

Lime 2004  
*Programme*



**Lime**

**DINNER & DANCE**

**7.30PM  
30TH SEPT 2004**

**PARK LANE  
LONDON**

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## Programme:

- 7.30pm: Champagne reception
- 8.30pm: Dinner
- Over coffee: Sister Helen Prejean  
(author of ‘Dead Man Walking’)
- After dinner: Auction (conducted  
by Hugh Edmeades, Chairman,  
Christie’s South Kensington)
- Followed by: Dancing (The Panto  
Band)
- 1.00am: Carriages

# Amicus

Assisting Lawyers for  
Justice on Death Row

Registered Charity  
Number: 1019651

“Thank you  
for supporting  
Lime – and have  
a wonderful  
evening.”



Sister Helen Prejean



Michael Mansfield QC



Anthony Cardew



## What we get from Lime

Welcome to Lime – and thank you so much for being here to support the vital work of Amicus and the Capital Cases Charitable Trust (“CCCT”).

We are enormously grateful for the support Lime has received in advance of this evening. In particular, the Committee would like to thank CardewChancery, CTD Printers Ltd, Darwin Print Solutions, Herbert Smith, James McNaughton Paper, Lovells and Radley Yeldar for their generosity.

Tonight will provide funds for urgently needed legal assistance, including internships and pro-bono appeal work by UK-based lawyers, for US and Caribbean capital cases.

The number of people Amicus and CCCT can help depends directly on the number of people who help us. You are doing that by being here this evening, and we hope you will continue your support by participating in tonight’s auction, raffle and ‘gift tree’.

We hope you have a very enjoyable evening.

### Lime Committee

Claire Jenkins  
Olga Basirov  
Clodaghmuire Callinan  
Olivier Castagné

Gillian Christopher-  
Chambers  
Joanne Cross  
Shirley Drummond-  
Coles

Alice Hardy  
Christoph Kleinsasser  
Carole Murray  
Erica Pomeroy  
Emma-Sue Prince

Francesca Raleigh  
David Robbie  
Fiona Severs  
Yasmin Waljee

## Letter of support *from Sister Helen Prejean*



“Dear Friends,

I’m delighted to be a part of the Lime event on September 30. There’s nothing I like better than participating in events that foster and strengthen the partnership between folks in the UK and the US to save human beings from execution. That’s what Amicus is about, training young law students and sending them to help overwhelmed capital defense attorneys in the US. I’m happy to do whatever I can to generate resources for such a worthy project.

It’s interesting to note that the UK played a significant role in the First Abolitionist Movement to abolish slavery. Passionate anti-slavery leaders such as Harriet Beecher Stowe (*Uncle Tom’s Cabin*) and Frederick Douglas were brought to the UK to speak long before their voices were heard in the US.

Now, in the Second Abolitionist Movement to end the death penalty (rightly called by some “legal lynching”) projects such as Amicus continue the noble UK – US relationship.

My second book, *The Death of Innocents: An Eyewitness Account of Wrongful Executions* (pub. date: Dec. 28, 2004, Random House) tells the story of two men – innocent, I believe – whom I accompanied to execution. The stories dramatically illustrate how defense counsel for capital defendants makes all the difference. That’s why Amicus is so important, and why I’m traveling to London to be with you for the Lime event. I hope everyone reading this will be over-the-top generous in supporting this wonderful effort. I look forward to meeting each of you personally. I can already anticipate the warm glow of energy that will fill the room of us gathered together to promote the noblest of causes – human rights.”

**Sister Helen Prejean**  
Author of *Dead Man Walking*

## Letter of support *from Eluned Morgan MEP*



“The European Union has taken the lead in promoting and protecting human rights across the globe. The EU has done this formally, through trade agreements which are linked to human rights provisions, as well as informally through peer pressure. It is no coincidence that Turkey has abolished the death penalty whilst in the process of applying to join the EU. This sort of political and moral pressure is always welcome, but it is organisations such as Amicus which improve the situation for many defendants on a day to day basis.

Today, Amicus’ work in the US is more necessary than ever. The US speaks eloquently on civil liberties, democracy and the rule of law, but on a practical basis, the country fails ordinary people in judicial trouble. They have withdrawn national funding from organisations which help to

protect the rights of those facing the death penalty, and have failed to address the inherent racism of its legal system.

The work that Amicus does in training legal staff, publicising the state of the American judicial system, and providing international support to those working within the US, is indispensable. Its work contributes to the global effort to tackle human rights abuses and injustice and should be applauded.”

Eluned Morgan MEP



## More about Amicus

### Amicus

Assisting Lawyers for  
Justice on Death Row

Amicus was founded in 1992 – then known as The Andrew Lee Jones Fund – in memory of Andrew Lee Jones, who was executed in Louisiana in 1991. The charity’s objectives are to assist in the provision of legal representation for those awaiting capital trial and punishment in the US, or any other country, and to raise awareness of potential abuses of their rights.



Amicus' main activities are:

**01. Internships** The charity arranges volunteer placements with capital defence attorneys' offices. Amicus places an average of 20 interns a year, and provides funding for about 10 of them.

**02. Training** Amicus runs a comprehensive training programme in US criminal law and procedure, legal research, evidence and professional conduct – to equip interns to be of most use to an office on arrival. The charity is recognised as a CPD (continuing professional development) training provider by the Bar Council (registered) and the Law Society (non-registered).

**03. Amicus curiae briefs** Lawyers for Amicus prepare briefs for presentation to court on a variety of issues (e.g., the execution of juveniles and the mentally retarded, the treatment of juries and rules of evidence) at any stage in a case's proceedings – from pre-trial motions through to the US Supreme Court.

**04. Legal education** Three recipients of some Amicus funding have completed US legal education and are practising full-time as capital defence attorneys.

