

• Of interest

Australian granted reprieve in Vietnam

An Australian woman of Vietnamese descent, sentenced to death last year in Vietnam for trying to smuggle heroin to Sydney, was granted clemency and sentenced to life in prison, in July. Le My Linh, 44, was convicted and sentenced to die by firing squad in a case that had apparently raised some diplomatic tensions with Canberra.

After a Ho Chi Minh City court rejected her appeal, Le My Linh appealed to Vietnam's president. A statement from the Vietnamese Foreign Ministry said President Tran Duc Luong's clemency decision was based on the "humanitarian tradition of Vietnam and the good relations between Vietnam and Australia".

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President's Column

Bali and beyond – an opportunity lost

Australia's political leadership has let us down. Although this Federal government claims anti-death penalty credentials, a heavy question mark now overhangs that assertion.

I wrote in a recent issue of this newsletter about the lack of vocal opposition to the prospect of the various alleged Bali bombers receiving the death penalty. That relative silence was the quiet before what might be called the storm of overt (and implicit) support for the death penalties for both Amrozi and more recently, Imam Samudra. Both the Australian political elite (excluding the Democrats and the Greens) and the media were complicit in slavishly airing the support for the death penalty after those verdicts. A poll in *The Australian* newspaper was the icing on the cake. Apparently, a majority of Australians support the death penalty for acts of terrorism...

Our Prime Minister attempted to have it both ways when commenting on the handing down of the death sentence for Amrozi. He was given every opportunity to state that Australia supported the conviction but not the sentence. He did not do so. He in fact made it clear that Australia would make no representation to the Indonesian Government on the issue of penalty. Howard claims to be opposed to the death sentence. Clearly, this is a *non-core* opposition to the death penalty.

Recently, upon the sentencing of Imam Samudra, our Foreign Minister commented that the sentence was appropriate. Really Mr Downer! We thought you and the Australian government were opposed to the death penalty. Perhaps the death penalty is acceptable to this Government so long as it is applied to non-Australians.

We condemn the Australian Federal government for failing to state its unconditional opposition to the application

of the death penalty wherever and to whomever.

And we commend the stance of Adelaide stipendiary magistrate, Brian Deegan, who lost his son Josh in Bali. He was both forceful and eloquent in his unconditional opposition to the handing down of the death penalty to Amrozi.

More interns to head to US

At this stage, we have four energetic and committed interns heading off to the US in November for a tour of duty, with the prospect of more in the wings. Those four Reprive members are: Carly Marcs, Lara Guarino, Sophie Williams, and Lucy Adams.

We congratulate them on their commitment and sense of adventure. They join a long line of courageous and committed Reprive members who have given selflessly to the cause in the southern USA over the past 2 and a half years.

AGM and Justice Michael Kirby's speech – 6 October 2003

The second annual general meeting of *RepriveAustralia* is to occur at 4pm on Monday 6 October at the Essoign Club on Level 1, 205 William Street, Melbourne. All members should have received notification of the meeting in recent times.

We are very excited to confirm that our founding patron, High Court Justice Michael Kirby, will speak after the meeting at 5.00pm on the High Court and the death penalty. Justice Kirby's presentation coincides with the celebrations for the centenary of the High Court. It is an address not to be missed.

Clive Stafford Smith OBE to visit Australia

At the invitation of Reprive, Clive Stafford

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Parchman, Mississippi

A few weeks into my internship here at the Louisiana Crisis Assistance Center (LCAC) in New Orleans, attorney Richard Bourke, fellow intern Carmella Quimbo and I made a visit to Parchman prison (Mississippi's state penitentiary). For want of a better description, it was a very surreal experience. In preparation for my visit I had read the brief for an upcoming civil action, brought by several prisoners, against the awful living conditions in Parchman. The brief truly is an indictment of the 'living' conditions in Parchman. After reading stories of inmates being locked for 23 ½ hours per day in plexiglass cells in the middle of summer, to inmates being forced to stay in cells where mentally disturbed inmates have strewn faeces on the walls, to stories of poor ventilation, hygiene and food sanitation, my preconceptions of Parchman were something akin to hell on earth. I had conjured up images of an imposing, impenetrable and fierce construction, swathed in razor wire.

