American Bar Association
www.supremecourtpreview.org

No. 07-343

IN THE
Supreme Court of the United States

PATRICK KENNEDY,

Petitioner,

v.

LOUISIANA,

Respondent.

On Writ of Certiorari to the Louisiana Supreme Court

BRIEF *AMICI CURIAE* OF LEADING BRITISH LAW ASSOCIATIONS, SCHOLARS, QUEEN'S COUNSEL AND FORMER LAW LORDS IN SUPPORT OF PETITIONER PATRICK KENNEDY

DAVID PANNICK QC
BLACKSTONE CHAMBERS
Blackstone House
Temple
London EC4Y 9BW

BARONESS HELENA KENNEDY QC
DOUGHTY STREET CHAMBERS
10-11 Doughty Street
London WC1N 2PL

MATTHEW BRUCE
JOHN BLAIN
TAMLYN LUDFORD
FRESHFIELDS
BRUCKHAUS DERINGER
65 Fleet Street
London EC4Y 1HS

SANDRA L. BABCOCK
Counsel of Record
BLUHM LEGAL CLINIC
NORTHWESTERN
LAW SCHOOL
357 E. Chicago Avenue
Chicago, IL 60611
(312) 503-0114

PROFESSOR CONOR GEARTY
CENTRE FOR THE STUDY
OF HUMAN RIGHTS
LONDON SCHOOL OF
ECONOMICS AND
POLITICAL SCIENCE
Houghton Street
London WC2A 2AE

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

International Cases

Treaties

Other Authorities

British Reports & Parliamentary Debates

British Statutes

Books

U.N. Documents

Foreign Penal Codes

Internet Authorities

INTEREST OF AMICI CURIAE[1]

This Court has stated that the "[t]he United Kingdom's experience bears particular relevance" to its analysis of the cruel and unusual punishment clause of the Eighth Amendment. *Roper v. Simmons*, 543 U.S. 551, 577 (2005). As leading British law associations, scholars, Queen's Counsel and former Law Lords, *amici* are particularly well placed to advise the Court with regard to the United Kingdom's experience in abolishing the death penalty for rape.

In addition, this Court has repeatedly taken note of other nations' practices in considering the application of the death penalty to categories of offenses and categories of offenders. Several individual *amici* have published widely on international law, and one has written a treatise on the application of the death penalty worldwide. Law association *amici* are likewise involved in efforts to strengthen the international rule of law. In this regard, and as members of the international community, *amici* have a special interest in ensuring

---

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

the Court is provided with accurate data regarding international norms and state practices relating to the application of the death penalty.

A complete list of the *amici* is included in the Appendix.

INTRODUCTION AND SUMMARY OF ARGUMENT

The nations of the world do not speak with one voice when it comes to the debate over the death penalty's efficacy or morality. Although 135 nations have abolished the death penalty in law or in practice, sixty-two nations continue to sentence offenders to death. Amnesty International, Death Penalty: Abolitionist and Retentionist Countries (Sept. 19, 2007), http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries (last visited Feb. 17, 2008). Nonetheless, there is an overwhelming international consensus regarding certain aspects of the death penalty's *application.* Thus, as this Court recognized in *Roper,* virtually all of the world's nations—including those that are aggressive proponents of capital punishment—no longer execute juvenile offenders. 543 U.S. at 577. Likewise, the vast majority of nations disallow the execution of mentally retarded offenders. *See Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002) ("[W]ithin the world community, the imposition of the death penalty

for crimes committed by mentally retarded offenders is overwhelmingly disapproved."). There is an equally strong international consensus against the application of the death penalty in the case at bar.

This Court has repeatedly recognized that the views held by "other nations that share our Anglo-American heritage, and by the leading members of the Western European community" are relevant to its analysis of the Eighth Amendment's application. *Thompson v. Oklahoma,* 487 U.S. 815, 830 & n.31 (1988) (Stevens, J., concurring). And in *Roper,* the Court emphasized that "[t]he United Kingdom's experience bears particular relevance here in light of the historic ties between our countries and in light of the Eighth Amendment's own origins." 543 U.S. at 577. In the United Kingdom, the death penalty for rape—including the rape of a child—was abolished in 1841, more than one hundred years before the death penalty was abolished for all crimes.

The United Kingdom's experience is consistent with international norms regarding the application of the death penalty. First, Louisiana's expansion of the death penalty to the crime of rape violates the principle that retentionist nations may not extend the death penalty to crimes to which it did not previously apply, and its corollary that nations should strive to progressively reduce the number of crimes for which the death penalty may be imposed. Second, the laws and practices of the international community confirm that the imposition of the death penalty for the crime

of child rape is considered an excessive punishment. Taken together, these sources of international law demonstrate that Louisiana's expansion of the death penalty to the crime of child rape is inconsistent with the weight of world opinion—a factor this Court has repeatedly found "instructive" in its Eighth Amendment analysis.[2]

ARGUMENT

I. Long Before the United Kingdom Abolished the Death Penalty, it Eliminated the Death Penalty For the Crime of Rape.

In *Roper*, the Court found it significant that the United Kingdom had abolished the juvenile death

---

[2] *Roper*, 543 U.S. at 578 (finding that the "opinion of the world community, while not controlling . . . provide[s] respected and significant confirmation" for the conclusion that the execution of juvenile offenders violates the Eighth Amendment); *Atkins*, 526 U.S. at 316 n.21 (noting that "within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved," and finding that "[a]lthough these factors are by no means dispositive, their consistency with the legislative evidence lends further support to our conclusion"); *Thompson v. Oklahoma*, 487 U.S. 815, 830 (1988) (Stevens J., concurring) (noting international opposition to execution of defendants who were younger than 16 when their crimes were committed); *Enmund v. Florida*, 458 U.S. 782, 796 n.22 (1982) (considering international opinion regarding felony murder).

penalty decades before total abolition, having "recognized the disproportionate nature of the juvenile death penalty." 543 U.S. at 577. Long before the United Kingdom eliminated the juvenile death penalty, however, it abolished the death penalty for the crime of rape. Specifically, the death penalty for all forms of rape was abolished in 1841, and after 1861, murder was the only offense against a person for which an individual could be executed in the United Kingdom. The removal of non-murder offenses did not reflect any general concerns about the use of the death penalty; indeed, many individuals continued to be executed in the United Kingdom.[3] Instead, it was part of a general narrowing of the classes of offenses to which the death penalty could apply and a recognition that the execution of individuals who did not cause death was excessive and inconsistent with evolving standards of decency.

