

Of Interest

In June, Texas Governor Rick Perry commuted the death sentences of 28 juvenile offenders to life in prison.

This brings the state into line with the recent US Supreme Court ruling in *Roper v Simmons* that deemed unconstitutional the practice of executing those who were under 18 at the time of their crime.

However, 419 people still remain on death row in Texas, a state that has executed 345 people since 1976.

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President's Column

Whipped and Stoned: Death Iranian Style

"...Kayhan, October 4, 1986,[it was] reported that a 25-year-old woman named Nosrat was stoned to death in the city of Qom. She died after an hour of continuous stoning. On April 17, 1986 a woman was stoned to death in the city of Qom. Prior to being stoned, she was whipped in public. In July 1980, four women were simultaneously stoned to death in the city of Kerman..."
[from www.vibrani.com/stoning]

Leading Iranian human rights lawyer and Nobel Laureate Shirin Ebadi is, at a minimum, an inspiration to any person who cares about human rights. She is also an important link in the network of 'eyes' watching governments around the world that ordain death to be the ultimate penalty.

With great courage, Shirin Ebadi challenges the Islamic theocrats at a state and federal level who maintain support for the death penalty in Iran. Ebadi defends, and speaks out on behalf of, women convicted of adultery and sentenced to death by stoning. Sound bad, sub-human, and cruel? A short description of the punishment confirms the extreme nature of this state sponsored, and often public, act which is often ordered by the 'Special Clerical Court':

"You bury the person up to their waist and then you throw small stones at them until they die. The stones should not be very big so that the person

suffers before dying."

Mark Willacy, of the ABC's 'AM' program, recently reported that two Iranian women are facing imminent execution for adultery. One will be flogged and then hanged; the other will be buried up to her waist and then stoned to death.

We are far away from these events in Australia. However, our respect for universal human rights and our avowed opposition to the death penalty in all its forms compels us to notice these things. Should we self-censor for reasons of cultural relativity? In my opinion, no, for that would be to lose sight of the universality of certain human rights. It would also demean the voice and spirit of courageous women like Ebadi who know and live in the local cultures and through deed and word critique the failings and abuses of those cultures.

We salute the courage and continuing efforts of Shirin Ebadi.

Internship Program Flourishing

We have received around 10 applications for the November 2005 intern intake. This is a vindication of our continuing commitment to the internship program. A number have already been accepted into the program and they shall learn where they will be placed in the coming months.

We are still accepting applications. If you are interested in applying to travel

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President's Column (cont'd)

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to the United States and assist in one of our affiliated offices in the deep south, please send us an application as soon as possible.

Reprive: an International Perspective

I recently participated in a telephone hook up with New Orleans. At the other end of the phone was Richard Bourke representing RepriveUS and Annabel Harris and Emily Bolton representing RepriveUK. In an hour and a half of wide-ranging discussions, we exchanged views and ideas about the various national organisations and the need for a cohesive strategic direction. For the most part, this was a "talkfest" designed to open up the lines of communications between the various national bodies. However, it was also symbolically important. To my mind, it was an initial step along a path to cementing cooperation between the three existing bodies. The recent tour of the theatrical production "Lorilei" to London demonstrated to me the energy and vision that can be generated when two organisations (the "Reprives" of Australia and the

UK) work closely together.

Annual General Meeting in September/October

We have commenced planning for our annual general meeting later this year. We intend to stage an event with an inspiring keynote speaker. Stay tuned and we will provide you with more details as they come to hand.

Resignation of Executive Officer

Natasha Stojanovich has resigned after 18 months in the position of Executive Officer. I would like to publicly thank Natasha for all her hard work and commitment (including her patience) over the most recent period. Natasha assisted in the establishment of our office and also put in place effective management systems. She will be sorely missed but will remain an active member of the Executive. We wish her well as she focuses on her future legal career.

Please Renew Your Membership Now

Now is the time to make that very small annual financial contribution (all of \$40) to continue your

membership of this organisation. I encourage you to renew your membership as soon as you can. If you're reading this and you are not yet a member – now's the time to join! Any additional donations you feel able to include with your annual membership fee would also be warmly appreciated.