Upon arriving however, I was surprised by how seemingly 'normal' the prison was, and so very different from what I had imagined. Firstly, Parchman is far from 'fortress-like', it more readily resembles a large plantation. The prison and its grounds take up about 16,000 hectares, and the prison even has its own post-code. It is also very easy to get lost.

Once you have been let through the front security gate, you proceed down what is the main avenue of Parchman. However, the razor wire, prison blocks, guards and prisoners are strangely absent. The avenue is lined with sweet, symmetrical, white weatherboard houses, garnished with a seemingly endless supply of Christmas decorations and flashing reindeer. Many of the guards, prison officials and their families actually live on the prison grounds. Abruptly

after this wistful stream of suburban bliss, one becomes irrevocably aware of the presence of the old brick death house, which still houses the gas chamber where Edward Earl Johnson was executed. It is at this stage of the journey that the harsh realities of Parchman come crashing down around you.

The flat, sparse landscape is punctuated with flat isolated compounds surrounded by razor wire. The level of security is imposing and even a little intimidating, yet also strangely antiquated: almost medieval in some instances. For example, in one of the buildings where Richard and I visited an inmate, we encountered a guard stationed atop an enormous tower, who proceeded to demand who we were and what our purpose was. After shouting back our purpose, she lowered a bucket down from her tower, on a rope, and loudly instructed us to place our keys in the bucket. After complying with her request, a series of mechanised gates slowly opened. As Richard and I made our way across to the front gate we tried not to appear alarmed by the wooden signs posted on the grass, alongside the concrete path stating 'gun-line' do not cross. I got the distinct impression that they don't get many 'free-world' visitors.

Speckled around the farm, inmates are performing manual labour, in striped pants I thought only survived in films. One could assert that they are merely slaves by another name (it does resemble a plantation). The prisoners at Parchman, unlike their counterparts in the Louisiana State Penitentiary, (where they get paid a few cents an hour) receive no recompense for their labour. They also get very little say over the work that they perform. One of our clients, formerly on death row, (and currently serving a lesser charge), now delivers food trays to other

death row inmates.

Parchman's only redeeming feature is the strength, spirit and tenacity of our clients, and their capacity to survive and function in such adversity. But they are in a most unenviable position, as Parchman is a truly sick and twisted place.



Natasha Stojanovich
Reprive Intern

Natasha was an intern at the Louisiana Crisis Assistance Center in New Orleans for three months earlier this year, working with Clive Stafford Smith and his team.

In Brief

US decision— Only juries can impose a death sentence

Citing a 2002 Supreme Court ruling that only juries can impose the death penalty, a federal appeals court this month overturned 111 death sentences that had been imposed by judges in Arizona, Idaho and Montana. In an 8-3 vote, the 9th Circuit Court of Appeals in San Francisco, California, said inmates sent to death row by judges should have their sentences commuted to life in prison. That ruling covers only cases in states within the appeals court's jurisdiction: 89 in Arizona, 17 in Idaho and five in Montana.

Nigerian Court overturns stoning death sentence

In late September, an Islamic appeals court in Nigeria overturned the conviction of the mother of a small child who had been sentenced to death for adultery. Amina Lawal was found guilty of adultery under strict Islamic Sharia laws after she had a baby while unmarried.

Citing procedural errors, five judges overturned the conviction on the basis that Ms Lawal, 32, had not been given sufficient opportunity to defend herself.

The sentence, widely condemned around the world, would have been the first judicially sanctioned stoning death of a woman since 12 states in northern Nigeria adopted strict Sharia law in 1999.