A. The United Kingdom Abolished the Death Penalty for All Forms of Rape in 1841 as Part of a General Narrowing of the Classes of Offenses to Which the Death Penalty Applied

The United Kingdom abolished the death penalty for murder in 1965. Murder (Abolition of Death Penalty) Act, 1965, c. 71, § 1(1) (Eng.). Long

---

[3] For example, between 1900 and 1949, 755 people were executed for murder. THE REPORT OF THE ROYAL COMM. ON CAPTIAL PUNISHMENT, 1949–1953 REPORT, 1953, [Cmd.] 8932, Appendix 3.

before total abolition, however, the United Kingdom had progressively limited the categories of offenses and offenders to which the death penalty should apply. For the crime of rape (including the rape of a child), the death penalty was abolished in 1841[4]—over 125 years before the death penalty was finally abolished for murder.[5]

At the start of the 19th century, over 200 offenses were potentially punishable by death.[6] Around that

---

[4] Substitution of Punishments of Death Act, 1841, 4 & 5 Vict., c. 56, § 3 (Eng.).

[5] Other common law nations, such as Canada and Australia, followed a similar pattern in the decades leading to total abolition. In 1954, Canada abolished the death penalty for rape. *Rudolph v. Alabama*, 375 U.S. 889, 891 n.5 (1963) (Goldberg, J. dissenting from denial of certiorari) ("In Canada, for example, the death sentences was rarely imposed for rape, even prior to its formal abolition in 1954."). The application of the death penalty was further limited over the next few decades, until Canada finally removed all references to the death penalty from domestic law in 1998. *See* Amnesty International, The Death Penalty in Canada: Twenty Years of Abolition 2000, http://www.amnesty.ca/deathpenalty/canada.php (last visited Feb. 17, 2008). In Australia, the death penalty for rape was abolished in most states by the late nineteenth century—several decades before total abolition. *See* JOCK MCCULLOCH, BLACK PERIL, WHITE VIRTUE: SEXUAL CRIME IN SOUTHERN RHODESIA, 1902–1935, AT 55 (2000); THE WAKEFIELD COMPANION TO SOUTH AUSTRALIAN HISTORY 135 (2001).

[6] The number of executions was also very high. In one year, 1785, ninety-seven people were put to death in London and Middlesex alone. 1 LEON RADZINOWICZ, A HISTORY OF ENGLISH CRIMINAL

time, however, the nation began to reconsider the application of the death penalty to such a wide range of offenses. Public debates centered on the inhumanity of the sheer number of capital statutes, the question of whether the death penalty for non-murder offenses was effective as a deterrent and necessary at all[7], and the uncertain and arbitrary nature of punishment in a system where only a fraction of those convicted were sentenced to die.

The UK Parliament responded by significantly narrowing the range and number of offenses to which the death penalty applied. In 1823, the Judgment of Death Act gave judges the power to commute the death penalty for all capital crimes except treason and murder. Judgment of Death Act, 1823, 4 Geo. 4, c. 48, § 1 (Eng.). And in 1832, punishment of death was removed from two-thirds of capital crimes. The Punishment of Death, Etc. Act, 1832, 2 & 3 Will. 4, c. 62, Preamble (Eng.). For example, the death penalty

---

LAW AND ITS ADMINISTRATION FROM 1750: THE MOVEMENT FOR REFORM 147 (1948). This can be contrasted with, for example, the years 1947–1949 when a total of 35 people were executed in the United Kingdom. THE REPORT OF THE ROYAL COMM. ON CAPITAL PUNISHMENT, 1949-1953 REPORT, 1953, [Cmd.] 8932, Appendix 3.

[7] In 1837, William Ewart stated in the House of Commons: "another reason why murder only should be punished with death was that by the continuance of capital punishment in other cases an inducement was given to a criminal to put an end to the testimony against him by the absolute destruction of the person he had robbed." 38 PARL. DEB., H.C. (3d ser.) (1837) 910.

for coining[8] and shoplifting, as well as sheep, cattle and horse-stealing, was abolished at that time. *Id.*, §1.

In 1833, Parliament appointed the Criminal Law Commissioners to reform the criminal justice system of England and Wales. 4 LEON RADZINOWICZ, A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750: GRAPPLING FOR CONTROL 310 (1968). In their report, the Commissioners advocated a rationalization of the law relating to violent offenses and a substantial reduction in the number of crimes to which the death penalty applied. CRIMINAL LAW COMMISSION, SECOND REPORT ON PRISONERS' COUNSEL AND THE DEATH PENALTY, 1836, H.C. 36, at 183. The Commissioners stated that it was contrary to the principles of criminal jurisprudence to punish indiscriminately offenders whose crimes differed so widely, not only with respect to moral guilt, but also in their harmful consequences to society. *Id.* at 1, ¶ 3.

They observed that while a wide range of offenses were death-eligible, very few offenders were actually put to death. *Id.* at 1, ¶ 6. The Commissioners further noted that the earlier repeal of a number of capital punishments had not resulted in any subsequent increase in the number of offenses committed, but had in fact resulted in a decrease. *Id.* at 3, ¶ 2. Consequently, in 1837, Parliament abolished

---

[8] Coinage Offenses Act, 1832, 2 & 3 Will. 4, c. 34, Preamble (Eng.).

the death penalty for offenses such as the forgery of wills,[9] burglary, and theft from a dwelling house.[10] Burglary Act, 1837, 7 Will. 4 & 1 Vict., c. 84, §§ 3 & 5 (Eng.).

The continued narrowing of offenses to which the death penalty applied then led to the discontinuance of the imposition of the death penalty for the crime of rape. At that time, under English law the death penalty was imposed for the crimes of "rape" and "unlawfully and carnally knowing and abusing any girl under the age of ten years." *See* Offenses Against the Person Act, 1828, 9 Geo. 4, c. 31, §§ 16 & 17 (Eng.). By 1840, after the death penalty was abolished for a range of offenses against the person, the government decided to abolish the death penalty for rape and carnal knowledge – based in part on concerns about wrongful convictions. Indeed, in parliamentary debate on the abolition of the death penalty for rape, it was said that "there were no capital convictions which so little satisfied the public mind as those for rape, or in which doubts were so frequently expressed of the guilt of a prisoner after his execution." 57 PARL. DEB., H.C. (3d ser.) (1841) 1420.