Amicus is collaborating with a fellow death penalty charity, the Capital Cases Charitable Trust ("CCCT"), in organising Lime. CCCT focuses on capital cases in the Caribbean. Amicus and CCCT lawyers collaborate in many areas – including training, drafting legal arguments and *amicus curiae* briefs – since a number of international human rights' law principles apply across jurisdictions. A donation from the funds raised by Lime will be made to CCCT in order to support the important Caribbean capital defence work that it undertakes.

**An ongoing case...**

One of many cases worked on by Amicus interns is that of Bobby Moore – who has been on death row for nearly 24 years.

He came from an extremely poor and violent home – one of nine children, his father was an abusive alcoholic who was particularly violent to Bobby and his mother. Bobby often tried to protect his mother from this abuse and, as a consequence, suffered the worst of his father's violence – terrible, and almost daily, beatings, starvation and verbal abuse. He had learning disabilities that were never diagnosed, leaving school illiterate.

At 12, the cycle of violence escalated to Bobby being thrown out of the house to fend for himself on the streets of Houston, eating out of garbage cans and sleeping in disused houses. His father threatened his siblings that whoever smuggled food out to Bobby would also be kicked out of the house. His life on the street led him into petty crime and worse.

Bobby was convicted of a killing in 1980 during the course of a robbery. There was ample independent evidence that the shooting was an accident, and indeed the confession he gave the police was that he never intended to kill the victim, that the whole thing was an accident. The jury never heard any of this since his first trial lawyers – who were subsequently declared incompetent and corrupt by the appeal courts – met him for the first time on the first day of the trial. They knew nothing of the facts of the case, or Bobby as a person. They concocted an alibi defence between them and then argued conflicting defences of alibi and accident. Inevitably, he was convicted and sentenced to death.

When Bobby arrived on death row he could barely read or write and was assessed by the prison doctors as needing services for the retarded. He had come to prison only knowing neglect and violence for most of his life, but he slowly came to realise that there was another way to live. Some older prisoners taught him basic literacy and he developed as a person.

Having faced two execution dates – in 1986 and 1993 – which were only stayed shortly before their scheduled time, the Federal District Court finally upheld Bobby’s claims of ineffective assistance of counsel. However, the Court only granted a retrial as to punishment, not conviction.

The new punishment trial was set for January 2001 – but there was virtually no legal aid to investigate a case that was 21 years old. At this point Amicus interns became involved in Bobby’s case. They worked tirelessly, gathering new evidence, talking to new witnesses from his childhood, getting school and medical records and talking to prison guards.

Amicus intern Patrick Moran, wrote in Counsel magazine, of his experiences working on the case and of the evidence he gathered:

*“By now he was onto his fifth set of lawyers, and was about to meet his sixth. I was part of this team. During the following months I learned more about Bobby’s past than he could remember himself.”*

*“I found members of his family with whom he lost touch decades ago. I travelled to rural ghettos in Louisiana to interview them. I spent hours at his elementary school, and knocked on the doors of his childhood friends and neighbours whom I could locate. I met ex-prison guards at their trailers deep in the pine forests of East Texas.”*

*“Bobby had learned to read and write. He was free of the drugs that had clouded his mind since adolescence. With the help of the other inmates and the library, he developed a knowledge of the world outside his tiny cell that he had never had while outside it. Bobby became a model inmate.”*

*“The jury had to consider whether Bobby would endanger other inmates if sentenced to life. Being familiar with Bobby’s disciplinary records, I was asked to present this evidence with the aid of charts. It was powerful evidence – in 20 years there were only 15 minor infractions. None were for violence.”*

Despite overwhelming evidence of his lack of dangerousness (a pre-requisite for a death sentence in Texas) and rehabilitation, sadly, the 2001 jury returned another death sentence based on the flawed trial in 1980 conducted by incompetent trial counsel.

However, there are still a number of compelling grounds of appeal that are being worked on today that give hope that the death sentence might be overturned.

These include: mental retardation (which would prevent Bobby being executed if proven); legal and factual insufficiency of evidence that Bobby is a continuing threat to society (based on a history of 24 years of non-violence and good conduct in prison); and, that he did not cause the death deliberately. In relation to all these grounds for appeal, the evidence collected by Amicus interns will be crucial. Without it, there could be no appeal.

## Andrew Lee Jones



Andrew was born in rural Louisiana, the fifth son of a black share-cropping family. His life changed on the death of his father, when the family was evicted from their home and Andrew, devastated by the death of a much-loved father, took off to Baton Rouge. He fell into a life of petty crime.

In 1984 Andrew was charged with the murder of the daughter of his estranged girlfriend. The evidence offered at his trial – which lasted less than a day – was that he knew the victim. No scientific evidence was produced by the prosecution. There was no evidence of a break-in at the girl's house despite the prosecution's allegations of the use of force. Andrew himself had no recollection of that fateful night. Prior to the trial, a defence witness was beaten by the police and withdrew his statement.

Andrew was found guilty and sentenced to death by an all-white jury in a courtroom where the only black faces were those of the family members, despite 30% of the local population being black. Black jury members are traditionally excluded from serving in East Baton Rouge parish.

On 19 July 1991, the Board of Pardons met to hear the final pleas for clemency from witnesses and appeals from the defence lawyers. Discussion of guilt or innocence is not part of this procedure. Andrew's mother, brothers and sister begged for his life, and a psychiatrist and a psychologist gave information relating to the family situation, and Andrew's state of mind.

Finally, the defence lawyer at the trial gave evidence. He offered his apologies for not giving Andrew a fair defence – as a court-appointed lawyer he had received the papers only a short time prior to the trial. He was not qualified to conduct capital trials, being less than five years out of law school, and this was his first capital trial. He saw his client only occasionally prior to the trial, and he had only recently been made aware that his client was medicated with Thorazine, a psychotropic drug, before and during the trial. The amount of medication given during his trial exceeded the amount needed for tranquillising purposes.

However, Andrew was refused clemency and he was duly executed by the State of Louisiana. In his memory, and in recognition of the need for people like Andrew to receive proper legal representation when facing the ultimate penalty, Amicus was formed in 1992.

