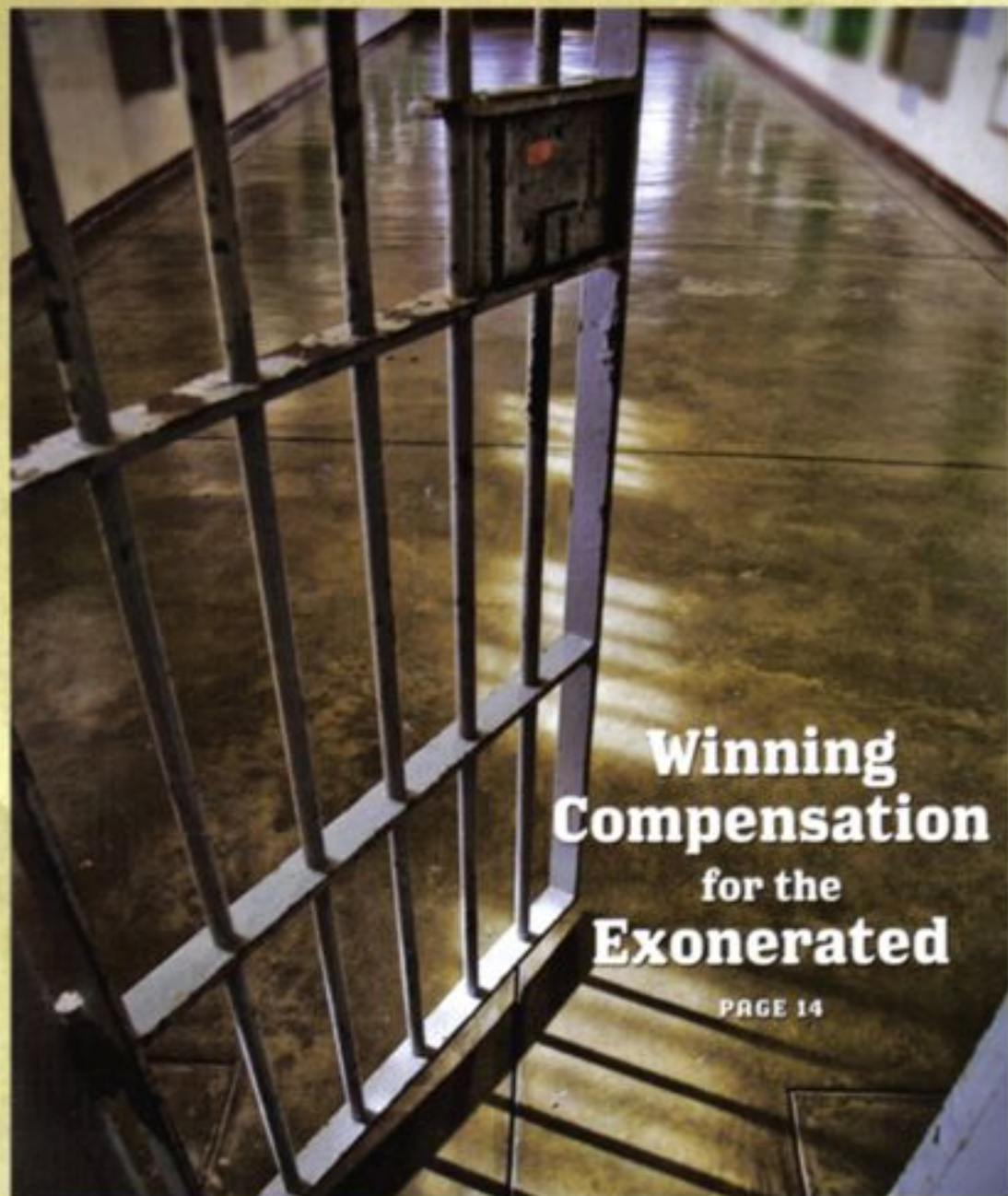


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DEFENDER

Volume 20, No. 2

A Publication of the Florida Association of Criminal Defense Lawyers

Summer 2008



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INTERNATIONAL CRIMINAL LAW

Aucun Chemin de Fleurs Ne Conduit à la Gloire¹



by
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Funk

Having attended FACDL's Death is Different XIV, I couldn't help but shudder during the incomparable Stephen Bright's keynote address on defending capital cases in the era of the *Roberts* court. His insights and recitations of procedural nightmares, "gotcha" justice and inequities reminded me that there is truly no easy road to success, as the title of this article states. While we in Florida continue to fight this necessary fight, I thought I'd take this opportunity to update you on what the rest of the world is "doing" in terms of the death penalty.

Amnesty International (AI) released its report about the death penalty worldwide on April 15, 2008. Not surprisingly, over 80 percent of all known executions took place in just five countries. They are: China, Iran, Saudi Arabia, Pakistan, and ... you guessed it,

the good old USA.

During 2007, 1,252 people were executed in 24 countries. These are the numbers that are known. China, Singapore, Malaysia and Mongolia carry out the death penalty as a "state secret" so the true numbers are assuredly higher.