In fact, this was an area where penal practice had run ahead of legislation. Even in rapes by more than one person, which the Criminal Law Commissioners had regarded as among the most

---

[9] Forgery Act, 1837, 7 Will. 4 & 1 Vict., c. 84, § 1 (Eng.).

aggravated cases, judges as a general rule recommended commutation of the death penalty.[11] Indeed, the last execution for rape had actually occurred some years earlier, in 1836, when Richard Smith was hanged in Nottingham.[12] Radzinowicz points out that

> the Home Office was besieged by applications in favorem vitae and city and county magistrates sent in memorials rather than become accessory to a punishment they regarded as excessive. One such protest had been submitted in a case which the memorialists themselves admitted

---

[11] Even during the time the death penalty was permitted for rape, the execution rate was low. Out of 678 offenders executed in London and Middlesex in the 23 years from 1749 to 1771, only 2 had committed rape. 1 RADZINOWICZ, *supra* note 6, at 148. The execution rate from within the number of persons charged with rape was also low. In 1810, of 24 offenders committed for trial for rape, only one was executed. *Id.* at 155. The death penalty was clearly seen as inappropriate for rape offenses.

[12] In 1837, with the capital code collapsing, two rapists were sentenced to death by Coleridge, J. at Chester assizes. They fainted in court when Coleridge told them that their crime "still remained and he supposed always would remain, punishable with death." The judge would have hanged if he could; had he succeeded, these would have been the last men hanged for rape in England. They were saved by public petitions. Some fifty people pleaded that the men were hitherto of good character, that the evidence against them was murky, and above all that the punishment was "far disproportionate to the offence." V. A. C. GATRELL, THE HANGING TREE: EXECUTION AND THE ENGLISH PEOPLE 1770–1868, at 501–02 (1994).

> "had been committed under the most revolting circumstances of violence and cruelty." It was only the knowledge that those convicted of rape were seldom hanged that induced juries to convict even one in three of those charged. In earlier years, when some had been executed, the convictions had dropped as low as one in fourteen. This was pre-eminently an offense for which the death penalty was generally considered inappropriate and in which its very existence increased the chances of acquittal and reduced the hope of deterrence.[13]

In Parliamentary debates, the majority view was that the death penalty was simply inappropriate for rape. Juries were unwilling to convict because of it. It was said that "where there had been executions in one year for rape, the proportions of convictions in the next year, for the offense, were less; thus showing, that there was a feeling certainly against the execution of the capital sentence" and that "there was a repugnance to a verdict in those cases [rape] which would end in taking away life." 57 PARL. DEB., H.C. (3d ser.) (1841) 51–52. Another objection "against the punishment of death [for rape] was its irrevocability. [Mr. C Buller] thought there was no offense to which they should be more careful of attaching irrevocable punishment than this, because there was no offense in which it was so difficult to get at satisfactory evidence." 57 PARL. DEB., H.C. (3d ser.) (1840) 745. A further reason for

---

[13] 4 RADZINOWICZ, *supra*, at 322.

abolishing the death penalty for rape was stated as: "what . . . had to [be] determine[d] was, which was the greater evil, rape or murder. Capital punishment for the former would incite an individual to commit the latter." *Id.*

Following considerable debate in both Houses of Parliament, in which the seriousness of the crime was fully acknowledged, Parliament voted to abolish the death penalty for all forms of rape in 1841. *See* 58 PARL. DEB., H.C. (3d ser.) (1841) 1570; *see also* The Punishment of Death Act, 1832, 2 & 3 Will. 4, c. 62 (Eng.).

The narrowing of capital offenses continued. By 1861, a person could be executed only if he or she had committed murder or a specific offense against the state. *See* Offences Against the Person Act, 1861, 24 & 25 Vict., c. 100, § 1 (Eng.); *see* 4 LEON RADZINOWICZ, *supra* note 6, at 342. This reflected, in the eyes of the United Kingdom, the unique seriousness and harm caused by intentionally ending a person's life or acting against and causing harm to the country's interests. Indeed, an attempt, a few years earlier, by a member of the House of Lords to reinstate the death penalty for certain aggravated cases of rape was rejected by the legislature. 146 PARL. DEB., H.L. (3d ser.) (1857) 1354.

B. After the Abolition of Rape as a Capital Offense, the United Kingdom Continued to Narrow the Application of the Death Penalty and Rejected Efforts to Extend its Application

While the death penalty remained for murder and certain offences against the state[14] during the remainder of the 19th century and majority of the 20th century, the United Kingdom continued to gradually limit the types of offenses and types of offenders for which, and to whom, the death penalty applied. One key area in which the use of the death penalty was limited in the United Kingdom was in its use against young people and the mentally impaired. These are, of course, categories of offenders which this Court has recently held that it is unconstitutional to execute. *See Atkins v. Virginia*, 536 U.S. 304 (2002); *Roper v. Simmons*, 543 U.S. 551 (2005).

But it was over 50 years *after* capital rape was abolished that the United Kingdom first moved to distinguish between certain categories of murderers. The United Kingdom prohibited the execution of children under the age of 16 in 1908. Children Act, 1908, 8 Edw. 7, c. 67, § 103 (Eng.). The execution of persons under the age of 18 was prohibited in 1933.

---

[14] Arson in a royal dockyard, *see* Dockyards Protection Act, 1772, 12 Geo. 3, c. 24, § 1 (Eng.), espionage, *see* Naval Discipline Act, 1860, 23 & 24 Vict., c. 23, § 1 (Eng.), piracy with violence, *see* Piracy Act, 1837, 7 Will. 4 & 1 Vict., c. 88, § 2 (Eng.), and high treason, *see* Treason Act, 1814, 54 Geo. 3, c. 146, § 2 (Eng.).

Children and Young Persons Act, 1933, 23 & 24 Geo. 5, c. 12, § 53 (Eng.). And in 1957, by way of the Homicide Act, the defense of diminished responsibility was introduced, whereby a defendant who could prove he suffered from an abnormality of mind and a substantial impairment of moral responsibility would be convicted of manslaughter, which did not carry the death penalty. Homicide Act, 1957, 5 & 6 Eliz. 2, c. 11, § 2 (Eng.). Thus, while the United States' abolition of the death penalty for juveniles and the mentally retarded is consonant with the historical application of the death penalty in the United Kingdom, Louisiana's expansion of the death penalty to child rape is not.