# The Capital Cases Trust



**CAPITALCASESTRUST**

Charity Number 1083432

The Capital Cases Charitable Trust was founded in November 1998. The object of the Trust is to undertake legal, educational and remedial work on behalf of such prisoners. Its formation marked recognition of the high levels of work carried out by the legal community in England on behalf of prisoners on death row in a number of Commonwealth Caribbean countries, particularly Jamaica, Trinidad and Tobago and the Bahamas. This work is carried out through the London Panel of Solicitors and Barristers.

At present there are 130 prisoners on death row in the Caribbean. The Panel conducts, on an entirely pro bono basis (free of charge), the appeals of those prisoners who have the right to appeal to the Judicial Committee of the Privy Council because of their desperately poor financial circumstances. The Privy Council, based in Downing Street, continues to serve as the final court of appeal under the constitutions of the Commonwealth countries in question.

The law firms also conduct applications on behalf of prisoners to the United Nations Human Rights Committee and the Inter-American Commission on Human Rights, which are part of an international system of protection against human rights violations and can provide redress where domestic remedies are inadequate.

## The work of the Trust

In contrast to the international trend of abolishing the death penalty, the English speaking Caribbean continues to impose death sentences. In the past seven years Guyana, Trinidad and the Bahamas have all carried out executions by hanging, and Jamaica and Belize retain the death penalty. At independence those States inherited the death penalty as a mandatory sentence for murder as part of the UK's colonial legacy.

The London Panel challenged the mandatory death sentence in international and domestic proceedings. In a recent decision of the Privy Council, the mandatory death sentence, regrettably, was confirmed in Trinidad and Barbados, but declared unconstitutional in Jamaica.

In order to represent prisoners on death row effectively the Capital Cases Charitable Trust employs a clerk in Jamaica, and supports the Jamaican Council for Human Rights, as well as paying case disbursements, for example, obtaining expert psychiatric witness reports. None of the funds raised go towards legal fees.

### Pamela Ramjattan – a compelling case

Many cases taken on by the London Panel involve grave miscarriages of justice with the accused being convicted on little or no evidence. This work could not be carried out without the help of the Capital Cases Charitable Trust.

The Trinidadian case of Pamela Ramjattan represents one of the most poignant death penalty cases. Pamela was sent to live with Jordan in 1981, under duress, following threats of violence towards her family. She was 17 at the time and, over the following ten years, Pamela and her six children were all subjected by Jordan to repeated instances of severe violent abuse and death threats. On numerous occasions she tried to escape with all, or some, of her children but Jordan would always locate her and force her home.

Finally in 1991, five months pregnant, Pamela was attacked and subjected to a particularly brutal beating by Jordan. He was keeping her prisoner in their isolated house but she smuggled a message to her former childhood friend asking to be rescued. Ultimately, the prosecution alleged, the friend arrived at night and together with another beat Jordan to death.

Pamela (who inflicted none of the fatal blows and was not even in the room during the killing) was tried and convicted for being part of the joint enterprise to murder, along with the two men, despite there being no evidence of any plan.

A death sentence is mandatory for murder convictions in Trinidad and Tobago. The history of domestic violence which Pamela had suffered was not considered at all by the trial or the appeal court. Pamela was not given access to a lawyer for over a year following her arrest and her baby died shortly after birth due to the absence of any medical facilities in prison.

Pamela was represented by members of the London Panel. Her appeal was ultimately successful. Pamela was released from prison in February 2003 and in an emotional home-coming was reunited with her six children from whom she had been separated for 12 years.

The Trust is grateful to the Sigrid Rausing Trust, the Law Society of England and Wales and the numerous Panel solicitors and barristers that offer support.

If you would like to know more about the Capital Cases Charitable Trust or wish to give a donation please contact: Yasmin Waljee, Trust Secretary ([yasmin.waljee@lovells.com](mailto:yasmin.waljee@lovells.com)).

## The Panto Band

It's "The Panto Band". Oh no it isn't! Oh yes it is! Ok, so you're not at a Panto but that's where it all started. Fulham, 1999. We got together to play for London's most successful annual charity Pantomime. And the name's stuck.

We are a five piece covers band devoted to providing the best disco, rock n roll and 80s classics this side of New York City. We're Studio 54 and Radio City Hall in one neat package and we only play for glamorous parties. The glammer the better!

We have played for charity parties across London town including sell-out performances at the Camden Round House and the Great Hall of the Inner Temple. We also do the odd wedding and bar mitzvah... if they feature in "OK!" or "Hello!" And, of course, we still play at the annual Panto (check out [www.backendproductions.com](http://www.backendproductions.com) for more details).

We are: Jake McQuitty (vocals); Tal Hewitt (vocals and percussion); Stephen Hewitt (guitar); Simon Gray (keyboards); Simon Sheward (bass); and Kenny Stone (drums).

If you'd like us to play at your party call Jake on 07961 103 061 or Stephen on 07957 406 077 or come and talk to us tonight!



Left Just Jake with the Panto Band.

## Many Rivers *Gospel Choir*



Above Steve keeps on riffing for the Panto Band.

Below right Many Rivers Gospel Choir members.

Many Rivers is a unique choir and brings together people from a huge diversity of backgrounds, cultures and faiths. The choir's singers are united by their belief in the human spirit, their ongoing personal discoveries and awe of both life's mysteries and its truths and by the profound inspiration of the music they share.

Gospel music is one of the most powerful musical forms in the world and even those who may not understand its words are still moved by its rhythms, harmonies and emotions.

Many Rivers brings its own spirit to gospel music, carrying forward messages of love, hope and faith. Inspired by the Gospel, Many Rivers' repertoire includes other uplifting songs to get the feet tapping, the hands clapping and hearts loving!

