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## Interview: Richard Dieter

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# U.S. Death Penalty Is Under Fire

*Richard Dieter has been the Executive Director of the Death Penalty Information Center in Washington, D.C. since 1992. He spoke with Marianna Wertz on Aug. 8.*

**EIR:** Could you tell us about the Death Penalty Information Center, when it was founded, and what its purpose is?

**Dieter:** The Death Penalty Information Center was founded in 1990. It's a non-profit organization. We do research into the problems of the death penalty, and try to have accurate, factual information available for the public, for the media, for legislators, attorneys— whoever is interested in the subject.



**EIR:** I'd like to focus first on the overseas view of the American death penalty. The European Union recently called on President Clinton to place a moratorium on Federal executions. Could you tell us how our European allies—who have all abolished the death penalty—view America's expanding use of capital punishment?

**Dieter:** The European Community [EU] looks on America as a human rights violator, with respect to the death penalty, and they are becoming more focussed, more organized, in their opposition to this. The EU is not only calling for a moratorium, but they have been active on particular executions, asking for clemency, and are particularly disturbed about the fact that juvenile offenders are still executed, and those with mental illness and mental retardation. So, there's been a much more active program on that among the European countries.

I think that their point of view is that the death penalty is a human rights issue. Here, in the United States, we see it as a political issue, a criminal justice issue, but not really as a human rights issue, except for some people. So it's a different way of approaching it. As a human rights issue, it involves the taking of human life, perhaps unnecessarily in their view, and so it should be stopped. We're not at that point here in this country, and also see it as a states' issue as opposed to an issue that the Federal government can decide, although the

Federal government also has its own death penalty, and that, too, has caused concern among the European countries.

**EIR:** The European Union in August called on Texas Gov. George Bush not to execute a mentally retarded man in Texas. Can you tell us something about that case?

**Dieter:** To begin with, mental retardation is one of those areas that the United Nations Human Rights Commission has pointed out as a group that should be excepted. Even if a country has the death penalty, they should not be executing the mentally retarded or juvenile offenders, for the same reason. So, along comes this case in Texas, a man named Oliver Cruz, who tested with an IQ in the low 60s, which is a strong form of mental retardation, and yet, no courts stopped this, no clemency board and no governor intervened. As a matter of fact, he was executed just last night [Aug. 7], despite the concerns of the American Bar Association, and human rights leaders around the world.

**EIR:** Can you tell us some of the other actions that the United Nations or EU have taken, with respect to specific American cases?

**Dieter:** There's been an intervention in a number of cases, going back even ten years, where there was concern about some juvenile offenders, Terry Roach for one. They said that, in particular, someone who is under the age of 18 at the time of their crime should not be executed, even in a country that has the death penalty. None of those interventions or requests for clemency has yet had an effect.

As a matter of fact, the U.S. signed, along with almost all the other countries in the world, a treaty, called the International Covenant on Civil and Political Rights, and that treaty has a very clear clause in it, that those under 18 should not get the death penalty. The U.S. signed this treaty, ratified this treaty in 1992, under President Bush, but took a reservation to that clause and said, we will go along with the treaty, except we want to be able to execute juvenile offenders. A number of the European countries, I think it was ten in all, deliberately and very explicitly said that that reservation is unacceptable. That interferes with the object and purpose of the treaty. You can't sign the treaty and then pull back. You have to take the treaty, or not. That's just one action.

The UN Commission on Human Rights every year for the past three years has passed a resolution calling for a moratorium on the death penalty and, in particular, again calling for an exception for those who are juveniles and mentally retarded. This year, 2000, the resolution was introduced by the European Community, to show their particular support for it.

**EIR:** Pope John Paul II has moved the Catholic Church into opposition to the death penalty in the last few years, including on a visit to the United States on this issue in 1999. Can you discuss the importance and impact of this?