At the same time, while public opinion debated the merits of complete abolition of the death penalty, Parliament moved to limit the categories of murder for which the death penalty should apply. In 1949, the Royal Commission on Capital Punishment was established to consider the use of the death penalty in the United Kingdom. By 1953, when the Commission reported its findings, there was a growing consensus that, even if the death penalty should not be abolished, its use should be restricted to the most serious acts of murder.[15]

---

[15] THE REPORT OF THE ROYAL COMMISSION ON CAPITAL PUNISHMENT, 1953, [Cmd.] 8932, at 20. Although the government at the time failed to pursue all of the Commission's proposals, the UK Parliament did adopt the Homicide Act 1957, which distinguished between capital and non-capital murder and narrowed the categories of murder for which the death penalty

Since 1964 (one year before Parliament abolished the death penalty for murder),[16] no person has been executed for any offense in the United Kingdom. The death penalty remained on the statute book for certain offenses against the state (arson in a royal dockyard until 1971,[17] espionage until 1981,[18] and piracy and high treason until 1998[19]), although the last execution for any of these offenses took place in 1946. On October 10, 2003, the U.K. ratified the Thirteenth Protocol to the European Convention on Human Rights,[20] which prohibits the use of the death

---

could be imposed. Only the following categories of murder were considered serious enough to carry the death penalty: (i) any murder done in the course of or furtherance of theft; (ii) any murder by shooting or by causing an explosion; (iii) any murder done in the course or for the purpose of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody; (iv) any murder of a police officer acting in the execution of his duty or of a person assisting a police officer so acting; (v) in the case of a person who was a prisoner at the time when he did or was party to the murder, any murder of a prison officer acting in the execution of his duty or of a person assisting a prison officer so acting; and (vi) two or more murders on different occasions. Homicide Act, 1957, 5 & 6 Eliz. 2, c. 11, §§ 5–6 (Eng.).

[16] Murder (Abolition of Death Penalty) Act, 1965, c. 71, § 1(1) (Eng.).

[17] Criminal Damage Act, 1971, c. 48, § 4(1)–(2) (Eng.).

[18] Armed Forces Act, 1981, c. 55 § 17 (Eng.).

[19] Crime and Disorder Act, 1998, c. 37, § 36(4)–(5) (Eng.).

penalty in all circumstances, and the U.K. became an abolitionist state in law as well as practice.[21]

C. Today, the United Kingdom Recognizes the Unique Seriousness of Murder Compared with All Other Offenses Against the Person, and This is Reflected in its Sentencing Policy

When sentencing, English courts must consider the following statutory purposes: (i) the punishment of offenders; (ii) deterrence and the reduction of crime; (iii) reform and rehabilitation of the offender; (iv) the protection of the public; and (v) the making of reparation to the victims.[22] Courts must determine the seriousness of the offense and, in doing so, must consider the offender's culpability in committing the offense and any harm which the offense caused, was

---

[20] Protocol Thirteen to the European Convention on Human Rights, Feb. 1, 2004.

[21] Protocol Thirteen has now been ratified by 40 European states and signed by five others. It superseded Protocol Six, which abolished the death penalty for most purposes but permitted states to make provision for the death penalty in respect of acts committed in time of war, or under imminent threat of war. *See*, Hansard Publications and Records, Human Rights Act 1998 (Amendment) Order 2004, Column 1420 per Lord Evans of Temple Guiting (May 26, 2004).

[22] Criminal Justice Act, 2003, c. 44, § 142(1) (Eng.). These statutory purposes do not apply to murder which is a sentence "fixed by law." *Id.* § 142(2)(b).

intended to cause or might foreseeably have caused.[23]

Current sentencing policy in the United Kingdom reflects the unique seriousness of murder as compared to any other offense against the person. Murder alone in the United Kingdom carries a mandatory sentence of life imprisonment. Murder (Abolition of Death Penalty) Act, 1965, c. 71, § 1(1) (Eng.). Sentencing guidelines published in April 2007 set out proposed sentences for sexual offenses that are intended to achieve and reflect the statutory purposes set out above. Sexual Offences Act 2003, Guidelines by the Sentencing Guidelines Council, Definitive Guideline (April 2007). The guidelines state that the recommended sentence for an offender who commits the single offense of rape of a child under 13 where there are no aggravating factors is 10 years' imprisonment. *Id.* at 25. This rises to 13 years for cases involving any aggravating factors such as breach of trust, more than one offender acting together, abduction or detention or sustained attack. *Id.* A discretionary maximum sentence of imprisonment for life may also be imposed.[24]

---

[23] *Id.* § 143(1).

[24] *Id.* Such a sentence is the starting point for offenders where the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified serious offenses. Criminal Justice Act, 2003, c. 44, § 225(1) (Eng.).

The sentencing guidelines emphasize that for this type of offense, more than for many others, the sentencing process must allow for flexibility and variability. *Id.* at 5, ¶ 1.3. There are also issues regarding the deterrence goal when setting the sentencing tariff for these offenses. In rape or child rape cases, where the perpetrator is often a relative or acquaintance of the victim, fear that a too severe penalty will be imposed might inhibit the victim, or another family member, from reporting the offense. Failing to distinguish between the sentences for rape and murder would also remove a major incentive for a rapist not to kill his victim in order to eliminate the only witness to his crime.

II. There is a Well-Established Global Consensus that Nations That Retain the Death Penalty Must Strictly Limit Its Application

The United Kingdom's experience is consistent with well-established international norms regarding the application of the death penalty. International authorities have long agreed that nations that retain the death penalty must refrain from expanding the death penalty to crimes to which it currently does not apply – a principle that has been codified in a regional convention and reaffirmed by the jurisprudence of human rights bodies. There is an equally strong global consensus that nations should gradually narrow the categories of offenses for which the death penalty may be imposed. Evidence of this consensus is found in the

resolutions and statements of United Nations organs, in the jurisprudence of international human rights bodies, and in the commentary of recognized experts in the field of international law. It finds further confirmation in the statements and practices of retentionist nations, where the use of the death penalty has been progressively restrained.

All nations should respect the principles embodied in these sources of international law, not only because they express a standard of decency setting the outer boundary for civilized punishment among the community of nations, but also because they enable nations observing that boundary to affirm the dignity and assure the protection of victims of reprehensible crimes—like child rape—by insisting that severe condemnation and punishment of such crimes can be accomplished by penalties less than death.

