

Of interest

- On 13 June 2001 Oklahoma City Bomber, Tim McVeigh, was killed by lethal injection—the first Federal execution in 38 years.
- There are now a further 19 Federal death row prisoners awaiting execution. The killings are scheduled to start almost immediately.
- There are around 3,700 inmates on death row in the United States
- Even killing a person a day, it would take more than ten years to clear the backlog of executions.

In this issue

President's Column	1
McVeigh executed, al-Owhali spared	2
Executing the 'mentally retarded' & the US Constitution	2
Howard's True Story	3

President's Column

Launch of *RepriveAustralia* 17 May 2001

RepriveAustralia was successfully launched at a terrific function attended by almost 180 people at the Essoign Club in Melbourne on 17 May 2001. The launch was very generously sponsored by the Criminal Bar Association of Victoria ("CBA"). The key note speaker was Justice Michael Kirby AC CMG of the High Court of Australia. His Honour spoke eloquently on the history of the death penalty in Australia. More importantly though, he spoke of the need for members of the community – not just lawyers – to become engaged in both the local and international community. It was inspiring stuff and doubly so to hear such a learned and respected member of our community supporting a cause such as this.

His Honour was followed by our famous import, Clive Stafford Smith OBE. Clive helped establish and found the UK branch of Reprive in 1999. He has worked tirelessly for over 20 years representing the indigent on death rows in the Southern United States. I personally had the privilege of working with Clive for around 6 weeks in early 1998 in Louisiana.

It was a great coup to lure Clive to Australia to help launch the Australian chapter of the organisation. Clive had the audience transfixed with a mixture of anecdotes from his work in the US and his passionate and reasoned arguments against the imposition of the death penalty. His speech was exceptionally well received – it both inspired and enlightened. We thank him for making time to be with us on the launch of the organisation.

May I also take this opportunity to publicly thank, on behalf of *RepriveAustralia*, both the CBA and Justice Michael Kirby. We are deeply indebted to them for their enormous generosity and support.



RepriveAustralia team - Pia Di Mattina, Richard Bourke, Susan Brennan, Clive Stafford Smith and Nicholas Harrington

Aims and Ambitions

The formal purposes of the organisation are :

- To provide effective legal representation and humanitarian assistance to impoverished people facing the death penalty at the hands of the state.
- To raise funds to fund a body of volunteers from Australia to provide assistance to indigent defendants on death row.
- To further, through education, the cross-fertilisation of legal and investigative strategies from one jurisdiction to another.
- To conduct lectures and meetings concerning the use of the death penalty.
- To raise awareness generally concerning human rights.

The extent to which we can achieve these aims will depend to a large degree on the support and involvement of the membership – that's you.

Like Reprive (UK), one of our key ambitions is to facilitate the passage of local people to work as volunteers at legal offices representing the poor and forgotten on death row. At this early stage, our main link is to the Louisiana Crisis Assistance Centre in New Orleans.

(Continued on page 4)

Executing the “mentally retarded” & the US Constitution

There appears to be a growing consensus in the US that to execute mentally retarded inmates is to walk on thin constitutional ice. It is typically estimated that around 10% of the 3,700 prisoners currently on death row there are “mentally retarded”, having IQ scores of less than 70, where a score of 100 is considered average. However, recent tests conducted by defence lawyers in Louisiana and Mississippi suggest that as many as 30% of death row inmates suffer from an intellectual disability.

Later this year, the US Supreme Court will consider whether such executions should be deemed unconstitutional as “cruel and unusual punishment” in violation of the Eighth Amendment to the US Constitution, in a case being brought by an inmate on North Carolina’s death row, Ernest McCarver. McCarver, who was within hours of being executed when the court granted a stay in March, reportedly has an IQ of 67.

When the Supreme Court last considered the question in 1989 (*Penry v. Lynaugh* 492 U.S. 584), only two states with the death penalty, Georgia and Maryland, barred execution of the “retarded”. However, even the State which currently executes the greatest number of prisoners each year, Texas (with 37 executions in 1997), passed a Bill in May 2001 banning such executions (although this is currently awaiting the Governor’s signature before it passes into law). This follows similar

moves in 17 other States in the US in recent years.

When the 12 States that no longer have the death penalty are included in the count, around 60% of States in the US no longer allow the execution of mentally retarded prisoners.

The Supreme Court looks at “evolving standards of decency” to determine whether a punishment is cruel and unusual. Under that test of social consensus, in recent years the court has ruled out execution of the insane, of rapists not also convicted of murder and of murderers younger than 16.