For more information please contact Emma-Sue Prince on +44 208 925 9081 or +44 7956 411 810



## To kill or not to kill *by Scott Turow*



### *Coming to terms with capital punishment.*

When Joseph Hartzler, a former colleague of mine in the United States attorney's office in Chicago, was appointed the lead prosecutor in the trial of Timothy McVeigh, the Oklahoma City bomber, he remarked that McVeigh was headed for Hell, no matter what. His job, Hartzler said, was simply to speed up the delivery. That was also the attitude evinced by the prosecutors vying to be first to try the two Beltway sniper suspects. Given the fear and fury the multiple shootings inspired, it wasn't surprising that polls showed that Americans favored imposing what Attorney General Ashcroft referred to as the "ultimate sanction." Yet despite the retributive wrath that the public seems quick to visit on particular crimes, or criminals, there has also been, in recent years, growing skepticism about the death-penalty system in general. A significant number of Americans question both the system's over-all fairness and, given the many cases in which DNA evidence has proved that the wrong person was convicted of a crime, its ability to distinguish the innocent from the guilty.

Ambivalence about the death penalty is an American tradition. When the Republic was founded, all the states, following English law, imposed capital punishment. But the humanistic impulses that favored democracy led to questions about whether the state should have the right to kill the citizens upon whose consent government was erected. Jefferson was among the earliest advocates of restricting executions.

In 1846, Michigan became the first American state to outlaw capital punishment, except in the case of treason, and public opinion has continued to vacillate on the issue. Following the Second World War and the rise and fall of a number of totalitarian governments, Western European nations began abandoning capital punishment, but their example is of limited relevance to us, since our murder rate is roughly four times the rate in Europe. One need only glance at a TV screen to realize that murder remains an American preoccupation, and the concomitant questions of how to deal with it challenge contending strains in our moral thought, pitting Old Testament against New, retribution against forgiveness.

I was forced to confront my own feelings about the death penalty as one of fourteen members of a commission appointed by Governor George Ryan of Illinois to recommend reforms of the state's capital-punishment system. In the past twenty-five years, thirteen men who spent time on death row in Illinois have been exonerated, three of them in 1999. Governor Ryan declared a moratorium on executions in January, 2000, and five weeks later announced the formation of our commission. We were a diverse group: two sitting prosecutors; two sitting public defenders; a former Chief Judge of the Federal District Court; a former US senator; three women; four members of racial minorities; prominent Democrats and Republicans. Twelve of us were lawyers, nine with experience as defense attorneys and eleven – including William Martin, who won a capital conviction against the mass murderer Richard Speck, in 1967 – with prosecutorial backgrounds. Roberto Ramirez, a Mexican-American immigrant who built a successful janitorial business, knew violent death at first hand. His father was murdered, and his grandfather shot and killed the murderer. Governor Ryan gave us only one instruction.

We were to determine what reforms, if any, would make application of the death penalty in Illinois fair, just, and accurate. In March, 2000, during the press conference at which members of the commission were introduced, we were asked who among us opposed capital punishment. Four people raised their hands. I was not one of them.



For a long time, I referred to myself as a death-penalty agnostic, although in the early seventies, when I was a student, I was reflexively against capital punishment. When I was an assistant US attorney, from 1978 to 1986, there was no federal death penalty. The Supreme Court declared capital-punishment statutes unconstitutional in 1972, and although the Court changed its mind in 1976, the death penalty did not become part of federal law again until 1988. However, Illinois had reinstated capital punishment in the mid-seventies, and occasionally my colleagues became involved in state-court murder prosecutions. In 1984, when my oldest friend in the office, Jeremy Margolis, secured a capital sentence against a two-time murderer named Hector Reuben Sanchez, I congratulated him. I wasn't sure what I might do as a legislator, but I had come to accept that some people are incorrigibly evil and I knew that I could follow the will of the community in dealing with them, just as I routinely accepted the wisdom of the RICO statute and the mail-fraud and extortion laws it was my job to enforce.

My first direct encounter with a capital prosecution came in 1991. I was in private practice by then and had published two successful novels, which allowed me to donate much of my time as a lawyer to pro-bono work. One of the cases I was asked to take on was the appeal of Alejandro (Alex) Hernandez, who had been convicted of a notorious kidnapping, rape, and murder. In February, 1983, a ten-year-old girl, Jeanine Nicarico, was abducted from her home in a suburb of Chicago, in DuPage County. Two days later, Jeanine's corpse, clad only in a nightshirt, was found by hikers in a nearby nature preserve. She had been blindfolded, sexually assaulted several times, and then killed by repeated blows to the head. More than forty law-enforcement officers formed a task force to hunt down the killer, but by early 1984 the case had not been solved, and a heated primary campaign was under way for the job of state's attorney in DuPage County. A few days before the election, three men – Alex Hernandez, Rolando Cruz, and Stephen Buckley – were indicted.

The incumbent lost the election anyway, to a local lawyer, Jim Ryan, who took the case to trial in January, 1985. (Ryan later became the attorney general of Illinois, a position he is about to relinquish.) The jury deadlocked on Buckley, but both Hernandez and Cruz were convicted and

sentenced to death. There was no physical evidence against either of them – no blood, semen, fingerprints, or other forensic proof. The state's case consisted solely of each defendant's statements, a contradictory maze of mutual accusations and demonstrable falsehoods. By the time the case reached me, seven years after the men were arrested, the charges against Buckley had been dropped and the Illinois Supreme Court had reversed the original convictions of Hernandez and Cruz and ordered separate retrials. In 1990, Cruz was condemned to death for a second time. Hernandez's second trial ended with a hung jury, but at a third trial, in 1991, he was convicted and sentenced to eighty years in prison.

Hernandez's attorneys made a straight forward pitch to me: their client, who has an I.Q. of about 75, was innocent. I didn't believe it. And, even if it was true, I couldn't envision persuading a court to overturn the conviction a second time. Illinois elects its state-court judges, and this was a celebrated case: "the case that broke Chicago's heart" was how it was sometimes referred to in the press. Nevertheless, I read the brief that Lawrence Marshall, a professor of law at Northwestern University, had filed in behalf of Cruz, and studied the transcripts of Hernandez's trials. After that, there was no question in my mind. Alex Hernandez was innocent.

