

<b>Institution: 10007140 Birmingham City University</b>		
<b>Unit of Assessment: 18 Law</b>		
<b>Title of case study: INFLUENCING LEGAL PRACTICE AND REFORM IN THE UNITED STATES</b>		
<b>Period when the underpinning research was undertaken: 2013-2020.</b>		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Dr Sarah <b>Cooper</b>	Reader in Interdisciplinary Legal Studies	2009-present.
Dr Ilaria <b>Di Gioia</b>	Lecturer in Law	2016-present.
Dr Anne <b>Richardson Oakes</b>	Reader in American Legal Studies	1978-present.
Dr Alice <b>Storey</b>	Lecturer in Law	2017-present.
Professor Jon <b>Yorke</b>	Professor of Human Rights	2009-present.
<b>Period when the claimed impact occurred: 2014-2020.</b>		
<b>Is this case study continued from a case study submitted in 2014? No.</b>		
<b>1. Summary of the impact</b> (indicative maximum 100 words)		
<p>The Centre for American Legal Studies (CALS) influences legal practice and reform in the United States (US). Our research has: (1) <b>enhanced legal representation in US capital cases</b> through underpinning both our contributions to <i>amicus curiae</i> briefs submitted to US courts, and teaching for Amicus' US Death Penalty Training Programme; (2) <b>informed the resolution of state and federal litigation</b> through being independently referenced as authority by US judges, lawyers, and civil society; and (3) <b>increased the awareness</b> of stakeholders in domestic (Arizona) and international (United Nations) settings about necessary <b>law reform</b> regarding capital punishment, climate change, and compassionate release.</p>		
<b>2. Underpinning research</b> (indicative maximum 500 words)		
<p><b>Yorke</b> argues capital punishment is not a legitimate function of US sovereignty. His account of the interplays between the "science" and the constitutional law of lethal injection, unveils that adjudicative processes fail to properly assess lethal injection protocols, and maintain tortuous executions by improperly rejecting sound pharmacology that execution drugs do not minimise pain (<b>R01</b>). Applying "<i>time study</i>", Yorke coins "<i>capital judicial time</i>" wherein the state and prisoner compete to control linearity to respective destinations: execution and natural death. Yorke argues the state likely has a "<i>unfair time use advantage</i>", and uses the case of Linda Carty, a dual citizen of the UK and Federation of St Kitts and Nevis on Texas' death row, as an example. US courts have rejected Carty's constitutional claims through applying a non-cumulative review. Yorke proposes that the state's control over "<i>when</i>" and "<i>how</i>" claims are considered demonstrates that it can – through the courts separating the claims in separate hearings (as (e1) + (e2)) – diminish their factual power. He contends a single hearing cumulative review (<math>\sum</math> of  e1 + e2 ) could properly reveal the compounded nature of the constitutional violations in Carty's case, and shift the direction of time away from death (<b>R02</b>).</p> <p><b>Cooper</b> focuses on wrongful conviction and early release. She identified that US courts generally reject challenges to the reliability of forensic science evidence (e.g., firearms identification), despite</p>		

the association between such evidence and wrongful conviction. Instead, courts defer to precedents and rational decision-making by competent authorities (e.g., judges, lawyers and jurors), overlooking limitations in both legal agents' scientific expertise and legal processes (e.g., admissibility frameworks and cross-examination) for excluding unreliable science (**R03**). Cooper's evaluation of US clemency procedures (mechanisms for early release) for remedying wrongful conviction found limited transparency and decision-maker expertise; burdensome application processes and proof standards; minimal due process standards; restricted appellate review; and political associations combine to hinder innocence claims (**R04**). This expertise led to a Leverhulme Trust and British Academy Grant Award to analyse US state compassionate release procedures, which typically facilitate early release on ill-health grounds. This study produced a national account of compassionate release (including procedure numbers, methods, labels, eligibility, exclusions, processes, and release requirements) and a blueprint for reform.

**Richardson Oakes** and **Di Gioia** have developed models for understanding state resistance to federal policies, explaining partisan litigation tactics as new manifestations of an *un-co-operative federalism*. **Richardson Oakes** and Dotto (a funded PhD Candidate in CALS) identified that Democratic-state governors, concerned about global climate change, had initiated similar tactics to oppose the Trump Administration's rollback of domestic environmental regulation and its notice to withdraw from the Paris Agreement. As part of this, **Richardson Oakes** and Dotto produced a detailed account of US international climate change obligations and the implications of federal rollbacks (**R05**).

Led by **Storey**, the BCU team's Stakeholder Report (**R06**) to the US 2020 United Nations Universal Periodic Review focuses on capital punishment, climate change, and compassionate release. Drawing on the team's collective expertise, the report's research-informed recommendations include that foreign nationals charged with capital offences be promptly informed of their consular assistance rights; the US Food and Drug Administration regulate lethal injection drugs; the federal government not rollback its domestic and international climate change commitments; and compassionate release best practices be implemented.