A. Nations That Retain the Death Penalty May Not Extend the Death Penalty to Crimes to Which It Does Not Presently Apply

The U.N. Commission on Human Rights[25] has

---

[25] The U.N. Commission on Human Rights, an ECOSOC-created organ, was given the broad mandate of promoting human rights worldwide. *See* THOMAS BUERGENTHAL, DINAH SHELTON & DAVID STEWART, INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL 96 (West 3rd ed. 2002). It was superceded by the Human Rights Council in 2006. G.A. Res. 60/251, § 1, U.N. Doc. A/RES/60/251 (Apr. 3,

repeatedly called on nations maintaining the death penalty "not to extend [the death penalty's] application to crimes to which it does not at present apply."[26] In the Americas, this principle has been codified in Article 4(2) of the American Convention on Human Rights (ACHR).[27] The two human rights bodies that monitor compliance with human rights in the region—the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights—have both emphasized the fundamental nature of this principle in assessing the application of the death penalty in the Americas.

2006).

[26] U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 2005/59, ¶5(b), U.N. Doc. 2005/59 (Apr. 20, 2005); U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 2004/67, ¶ 5(b), U.N. Doc. 2004/67 (Apr. 21, 2004); U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 2003/67, ¶ 5(a), U.N. Doc. 2003/67 (Apr. 24, 2003).

[27] American Convention on Human Rights [ACHR] art. 4(2), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 ("the application of [the death penalty] shall not be extended to crimes to which it does not presently apply"); *see also* Protocol to the ACHR to Abolish the Death Penalty, ¶ 1, O.A.S.T.S. No. 73, U.N.T.S. A-53 ("Article 4 of the American Convention on Human Rights recognizes the right to life and restricts the application of the death penalty.").

The United States has signed the American Convention, and is therefore obligated not to defeat its object or purpose. Vienna Convention on the Law of Treaties art. 18, Jan. 27, 1980, 1155 U.N.T.S. 331.

In an advisory opinion interpreting Article 4(2), the Inter-American Court on Human Rights concluded:

> Although in the one case the Convention does not abolish the death penalty, it does forbid extending its application and imposition to crimes for which it did not previously apply. In this manner any expansion of the list of offenses subject to the death penalty has been prevented. In the second case, the reestablishment of the death penalty for any type of offense whatsoever is absolutely prohibited[.][28]

In *Raxcacó-Reyes v. Guatemala,* the Inter-American Court concluded that Guatemala had violated Article 4(2) by sentencing an offender to death for abducting an eight-year-old child—a crime that did not carry a death sentence at the time Guatemala ratified the American Convention on Human Rights. *Raxcacó-Reyes v. Guatemala,* 2005 Inter-Am. Ct. H.R. (ser. C) No. 133, ¶ 56 (Sept. 15, 2005). The Court concluded that a kidnapping which did not result in death was not a "most serious crime" under Article 4(2) of the American Convention. *Id.* ¶ 71; *see also id.* ¶ 28 (separate opinion of Judge Garcia-Ramirez)

---

[28] *Restrictions to the Death Penalty* (Arts. 4(2) and 4(4) American Convention on Human Rights), OC-3/83 Op. Inter-Am. 15, ¶ 56 (September 8, 1983) (advisory opinion).

(concluding that the only offense that constitutes a "most serious crime" is aggravated homicide).[29]

The Inter-American Commission on Human Rights has held that the principle set forth in Article 4(2) reflects established international norms. In 2000, the Inter-American Commission concluded that the reinstatement and expansion of the federal death penalty in the United States was "inconsistent with the spirit and purpose of numerous international human rights instruments to which the State is a signatory or a party, and [was] at odds with a demonstrable international trend toward more restrictive application of the death penalty." *Garza v. United States*, Case 12.243, Inter-Am. C.H.R., Report No. 52/01, OEA/Ser.L/V/II/111, doc. 20, rev. ¶ 94 (2000).

B. Nations That Retain the Death Penalty Must Progressively Narrow the Class of Offenses Punishable by Death

On December 18, 2007, the United Nations General Assembly adopted a resolution calling upon

---

[29] In response to the ruling, Guatemala commuted the offender's death sentence to a term of forty years. Inés Benítez, *Guatemala Complies with Inter-American Court Ruling*, INTER-PRESS SERVICE NEWS AGENCY, Oct. 19, 2007, at 1, *available at* http://ipsnews.net/news.asp?idnews=39737 (last visited Feb. 15, 2008).

"all States that still maintain the death penalty to . . . progressively restrict the use of the death penalty and reduce the number of offenses for which it may be imposed[.]" G.A. Res. GA/10678, § 2(c), U.N. Doc. A/C.3/62/L.29 (Dec. 18, 2007). The General Assembly further called upon nations that had abolished the death penalty not to reintroduce it. *Id.* at § 3. The text of the resolution, which was adopted by a wide majority of nations, is only the most recent demonstration of the international community's longstanding consensus on these points.

Past U.N. Resolutions and other U.N. Reports express a consistent view; indeed, the language in many of these documents is synonymous with the language of the 2007 resolution. For example, in 1971 and in 1977 the General Assembly passed resolutions calling for progressive restrictions on the number of offenses for which capital punishment may be imposed.[30] Over the last three decades, the United Nations Economic and Social Council (ECOSOC)[31] has likewise passed numerous resolutions reiterating this principle.[32] And the U.N. Commission on Human

---

[30] G.A. Res. 2857 (XXVI), ¶ 3, U.N. Doc. A/2027 (Dec. 20, 1971); G.A. Res. 32/61, ¶ 1, U.N. Doc. A/RES/32/61 (Dec. 9, 1977).

[31] ECOSOC is a charter body of the United Nations empowered to adopt resolutions for the promotion of human rights around the world. *See* U.N. Charter art. 68.