A concern for the plight of death row prisoners with sub-average IQs (or as the Americans refer to them, the “mentally retarded”) is an early focus for the work of *RepriveAustralia*. Under Australian law, many of America’s death row prisoners would not be regarded as competent to be tried or convicted for murder, let alone be sentenced to death.

In March 2001 Human Rights Watch released a detailed report, *Beyond Reason: The Death Penalty and Offenders with Mental Retardation*. The Report contains a review of the law and numerous case studies. It can be read at: www.hrw.org/reports/2001/ustat/

McVeigh Executed, al-'Owhali spared.

On 13 June 2001 the execution of Tim McVeigh brought to a crescendo the frenzy surrounding the Oklahoma bomber’s trial and sentence. In the aftermath, a series of journalist ‘witnesses’ gave interviews, each apparently trying to outdo the other in capturing the ultimate media byte. Advertising for bootleg McVeigh execution tapes has already begun.

Perhaps one of the most lingering impressions from the case will be the discovery of 6000 undisclosed documents in the possession of the FBI, resulting in a one month postponement of the execution. This, in one of the most high profile capital cases with one of the best funded defence teams in US history. It begs the question of what is occurring in the countless cases of indigent accused with ill-funded, ineffective

representation and no public scrutiny.

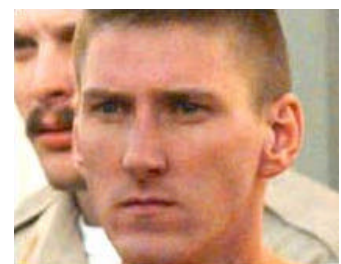
The McVeigh case seems to have fragmented the support for the death penalty in America. Even where there were 168 deaths and untold physical and emotional casualties, seeking vengeance and retribution by the imposition of the death penalty seems to be under serious question. We hope the tide is slowly turning.

Meanwhile, in a fascinating counterpoint to the McVeigh execution, 1998 Nairobi embassy bomber, Mohamed al-'Owhali was spared death by a New York jury. The jury cited, amongst other reasons, that it may make him a martyr, that it would not relieve the loss of the victims, that life imprisonment was a greater penalty (particularly than lethal injection) and that he had been raised under a different set of beliefs.



Eddie Mitchell (IQ 66), on death row in Louisiana, waived his right to remain silent and to have an attorney present during his police interrogation. Later, when asked by his lawyer if he understood what it meant to waive his rights, Mitchell simply waved his hand.

Officially, 35 offenders with ‘mental retardation’ have been executed in the United States since 1976



Timothy McVeigh, executed 13 June 2001



Mohammed al-'Owhali jury refused to impose death penalty

Howard's True Story

In 1982 in Mississippi, Howard Neal was sentenced to death for the murder of his brother and two nieces. He was, in his own words, *28 old years*...

At the time of his conviction Howard was illiterate, having had no education and having come from a bitterly poor and unstable background. He has an IQ of only 54, and is therefore considered mentally impaired or "retarded".

Waiting on death row, Howard gradually learnt to read and write. In a struggling hand, littered with idiosyncratic expression, phonetic spelling and repetitions and confusions which evoke the cadences of his southern accent, he has recorded fragments of his story.

... I got arest in 1981. I got the death sentenced in 1982. I don't know if state going to kill me or not. It take a life to go through Court... I know a story like this is hard to believe. But this is a true story about my history. This is a true story, about my life...

Howard was convicted largely on the basis of a policeman's evidence that he had verbally confessed to the crime, and has been on death row for 19 years. He protests his innocence. Until Clive Stafford Smith heard about his case, he didn't have a chance.

An Englishman by birth, Stafford Smith has spent the last 20 years as a defence advocate in capital cases in the southern United States. He has represented more than 300 people on death row, including every British person facing the death penalty in the US since 1984. In October 2000, he was awarded an OBE for "humanitarian services" in recognition of his 20 years working for justice for those facing death at the hands of the state in America.

In 1993 Stafford Smith established the Louisiana Crisis Assistance Centre (LCAC), a non-profit law office specialising in indigent capital defence in New Orleans. In 1998, two founders of *RepriveAustralia*, Nicholas Harrington and Richard Bourke, spent time working as volunteers at the LCAC.

At that time, Stafford Smith spoke to Harrington about Howard Neal, and the strangely poetic and compelling manuscript he had written. Stafford Smith customarily asks his clients to set down their life stories

for a number of reasons – in Howard's case it was to practise his writing and help pass the time, but also to draw out material for an application for clemency from the Governor; the last ditch effort when all other legal avenues have been exhausted.