Over the past 4 years, RepriveAustralia has sent 34 volunteer interns (4 of whom have done more than one 'tour of duty') to work in capital defence offices in Louisiana, Texas, Mississippi and Georgia. Over 114 months of full-time work in the US have been donated by RepriveAustralia volunteers. This means we have contributed the equivalent of one person working for 9 and a half years to help save lives, and work towards the abolition of the death penalty on the ground, in the US justice system. Your membership fees allow us to meet the basic costs of running a lean volunteer organisation committed to contributing to the international battle for human rights.

**Nicholas Harrington
President**

Intern Report From Texas

At bars in Houston, I try to avoid talking about what I'm doing here and why I think it's worthwhile. This is a social decision. If you mention it, chances are an argument will follow. Even if this can be tactfully avoided, the likely presumption is that you and the European volunteers you're hanging out with, are a bunch of hopelessly naïve exploitees being taken for a ride by opportunistic Texan legal offices.

My timid approach anywhere outside the office though, is no reflection on my passion for the cause. Quality capital defense throughout the US death belt is important in its ability to set human rights standards practiced by the most powerful and far reaching nation in the world. For those numerous individuals whose lives literally depend on it, it is vital. Organisations that unflinchingly, articulately and repeatedly make

strong statements against the death penalty, also play a crucial political and educational role.

Everyone involved with Reprive is passionately against capital punishment. The collective stance is that it is both philosophically and practically wrong. The interns who opt to volunteer in capital defense offices throughout the United States are also motivated by a sense,

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Intern Report From Texas (cont'd)

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justified in my opinion, that defendants facing capital charges in the US confront a system disproportionately weighted against them.

Sentences are harsh, appointed counsel are often sub-standard and there is overwhelming popular support for the death penalty. Although Reprive is focused on the fight against capital punishment, the work that it does is also a practical assertion of the right to competent representation and equal treatment before the law.

A personal challenge for me has been coming to terms with the fact that a death sentence is often a procedural, almost administrative measure. It is not, in all cases motivated by a stoic sense of justice or even a lustful thirst for revenge. Sometimes, it seems to be almost circumstantial.

A murder may have happened under certain conditions which implicitly give the DA (Prosecutor) the discretion to seek death. Where there is no anger on the part of the victim's family and no public outcry, there appears to be no reason to take this step other than the DA's agenda of seeking death. Although all capital cases are horrific, I have found the blind and circular logic of this incidental application especially disturbing. It's sort of like reading Joseph Heller's *Catch-22*!

Much of this office's time is taken trying to establish that although someone may have done something bad or evil, this does not reflect a bad or evil personality. In other words, culpability is mitigated by

exceptional characteristics or circumstances. Examples of mitigating evidence include positive personality traits or evidence of a particularly difficult upbringing. If this circumstance can be established, the bad may be excusable and the sentence of death becomes a sentence of life (that's life in prison). If not, the bad is fundamental and the client is killed. Put in these terms, capital punishment looks like what it is, archaic and inhumane.

Often, this distinction seems misplaced. Defendants who have committed a crime are crudely divided between culpable criminals and criminals who are also victims. Sometimes, the facts of a case describe a person who has done something wrong, events have turned for the worse, and the situation has spiraled from bad to terrible. In a country where guns are readily accessible, this interpretation isn't as generous as it may sound.

I expected that during my exposure to capital cases, I would be upset by the death penalty and angered by specific injustices attached to it. This has in fact been a large part of my experience. What I did not expect to think about so much is the attitude to crime and criminal prosecution in this part of the world.

One of the most bizarre experiences of the internship so far (apart from being baptized in an Evangelical black church), was watching *Law and Order* in a cheap motel room the night before going out to interview jurors. The weird thing was not that we seemed to be in the middle of its content. As I said to my fellow interviewers: 'Guys, we don't need this. Our life is much more interesting!' What

shocked me was that the show is so overtly pro-prosecutor; so unashamedly demonizing of criminals as mono-dimensional 'baddies'.