[32] U.N. ESCOR Res. 1996/15, ¶ 1, U.N. Doc. E/1996/96 (July 23, 1996) (noting that an increasing number of nations have "adopted

Rights adopted a resolution each year between 1997 and 2005 calling on nations maintaining the death penalty to progressively restrict the number of offenses punishable by death.[33]

---

a policy of reducing the number of capital offenses"); U.N. ESCOR Res. 1995/57, ¶ 2, U.N. Doc. E/1995/95 (July 28, 1995) (same); U.N. ESCOR Res. 1990/90, ¶ 2, U.N. Doc. E/1990/51/Add.1 (July 24, 1990) (same); U.N. ESCOR Res. 1989/64, ¶ 5, U.N. Doc. E/Res/1989/89 (May 24, 1989) ("[N]oting with satisfaction that a large number of Member States have [begun implementing] safeguards."); U.N. ESCOR Res. 1930 (LVIII), ¶ (b), U.N. ESCOR, Organizational Session for 1975, Supp. No. 1, U.N. Doc A/Res/1930 (May 6, 1975) (noting that the number of death-eligible offenses between 1969 and 1973 "has been progressively declining in many parts of the world"); U.N. ESCOR Res. 1745 (LIV), ¶¶ 1, 3, U.N. ESCOR 54th Sess., Supp. No. 1, U.N. Doc. A/Res/1745 (May 16, 1973).

[33] *See* U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 2005/59, ¶ 5(b), U.N. Doc. 2005/59 (Apr. 20, 2005); U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 2004/67, ¶ 5(b), U.N. Doc. 2004/67 (Apr. 21, 2004); U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 2003/67, ¶ 5(a), U.N. Doc. 2003/67 (Apr. 24, 2003); U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 2002/77, ¶ 5(a), U.N. Doc. 2002/77 (Apr. 25, 2002); U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 2001/68, ¶ 5(a), U.N. Doc. 2001/68 (Apr. 25, 2001); U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 2000/65, ¶ 4(b), U.N. Doc. 2000/65 (Apr. 26, 2000); U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 1999/61, ¶ 4(b), U.N. Doc. 1999/61 (Apr. 28, 1999); U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 1998/8, ¶ 4(a), U.N. Doc. 1998/8 (Apr. 3, 1998); U.N. Comm. on Hum. Rts., *The Question of the Death Penalty*, Res. 1997/12, ¶ 4, U.N. Doc. U.N. Doc. 1997/12, (Apr. 3, 1997).

Echoing the calls of the U.N. organs, the Human Rights Committee[34] and U.N. Special Rapporteurs[35] have repeatedly observed that states must restrain their use of the death penalty, both by limiting the death penalty to the most serious crimes and by narrowing the scope of death eligible offenses.[36] This

---

[34] The Human Rights Committee is charged with monitoring compliance with the International Covenant on Civil and Political Rights. International Covenant on Civil and Political Rights [ICCPR] art. 28, Mar. 23, 1976, 999 U.N.T.S. 171.

[35] The United Nations Commission on Human Rights formerly appointed experts to serve as Special Rapporteurs on thematic issues as well as to gather information regarding human rights practices in specific countries. U.N. Comm. on Hum. Rts., *Extrajudicial, Summary or Arbitrary Executions*, Res. 1996/74, § 7, U.N. Doc. 1996/74 (Apr. 23, 1996). The Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions are currently appointed by the Human Rights Council. G.A. Res. 60/251, § 5, U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

[36] *See, e.g.*, Human Rights Comm., General Comment No. 06: *The Right to Life*, 16th Sess., §6, U.N. Doc. 30/04/82 (1982) ("[w]hile... States Parties are not obliged to abolish the death penalty totally they are obliged to limit its use"); U.N. Hum. Rts. Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, ¶ 65, U.N. Doc. A/HRC/4/20/2007/18 (Jan. 29, 2007); U.N. Comm. on Hum. Rts., *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 147, U.N. Doc. A/HRC/4/33/Add.2 (Mar. 15, 2006); Press Release, U.N. Comm. on Hum. Rts., Special Rapporteur on Torture Highlights Challenges at End of Visit to China 9, *available at*

mandate clearly extends to the United States, which is a party to the International Covenant on Civil and Political Rights (ICCPR). International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171. In 2006, in response to information regarding the expansion of the death penalty in the United States, the Human Rights Committee called upon the United States to "review federal and state legislation with a view to restricting the number of offenses carrying the death penalty." Human Rights Comm., *Concluding Observations of the Human Rights Committee, United States of America*, ¶ 29, U.N. Doc. A/61/40 (July 2006).

Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) provides, "[i]n countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes." ICCPR art. 6. The Human Rights Committee has concluded that only crimes that result in the loss of life constitute "most serious crimes" under Article 6. Human Rights Comm., *Concluding Observations of the Human Rights Committee, Islamic Republic of Iran*, ¶ 8, U.N. Doc. CCPR/C/79/Add.25 (1993). The Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions concurs with this

---

http://www.unhchr.ch/huricane/huricane.nsf/0/677C1943 FAA14D67C12570CB0034966D?opendocument (Dec. 2, 2005); U.N. Comm. on Hum. Rts., *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, ¶ 55, U.N. Doc. E/CN.4/2005/7 (Dec. 22, 2004); U.N. Comm. on Hum. Rts., *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, ¶ 47, U.N. Doc. E/CN.4/2004/7 (Dec. 22, 2003).

judgment. In a recent report analyzing the *travaux preparatoires* of the ICCPR and the jurisprudence of all of the principal United Nations bodies charged with interpreting Article 6, he concludes, "the death penalty can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life."[37]

Finally, the practices of retentionist states reflect and reaffirm the international legal principle that the scope of the death penalty should be progressively limited. The U.N. Secretary General's 2005 *Report on Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* recognizes "an encouraging trend toward . . . restriction of the use of capital punishment in most countries."[38] This trend had earlier been documented

---

[37] Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, ¶ 65, U.N. Doc. A/HRC/4/20/2007/18 (Jan. 29, 2007). *See also* Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, ¶ 21, U.N. Doc. E/CN.4/1998/68/Add.3 (Jan. 22, 1998) ("the most serious crimes are those 'intentional crimes with lethal or other extremely grave consequences.' The Special Rapporteur considers that the term 'intentional' should be equated to premeditation and should be understood as deliberate intention to kill.").