### 3. References to the research (indicative maximum of six references)

**R01:** Jon Yorke, *Comity, Finality, and Oklahoma's Lethal Injection Protocol*, 69 Okla. L. Rev. 545 (2017).

**R02:** Jon Yorke, *An Experience of Time in the Capital Judicial Process*, 24(2) Tex. J. C.L. & C.R. 189 (2019).

**R03:** Sarah Lucy Cooper, *The Collision of Law and Science: American Court Responses to Developments in Forensic Science*, 33 Pace L. Rev. 234 (2013).

**R04:** Sarah Lucy Cooper & Daniel Gough, *The Controversy of Clemency and Innocence in America*, 51(1) Cal. W. L. Rev. 55 (2014).

**R05:** Valentina Dotto & Anne Richardson Oakes, *The Environment, A Bipartisan Issue?: Partisanship Polarization and Climate Change Policies in the United States*, 8(3) Brit. J. Am. Legal Stud. 483 (2019).

**R06:** Alice Storey, Jon Yorke, Lissa Griffin, Anne Richardson Oakes, Sarah L. Cooper & Ilaria Di Gioia, *The UPR Project at BCU, Stakeholder Report Joint Submission by Birmingham City University and Pace University to the United States of America's Universal Periodic Review (UPR), Third Cycle, 36th Session of the UPR Working Group (May 2020)*.

#### 4. Details of the impact (indicative maximum 750 words)

##### ***Enhanced Legal Representation***

We use our research expertise to inform *amicus curiae* briefs filed in US capital cases. We have been involved in four briefs post-2014, addressing justice system recognition of foetal alcohol spectrum disorder, the constitutionality of capital punishment, and procedural fairness [S01]. Yorke's work on Linda Carty's case, as a member of the UK Foreign, Commonwealth and Development Office's (FCDO) Expert Group on the Death Penalty and Pro Bono Lawyer's Panel, demonstrates the significance of this work. Carty has been on Texas' death row for 18+ years. In 2014, Yorke formed a drafting team for Her Majesty's Government (HMG) to file an *amicus curiae* brief in support of Carty's case (promoting her rights to a fair trial) to the Texas Court of Criminal Appeals (TCCA). The TCCA subsequently gave a "significant" and "rare" judgment in the case, with its grounds for remanding Carty's execution and its order for the reconsideration of her case "consistent with" arguments raised by Yorke [S02]. In 2018, Yorke led HMG's brief to the United States Supreme Court (USSC), submitting (as in R02) that the right to a fair trial under international law requires a cumulative error review to determine the fairness of Carty's proceedings. Yorke's work has been described as "instrumental in the UK government's efforts" to highlight important human rights issues to the USSC [S03].

We also support Amicus, a charity that helps provide legal representation in US capital cases, including through coordinating volunteer placements in the UK and US (30+/year) and *pro bono* caseworkers (800+). To ready volunteers to be of "maximum, immediate use" to US offices and to train caseworkers, Amicus runs a Death Penalty Training Programme (DPTP), which is CPD-accredited by the Solicitors Regulation Authority and Bar Standards Board. The BCU team has supported the DPTP "for over a decade... utilizing their research expertise to deliver innovative sessions" on capital punishment and international law (Yorke & Storey), the infrastructure of the American legal system (Di Gioia), and forensic science and wrongful conviction (Cooper). Between 2014 and July 2020, "The BCU team ... reached over 2000 participants", with Amicus' Director describing them as "key contributors" to Amicus' mission, undertaking work that "makes a difference..." [S04].

##### ***Informing Litigation***

US judges, lawyers and civil society cite our research as authority to inform litigation. In rejecting a challenge to Kentucky's clemency procedures, the Kentucky Supreme Court referenced R04 when finding no state "provides the adjudication-like process Appellants contend is due" and "Kentucky's reliance on the Governor" for clemency decisions was not unique. In considering if defence counsel was ineffective for failing to find and present a firearms expert, the Tennessee Supreme Court referenced R03 when stating forensic science had "faced criticism" and was associated with wrongful conviction. Lawyers have repeatedly referenced – in appellant briefs and memorandums of law – R03's account of firearms evidence limitations when making firearms evidence-related challenges in state and federal courts. R03's finding that courts commonly rely on precedent to admit criticised forensic evidence has also been referenced by *amici* non-profit organisations representing indigent defendants, in support of their argument that courts are abdicating their gate-keeping role to ensure jurors only receive reliable evidence [S05].

##### ***Increasing Awareness about necessary Law Reform***

Arizona has a "very narrow" compassionate release procedure. Only if permitted by their sentencing statute (which is rare) and medically certified to be within four months of death, can prisoners apply to Arizona's Board of Executive Clemency (BOEC) for compassionate release based on 'imminent danger of death.' Concerned, a contract attorney for the Arizona Justice Project, sought Cooper's expertise in evaluating US state clemency procedures, asking if Arizona's approach could be compared to that of other states. Funded by a BCU Small Development Grant, they "Harness[ed] Dr Cooper's research methods" to undertake a Pilot Study of US compassionate release procedures.