This program, and others like it, are a huge part of the abolitionist PR challenge. It is not to say that *Law and Order* isn't popular in Australia or that sympathies for a 'tougher stance' on crime (or terrorism) are not present. Civil libertarians are all too conscious of the capacity for politicians to sacrifice human rights on these grounds.

One major difference I have noticed though, is that there is no nobility attached to the rights or cause of criminal defendants here. I don't think that Australians are more sympathetic towards criminals than Americans. There is though (especially within legal circles), a certain romance and respectability attached to the representation of the most downtrodden members of society.

In contrast, the most important human rights work done in the United State (capital defense) attracts no prestige. Trying to explain this distinction, I bought one of GRACE's Attorneys a second hand copy of 'Rumpole for the Defense'.



Nadia Harrison

Nadia has just spent three months working at the Gulf Region Advocacy Center in Houston, Texas.

Who Do We Want To Be?

I am a capital defence lawyer in the deep south of the United States. What that means is I help defence people who have been accused or found guilty of murder and whom the state is trying to execute. The crimes I am dealing with are some of the heinous, disturbing and devastating there are. My clients are often the most hated figures in their communities, so hated that being identified with them sometimes makes me a target for hatred too. A hate that strong tends to distort things, to make people do things they normally wouldn't dream of and to behave in ways that don't really represent who they are or want to be.

In one case I worked on virtually a whole family applauded and cheered as they watched a man killed. They were allowed to witness his execution because the man had killed their loved one. I don't believe they are bad people. I also don't believe they are the kind of people who would applaud and cheer while someone is killed, or who would think people should applaud and cheer while someone is killed. I am sure they would not condone the pain caused to a mother whose son was killed in front of her while others applauded and cheered.

But they did applaud and cheer. That is what hate can do to you. Fear does the same thing.

People hated and feared Ryan. When he was 17 he was accused of killing a beloved local shopkeeper who had been gunned down during a botched robbery. People hated and fear Ryan enough for him to be found guilty beyond reasonable doubt of murder and sentenced to death, even though he was actually

innocent. He had two lawyers, an investigator, months of pre-trial hearings, a full trial and an alibi. But two eyewitnesses to the killing steeled themselves against any doubt they may have had and swore that it was definitely Ryan who did it.

The eyewitnesses were wrong. They didn't lie. They were just wrong. After four years on death row, DNA on a ski mask used in the robbery helped prove that Ryan didn't do it, and now he is free, trying to put back the pieces of a life devastated by the mistake that was made.

Dan is out now as well. Like Ryan he was sentenced to death after he was wrongly identified as the killer. Unlike Ryan it took him twice as long – eight years – to secure his release. Disappointingly, the Federal Bureau of Investigation knew he was probably innocent all along. One of their long-term informants, a reliable source whose testimony had proved truthful many times before, told them Dan didn't do it and named the man who did. The name he gave was the same man Dan and his lawyers were saying had done it. So the FBI knew Dan was probably innocent but didn't tell anyone. Dan was hated and feared enough that they let him get sentenced to death and spend all that time in prison for a crime he didn't commit. Even when they were forced to hand over their paperwork the FBI tried not to tell what they had known all along. Instead they supplied a document with blackouts for "classified" information:

The source further advised that Daniel Bright, aka 'Poonie', is in jail for

murder committed by ----

Finally a judge told them to stop messing about and to hand over the full document. Dan's conviction was overturned and the prosecution dropped all charges. The sobering thing about Ryan and Dan's cases is they were sentenced to death even though they were part of a criminal justice system where there is adversarial testing of evidence, lawyers for both sides, public trials, impartial jurors, unanimous verdicts and a requirement of proof beyond reasonable doubt. People hated and/or feared them enough to want them to die and to make it so that would happen.