[38] The Secretary-General, *Report of the Secretary-General on Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, ¶ 3, U.N. Doc. E/2005/3 (Mar. 9, 2005).

by the U.N. Sub-Commission on the Promotion and Protection of Human Rights. In reports issued in 1999 and 2000, the Sub-Commission noted compelling empirical evidence that demonstrated the "tendency in retentionist States to restrict the number of crimes carrying a possible death sentence."[39]

The observations of these U.N. bodies are consistent with both historical and current practices of retentionist states. In Japan, for example, the government has gradually narrowed the categories of offenses that are death-eligible over the last 150 years. Japan abolished the death penalty for rape in 1908. *See* PETRA SCHMIDT, CAPITAL PUNISHMENT IN JAPAN 19–21, 25–28 (2002). Japan's penal code currently authorizes the death penalty for seventeen crimes, most of which are various forms of homicide and treason. *See id.* at 30. Although the penal code does permit the imposition of the death penalty for certain non-homicide offenses, since 1945 the death penalty has been reserved primarily for cases of murder and robbery-murder. *Id.* at 39, 46–47. The most comprehensive scholarly treatment of the death penalty in Japan indicates that no death sentences for rape have been handed down for at least the last 100

---

[39] U.N. Sub-Comm. on the Promotion and Protection of Human Rights, ¶ 4, Res. 2000/17, U.N. Doc. 2000/17, (Aug. 17, 2000); *see also* U.N. Sub-Comm. on the Promotion and Protection of Human Rights, ¶5, Res. 1999/4, U.N. Doc. 1999/4, (Aug. 24, 1999).

years. *Id.* at 27–47.[40]

As this overview of international law and state practice demonstrates, there are certain well-established principles that should inform the Court's analysis of the case at bar. Louisiana has extended the application of the death penalty to the crime of child rape – a crime to which it did not previously apply. This expansion of the death penalty contravenes international norms, which not only prohibit the expansion of the death penalty but also call for a progressive narrowing of its scope. *Amici* respectfully urge the Court to consider these principles in evaluating the constitutionality of Patrick Kennedy's death sentence under the Eighth Amendment to the United States Constitution.

III. Current State Practice Reflects a Global Consensus that the Death Penalty is an Excessive Punishment for Rape.

The death penalty is authorized by law for the crime of rape or child rape in only twenty-eight of the world's 193 nations.[41] No Western democracy continues

---

[40] Even China, the nation responsible for the vast majority of the world's executions, has indicated it intends to reduce the number of offenses that are death-eligible. *China Questions Death Penalty,* CHINA DAILY, Jan. 27, 2005, http://www.chinadaily.com.cn/english/doc/2005-01/27/content_412758.htm.

[41] The 193 nations are those members of the United Nations and

to authorize the punishment. And of the twenty-eight nations that authorize the practice by law, six are considered to be abolitionist in practice as they have not carried out any executions in at least ten years.[42]

None of the twenty-two retentionist states that

---

the Holy See. The death penalty for rape is available in Bangladesh, China, Cuba, Democratic Republic of the Congo, Egypt, Iran, Iraq, Jordan, Kuwait, Laos, Lesotho, Malawi, Mauritania, Mongolia, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, South Korea, Syria, Tajikistan, Thailand, Tunisia, Uganda, United Arab Emirates, Vietnam, and Yemen. Data is not available for Libya.

Hands Off Cain has reported that Malaysia authorizes the death penalty for rape. Hands Off Cain, Hands Off Cain Database,http://www.handsoffcain.info/bancadati/schedastato.php ?idstato=10000008&idcontinente=23 (explaining that rape is punishable by death in Malaysia). This is incorrect. The penal code of Malaysia establishes that the crime of rape is punished by a term of incarceration and not the death penalty. Malaysia Penal Code, ¶ 376 (setting punishment at term of incarceration for rape).

[42] Those nations are: Laos, Lesotho, Malawi, Mauritania, South Korea, and Tunisia. *See* Amnesty International, Death Penalty: Countries Abolitionist in Practice (Sept. 19, 2007), *available at* http://www.amnesty.org/en/death-penalty/countries-abolitionist-in-practice. In addition, Tajikistan's legislature passed a moratorium bill in 2004, and no executions have been carried out since that time. *See* Eurasianet.org, Tajikistan: Parliament Follows Regional Trend by Adopting Moratorium on Death Penalty, June 5, 2004, http://www.eurasianet.org/departments/rights/articles/pp060504.shtml.

authorize the death penalty for rape could be considered nations that share the "Anglo-American heritage" of the United States. *See Thompson*, 487 U.S. 830 & n.31. Many are nations whose legal traditions are influenced by Islamic law, which often calls for greater penalties than those typically inflicted for similar crimes in Western nations.[43] None of the twenty-two nations, with the exception of Mongolia, is an electoral democracy.[44]

Amici have found no evidence of an international trend to expand the death penalty to the crime of child rape. Indeed, the trend is in the opposite direction. In 2002, it was reported that Belarus,

---

[43] In Nigeria, for example, the penal code developed by the national government does not authorize the death penalty for rape. *See* Nigeria Criminal Code Act, pt. V, ¶ 358 ("Any person who commits the offence of rape is liable to imprisonment for life, with or without caning."). The Shari'ah code that is applied in Zamfara state, by contrast, authorizes the death penalty for rape, Zamfara State of Nigeria, Shari'ah Penal Code Law, ch. VIII, ¶ 127 available at http://www.zamfaraonline.com/sharia/chapter08.html ("Whoever commits the offense of [having sexual intercourse through the genitals of a person over whom he has no sexual rights] shall be punished . . . if married, with stoning to death (*rajm*)."), adultery, *id.* ¶ 128, and sodomy, *id.* ¶ 129. "Lesbianism" is punished by fifty lashes and imprisonment up to six months. *Id.* ¶ 135. Theft is punished by amputation of the right hand. *Id.* ¶ 145.

[44] FREEDOM HOUSE, FREEDOM IN THE WORLD 2008, *available at* http://www.freedomhouse.org/uploads/fiw08launch/FIW08Tables.pdf. (last visited Feb. 18, 2008).

Kazakhstan, Kyrgyzstan, Morocco, Uzbekistan and the Philippines authorized the imposition of the death penalty for some form of rape. ROGER HOOD, THE DEATH PENALTY: A WORLDWIDE PERSPECTIVE 83 (2002). Since then, these countries have either abolished the death penalty entirely (Kyrgyzstan, Philippines, Uzbekistan),[45] or have eliminated the death penalty for rape (Belarus, Kazakhstan, Morocco).[46] There are few reports of executions for any form of rape not resulting in death. A search of a leading database on the death penalty reveals that the only countries reported to have imposed death sentences for the crime of rape in recent years are Saudi Arabia, Iran, China and Kuwait. Hands Off Cain, Hands Off Cain Database, http://www.handsoffcain.info/search/? srctxt=rape (last visited Feb. 18, 2008).