In June, 1985, another little girl, Melissa Ackerman, had been abducted and murdered in northern Illinois. Like Jeanine Nicarico, she was kidnapped in broad daylight, sexually violated, and killed in a wooded area. A man named Brian Dugan was arrested for the Ackerman murder, and, in the course of negotiating for a life sentence, he admitted that he had raped and killed Jeanine Nicarico as well.

The Illinois State Police investigated Dugan's admissions about the Nicarico murder and accumulated a mass of corroborating detail. Dugan was not at work the day the girl disappeared, and a church secretary, working a few blocks from the Nicarico home, recalled a conversation with him. A tire print found where Jeanine's body was deposited matched the tires that had been on Dugan's car. He knew many details about the crime that had never been publicly revealed, including information about the interior of the Nicarico home and the blindfold applied to Jeanine.

Nevertheless, the DuPage County prosecutors refused to accept Dugan's confession. Even after Cruz's and Hernandez's second convictions were overturned in the separate appeals that Larry Marshall and I argued, and notwithstanding a series of DNA tests that excluded Cruz and Hernandez as Jeanine Nicarico's sexual assailant, while pointing directly at Dugan, the prosecutors pursued the cases. It was only after Cruz was acquitted in a third trial, late in 1995, that both men were finally freed.

Capital punishment is supposed to be applied only to the most heinous crimes, but it is precisely those cases which, because of the strong feelings of repugnance they evoke, most thoroughly challenge the detached judgment of all participants in the legal process – police, prosecutors, judges, and juries. The innocent are often particularly at risk. Most defendants charged with capital crimes avoid the death penalty by reaching a plea bargain, a process that someone who is innocent is naturally reluctant to submit to. Innocent people tend to insist on a trial, and when they get it the jury does not include anyone who will refuse on principle to impose a death sentence. Such people are barred from juries in capital cases by a Supreme Court decision, *Witherspoon v. Illinois*, that, some scholars believe, makes the juries more conviction-prone. In Alex Hernandez's third trial, the evidence against him was so scant that the DuPage County state's attorney's office sought an outside legal opinion to determine whether it could get the case over the bare legal threshold required to go to a jury. Hernandez was convicted anyway, although the trial judge refused to impose a death sentence, because of the paucity of evidence.

A frightened public demanding results in the aftermath of a ghastly crime also places predictable pressures on prosecutors and police, which can sometimes lead to questionable conduct. Confronted with the evidence of Brian Dugan's guilt, the prosecutors in Hernandez's second trial had tried to suggest that he and Dugan could have committed the crime together, even though there was no proof that the men knew each other. Throughout the state's case, the prosecutors emphasized a pair of shoe prints found behind the Nicarico home, where a would-be burglar – i.e., Hernandez – could have looked

through a window. Following testimony that Hernandez's shoe size was about 7, a police expert testified that the shoe prints were "about size 6." Until he was directly cross-examined, the expert did not mention that he was referring to a woman's size 6, or that he had identified the tread on one of the prints as coming from a woman's shoe, a fact he'd shared with the prosecutor, who somehow failed to inform the defense.

This kind of overreaching by the prosecution occurred frequently. A special grand jury was convened after Cruz and Hernandez were freed. Three former prosecutors and four DuPage County police officers were indicted on various counts, including conspiring to obstruct justice. They were tried and – as is often the case when law enforcement officers are charged with overzealous execution of their duties – acquitted, although the county subsequently reached a multimillion-dollar settlement in a civil suit brought by Hernandez, Cruz, and their onetime co-defendant, Stephen Buckley. Despite assertions by DuPage County prosecutors that Jeanine Nicarico's killer deserves to die, Brian Dugan has never been charged with her murder, although Joseph Birkett, the state's attorney for the county, admitted in November that new DNA tests prove Dugan's role with "scientific certainty."

In the past, Birkett had celebrated the acquittal of his colleagues on charges of conspiring to obstruct justice and had attacked the special prosecutor who'd brought the charges. He continues to make public statements suggesting that Cruz and Hernandez might be guilty. An ultimately unsuccessful attempt was made to demote the judge who acquitted Cruz, and last year, when the judge resigned from the bench, he had to pay for his own going-away party. In the meantime, the prosecutor who tried to incriminate Alex Hernandez with the print from a woman's shoe is now Chief Judge in DuPage County.

If these are the perils of the system, why have a death penalty? Many people would answer that executions deter others from committing murder, but I found no evidence that convinced me. For example, Illinois, which has a death penalty, has a higher murder rate than the neighboring state of Michigan, which has no capital punishment but roughly the same racial makeup, income levels,

and population distribution between cities and rural areas. In fact, in the last decade the murder rate in states without the death penalty has remained consistently lower than in the states that have had executions. Surveys of criminologists and police chiefs show that substantial majorities of both groups doubt that the death penalty significantly reduces the number of homicides.

Another argument – that the death penalty saves money, because it avoids the expense of lifetime incarceration – doesn't hold up, either, when you factor in the staggering costs of capital litigation. In the United States in 2000, the average period between conviction and execution was eleven and a half years, with lawyers and courts spewing out briefs and decisions all that time.

The case for capital punishment that seemed strongest to me came from the people who claim the most direct benefit from an execution: the families and friends of murder victims. The commission heard from survivors in public hearings and in private sessions, and I learned a great deal in these meetings. Death brought on by a random element like disease or a tornado is easier for survivors to accept than the loss of a loved one through the conscious will of another human being. It was not clear to me at first what survivors hoped to gain from the death of a murderer, but certain themes emerged. Dora Larson has been a victims'-rights advocate for nearly twenty years. In 1979, her ten-year-old daughter was kidnapped, raped, and strangled by a fifteen-year-old boy who then buried her in a grave he had dug three days earlier. "Our biggest fear is that someday our child's or loved one's killer will be released," she told the commission. "We want these people off the streets so that others might be safe." A sentence of life without parole should guarantee that the defendant would never repeat his crime, but Mrs. Larson pointed out several ways in which a life sentence poses a far greater emotional burden than an execution. Because her daughter's killer was under eighteen, he was ineligible for the death penalty. "When I was told life, I thought it was life," Larson said to us. "Then I get a letter saying our killer has petitioned the governor for release."

