

## President's Column

### Of Interest

In early March, the Governors of South Dakota and Wyoming each signed legislation raising the age of eligibility for capital punishment to 18 in those states.

Thirty-one states now prohibit the execution of juvenile offenders.

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### Australian sentenced to death in Singapore

As members have no doubt heard, on 20 March, a 23 year old Australian, Tuong Van Nguyen, was found guilty of drug trafficking by the High Court in Singapore and sentenced to death.

Executions in Singapore are by hanging and are performed on Friday mornings at dawn with little or no warning to the family or legal advisers of the prisoners.

Reprive has been involved in Van's case from the outset, providing research and tactical support to the Australian lawyers assisting his Singapore defence team.

We are particularly concerned about a young first offender, who has no prior convictions for unlawful behaviour of any kind, having been given a mandatory death sentence.

The absence of judicial discretion in relation to the death sentence is inappropriate and arguably contravenes the Singapore Constitution. No other country has a mandatory death penalty for the possession of drugs in transit. Legal arguments put to the court by the defence team also included problems with the evidence in Van's case, including chain of custody issues.

In a report released in January, Amnesty International accused Singapore, with a population of just over 4 million, of having the world's highest per capita use of the death penalty. Amnesty says that more than 400 prisoners have been hanged in Singapore since 1991; three times as many, compared to its total population, as Saudi Arabia, and almost seven times as many as China, with many prisoners being

arbitrarily killed for relatively minor drug offences.

Reprive understands that the Australian Government has been making representations to the Singapore Government on Van's behalf, and is very concerned at the now very real prospect of a death sentence being carried out against an Australian citizen.

We commend the Australian government for its strong anti-death penalty stance for its citizens and its efforts on Van's behalf.

Singapore is a member of the Commonwealth, whose members share a common heritage and common values, including a commitment to the rule of law and basic legal rights.

Singapore Prime Minister Goh Chok Tong told the BBC in a recent interview that between 70 and 80 people had been executed last year. When queried about why he did not know the precise number, he reportedly said: "I've got more important things to worry about."

In this age of global unrest, strife and fear, we all have important things to worry about. One of those things is surely how we administer justice and punish those who digress from acceptable behaviour.

The continued use of the death penalty is something that should concern us all, regardless of where and against whom it is being used.

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## President's Column

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### **Interns return from the US**

The most recent group of Reprive Interns have recently concluded their tour of duty, having spent three months working in Texas and Louisiana.

Lucy Adams, Tamara Hamilton-Noy, Lara Guarino, Emma Williams, Sophie Williams, and Carly Marcs all did a sterling job in challenging circumstances, and we thank them.

Those with whom they worked have again expressed their gratitude for the contribution that Australian volunteers are continuing to make in the fight against the death penalty in the US.

**Nicholas Harrington**  
*President*  
*RepriveAustralia*

### **Background on Tuong Van Nguyen**

Tuong Van Nguyen was born in the Songkhla refugee camp on the Thai-Vietnam border in August 1980. Six months later he arrived in Australia with his twin brother and mother. Van completed his education, maintained full time employment and was never in trouble with the police.

However, on 12 December 2002, Van, then aged 22, was arrested in the transit lounge of Changi airport in Singapore, attempting to board a flight to Australia. Van was in transit on a flight from Cambodia to Australia and was allegedly found to be in possession of almost 400 gm of heroin.

Singaporean authorities chose to charge Van with the capital charge of importing a controlled drug into Singapore.

In Singapore, unlike neighbouring Malaysia, there is no specific provision for those found in possession of drugs whilst in transit through this major airline hub. Instead, those detected are dealt with on the same basis as if they had been attempting to import the drug for distribution in Singapore.

For those found to have "imported" more than 15 gm of heroin there is a mandatory death penalty.

An appeal against his death sentence has been lodged.

Should the appeal fail, Van's only hope would be a plea for clemency to Singapore's President, S.R. Nathan. However, such pleas have extremely slim chances of success.



## New Developments in US Juvenile Death Penalty

Following the discussion of the juvenile death penalty in America in our last newsletter, some dramatic events have occurred giving hope that abolition may be close at hand.

On 26 August 2003 the Missouri Supreme Court interpreted the Eight Amendment to the *Federal Constitution* to outlaw the juvenile death penalty on the basis that evolving moral standards had made this a cruel and unusual punishment by today's standards.

On 26 January 2004 the United States Supreme Court agreed to hear an appeal from this decision; the subsequent ruling will be binding on all of the states in the US. The case, *Roper v Simmons*, is expected to be argued before the Court in late 2004.

On 3 March 2004, South Dakota Governor Michael Rounds and Wyoming Governor Dave Freudenthal both signed into law legislation raising the age of eligibility for the death penalty in their respective states to 18.