**Dieter:** I think Pope John Paul II is viewed in a number of ways. One, as certainly a religious leader, but also as a world leader on issues of moral concern. And, of course, he's also viewed as a conservative. On many issues, he would side with the more conservative elements, and certainly even within the Catholic Church. But, for him to speak out very clearly and to visit the United States in 1999, as he did, and say that the death penalty should be stopped, I think had a very strong effect.

There are a lot of members of Congress, a lot of governors, a lot of our population, who adhere to the Catholic faith, and this is the strong, moral leader saying that this is really an important issue for Catholics. That is bound, I think, to have some effect on how elections go, what kind of justification politicians can give to the death penalty, if not a moral justification. It falls on much weaker sociological kinds of debates that really are not well proven.

**EIR:** In January, Illinois Gov. George Ryan announced a moratorium on executions in his state (and he's also a conservative), after 13 death row inmates were found to be innocent. Since then, there's been increasing opposition to capital punishment in the United States, including from other conservatives. Could you discuss some of the developments that have occurred since January?

**Dieter:** There's been a real sea-change, I think, in terms of the American public's view of the death penalty. There had been in the past, ample evidence that there were problems. But, it really hadn't been validated by people who believe in the death penalty. They were on the other side.

What Governor Ryan did—he is a Republican, he is the chairman of Governor Bush's Presidential campaign in Illinois, he is a supporter of the death penalty. For him to say that the death penalty is so flawed, at least in Illinois, as to require all executions to be stopped indefinitely, was a statement that these problems are true, they're accurate, at least to some degree.

That opened the door. A lot of people, I think, were fearful to look at this and say, "The emperor has no clothes." This is politically incorrect, so to speak, to be against the death penalty. He said it's right, it's the moral position. So, you have many other people—writers, such as George Will; religious leaders, such as the Reverend Pat Robertson—calling for a moratorium, across the board. You have legislation being introduced to protect the innocent, that is co-sponsored by Republican senators and congressmen. This is really a very different atmosphere, and, I think, some of that should be attributed to Governor Ryan's statement.

**EIR:** The Innocence Protection Act of 2000 is one of those pieces of legislation you mentioned. Do you see prospects for its passage in the near term?

**Dieter:** I think there have been hearings on that bill in both the House and the Senate, and that's a good sign. On the more

pessimistic side, you'd have to say that there's little time left in *this* Congress for new legislation to get through. I think the public is clearly behind DNA testing for those who may be innocent. The polls show 95% concern. So, I think that that aspect of the bill could go through very easily. What's more problematic is that this bill is trying to address *why* innocent people end up on death row, instead of just trying to correct the problem afterwards, in that it advocates for better defense for those facing the death penalty. Some of those issues may need more debate, they may come up again in the next Congress. If those in leadership want it to move, it could still happen. But, I don't know if there's the collective will to make it happen yet.

**EIR:** One of the organizations which has called for a moratorium on executions is the American Bar Association. The ABA's new president announced her support for an intensification of this campaign. Do you see that as significant?

**Dieter:** Yes. I think that's very significant. The American Bar Association was the one that really introduced this idea of, not necessarily opposing the death penalty, but calling for a moratorium, calling for executions to stop until we can figure out and improve the system. They introduced that resolution in 1997. Now, with this new president, Martha Barnett, they are saying they are going to make it a priority.

It's similar to what the Catholic Church is doing. Actually, the Catholic bishops in the U.S. had a long-standing opposition to the death penalty, although not all were in agreement. When the Pope made it a cardinal issue, so to speak, then it started being talked about in churches, in schools, and at family tables. With the American Bar Association, it's going to be talked about in bar meetings and meetings of judges, and even in corporate law firms. This issue is a priority. And that is how opinion is moved in this country. It's got to get down to spreading the word that this is a serious problem, which many people with different views are coalescing on.

**EIR:** There was a moratorium in this country, from 1972 until 1976. I believe it was because of many of the same problems that we have today.