Harrington brought the manuscript back to Melbourne, and later sparked the interest of local actor and writer, Tom Wright, who worked with him to adapt it into a monologue for the stage.

That piece, *This is a True Story*, was directed by Harrington and performed by Tom Wright at the Carlton Courthouse, in association with La Mama and with the support of *RepriveAustralia*, in May 2001 as part of Law Week. Stafford Smith came to Melbourne to support the show, and participated in some rather robust question and answer sessions after some of the performances.

The Age hailed the piece as "an utterly compelling eye-opener."

In Stafford Smith's view, the key issue is that people get executed in the US because they have no friends. No one to stand up for them. They are the most despised and dispensable and utterly marginalised. He believes the monologue piece provides an important avenue for highlighting the injustice Howard and others like him face.

There are hopes to take the piece to London, and then the US, as a "left field" method of advocating for justice and making a difference.

The Mississippi District Attorney in charge of pursuing Howard's death recently boasted that he plans to set a date for his execution by lethal injection some time this year.

Stafford Smith told Howard about the show before he came to Melbourne, and he was hugely pleased to think that people in a country he calls 'Lostralia' are interested in his life story. While not really having any idea where we are, he told Clive he would love to come and live here one day.

Some people who saw the show have asked for Howard's address, so they can write to him. *RepriveAustralia* would be happy to pass on any letters to Howard's defence team, and they will ensure he gets them.



Howard Neal circa 1962. Currently on death row, he has lived under threat of execution since 1981

"I got arest in 1981. I got the death sentenced in 1982. I don't know if state going to kill me or not..."



Tom Wright in *This is a True Story* La Mama at Carlton Courthouse 15-26 May 2001



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OUR WEBSITE IS UNDER
CONSTRUCTION.
MEANWHILE, PLEASE VISIT
WWW.REPRIVE.ORG.UK

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 (UK)* has assisted numerous volunteers to attend the southern United States to work on death penalty cases.

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.

President's Column

(Continued from page 1)

The LCAC was founded by Clive Stafford Smith in 1993. The bulk of the practice of this small office and its dedicated employees is representing death row inmates in both Louisiana and Mississippi.

We have already been approached by a number of people who are interested in venturing to New Orleans in the next 12 months in order to work as volunteers in the LCAC office. We are currently developing the intern program and hope to be able to help them and others get there as soon as possible. I should stress that you do not need to be a lawyer or law student to provide effective assistance. Many of the tasks I undertook in 1998 were essentially non-legal but important nonetheless. For those of you who are interested, please keep the following in mind:

- you need to be a fully financial member of *RepriveAustralia* in order to obtain assistance from this organisation;
- at this stage, *RepriveAustralia* cannot afford to provide direct financial assistance (that is, until those significant donations start rolling in...). We can however arrange for your introduction to and placement with a relevant service. Please consider the financial aspect of your planning carefully;
- the LCAC needs volunteer interns to spend at least 3 months assisting in the office. October through to May is the best time, as you would not be competing with the US college students who volunteer during their summer break; and
- it is a completely life-affirming and rewarding pursuit!

Membership and donations

This organisation survives on the funds received from membership fees and donations. We encourage people to join, get involved and engage! Even better, entice your friends to join up as well and help make us a strong, vibrant and multi-talented organisation comprised of a diverse and vocal membership. You may have received this newsletter because you expressed interest in the organisation – you will only receive the next one if you are a paid up member!

And finally, my special thanks to two women who are in far away places. In January 2001, I met with Andie Lambie in London to discuss the possibility of establishing an Australian sister for *Reprive UK*. Andie is the Director of *Reprive UK*, and she was full of energy and enthusiasm for the establishment of the Australian chapter. She has been of great assistance in the months leading up to the May launch.

And finally, Emily Bolton in New Orleans. Emily is married to Clive and is an old mate from our university days in Melbourne. She has been a huge supporter of the Australian chapter and continues to provide invaluable e-mail input from the LCAC 'in New Orleans.

To two great women, a big thank you.

It is with great ambition and energy that the Australian chapter of the organisation has been launched. We hope, with your help, to contribute significantly to the international anti-death penalty cause.

Nick Harrington
President



Justice Michael Kirby with the audience in the palm of his hand at the launch.



Clive Stafford Smith at the launch of *RepriveAustralia* in Melbourne.