

**REPRIEVE AUSTRALIA**  
**HONORARY LIFE MEMBERSHIP CEREMONY**  
**STATE LIBRARY OF VICTORIA (ROTUNDA ROOM)**  
**MELBOURNE, AUSTRALIA**  
**18 MARCH 2008\***

**The Hon Justice Michael Kirby AC CMG\*\***

Thank you very much President, Sir Zelman and Lady Cowen, Lady Hamer, the Honourable Barry Jones, my judicial and legal colleagues, fellow citizens.

Melbourne is certainly a surprising place. I thought I knew every speaking venue in this nation. I thought I knew every beautiful room in this nation. But here we are in this wonderful place which is for me a new jewel of Australia. The Supreme Court Library is a great jewel. This is another one, hidden away in Melbourne. It's a magnificent setting for this occasion. For the people that we're going to honour. It is not unsuitable that the dominant colour of the room is red - red for blood. And blood is the force for life not just a symbol of death. We're here to celebrate the work for life of some wonderful citizens of our country.

If you look at the people who are going to be honoured, they really fall into four categories. There are the abolishers, the agitators, the advocates and the founders. The abolishers that we're going to honour

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\* A speech delivered at the Reprieve Australia Honorary Life Membership Ceremony in Melbourne on 18 March 2008. The record has been lightly edited.

\*\* Justice of the High Court of Australia. Patron of Reprieve Australia.

are Sir Zelman Cowen, Dr Barry Jones, the Honourable Brian Dixon, and Dr Mick Richards. The agitator, who won't be here to be honoured (and a few of the others are agitators too) is Brian Morley. The advocates are the Honourable Lex Lasry, Julian McMahon, Clive Stafford-Smith and Richard Bourke. And the founders of Reprieve in Australia are Nick Harrington, Susan Brennan and Pia Di Mattina.

As you would know, the death penalty was abolished in Victoria in 1975 during the enlightened government of Sir Rupert Hamer. And Lady Hamer, with generosity of spirit, said that it was very important that I should make the point that, although Dick Hamer gets and properly gets credit, and although his government, of which the Honourable Brian Dixon was a member, gets credit for the abolition of the death penalty, and although their credit brings to attention the fact that this became a bipartisan belief in our country, we should also honour others – including the spirit of the late Jack Galbally. Year after year he introduced a private member's bill into the Victorian parliament. This was ultimately taken up by the government and enacted.

So, it's a very fitting thing that we should celebrate the work of Reprieve, of which we've heard a little from the President. We should also celebrate those who went before. Especially we should do so in this historical setting that reminds of us of the strong, confident spirit, looking to the future, that founded Victoria and Australia.

If you read the High Court's case on the Ronald Ryan affair that ultimately propelled Australia finally to end capital punishment, you will see at work the spirit and mind of citizens and lawyers of the 1960s. In fact,

earlier in the '60s, there was the case of Rupert Max Stuart<sup>1</sup>. I don't know how many of you have seen the film, *Black and White*. It is the story of Rupert Max Stuart and how he was sentenced to death for the rape and murder of a little girl at Ceduna in South Australia. His conviction was secured substantially, overwhelmingly, on a confession which he was alleged to have given to police. Yet the greatest authority on the Arunda language, Professor Strehlow, said it simply could not have been the language of Rupert Max Stuart. The film brings out the mood and spirit of the time. Although it's about Adelaide and not about Melbourne, the most captivating thing, for a person of my great age, is to see how it captures the mood of complacency that existed in our country back in the 1960s. Complacency, acceptance of things that had long been established and could not really be questioned. Let alone could it be contemplated that things would be changed. As a Justice of the High Court of Australia, it's always a little upsetting for me to read the *Stuart Case*, as occasionally we have to. It begins in very powerful prose, 'Certain features of this case have caused us anxiety.' And it finishes with that same phrase, 'Certain features of this case have caused us anxiety.' Yet the justices of the court, notwithstanding the anxiety that they repeated, went on to confirm the death penalty on Rupert Max Stuart.

It has to be said that, in that case, it wasn't the legal system that saved the prisoner, because the Privy Council also refused to intervene. It was the media that saved the life of Rupert Max Stuart and, in particular, another Rupert, Rupert Murdoch, then a young cadet newspaper owner in Adelaide, long before he built the global empire of News Limited. It was he who took up the cudgels and organised a campaign on the front pages of his newspapers that led ultimately to a royal commission and to the

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<sup>1</sup> (1959) 101 CLR 1.

commuting of the sentence. It is worth reading that case. It is worth seeing that film, *Black and White*. They capture the mood of the times.

Another very interesting case in the *Commonwealth Law Reports* is the case of Robert Peter Tait<sup>2</sup>. It's a very unusual case in the law reports because of the fact that it's not, as it were, a fully reasoned decision of the court. It's drama unfolded because it's, effectively, the transcript of the interchanges between the bench and the lawyers in the well of the court in the old High Court building here in Little Bourke Street. Chief Justice Dixon, leading the Court, was confronted with the Solicitor-General, Sir Henry Winneke, who was endeavouring to maintain the schedule that was designed to lead to the execution of Robert Peter Tait immediately. The story is worth reading for those of you who have access to the *Commonwealth Law Reports*. A man's life hung in the balance.