**Dieter:** The problems that were identified in 1972 were that the death penalty, as it was being applied, was too arbitrary, that it was like being "hit by lightning," as one of the justices said; that you couldn't predict it. There was also a sense that it was discriminatory. There wasn't as much talk about innocence. Appeals were so short that there really wasn't much time to develop new evidence, in most cases. There was a sense of problems. It came down to problems with the laws, as they were written.

Where we are now is a little bit similar. There's still a question about its arbitrariness, but the leading issue, which is pushing people, I think, is this issue that the death penalty is making mistakes. We're clearly putting innocent people on death row. We have 87 of these cases that we've discovered



At a press conference introducing the Innocence Protection Act, from left: Sen. Patrick Leahy (D-Vt.); Kirk Bloodworth, the first person freed from death row as a result of DNA testing; and Clyde Charles, exonerated from death row as a result of DNA testing.

just since the death penalty came back, who could have been executed. We've probably executed some innocent people. We're certainly running the risk of it. That's an issue that really grabs people, even those who are in favor of the death penalty.

So, it's still a problem with the laws. It's still a problem with human beings trying to make an irrevocable, almost infallible decision with their own imperfections. In a way, that can't be done. So, it's coming around again to how do you decide who lives and who dies in a society such as ours. And there really is no good way.

**EIR:** The two main arguments for capital punishment are that it "saves lives," as Governor Bush has put it, by ending the threat that the murderer poses; and that it brings closure to the victim's friends and family. Many of our readers support the death penalty. Can you respond to these two main arguments?

**Dieter:** I think what Governor Bush is saying there, when he said he supports the death penalty because it saves lives, is that he believes that if someone is executed, *other* people will not commit murder. That's the deterrence question, and it has been researched for 50 years, and there is very little proof that that's true. It seems like it ought to be true. It seems like people ought to be scared so much by the death penalty that

they don't—but the studies really haven't confirmed that. If we're killing people because it provably deters others from committing murder, then we have to look again at the studies.

If he's saying that it keeps the person who did the first murder from committing another murder, well, certainly, if you execute them, they won't do that. But, that's also true almost exclusively of people in prison for life without parole, for example. They're never getting out. The worst-case scenario is maybe a murder in prison, but that is actually very rare. And it's a problem that exists for the 2 million people who are in prison. It's not a problem of the death penalty. So that's not a societal problem.

The other justification is that it helps the families of victims. Well, there are a lot of problems with that. For one thing, there are a lot of family members who have had this kind of tragedy, who are opposed to the death penalty. So, the death penalty tends to *split* families, and causes a lot of anger and hurt, because for some family members, the last thing they want is an execution, while others

want it. It also drags out the case. Instead of having a sentence of, say, life without parole, which is then served immediately, you have the uncertainty of at least ten years of the death penalty, where, chances are, the case is going to be overturned at some point and have to be done over again, because it was so sloppily handled in the first place.

So, instead of closure, we drag people through a long period of uncertainty with a lot of frustration, and about one in 100 murderers actually ends up being executed. What do the other 99 families feel? They feel short-changed; that their loved one wasn't worth it. So, it creates this community in which, supposedly, one out of 100 families gets this great boon of an execution ten years later, and much of their lives dragged through that, and the other 99 families are frustrated.

So, if we had clearer, swift, and sure punishment, such as life without parole, I think we could also then devote more attention to the victims, provide resources, counselling, financial resources, whatever is needed to help them, instead of offering them another death at the end of this, and of course, another family, the family of the defendant, torn up by the whole situation.

**EIR:** The first Federal execution in 37 years, of Juan Raul Garza, was set for this month, August. It's now been postponed by President Clinton until at least December. Some

say, so that it won't be an issue for Al Gore in the Presidential campaign. But, it is already an issue in the campaign, with Governor Bush's execution record very much in the public eye. What is your view of the death penalty in the election campaign?