In 2002 the US began building Camp X-Ray, stage one of the sprawling interrogation and detention development at downtown Guantanamo Bay. Like a number of other capital defence lawyers, I got involved immediately. I am a very small fish so I got involved in my own very small way but, like the others, I got involved because I knew only too well what could happen to people who were as hated and feared as the prisoners at Guantanamo.

It is now notorious that on Guantanamo Bay US forces and various levels of George W. Bush's administration have participated in the abuse of detainees with near impunity. They have set up terror tribunals stripped of many of the central planks of our long-established understanding of due process. It is also now notorious that the reason they set the whole thing up on Guantanamo Bay was to avoid the restraint imposed by the US Constitution and, in particular, the Bill of Rights. They have argued throughout that they need not provide their prisoners

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Who Do We Want To Be? (cont'd)

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with the sort of checks and balances that Ryan and Dan received because there is no Bill of Rights on Guantanamo Bay. In 2004 the Australian government announced its position – that the Guantanamo trials accorded with accepted principles of criminal justice. Not even the US government thought that; that's why they were occurring on Guantanamo Bay. Six months later the Australian government went on to announce that it had always known the tribunals would accept and rely on evidence obtained through torture. Apparently torture was one of those "accepted principles of criminal justice" they were talking about.

When you hear things like this, you cannot help but reflect on the fact that just like Guantanamo Bay, Australia doesn't have a Bill of Rights. American has one, Canada has one, New Zealand has one and Britain now has one through the European Charter. But Australia and Guantanamo Bay don't have one.

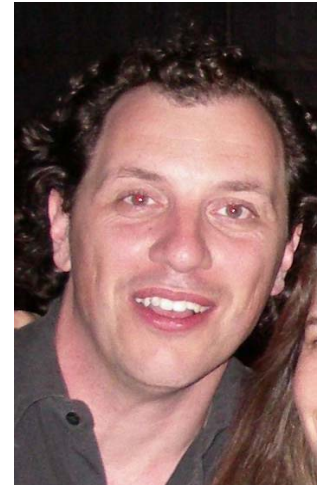
People often say we don't need a Bill of Rights. At one time I said the same thing. I believed our system – built on honour, decency,

constitutional convention and the separation of powers – protected the principles we hold dear. There was no need to write them in stone. To do so would only create a tool for mischief – the lawyer's picnic theory.

Of course, we don't really have a separation of powers. The Australian parliament, when completely dominated by the ruling party, is almost completely useless as a mechanism for holding the executive accountable, and so compares poorly with the British parliament or US congress. Our separation of powers consists of a supine legislative branch that spends most of the year in semi-retirement and a judicial branch that is largely toothless in the face of a determined executive.

The truth is that with a parliamentary majority and control of the Senate, which is exactly the situation from July 1 onwards, the Australian government can do pretty much anything it wants. The Australian government could legislate to create its own Guantanamo Bay except that, unlike the US, it wouldn't have to go offshore. (This might, in light of Australia's present treatment of refugees, seem a blindingly obvious statement.)

Having now worked in the US system, I am hardly America's greatest fan. But I have seen that a Bill of Rights is not the lawyer's picnic I had been led to believe. A Bill of Rights is what happens when a community commits itself to some of the bedrock principles that define us. Without it, it is too easy for our country to end up behaving in ways that don't really represent who we are or want to be.



Richard Bourke

One of the founders of Reprive and formerly a barrister in Victoria, Richard has been working in the US on capital cases since early 2002. This is an extract from the June issue of The Monthly, the new magazine of politics, society and the arts, published by Schwartz publishing.

Memberships now due for 2005/2006

Please don't forget to renew your membership this month for the coming year.

However, if you joined after 1 April 2005, your membership carries over for the 2005/2006 year, and you don't have to pay again.

Simply download a membership renewal form from www.reprive.org.au



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PLEASE VISIT OUR
WEBSITE AT
WWW.REPRIVE.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.

THE BULLY & THE BATTLE FOR THE TIMOR SEA BY TONY CLIFTON

THE MONTHLY

July 2005

MURDOCH'S WAR

Starring one lovestruck teenager, one angry man and one ambitious press baron

BY ROBERT MANNE

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