Victims' families talk a lot about "closure," an end to the legal process that will allow them to come to final terms with their grief. Mrs. Larson and

others told us that families frequently find the execution of their lost loved one's killer a meaningful emotional landmark. A number of family members of the victims of the Oklahoma City bombing expressed those sentiments after they watched Timothy McVeigh die. The justice the survivors seek is the one embedded in the concept of restitution: the criminal ought not to end up better off than his victim. But the national victims'-rights movement is so powerful that victims have become virtual proprietors of the capital system, leading to troubling inconsistencies. For instance, DuPage County has long supported the Nicarico family's adamant wish for a death sentence for Jeanine's killer, but the virtually identical murder of Melissa Ackerman resulted in a life term with no possibility of parole for Brian Dugan, because Melissa's parents preferred a quick resolution. It makes no more sense to let victims rule the capital process than it would to decide what will be built on the World Trade Center site solely according to the desires of the survivors of those killed on September 11th. In a democracy, no minority, even people whose losses scour our hearts, should be entitled to speak for us all.

Governor Ryan's commission didn't spend much time on philosophical debates, but those who favored capital punishment tended to make one argument again and again: sometimes a crime is so horrible that killing its perpetrator is the only just response. I've always thought death-penalty proponents have a point when they say that it denigrates the profound indignity of murder to punish it in the same fashion as other crimes. These days, you can get life in California for your third felony, even if it's swiping a few videotapes from a K-Mart. Does it vindicate our shared values if the most immoral act imaginable, the unjustified killing of another human being, is treated the same way? The issue is not revenge or retribution, exactly, so much as moral order. When everything is said and done, I suspect that this notion of moral proportion – ultimate punishment for ultimate evil – is the reason most Americans continue to support capital punishment.

This places an enormous burden of precision on the justice system, however. If we execute the innocent or the undeserving, then we have undermined, not reinforced, our sense of moral

proportion. The prosecution of Alex Hernandez demonstrated to me the risks to the innocent. A case I took on later gave me experience with the problematic nature of who among the guilty gets selected for execution. One afternoon, I had assembled a group of young lawyers in my office to discuss pro-bono death-penalty work when, by pure coincidence, I found a letter in my in-box from a man, Christopher Thomas, who said he'd been convicted of first-degree murder and sentenced to death, even though none of the four eyewitnesses to the crime who testified had identified him. We investigated and found that the letter was accurate – in a sense. None of the eyewitnesses had identified Thomas. However, he had two accomplices, both of whom had turned against him, and Thomas had subsequently confessed three different times, the last occasion on videotape.

According to the various accounts, Chris Thomas – who is black, and was twenty-one at the time of the crime – and his two pals had run out of gas behind a strip mall in Waukegan, Illinois. They were all stoned, and they hatched a plan to roll somebody for money. Rafael Gasgonia, a thirty-nine-year-old Filipino immigrant, was unfortunate enough to step out for a smoke behind the photo shop where he worked as a delivery driver. The three men accosted him. Thomas pointed a gun at his head, and when a struggle broke out Thomas fired once, killing Gasgonia instantly.

I was drawn to Chris Thomas's case because I couldn't understand how a parking-lot stickup gone bad had ended in a death sentence. But after we studied the record, it seemed clear to us that Thomas, like a lot of other defendants, was on death row essentially for the crime of having the wrong lawyers. He had been defended by two attorneys under contract to the Lake County public defender's office. They were each paid thirty thousand dollars a year to defend a hundred and three cases, about three hundred dollars per case. By contract, one assignment had to be a capital case. The fiscal year was nearly over, and neither of the contract lawyers had done his capital work, so they were assigned to Thomas's case together. One of them had no experience of any kind in death-penalty cases; the other had once been standby counsel for a man who was defending himself.

In court, we characterized Thomas's defense as all you would expect for six hundred dollars. His lawyers seemed to regard the case as a clear loser at trial and, given the impulsive nature of the crime, virtually certain to result in a sentence other than death. They did a scanty investigation of Thomas's background for the sentencing hearing, an effort that was hindered by the fact that the chief mitigation witness, Thomas's aunt, who was the closest thing to an enduring parental figure in his life, had herself been prosecuted on a drug charge by one of the lawyers during his years as an assistant state's attorney. As a result, Thomas's aunt distrusted the lawyers, and, under her influence, Chris soon did as well. He felt screwed around already, since he had confessed to the crime and expressed remorse, and had been rewarded by being put on trial for his life. At the sentencing hearing, Thomas took the stand and denied that he was guilty, notwithstanding his many prior confessions. The presiding judge, who had never before sentenced anybody to death, gave Thomas the death penalty.

In Illinois, some of this could not happen now. The Capital Litigation Trust Fund has been established to pay for an adequate defense, and the state Supreme Court created a Capital Litigation trial bar, which requires lawyers who represent someone facing the death penalty to be experienced in capital cases. Nonetheless, looking over the opinions in the roughly two hundred and seventy capital appeals in Illinois, I was struck again and again by the wide variation in the seriousness of the crimes. There were many monstrous offenses, but also a number of garden-variety murders. And the feeling that the system is an unguided ship is only heightened when one examines the first-degree homicides that have resulted in sentences other than death. Thomas was on death row, but others from Lake County – a man who had knocked a friend unconscious and placed him on the tracks in front of an oncoming train, for instance, and a mother who had fed acid to her baby – had escaped it.