The legislation in South Dakota and Wyoming means that the juvenile death penalty has now been outlawed in more states than had outlawed the execution of the mentally retarded at the time of the *Atkins* decision.

As discussed in our last newsletter, the US Supreme Court had failed to grant certiorari to consider this issue in two recent cases. By resting its decision solely on the Federal Constitution, the Missouri Supreme Court effectively forced the US Supreme Court to consider the matter. If the US Supreme Court had refused to hear the case, the Missouri decision would have stood, providing persuasive precedent for other states to follow. Other states would have either followed suit, making the decision for the Supreme Court, or would have rejected the Missouri opinion, creating a conflict between

the states.

As a result, it is not certain which way the Supreme Court will rule on this issue. Either way, the court is likely to back away from the mathematical approach adopted in *Atkins* to determine the prevailing moral standards of the US community. In the meantime, legislation has been proposed that would abolish the juvenile death penalty in every state that still retains it as a sentencing option.

Texas currently has 28 prisoners on death row who were juveniles at the time of their offence. Five of these have execution dates scheduled between now and the end of June 2004. Stays of execution have been ordered in these cases following the decision to hear *Roper v Simmons*.

I was sitting in the office of a prosecutor in Texas a couple of weeks ago, and in an exasperated voice she explained that she did not know what the big deal was about. She went on to say that under Texas law you become an adult at 17; so, they have no juveniles on death row.

Of course, I could not complain too loudly as my home state of Victoria has also legislated that for the purposes of the criminal law children become adults at 17. It is for this reason that Australia has been forced to maintain a reservation from the United Nations Declaration on the Rights of the Child.

### Richard Bourke

*Richard, a member of the Victorian Bar, is a founding member of Reprieve and has been working in New Orleans since January 2002.*



Chris Simmons

### A case in point

Christopher Simmons, a young man with no prior criminal history, was just 17 years old at the time of his arrest for the 1993 killing of Shirley Crook for which he was sentenced to death.

A victim of horrific childhood abuse, he had become addicted to alcohol and drugs at the time of the killing.

On 26 January 2004, the United States Supreme Court announced that it will re-examine the constitutionality of the juvenile death penalty in Chris' case.

The Missouri Supreme Court ruled in August 2003 that the execution of those who committed crimes while under the age of 18 violates evolving standards of decency and is, therefore, prohibited by the Eighth Amendment of the United States Constitution.

The Court set aside Chris' death sentence and re-sentenced him to life in prison without the possibility of probation or parole.

## A volunteer for a volunteer

The word volunteer has two meanings in the death penalty community here in the US.

It refers to members of the legal and broader community who donate their time and energy to help capital defendants. This something that Reprive volunteers from Australia, the UK and Spain have been doing a lot of over the last few years.

However, it has a darker meaning as well. It refers to those death row prisoners who abandon their appeals and proceed without further resistance to execution. The unconscionable conditions of Death Row makes volunteering a recurrent theme as prisoners are driven to end their day-to-day suffering by allowing the state to kill them.

*RepriveAustralia* volunteer, Eleni Antonopoulos, has once again returned to the United States to work on the case of a death row volunteer there, Perry Austin.

Perry Austin was serving a lengthy jail term in the Texas prison system when he decided to kill himself. An identified homosexual within the prison system, his life is a constant struggle in which he must forcefully resist rape and physical assaults. As a gay prisoner, he is expected to "put out" for any prisoners who want sex at any time. If this is not how he wants to live his life then he must fight.

Confined to administrative segregation for fighting, or "safekeeping" segregation for his own protection, Perry's life in prison has been a living hell. With a history of depression and suicide attempts it is no surprise that these conditions drove him to attempt self-destruction.

Perry wrote to a Houston detective, offering to confess to a decade old murder of a nine-year-old boy. In his letter he wrote:

*"I want to help you out if you'll help me out. I know you want to close that murder case concerning David and I will help you. I will confess to it on several conditions. First the charge must be capital murder. Second, I must be guaranteed the death penalty. This must be guaranteed."*

He sacked his lawyer at trial, represented himself, entered a plea of guilty and told the jury empanelled to determine his sentence that if they did not give him the death penalty, he would kill again. They gave him the death penalty.

Perry refused to have an appellate lawyer appointed



**Perry Austin**

and refused to file an appellate brief. The Court of Criminal Appeal affirmed his conviction and an execution date was set.

Meanwhile, Perry had begun a correspondence with a pen pal in Britain and through this positive and supportive contact learned to place a value upon his life once again. A week before his scheduled execution Perry agreed to pick up his appeals and fight for his life.