President's Column (contd)

(Continued from page 1)

Smith will visit Australia in October. Clive will speak at a Reprieve fundraising event on 27 October being held in conjunction with PILCH. He will also be here for the opening night of *Lorilei – A Meditation on Loss* on 28 October 2003 at La Mama theatre in Carlton. If you wish to hear Clive speak or catch up with him, the following is his emerging itinerary (more details will follow in the coming weeks):

- Monday 27 October— Speaking at

fundraiser for Reprieve

- Tuesday 28 October— Opening night of *Lorilei*
- Wednesday 29 October — Q and A session after *Lorilei*, at La Mama
- Thursday 30 October — Returned intern dinner in Lygon St, Carlton
- Friday 31 October — Q and A session after *Lorilei*, at La Mama

We have a very busy period coming up. Make sure you are an active member! Most members have renewed their membership for 2003/2004, but if you haven't yet done so, please download a membership renewal form from our website and send it back to

us at GPO Box 4296, Melbourne 3001. An organization like Reprieve can only continue to exist with the support of our members.

We hope to see you on either 6 October 2003 or 27 October 2003, and at some stage during the short season of *Lorilei – A Meditation on Loss*, at La Mama.

Nicholas Harrington
President

The Conversation

He abruptly exited my presence and went into the woods to relieve himself. I wasn't sure whether that was his third or fourth time. In the company of my silence, I became immersed in the curious fortress he had created for himself.

On a day in December, fifteen years ago, he contacted the Sheriff's office. The information he conveyed ultimately sent his brother to death row.

In his emails, he described a happy and normal childhood. A forty five year old alcoholic, living on his parent's property in a storage cabin without running water did not remind me of the Brady Bunch!

Draped over the doorway was the rebel flag. In the South that means support for the Confederacy and its racist ideals. His cabin was an insulated, self-contained capsule. The bedroom was to the left and the sitting room was to the right. There was no partitioning. I noticed some photos scattered along the wall. Some showed a pretty blonde haired little girl; some of an obese, rusty haired twenty something woman. Time had not been kind to his only daughter.

He returned and fell into his chair that fit him like a glove. I could smell the guilt and torment on his breath. I could hear the guilt and torment in his monotone. I could see the guilt and torment in his tears. He was a tortured soul. Contacting the police had defined his later life. But was this inner turmoil the result of implicating his brother or an innocent man?

To him, there was no distinction. The only difference between he and his brother was a postal address. Like a prisoner, he lived in isolation in his capsule. He drank from the moment he awoke until the alcohol knocked him out. His parents fed him but hated him; as did his other siblings.

A second-hand computer rested stoically by his side. This was his only contact beyond the hatred that permeated his existence. In one corner of the capsule there was a number of plants. He nurtured them like a father and spoke about them as though they were his children. These plants representing to him, life and growth as he stagnated in his own misery.

His prolonged seclusion heralded unusual behaviour. Absent of the social etiquette that society ordinarily takes for granted, our conversation was punctuated with peculiarity. He would leave suddenly and without explanation, snigger crudely for no apparent reason and drift into the tomb of his thoughts. The silence that followed was broken by the sound of a wasp surveilling the green oasis in the corner of the capsule. He did not make eye contact but for one occasion.

He held a certain presence when speaking about that day fifteen years ago. He was staying at his grandmother's house with his brother. He was already in bed when his brother arrived. He was asked for some petrol so his brother could burn his clothes. In the morning he watched his brother strip the inside of his car. At work that same day, he heard about an abduction and murder. It was a small town. He put two and two together and contacted the sheriff a few days later.

What about the rumour that a church was offering a \$3000 reward for information? And what about the possibility that a Southern gang was hired to do a hit but made a mistake? Was the brother motivated by greed? Was he a member of this gang, prepared to sacrifice his brother for his own misdoing?

He took me through a series of photos, each over fifteen years old. I

saw a handsome groom, a proud father and seamen in uniform. These men bore an uncanny resemblance to the broken, toothless, derelict showing the photos to me.