The inevitable disparities between individual cases are often enhanced by social factors, like race, which plays a role that is not always well understood. The commission authorized a study that showed that in Illinois, you are more likely to receive the death penalty if you are white – two

and a half times as likely. One possible reason is that in a racially divided society whites tend to associate with, and thus to murder, other whites. And choosing a white victim makes a murderer three and a half times as likely to be punished by a death sentence as if he'd killed someone who was black. (At least in Illinois, blacks and whites who murdered whites were given a death sentence at essentially the same rate, which has not always been true in other places.)

Geography also matters in Illinois. You are five times as likely to get a death sentence for first-degree murder in a rural area as you are in Cook County, which includes Chicago. Gender seems to count, too. Capital punishment for slaying a woman is imposed at three and half times the rate for murdering a man. When you add in all the uncontrollable variables – who the prosecutor and the defense lawyer are, the nature of the judge and the jury, the characteristics of the victim, the place of the crime – the results reflect anything but a clearly proportionate morality.

And execution, of course, ends any chance that a defendant will acknowledge the claims of the morality we seek to enforce. More than three years after my colleagues and I read Chris Thomas's letter, a court in Lake County resentenced him to a hundred years in prison, meaning that, with good behavior, he could be released when he is seventy-one. He wept in court and apologized to the Gagonia family for what he had done.

Supporters of capital punishment in Illinois, particularly those in law enforcement, often use Henry Brisbon as their trump card. Get rid of the death penalty, they say, and what do you do about the likes of Henry?

On the night of June 3, 1973, Brisbon and three "rap partners" (his term) forced several cars off I-57, an interstate highway south of Chicago. Brisbon made a woman in one of the cars disrobe, and then he discharged a shotgun in her vagina. He compelled a young couple to lie down in a field together, instructed them to "make this your last kiss," and shot both of them in the back. His role in these crimes was uncovered only years later, when he confessed to an inmate working as a law librarian in the penitentiary where he was serving a stretch for rape and armed robbery.

Because the I-57 killings occurred shortly after the Supreme Court declared capital punishment unconstitutional, Brisbon was not eligible for the death penalty. He was given a sentence of one thousand to three thousand years in prison, probably the longest term ever imposed in Illinois.

In October, 1978, eleven months after the sentencing, Brisbon murdered again. He placed a homemade knife to the throat of a guard to subdue him, then went with several inmates to the cell of another prisoner and stabbed him repeatedly. By the time Brisbon was tried again, in early 1982, Illinois had restored capital punishment, and he was sentenced to death. The evidence in his sentencing hearings included proof of yet another murder Brisbon had allegedly committed prior to his imprisonment, when he placed a shotgun against the face of a store clerk and blew him away. He had accumulated more than two hundred disciplinary violations while he was incarcerated, and had played a major role in the violent takeover of Stateville prison, in September, 1979. Predictably, the death sentence did not markedly improve Brisbon's conduct. In the years since he was first condemned, he has been accused of a number of serious assaults on guards, including a stabbing, and he severely injured another inmate when he threw a thirty-pound weight against his skull.

Brisbon is now held at the Tamms Correctional Center, a "super-max" facility that houses more than two hundred and fifty men culled from an Illinois prison population of almost forty-five thousand. Generally speaking, Tamms inmates are either gang leaders or men with intractable discipline problems. I wanted to visit Tamms, hoping that it would tell me whether it is possible to incapacitate people like Brisbon, who are clearly prone to murder again if given the opportunity.

Tamms is situated near the southernmost point of Illinois, farther south than parts of Kentucky. The Mississippi, a wide body of cloacal brown, floods the nearby lowlands, creating a region of green marshes along orange sandstone bluffs. Tamms stands at the foot of one of those stone outcroppings, on a vast, savannalike grassland. The terms of confinement are grim. Inmates are permitted no physical contact with other human

beings. Each prisoner is held twenty-three hours a day inside a seven-by-twelve-foot block of preformed concrete that has a single window to the outside, roughly forty-two by eighteen inches, segmented by a lateral steel bar. The cell contains a stainless-steel fixture housing a toilet bowl and a sink and a concrete pallet over which a foam mattress is laid. The front of the cell has a panel of punch-plate steel pierced by a network of half-inch circles, almost like bullet holes, that permit conversation but prevent the kind of mayhem possible when prisoners can get their hands through the bars. Once a day, an inmate's door is opened by remote control, and he walks down a corridor of cells to an outdoor area, twelve by twenty-eight feet, surrounded by thirteen-foot-high concrete walls, with a roof over half of it for shelter from the elements. For an hour, a prisoner may exercise or just breathe fresh air. Showers are permitted on a similar remote-control basis, for twenty minutes, several times a week.

In part because the facility is not full, incarceration in Tamms costs about two and a half times as much as the approximately twenty thousand dollars a year that is ordinarily spent on an inmate in Illinois, but the facility has a remarkable record of success in reducing disciplinary infractions and assaults. George Welborn, a tall, lean man with a full head of graying hair, a mustache, and dark, thoughtful eyes, was the warden of Tamms when I visited. I talked to him for much of the day, and toward the end asked if he really believed that he could keep Brisbon from killing again. Welborn, who speaks with a southern-Illinois twang, was an assistant warden at Stateville when Brisbon led the inmate uprising there, and he testified against him in the proceedings that resulted in his death sentence. He took his time with my question, but answered, guardedly, "Yes."

I was permitted to meet Brisbon, speaking with him through the punch-plate from the corridor in front of his cell. He is a solidly built African-American man of medium height, somewhat bookish-looking, with heavy glasses. He seemed quick-witted and amiable, and greatly amused by himself. He had read all about the commission, and he displayed a letter in which, many years ago, he had suggested a moratorium on executions. He had some savvy predictions about

the political impediments to many potential reforms of the capital system.