**Dieter:** Well, the public doesn't have a lot of choices among the major candidates, with respect to the death penalty. All four of the Presidential and Vice Presidential candidates in the Democratic and Republican parties, it looks like, are supporters of the death penalty. So, it's not going to be an issue over which the candidates are at loggerheads.

I do think it's a concern of the American public. Not so much whether the death penalty should be abolished, but what should be done about its glaring inconsistencies, inaccuracies, unfairness, arbitrariness. People want to know, what are you going to do about innocent people? How are you going to prevent that? Are you just going to say, as Governor Bush has said, that he's confident that everybody who's executed in Texas is guilty? People don't believe that anymore. You've got to have a better solution. How many innocent people should we allow to be executed by mistake? Is just a couple okay? Is that all right for Al Gore? Or, is "none" the right answer to that? And if "none" is the answer, then how do you continue with the death penalty?

I think the candidates are going to be asked about the death penalty, they're going to have tough questions, and people are going to judge *character* by the different ways they respond, even if they tend to agree. It's going to have to come from their genuineness, and it's going to have to come from whether they've thought these problems through thoroughly.

**EIR:** Do you believe innocent people have been executed in America, and do you believe that the legislation now before Congress would prevent future executions of innocent people?

**Dieter:** I certainly believe that there have been innocent people executed in America. Certainly, over the last hundred years, there are a lot of cases where the evidence is very strong. But I think the strongest argument is that, since we've had DNA testing, we have found innocent people on death row. There's every reason to believe that, if we applied that DNA testing to the people who were executed in the 1970s and '80s, that some of them, too, would have been found innocent. They just didn't have the testing. Why should we be perfect in those decades and imperfect in the '90s? It doesn't make sense.

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So, DNA has opened a window on the fallibility of the system. The Innocence Protection Act would make sure that those cases that have [the possibility of] DNA testing will not be blocked by arcane rules that say you can't have any new evidence. Unfortunately, those are the minority of cases, that have DNA testing. The problems of mistaken eyewitnesses, withheld evidence, jailhouse snitches, are all going to continue, and still present a serious problem for those who support the death penalty.

**EIR:** Your website [www.deathpenaltyinfo.com] recommends a book by Michael Radelet and Hugo Bedau on the executions before 1976 of innocent people. Can you discuss that?

**Dieter:** Sure. Professors Michael Radelet and Hugo Bedau wrote a *Law Review* article in 1987, in which they discuss this problem of innocence, and named 23 cases in this century where they believe innocent people have been executed. Then, in 1992, along with Constance E. Putnam, they turned that into a book, entitled *In Spite of Innocence* [Boston: Northeastern University Press, 1992]. The main part of that book, and that article, is not about the 23 people who were executed, but about the hundreds of cases of wrongful convictions of people who are possibly facing the death penalty. It's mainly an indictment of the system. A very small part of it is these cases. Everybody should realize that there is no *forum* for deciding whether an innocent person has been executed. There is no court that decides that, as there is before a person is executed. Once they've been executed, it is left up to, mostly, public opinion. That's how you decide things. There is some research, some experts, who have concluded that some of these cases do not involve innocent people, and I'm sure there are others, I'm sure there are some who say they disagree with it.

The bigger problem is, that there are certainly mistakes going on, and we're running the *risk* of executing innocent people. That book and that article clearly categorize and describe those risks, and that's the important thing.

**EIR:** Let me just conclude with a personal question. How did you get into this business? What is your interest in it?

**Dieter:** I had questions about the death penalty ever since it was reinstated in 1976. In 1972, I was active in a group called the Community for Creative Non-Violence here in Washington, and opposition to the death penalty was something that, of course, we believed in, but there wasn't any death penalty all of a sudden, so it wasn't a big issue. But then, when it came back, and when, in 1977, the first execution occurred, it was something I had been involved in, in different states and in different capacities. It's something I like working on. I think it's an issue that touches a lot of other issues. It's one of these fundamental issues about life and justice, fairness, that I think really has reverberations for the whole American system of justice. So, it's an important issue for me.