When he was done talking, I drew the rebel flag to one side, stepped outside and re-entered the world.

What had I discovered that day in the capsule, in the woods, in the heart of the Deep South?

I know that acting on an intuition informed by education and middle class values does not always reveal truth. I also know that the truth can effortlessly hide behind supposition, assumption, prejudice and judgement.

The truth is that I have absolutely no idea what the truth is. Whether the brother was civically minded or was motivated by insidious greed or self-interest remains a mystery.

I think the closest I came to the truth was when the brother looked me in the eye and asked, " What would you have done if you were in my shoes? "

Perhaps then the solution to this case lies in all of us.



Ash Halphen

Ash Halphen is Vice President of Reprive, and spent last summer working with the Office of Post-Conviction Counsel in Mississippi. He has recently returned to the US for his third tour of duty, to work on a death row appeal case in Texas.

The Commonwealth of Nations and the Death Penalty

The Commonwealth of Nations is a voluntary association of independent sovereign nations that originally grew out of Britain's colonial past. Its 54 nations are spread across the entire world and hold approximately 1.7 billion people, almost one third of the world's population.

A disproportionately high number of the countries in the Commonwealth use the death penalty as a form of punishment. In total, 39 of the 54 countries retain the death penalty, although 12 of these have not executed anyone for at least 10 years (considered "de facto abolitionist"). That leaves 27 countries actively using the death penalty.

Within these 27 countries, there are major differences in the crimes that attract the death penalty. Murder and various crimes against the state, such as treason, are by far the most likely to result in a death sentence. In fact, 22 countries have the death penalty as an option for murder and 14 countries for crimes against the state.

As an illustration, consider India: it recently used its *Prevention of Terrorism Act* to sentence to death three people accused of the December 2001 terrorist attack on the Indian parliament. Nine people were killed and 16 were injured in the attack. On 16 November 2002, three men were convicted of 'waging war against India' and attempting to kill politicians in the parliament building. On 18 December 2002 they were sentenced to death.

Many countries in the Commonwealth have ratified the *International Covenant on Civil and Political Rights (ICCPR)*. Article 6 paragraph 2 of the *ICCPR* states that "sentence of death may be imposed only for the most serious crimes...".

The United Nations Human Rights Committee has suggested that treason, political crimes, and crimes not involving the loss of human life would not meet this standard. It has also objected to "vaguely defined crimes" such as war crimes "motivated by hostility towards the Republic".

So, the large number of Commonwealth nations using the death penalty for

crimes such as treason may be in breach of their obligations under the *ICCPR*. And countries that have not ratified the *ICCPR* may not be conforming to international standards and norms regarding the operation of the death penalty as set out in the *ICCPR*.

More could be done to generate awareness of the possible breaches of the *ICCPR* and to pressure countries into restricting the scope of the death penalty. Countries need to be encouraged to ratify the *ICCPR* if they have not already done so.

EXAMPLES OF CRIMES THAT CAN ATTRACT THE DEATH PENALTY

Crime	Nation(s) Imposing Death Penalty
Rape	Malawi, Malaysia, Nigeria, Pakistan
Drug Trafficking	Malaysia, Singapore, Pakistan
Assault by use of acid	Bangladesh
Possession of lethal explosives	India
Firearm offences	Singapore
Kidnapping	Pakistan
Grave breach of the Geneva Conventions	Zimbabwe
Aggravated robbery	Zambia
Burglary	Malawi
Robbery	Malawi

The table lists several crimes that are unlikely to meet the standard set by the *ICCPR*. For example, in Zambia, the crime of aggravated robbery results in a mandatory death sentence. Mandatory death sentences are also handed down by Singapore for murder, treason, drug trafficking and certain firearm offences. Singapore executed 340 people between 1991 and 2000. This gives Singapore one of the highest execution rates in the world, relative to its population.

Differences between countries in the method of execution are not as extreme.