I feel myself a kind of link with those days. Although I didn't know Sir Henry Winneke, I knew his son, Jack Winneke, later President of the Court of Appeal of Victoria. I also know Jack Starke, the son of Sir Hayden Starke. Jack Starke later became Sir John Starke. When I was first appointed to the Australian Law Reform Commission back in 1975, the very year of the abolition of the death penalty in this State, I called on him in the Supreme Court, in his chambers. So I am a link with Sir John Starke. He was appearing in the High Court for the health authorities who were trying to get Tait examined on the basis that he was mentally incompetent and indeed was insane. The prisoner's counsel was Mr John Nimmo, later Sir John Nimmo, Judge of the Federal Court, whom I also knew. So if you're around long enough, as I've been, you get to know these people. I therefore feel that I am a link back to those times.

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<sup>2</sup> (1962) 108 CLR 620.

Eventually Dixon insisted that the execution be postponed. The Bolte Government gave way. It was a raw confrontation. There were to be more such struggles before capital punishment was finally ended in Victoria and Australia.

I'm feeling a little nostalgic today because this is my birthday. [Applause] Don't get carried away! There is one more year of service on the High Court of Australia. One more year. It is a year I'm going to serve to the full, for law and justice.

If we think about the achievements of those fine citizens whom we are now going to honour, we have to realise that one of the admirable things about them is that they left a legacy which has not just been concerned with our legal affairs in Australia, important though they are and important though our country is and in our hearts and in our minds. The fact is that the greatest challenges in respect of the death penalty, and of human rights, lie beyond our shores. It's very important for us, as human beings and as citizens of this much blessed country, to be concerned at the predicament of people beyond Australia. To be engaged with them. If you read the excellent newsletter of Reprieve, you will see the achievements – the things that have been achieved in the past year or so, which show that there is still a struggle going on; there are still things to be accomplished; but progress is being made.

So there's good news. In July '07, Rwanda, a country which, as Louise Arbour, the High Commissioner for Human Rights, pointed out, was itself afflicted terribly with death and suffering, decided that it would abolish the death penalty. Sadly, in most countries of Africa the death penalty still reigns. Yet Rwanda has given the lead. In September 2007, the United

States Supreme Court by a grant of certiorari, has effectively put on hold the executions in that country. We now await the outcome of the United States Supreme Court decision. In October 2007, the European Union declared that the 10<sup>th</sup> of October would be the day for reflection throughout the world on the death penalty. A similar resolution for a moratorium was passed by the United Nations Human Rights Committee for the 15<sup>th</sup> of November 2007. On the 14<sup>th</sup> of December last year, New Jersey, after a 40 year drought in the United States, became the first State of that country to start the ball rolling again for the abolition of the death penalty in that country by legislative means such as we accomplished in Australia. The United States and China are still the major sources of executions around the world.

It's important for us, Australians, also to focus our minds on Australian citizens who are facing the death penalty: our citizens in the so-called 'Bali Nine'. We have here today, in the person of Julian McMahon, somebody who is still actively engaged in endeavouring to secure legal advice, assistance and support for those of the Bali Nine who still suffer the burden of living under the shadow of the death penalty. Of the nine, three were not sentenced to death and did not have that cast upon them. Three of the six who did, were, as a result of the recent decision of the Supreme Court of Indonesia, released from that burden. Yet three remain, including but not only Scott Rush, who has had some coverage in the media in this country. I was told by Julian McMahon that the government of the Commonwealth has provided funds for four lawyers of Australia to go to Indonesia this week for the preparation of the further submissions that are going to be placed before the Indonesian courts to ensure that the Australians, who are the subject of the death penalty, and who are therefore of proper concern to the government of our country, will get the

very best of support and assistance. I can say to you, Julian, that you and your colleagues will go with the thoughts of all those in this room. So we remember the struggle in our own country for the abolition of the death penalty. We come together tonight to honour those who were leaders in that struggle. Not content with concentration on our own affairs, they have established Reprieve in order to encourage us to look beyond Australia and to be concerned with human beings beyond our borders. Not good enough just for us to fix things up in Australia.

No man is an island. No woman is, or child is, an island. We are all part of the main. And it is therefore proper, in this historic place, that we should honour those whose achievements in the past brought an end to this barbarous aspect of the criminal justice system in Australia. And, today, we also honour those who are still working to accomplish that end in those many countries which have retained the death penalty. We hope that by their labours, we, as citizens of a free country, can contribute in effective ways to terminate the death penalty in those other places.

It's therefore my great pleasure to acknowledge those who were the abolishers, agitators, advocates and founders. I ask the President now to come forward and call their names so that they, in turn, can come forward, to be acknowledged by us all and receive their certificates. Effective progress in the struggle for universal human rights is only secured by people such as these.

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