They then successfully applied for a Leverhulme Trust and British Academy Grant to scale-up the study [S06]. In 2018, multi-stakeholder panels in New York and Arizona discussed Cooper's study report [S07]. For the Co-Chair of the Arizona Attorneys for Criminal Justice's Legislative and Policy Committee, the report confirmed Arizona "*lag[ged] way behind*" and was "*extremely helpful*" for reform efforts, so they asked Cooper to model legislation for Arizona [S08]. Cooper's model proposes a broader medical parole procedure that takes account of serious medical problems, public safety, medical appropriateness, cost, and human dignity [S07]. The model is a "*way forward*" at a time when Arizona is "*looking for ways*" to decarcerate and "*show mercy for those most deserving...*" and would allow the "*most vulnerable to die with dignity*" [S06]. Shared across "*charitable organizations, public-policy think tanks, research... organizations, faith groups, lobbyists and more*" the model is "*rais[ing] awareness ... and significantly advancing [Arizona] reform efforts...*" [S08]. This led to the model becoming a Bill (SB1478) sponsored by Arizona law-makers [S07]. Cooper's research "*no doubt...opened a path for stakeholders to discuss the need for such change in Arizona...*" [S06].

Our research also increases awareness about the need for law reform internationally. The Office of the United Nations High Commissioner for Human Rights (OHCHR) repeatedly cited R06 in its *Summary of Stakeholders' Submissions on the United States of America* in relation to the US 2020 Universal Periodic Review [S09]. In its report, the OHCHR cited R06 to: (1) support Women's International League for Peace and Freedom *et al* statements that US energy policy mostly focuses on fossil fuels, that oil and gas industries benefited from favourable taxation, and that the US should reinstate the Paris Agreement (per R05); (2) the American Civil Liberties Union's submission that capital punishment is declining in the US; and (3) Amnesty International's concern that executions have taken place in cases involving "*serious doubts about the proceedings...*" Here, the OHCHR specifically referenced to the accounts given of Linda Carty's proceedings in R02 and R06. With 139 stakeholder submissions, the OHCHR's citations to the BCU team's stakeholder report are noteworthy. The OHCHR's report is compiled for the UN Human Rights Council and is reviewed by the US government, UN member states, and civil society. Notably, in December 2020, the *Report of the Working Group on the Universal Periodic Review* reported UN member states' formal recommendations to the US, at its review on November 9, 2020, included that the US abolish capital punishment and reinstate the Paris Agreement [S010].

#### 5. Sources to corroborate the impact (indicative maximum of 10 references)

##### Enhanced Capital Representation

**S01: Amicus Briefs** (*Floyd v Flison* (2020); *Walter v. Pennsylvania* (2015); *In Re Linda Anita Carty* (2014); *Carty v Texas* (2018)).

**S02: Testimonial**, [Former] Human Rights Adviser, Prisoner Policy and Human Rights Team, Foreign and Commonwealth Office. [**Named Corroborator 1**]

**S03: Testimonial**, Human Rights Advisor & Senior Lawyer, Foreign, Commonwealth and Development Office. [**Named Corroborator 2**]

**S04: Testimonial**, Director of Amicus. [**Named Corroborator 3**]

##### Informing Litigation

**S05: Court Judgments, Appellant Briefs, Memorandum of Law, and Brief of Amici Curiae** (*Foley v. Beshear* (2015); *Kendrick v. State* (2015); *Morones v Texas* (2017); *Washington v DeJesus* (2017); *Washington v Hatfield* (2017); *USA v Harrison et al* (2015); *New York v Foster-Bey*; *New York v Williams* (2019)).

**Increasing Awareness about necessary Law Reform**

**S06: Testimonial**, Contract Attorney for the Arizona Justice Project & Supervising Attorney for the Post-conviction Clinic at the Sandra Day O'Connor College of Law at Arizona State University. **[Named Corroborator 4]**

**S07: Study Report, Panel Materials, Legislative Proposal and Arizona Senate Bill** (*Approaches to Medical Parole* in NY on June 7, 2018; *Compassionate Release of Prisoners with Health Problems Across the United States* in AZ on November 8, 2018; Sarah L. Cooper, *State Compassionate Release Approaches in the USA: A Blueprint for Discussion* (unpublished) (2018); Sarah L. Cooper, *Legislative Proposal for Enhancing Compassionate Release in Arizona*, (2019)); Arizona Bill SB1478 (executive clemency board; medical parole).

**S08: Testimonial**, Co-Chair, Arizona Attorneys for Criminal Justice, Legislative and Policy Committee. **[Named Corroborator 5]**

**S09: Summary of Stakeholders' Submissions on the United States of America**, Report of the Office of the United Nations High Commissioner for Human Rights, Human Rights Council, Working Group on the Universal Periodic Review, Thirty-sixth Session (March 6, 2020).

**S010: Report of the Working Group on the Universal Periodic Review** (United States of America) Human Rights Council, Forty-sixth Session (December, 15, 2020).