The nations with which the United States shares a common legal tradition long ago determined that the death penalty was an excessive punishment for the crime of rape, including child rape. Eighty-five percent of the world's nations agree.

---

[45] *See* Amnesty International, *supra* note 42.

[46] *See* OSCE Office for Democratic Institutions and Human Rights, Legislation Online: Belarus, http://www.legislationline.org/?jid=7&less= false&tid=144; OSCE Office for Democratic Institutions and Human Rights, Legislation Online: Kazakhstan, http://www.legislationline.org/?tid= 144&jid=28&less=false; Morocco Penal Code, arts. 486–88 (establishing that various terms of imprisonment are imposed for categories of rapes).

CONCLUSION

Louisiana's expansion of the death penalty to the crime of child rape is inconsistent with the history of the death penalty's application in the United Kingdom and violates established principles of international law. The vast majority of the world's nations have concluded that the death penalty is an excessive punishment for any form of rape that does not result in death. It would be a great disservice to the world community if the United States, long a leader in promoting and advocating human rights, permitted its local governments to expand the death penalty to the crime of child rape.

Respectfully submitted,

DAVID PANNICK QC
Blackstone Chambers
Blackstone House
Temple
London EC4Y 9BW

BARONESS HELENA
KENNEDY QC
Doughty Street
Chambers
10-11 Doughty Street
London WC1N 2PL

JOHN BLAIN
MATTHEW BRUCE
TAMLYN LUDFORD
Freshfields Bruckhaus
Deringer
65 Fleet Street
London EC4Y 1HS

SANDRA L. BABCOCK
Counsel of Record
Bluhm Legal Clinic
Northwestern Law
School
357 E. Chicago Avenue
Chicago, IL 60611
(312) 503-0114

PROFESSOR CONOR
GEARTY
Centre for the Study of
Human Rights
London School of
Economics
and Political Science
Houghton Street
London WC2A 2AE

Counsel for Amici Curiae

APPENDIX

APPENDIX

List of *Amici Curiae*

The **Bar Human Rights Committee** (BHRC) is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world and with defending the rule of law and internationally recognized legal standards relating to the right to a fair trial. The BHRC has previously acted as an amicus to the US Supreme Court in the case of *Roper v. Simmons*.

The **International Human Rights Committee** is the human rights arm of the **Law Society**, which is the representative body for solicitors in England and Wales. Its stated purpose is to uphold human rights and the rule of law around the world, particularly in relation to lawyers, their professional activities and the upholding of international human rights standards.

The **British Institute of International and Comparative Law** continues a mission first begun in 1895: to advance the understanding of international and comparative law; to promote the rule of law in international affairs; and to promote their application through research, publications and events.

The Lords of Appeal in Ordinary (or 'Law Lords') are the most senior judges in the United Kingdom. They are appointed to the appellate committee of the House of Lords, which acts as the highest court for U.K. domestic matters and hears appeals from lower courts on important or complex matters of law. The following former law lords are *amici* in this case:

Lord Browne-Wilkinson of Camden M.C
Lord Griffiths of Govilon M.C
Lord Millett of Marylebone
Lord Steyn of Swafield

In the United Kingdom, the rank of **Queen's Counsel** is a mark of distinction as an advocate. Only those practitioners who are considered to be the leaders of the profession in terms of ability and integrity are appointed to the role. The following Queen's Counsel are *amici* in this case:

Sir Sydney Kentridge QC
Lord Lester of Herne Hill QC
Conrad Dehn QC
Sir David Edward QC
Ian Brownlie CBE QC, UK Chairman of the International Law Commission
Gordon Pollock QC
Ian Hunter QC
Lord Grabiner of Alwych QC
The Hon. Michael J. Beloff QC
Stewart Boyd QC
David Donaldson QC
Nicholas Strauss QC
Robert Englehart QC

V.V.Veeder QC
Ian Glick QC
Barbara Dohmann QC
Hilary Heilbron QC
Bernard Eder QC
Alan Boyle QC
Jonathan Harvie QC
Professor Jeffery Jowell QC
Stephen Nathan QC
Patrick O'Connor QC
Presiley Baxendale QC
Professor Anthony Dicks QC
Richard Gordon QC
Christopher Sallon QC
Thomas Sharpe QC
Cherie Booth QC
Mark Hapgood QC
Christopher Gibson QC
Andrew Nicol QC
Clare Montgomery QC
Dr. David Thomas QC
Mark Howard QC
Andrew Hochhauser QC
Jeffrey Gruder QC
Andrew Popplewell QC
George Leggatt QC
Nicholas Green QC
Michael Grieve QC
Thomas Ivory QC
Richard Jacobs QC
Timothy Dutton QC
William Wood QC
Charles Hollander QC
Jeffery Onions QC
Stephen Auld QC

Rhodri Davies QC
Ian Mill QC
David Anderson QC
Aidan O'Neill QC
David Mildon QC
Gavin Millar QC
Tim Owen QC
Geraldine Andrews QC
Antony White QC
Raymond Cox QC
Victor Lyon QC
Richard Lord QC
Michael McLaren QC
Kenneth MacLean QC
Hugh Tomlinson QC
Mark Brealey QC
Keir Starmer QC
Malcolm Gammie QC
Andrew Lydiard QC
Conor Quigley QC
Laurence Rabinowitz QC
Andrew Hall QC
Professor Malcolm Shaw QC
Rabinder Singh QC
Mark Templeman QC
Richard Millett QC
Charles Graham QC
Joe Smouha QC
Bankim Thanki QC
Hugo Page QC
Robert Anderson QC
Simon Bryan QC
Anthony de Garr Robinson QC
Michael Fordham QC
David Foxton QC

Tom Linden QC
Robin Oppenheim QC
Craig Orr QC
Tim Otty QC
David Perry QC
Mark Milliken-Smith QC
Khawar Qureshi QC
Patricia Robertson QC
Dinah Rose QC
Heather Williams QC
Huw Davies QC

Professor Robert McCorquodale is the head of the School of Law at the University of Nottingham and the incoming director of the British Institute of International and Comparative Law.

Professor Roger Hood is the Director of the Centre for Criminological Research and a Fellow of All Souls College, Oxford.