"Henry is a special case," Welborn said to me later, when we spoke on the phone. "I would be foolish to say I can guarantee he won't kill anyone again. I can imagine situations, God forbid . . . But the chances are minimized here." Still, Welborn emphasized, with Brisbon there would never be any guarantees.

I had another reason for wanting to visit Tamms. Illinois's execution chamber is now situated there. Unused for more than two years because of Governor Ryan's moratorium, it remains a solemn spot, with the sterile feel of an operating theatre in a hospital. The execution gurney, where the lethal injection is administered, is covered by a crisp sheet and might even be mistaken for an examining table except for the arm paddles that extend from it and the crisscrossing leather restraints that strike a particularly odd note in the world of Tamms, where virtually everything else is of steel, concrete, or plastic.

Several years ago, I attended a luncheon where Sister Helen Prejean, the author of "Dead Man Walking," delivered the keynote address. The daughter of a prominent lawyer, Sister Helen is a powerful orator. Inveighing against the death penalty, she looked at the audience and repeated one of her favorite arguments: "If you really believe in the death penalty, ask yourself if you're willing to inject the fatal poison." I thought of Sister Helen when I stood in the death chamber at Tamms. I felt the horror of the coolly contemplated ending of the life of another human being in the name of the law. But if John Wayne Gacy, the mass murderer who tortured and killed thirty-three young men, had been on that gurney, I could, as Sister Helen would have it, have pushed the button. I don't think the death penalty is the product of an alien morality, and I respect the right of a majority of my fellow-citizens to decide that it ought to be imposed on the most horrific crimes.

The members of the commission knew that capital punishment would not be abolished in Illinois anytime soon. Accordingly, our formal recommendations, many of which were made unanimously, ran to matters of reform. Principal

among them was lowering the risks of convicting the innocent. Several of the thirteen men who had been on death row and were then exonerated had made dubious confessions, which appeared to have been coerced or even invented. We recommended that all interrogations of suspects in capital cases be videotaped. We also proposed altering lineup procedures, since eyewitness testimony has proved to be far less trustworthy than I ever thought while I was a prosecutor. We urged that courts provide pretrial hearings to determine the reliability of jailhouse snitches, who have surfaced often in Illinois's capital cases, testifying to supposed confessions in exchange for lightened sentences.

To reduce the seeming randomness with which some defendants appear to end up on death row, we proposed that the twenty eligibility criteria for capital punishment in Illinois be trimmed to five: multiple murders, murder of a police officer or firefighter, murder in a prison, murder aimed at hindering the justice system, and murder involving torture. Murders committed in the course of another felony, the eligibility factor used in Christopher Thomas's case, would be eliminated. And we urged the creation of a statewide oversight body to attempt to bring more uniformity to the selection of death-penalty cases.

To insure that the capital system is something other than an endless maze for survivors, we recommended guaranteed sentences of life with no parole when eligible cases don't result in the death penalty. And we also outlined reforms aimed at expediting the post-conviction review and clemency processes.

Yet our proposals sidestepped the ultimate question. One fall day, Paul Simon, the former US senator who was one of the commission's chairs and is a longtime foe of the death penalty, forced us to vote on whether Illinois should have a death penalty at all. The vote was an expression of sentiment, not a formal recommendation. What was our best advice to our fellow-citizens, political realities aside? By a narrow majority, we agreed that capital punishment should not be an option.

I admit that I am still attracted to a death penalty that would be applied to horrendous crimes, or that would provide absolute certainty that the likes of Henry Brisbon would never again satisfy their cruel appetites. But if death is available as a punishment, the furious heat of grief and rage that these crimes inspire will inevitably short-circuit any capital system. Now and then, we will execute someone who is innocent, while the fundamental equality of each survivor's loss creates an inevitable emotional momentum to expand the categories for death-penalty eligibility. Like many others who have wrestled with capital punishment, I have changed my mind often, driven back and forth by the errors each position seems to invite. Yet after two years of deliberation, I seem to have finally come to rest.

When Paul Simon asked whether Illinois should have a death penalty, I voted no.

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## Innocent former death row inmates talk about their experiences *18th and 19th October 2004*

Amicus and Reprieve are delighted to offer this great opportunity to hear Ray Krone, William Nieves and Nick Yarris talk about their experiences on Pennsylvania's death row.

Ray Krone grew up in York, Pennsylvania, with a loving family and many friends. He was an Air Force sergeant, and then a postman before finding himself on Arizona's death row for a murder he did not commit. In April 2002, having spent 10 years in prison, he became the 100th death row prisoner in the US to be exonerated when DNA evidence proved his innocence.

William Nieves spent six years of his life on death row. A native of Philadelphia, he was convicted of murder in 1993 for a crime he did not commit. In October 2000 a jury unanimously acquitted him and he was released. He is currently on the board of directors of Pennsylvania Abolitionists United Against the Death Penalty.

Nick Yarris spent half of his life on death row for a crime he did not commit. At the age of 21, he was convicted in one of the shortest murder trials in Pennsylvania history. He was the first death row prisoner in the US to request DNA testing to prove his innocence. After a 15-year

legal struggle and nearly 22 years on death row he was exonerated in September 2003 and released in January this year, becoming the 112th prisoner to be freed.

You can hear them on:

Monday 18th October from 6.30pm – 8.30pm at Baker & McKenzie, 100 New Bridge Street, London, EC1

Tuesday 19th October from 6.30pm – 8.30pm at Clifford Chance, 10 Upper Bank Street, London, E14

On Tuesday 19th October there will be an introduction by Clive Stafford Smith, who spent more than 25 years in the US defending people facing execution.

There is no entrance fee, but a donation of £10 is recommended to cover their travel costs. If you would like to attend please send an e-mail to: [exonerees@reprieve.org.uk](mailto:exonerees@reprieve.org.uk) or telephone 020 7353 4640. Your name will be put on an attendance list. You will not be admitted if your name is not on the list.

Amicus and Reprieve would like to thank Clifford Chance and Baker & McKenzie for kindly hosting these events.



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