Almost every retentionist country in the Commonwealth has hanging as a method of execution (25 out of 27 countries). Five countries still use shooting or death by firing squad: Bangladesh, Ghana, Malawi, Nigeria and Sierra Leone. Even worse, both Nigeria and Pakistan continue to use stoning as a method of execution. No country in the Commonwealth uses death by lethal injection.

Many Commonwealth countries have constitutions prohibiting cruel and unusual punishment but continue to use the death penalty and in particular, the outdated and inhumane methods of execution outlined above. However, the rules outlined in a country's constitution may present an opportunity for reform of its death penalty laws.

For example, on 22 February 2002, the Judicial Committee of the Privy Council (JCPC) upheld a ruling that the mandatory death penalty was in violation of the constitutions of eight island states – St Vincent and the Grenadines, St Lucia, Grenada, St Kitts Nevis, Dominica, Barbados, Belize and Antigua and Barbuda (The JCPC, located in England, is currently the region's highest court of appeal).

In its decision, the JCPC ruled that the operation of the mandatory death penalty was in violation of clauses in their constitutions not to be subjected to "inhuman and degrading punishment or other treatment".

The decision does not abolish the death penalty but restricts its operation and it should be seen as a step in the right direction.

Unfortunately, in the wake of rising levels of violent crime, political leaders throughout the Caribbean were quick to criticise the JCPC decision. They have proposed to amend their constitutions to make it easier to execute people. They have cited the "will of the people" as a justification.

Barbados amended its constitution in August 2002, in order to ensure that previous rulings of the JCPC would not apply to future cases. Belize is proposing to do the same.

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

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

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

The Commonwealth of Nations and the Death Penalty (contd)

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Four other Commonwealth nations in the Caribbean have prisoners on death row: Jamaica, the Bahamas, Guyana and Trinidad and Tobago. The courts will decide on the issue of the mandatory nature of the death penalty in these countries in the near future.

In much the same way as in the Caribbean, a rise in crime in Sri Lanka has sparked an extensive public debate over the possible resumption of executions in Sri Lanka. Sri Lanka is one of the few countries in Asia that does not actively use the death penalty. The last execution in Sri Lanka was carried out in June 1976 and throughout the period since, consecutive presidents have automatically commuted all death sentences.

In more positive news, Cyprus abolished the death penalty for all crimes on 19 April 2002. Likewise, Fiji became abolitionist on 11 March 2002 and South Africa in 1997. This reflects a general trend towards world-wide abolition of the death penalty.

Meanwhile, Tanzania took a step towards abolishing the death penalty in April 2002 when President Benjamin Mkapa commuted to life imprisonment the death sentences of 100 people convicted of murder.

Despite moves such as these towards abolition, a large number of Commonwealth nations retain the death penalty. As a result, *RepriveAustralia* has developed its Commonwealth Death Penalty project to advocate for the inclusion of the abolition of the

death penalty in the list of common principles that binds the Commonwealth. The ultimate aim is for abolition of the death penalty to be a precondition for membership of the Commonwealth.

Retentionist (Total 27)

Antigua and Barbuda
Bahamas
Bangladesh
Barbados
Belize
Botswana
Cameroon
Ghana
Guyana
India
Jamaica
Kenya
Lesotho
Malawi
Malaysia
Nigeria
Pakistan
Sierra Leone
Singapore
St. Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
United Republic of Tanzania
Trinidad and Tobago
Uganda
Zambia
Zimbabwe

De facto abolitionist (Total 12)

Brunei Darussalam
Dominica
Gambia
Grenada
Kiribati
Maldives
Nauru
Papua New Guinea
Samoa
Sri Lanka
Swaziland
Tonga

Abolitionist (Total 15)

Australia
Canada
Cyprus
Fiji
Malta
Mauritius
Mozambique
Namibia
New Zealand
Seychelles
Solomon Islands
South Africa
Tuvalu
United Kingdom
Vanuatu



Neal Sarma
Member of Reprive