AI states that in 2007, the "Chinese authorities again refused to publish statistics on the government's use of the death penalty, leaving the world in the dark about the number of executions carried out. Amnesty International believes there is likely to have been a significant drop in executions during 2007 after the Supreme People's Court (SPC) of China review for all death sentences was restored on January 1. In 2007, 470 executions were recorded by AI, but this number is based only on the public reports available and serves as an absolute minimum. The US-based organization Dui Hua Foundation estimates that 6,000 people were executed last year based on figures it obtained from local officials. In a country as vast as China, with tight government controls on information

and the media, only the authorities know the reality behind the use of the death penalty. As Beijing prepares to host the Olympics, AI challenges the government of China to end its secretive use of the death penalty and provide detailed information about the use of capital punishment. Only then can a full and informed debate around the appropriateness of the use of the death penalty take place."

The death penalty continues to be used as punishment in appalling circumstances in various places throughout the world. In July, Ja'Far Kiani, a father of two, was stoned to death in Iran for committing adultery. In October, a 75-year-old factory worker in North Korea was executed by firing squad for failing to declare his family background, investing his own money in the factory, appointing his own children to manage the factory and making international phone calls. Not to be outdone, Mustafa Ibrahim, an Egyptian national, was beheaded in Saudi Arabia for the practice of sorcery. In Texas, computers crashed at the Texas Defender Service in Houston

while attorneys were amending their brief on behalf of Michael Richard to include the *Baze v. Rees* issue which was accepted by the U.S. Supreme Court that morning. As a result of the crash, the attorneys missed the Texas Court of Criminal Appeal's deadline of 5:00 p.m. by 20 minutes.

The Texas court refused to stay open for the extra minutes, even though they had previously been advised of the crash. Consequently, the Supreme Court turned down the appeal and Mr. Richard was executed. Of course, two days later, another Texas death row inmate had his execution stayed until the Supreme Court decided *Baze*.⁷ As to Mr. Richard, Abel Acosta, chief deputy clerk for the court, said it is longstanding policy for the court to close on time. "The clerk's office consulted with the court, and we were advised that our hours are 8 to 5," he said. As Stephen Bright would say—Gotcha!

In December 2007, the United Nations General Assembly adopted a landmark resolution calling for a moratorium on executions to be established in all member nations that still maintain the death penalty, as well as a resolution strongly condemning rape against women and girls in all its forms, including in conflict situations. The resolution calling for "a moratorium on the death penalty" was passed by a vote of 104 in favor to 54 against,

with 29 abstentions. It called on all countries that still allowed capital punishment to "progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed." Those countries were also called on to provide the Secretary-General with information on their use of capital punishment and to respect international standards that safeguard the rights of condemned inmates. Importantly, some of the 54 "against" voters included: Afghanistan, Chad, China, Korea, Egypt, Iran, Iraq, Libya, Pakistan,

Somalia, Sudan, Syria, Yemen, and... what a surprise, the United States of America. Surely, our system of justice cannot be so vengeful and primitive that we continue to align ourselves with this list of countries having systems so lacking in knowledge and spiritual insight.

In 1764, a Jesuit-trained Italian man named Cesare Beccaria published *Dei delitti e delle pene* ("On Crimes and Punishment"). This publication occurred during Milan's "Enlightenment." In fact, he is cited as the first to speak out against torture and the death penalty as punishment. Interestingly, the European Union cites to Beccaria in its policy statement decrying the death penalty. Beccaria said some 244 years ago, "If I can prove that this punishment is neither useful nor necessary, I will have

furthered the cause of humanity." Amen to enlightenment.

The EU memorandum on the death penalty states:

The death penalty poses a set of distinct questions of a philosophical, religious, political and criminological nature. Although Member States' experiences in abolition varied in time, they shared common ground—that of the inhumane, unnecessary and irreversible character of capital punishment, no matter how cruel the crime committed by the offender. Besides, this justification now seems to be shared by the international community as a whole, insofar as both the Rome Statute of the International Criminal Court and the United Nations Security Council Resolutions establishing the International Criminal Tribunals for the former Yugoslavia and for Rwanda do not provide the death penalty among the range of sanctions, even when the most serious crimes, including genocide, crimes against humanity and war crimes are to be tried.

The road to abolishing the death penalty in the U.S. has not been nor will it be a flowered one. We must fight the fight keeping Beccaria's words close to our hearts and loud in our voices. The international community is moving down the enlightened road; now let's get Florida and the U.S. to follow. ■

⁷ "There Is No Easy Road to Success"

⁸ In April, the Supreme Court upheld Kentucky's use of a three-drug protocol for lethal injection, a protocol used with minor variations in many states, including Florida. *Baze v. Rees*, No. 07-5439 (April 16, 2008).

"If I can prove that this punishment is neither useful nor necessary, I will have furthered the cause of humanity."

—CESARE BECCARIA IN 1764

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