Perry has now admitted that he did not kill the boy and that he falsely confessed in an effort to end his life. Eleni has been in Texas since January, investigating the case and trying to develop sufficient evidence to overturn the death sentence. Perry's pen pal, Sheena Dewan, has helped to raise awareness and funds for Perry in Britain. Through Reprive (UK) and Reprive (US), this money has been used to fund some of Eleni's expenses. The appeal brief is due on 19 June 2004.

### **Richard Bourke**

*Richard Bourke, one of the founding members of RepriveAustralia, is now working in capital defense in the United States. He is representing Perry in his appeal.*

## A challenging time...

When Richard and I visited Eric, we talked about as much current politics and world history as could be compressed into a one-hour conversation. Somewhere in there the question came up - where in the social and political landscape of the United States is the Martin Luther King Jr. of today? Eric's answer came, "they probably locked him up when he was 16, he's probably somewhere in here now."

The "somewhere in here" Eric spoke of was the Mississippi State Penitentiary, and if truth be known, the MLK of today may just be Eric and the world may never know.

On the same day I visited Howard. Howard and I chatted about chocolate ice cream and animals. Howard talked a little bit about the Lord Jesus Christ but other than that our conversations were not unlike those I have with my cousin Liam - Liam is six.

Lastly on that day I visited Willie. Willie talked to me about hiphop. He recommended some music for my little brother but only after I promised Sam was 19 so it was fine if it had the obligatory 'obscene language' warning attached to it. Willie told me about his brothers. He said he had four but one was dead. Willie said, "unfortunately my older brother is incarcerated, my middle brother is also incarcerated and now my youngest brother too is incarcerated". Then, as if he needed to qualify his tragedy, he said, "that's just what comes from growing up in a bad area."

Eric, Howard and Willie are just three of the 5658 men incarcerated in Parchman Prison, Mississippi. Sixty-eight of these men (including Howard and Willie) have been condemned to die by the state - effectively declaring them to be the most dangerous men in the country. Much of my time as an intern at the Louisiana Crisis Assistance Center was spent working for a man that the State is desperate to commit to the ranks of these 'most dangerous' ones. The rest of my time was spent looking at others more deserving of such status.

My research into the system under which

approximately 660 men are being detained without charge at Guantanamo Bay revealed the power wielded by those holding the reigns of the global superpower. The system that has been set up to try the detainees - assuming, that is, that they will eventually be charged - is a largely unprecedented construction designed by the Bush Administration. It is devoid of potential to fulfil the detainees' basic right to a fair trial. The task that has been given to those members of the U.S. military assigned to act as defence counsel for those charged is, simply, gargantuan.

To ask a member of the military - whose aim is to defend and protect one of the most patriotic nations in the world - to provide zealous and impartial legal assistance to a person identified as an 'enemy combatant' in an ongoing 'war on terror' is to burden them with an inescapable conflict of interest. If this defence is unsuccessful at first instance the accused has no avenue of judicial review - possibly of a death sentence. He will, however, have access to review by the Military Commission Review Panel, an 'independent and impartial' review board made up of four civilian members - one of whom happens to be Donald Rumsfeld's next-door neighbour.

It seems the system's perception of danger is more a question of power, race and money than an actual capacity to harm other human beings en masse.

### Lucy Adams

*Lucy is a recently returned Reprieve Intern, having spent the last three months helping out at the Louisiana Crisis Assistance Center in New Orleans.*



Lucy Adams

For information about *ReprieveAustralia's* internship program or to apply to participate in the program please check out our website at [www.reprieve.org.au](http://www.reprieve.org.au) or email us at [contact@reprieve.org.au](mailto:contact@reprieve.org.au)



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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.

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## China Reconsiders Broad Use of Death Penalty

Recent reports suggest the Chinese government is planning to implement judicial reforms that could sharply decrease its use of the death penalty.

The Washington Post recently reported that China will restrict the use of capital punishment by requiring its highest court, the Supreme People's Court, to review all death penalty cases before executions are carried out.

Currently, the high court reviews only a minority of such cases, allowing the provincial courts that hand down death sentences to review their own judgments.

"Criticism of the legal system in society is rising. The Chinese Communist Party, as a ruling party that attaches importance to stability, knows that if it doesn't reform the judicial system, it would be bad for stability," said Liu Renwen, a scholar of law at the Chinese Academy of Social Sciences.

China, which does not release statistics on death sentences or executions, has long been criticized for its high number of executions. Based on state-run media

reports, Amnesty International estimated that China conducted 1,060 executions in 2002 and 2,468 executions in 2001.

A recent book about the Chinese leadership cited internal party documents when it reported that about 15,000 executions took place every year between 1998 and 2001.

Occasional cases of exonerations of people on death row have shaken the general public's confidence in China's death penalty system.