustralia's** Richard Bourke. The text of this opinion piece appears below.

For the record, the death penalty was abolished for the crime of treason by the **Death Penalty Abolition Act 1973**, effective 18 September 1973.

Three Australians are now believed to have been captured by Afghanistan's Northern Alliance, at least one apparently fighting for the Taliban.

The day after the news broke about the first of them, David Hicks, he was sentenced to death by some in the media - "legal experts" even detailing exactly how he would be killed if he were found guilty of treason.

In fact, we do not have the death penalty anywhere in Australia and in the case of treason it was abolished almost 30 years ago.

The calls for the execution of Hicks explain a lot about the death penalty. You don't need information, you don't need a trial, you just need to kill.

This is because the death penalty is about fear and hate and frustration. It is a violent lashing out that does not need and cannot survive cool consideration.

Nobody mentioned that in calling for the execution, some relied on the same Islamic law quoted by the terrorists. Others said that the terrorists are attacking our way of life, our free society, our Western civilization.

But the Australian way of life is about fairness and justice and as a part of our way of life we have rejected killing. The only Western country still supporting the death penalty is the USA.

As the calls for the execution of Hicks rang out, a group of five RepriveAustralia volunteers were in the United States, working on death row to try to save the lives of some of the thousands America is trying to kill. They are assisting the lawyers and investigators who defend those accused of capital crimes and plead for the lives of those found guilty.

I will join them in January and when those five come back in a couple of months time they will be replaced by another group of volunteers.

For me, the death penalty tells you two things about a community: that it believes that it has the right to take another's life and that it believes that violence is a solution.

The terrorists also believe these things - every killer has a reason why they were justified in killing.

In the US they kill children, the intellectually disabled and the mentally

ill. They kill people who have not had proper representation or appeals. Mainly, they kill the poor and the black.

The use of capital punishment is a stain on the US and if we allow it to continue without comment then we are stained as well.

In Australia we are lucky. As a community we hold human life sacred and we know, often from bitter experience, that violence is not a solution.

The most dangerous attack on our way of life doesn't come from terrorist attacks themselves. It comes from those who as a response would make us killers too.

RepriveAustralia was established earlier this year to try to help bring justice to those on death rows around the world and to highlight the need to end capital punishment everywhere.

Australian volunteers go overseas to help those on death row and the people fighting for them because every life we help to save is that much less blood on all of our hands.

This is a True Story—London season

"Here is a series of monologues so arresting you have to remember to catch your breath . . . This is a True Story (already seen in Australia) is that rare thing: an incisive, intelligent fusion of political truth and theatrical storytelling."

London Time Out, 24-31 October 2001

"If you want a cosy, entertaining night out, don't go near This is a True Story. If you want to be outraged and fired up by the injustices of the US justice system, if you want to make a tiny gesture and in the process maybe help save a life, then book your ticket without delay . . . You leave the theatre a slightly different person from the one you were when you went in."

The Guardian, 26 October 2001

On 10 October 2001, actor Thomas Wright, lighting designer Richard Vabre and I flew to London for a short season of the Theatre Tarquin production, "This is a True Story".

As many members may recall from our first newsletter, the production is based on the life story of Howard Neal, an inmate of some 19 years on Mississippi's death row. We left for London confident that both the material and production were powerful and compelling comments on the plight of the intellectually impaired on death row. Nevertheless, there was some trepidation in taking a locally produced fringe show to a city as rich in theatrical tradition and history as London.

The production was co-produced by Reprive (UK) and supported by **RepriveAustralia**. A sterling job was done by Andie Lambe in the London office in single-handedly playing producer, publicist, host, landlord (to Richard and Tom) and general trouble-shooter with local knowledge. It could not have happened without Andie. We were also greatly benefited by the presence of Clive Stafford Smith and the media interest he generates when he returns home to England.

The production was staged at 'The Man in the Moon' fringe venue in Chelsea.

In short, I can report to members that the trip and production were an outstanding success. Here are some highlights:

- Over 750 people attended the show over the 22 night season;

- There were 15 or more Q & A sessions after various performances and all of those I attended provoked a high level of debate and engagement on the death penalty issue;
- Organisations such as Amnesty International, Amicus, the Howard League, Human Writes and the major English law firms Freshfields and White & Case supported specific evenings and Q & A sessions;
- Attention was drawn to Howard's case and the cases of Britons on death row in the USA such as Kris Maharaj and Tracey Housel;
- The production was reviewed in very favourable terms by both **TimeOut** and **The Guardian** newspaper; and
- Reprive (UK) received enormous publicity and some donations.

I would like to thank Andie Lambe in London for a magnificent effort. No Andie – no London season. Further, a very special thanks to two non-Reprive members, Tom Wright and Richard Vabre. Both were engaged on a professional basis in their chosen field but neither demanded professional levels of remuneration. For both, it involved levels of sacrifice and commitment to the cause. I am indebted and most thankful to all 3 people.

Nicholas Harrington
Nick directed and, with Tom Wright, adapted This is a True Story.

Over 750 people attended the show over the 22 night season



Howard Neal

The monologue, This is a True Story, is based upon his writings from death row in Mississippi.



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PLEASE VISIT OUR
WEBSITE AT
WWW.REPRIEVE.ORG.AU

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.

Union Confidence Justice

(Continued from page 5)

expression of dissatisfaction. There was none.

In another case, a man was reprimanded for failing to attend by the scheduled time. He was handcuffed and placed in 'the box'. Having fallen asleep as well had clearly inflamed the Judge.

Finally the case that begged my attendance was called. The man with the different handcuffs rose to his feet and shuffled to the bar table, where he took a seat.

In December 1996, at just 16 years of age, he had been indicted for first degree murder for the fatal shooting of a 45 year old man and his 70 year old mother. In April 1996, the jury returned a verdict of guilty. At the penalty phase he was sentenced to death. The Louisiana Supreme Court on direct appeal reversed both conviction and sentence. The case was remanded for a new trial.

The motions before the court sought a recusal of the Judge (the equivalent of an application that he stand aside for

apprehension of bias), and the quashing of the indictment based on discrimination in the selection of grand jury forepersons and on the improper exclusion of jurors from the grand jury process. In all, over the preceding three weeks, six people had worked around the clock to prepare these motions. We all sat restlessly in our seats.

The motion to recuse was denied for reasons not stipulated and without resort to oral argument. The hearing was over within moments.

His Honour left the bench. Tension dissipated. The guard with a chin too big for his face escorted our client away. 'Thank y'all for your hard work', was all he had time to say as he passed.

As I left the courtroom I read the three words inscribed on the emblem resting between the United States and Louisiana flags - **Union Confidence Justice** – and drew a wry smile.

Ash Halphen



The State motto of
Louisiana –

Union, Justice, Confidence

Next issue . . .

The next issue of *RepriveAustralia Notes* will be published in March 2002.

We are always looking for items of interest from members to include – if you would like to write a brief piece about any particular issue please let us know by email at:

editor@reprive.org.au
