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I. Introduction

On July 12, 1994, Atif Rafay, accompanied by his friend, Sebastian Burns, arrived at his family's Bellevue, Washington, home to discover that both of his parents and his nineteen-year-old sister had been murdered.[1] The local police questioned Rafay and Burns, both Canadian citizens and eighteen at the time, but brought no charges against them.[2] Shortly thereafter, the pair returned to Canada.[3] One year later, police arrested the two teenagers for the murders and detained them in Vancouver, British Columbia, pending an extradition hearing.[4] Charged with aggravated first-degree murder, the pair faced the possibility of the death penalty if extradited to the United States.[5] Canada, their native country, abolished the death penalty in 1976.[6]

Initially, the British Columbia Superior Court and the Canadian Minister of Justice approved the extraditions, but the British Columbia Court of Appeals[7] reversed that decision.[8] Citing the Canadian Charter of

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* J.D. Candidate, May 1999, Washington & Lee University School of Law; B.A., Louisiana State University. Thank you to my parents for all their love and support. Also, thanks to Professors Geimer and White for their guidance as teachers and their inspiration as people.

1. Nancy Montgomery, *Race Discounted in Slayings*, SEATTLE TIMES, July 15, 1994, at B1.

2. *Id.*

3. Susan Byrnes, *Murder Suspects Unruffled*, SEATTLE TIMES, July 10, 1995, at B1.

4. Susan Byrnes, *Son and Friend Held in Triple Slaying*, SEATTLE TIMES, Aug. 1, 1995, at A1.

5. Richard Seven, *Extradition Process Begins*, SEATTLE TIMES, Aug. 2, 1995, at B1.

6. *Bellevue Slaying Case Tests Canada Extradition Law*, SEATTLE TIMES, May 12, 1997, *available in* 1997 WL 3233018.

7. The British Columbia Court of Appeals is the appellate court to which appeals of cases decided in the British Columbia Superior Court, a trial level court, are made. PETER MCCORMICK, CANADA'S COURTS 24 (1994). The Supreme Court of Canada is the highest

Rights and Freedoms,[9] the Court of Appeals refused to extradite the Canadians because of the possibility that they may face the death penalty.[10] An appeal to the Canadian Supreme Court followed, but that court remains undecided to date, recently delaying the extradition hearing because of intervention by Amnesty International.[11] Consequently, Rafay and Burns, now 22 and 23 respectively, have been in police custody in Vancouver for over three years.[12]

As of March 31, 1998, 104 countries have abolished the death penalty in either law or in practice while 91 countries, including the United States,

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court in the country. *Id.*

8. Louis T. Corsaletti, *Rafay Hires New Lawyer to Fight Extradition*, SEATTLE TIMES, Aug. 26, 1998, at B3.

9. In April of 1982, Canada proclaimed the Canadian Charter of Rights and Freedoms [hereinafter Canadian Charter]. WILLIAM A. SCHABAS, INTERNATIONAL HUMAN RIGHTS LAW AND THE CANADIAN CHARTER 10-13 (1996). The Canadian Charter, which is to some degree analogous to the Bill of Rights in the United States Constitution, enumerates a variety of freedoms and rights. *Id.* For example, the Canadian Charter provides in part:

> 2. Everyone has the following fundamental freedoms:
> (a) freedom of conscience and religion;
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
> (c) freedom of peaceful assembly; and
> (d) freedom of association. . . .
> 6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada . . .
> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Canada Act 1982, R.S.C., ch. 11, sch. B (1982) (Can.).

10. Jeffrey Simpson, *A Bellevue Case vs. Canada's Charter*, SEATTLE TIMES, Aug. 5, 1997. The court based its decision on the provision of the Canadian Charter which gives Canadian citizens the right to remain in Canada if they so choose. *See* Canada Act 1982, R.S.C., ch. 11, sch. B (1982) (Can.).

11. Louis T. Corsaletti, *Extradition Hearing Delayed for Rafay*, SEATTLE TIMES, Nov. 10, 1998, at B5. The Canadian Supreme Court postponed the extradition hearings in order to give all of the involved parties an adequate amount of time to answer the concerns raised by Amnesty International, namely that Rafay and Burns should not be sent back to the United States because Canada does not have a death penalty. *Id.* However, on March 22, 1999, the Supreme Court of Canada heard an appeal to the decision to extradite Rafay and Burns to the United States. *Canada Court Considers Extradition*, SEATTLE TIMES, March 23, 1999, at B4, *available in* 1999 WL 6263345. Attorneys for Rafay and Burns argued that the two Canadian citizens should not be extradited unless the United States guarantees that the pair would not be executed if convicted. *Id.* In replying to the defense's argument, the federal Justice Department of Canada contended that "Canada should not become a refuge for criminals wanting to avoid the death penalty." *Id.* The prosecuting attorney from the state of Washington has stated that he will not decide whether to charge the two defendants with capital murder until the Canadian court makes a decision. *Id.* The Supreme Court of Canada reserved its decision so it could be months before it issues a ruling. *Id.*

12. *Id.*

continue its use.[13] With an average of two countries abolishing the death penalty each year since 1976, abolition is clearly on an upward trend.[14] This growing movement, coupled with the fact that 74 foreign-nationals are currently on death row in the United States,[15] presents the question whether the United States will be able to continue to seek successfully extradition of foreign-nationals from abolitionist countries without agreeing in advance to eschew the death penalty. Stated another way, will countries who have deemed capital punishment inhumane be willing to turn their citizens over to a country that executed 68 people last year alone?[16]

Initially, this article will examine general principles governing extradition law.[17] Next, it will discuss important cases involving extraditions between the United States and other countries and the impact of these decisions on extradition law in the United States. Finally, this article will conclude that given the growing importance of human rights in extradition law, the United States is likely to encounter an increasing number of denials of extradition by countries opposing capital punishment.

II. A Procedural Overview of Extradition

Extradition is "[t]he surrender by one state or country [requested state] to another [requesting state] of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender."[18] Under international law, a country possesses no duty to surrender a criminal suspect to another country.[19] Consequently, extradition treaties or a national law of the requested state are necessary in order to invoke the proper jurisdiction.[20] Generally, these treaties enumerate those offenses to which the treaty parties agree warrant extradition,[21] and contain escape

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13. Amnesty International, *The Death Penalty: List of Abolitionist and Retentionist Countries* (visited Feb. 21, 1999) <http://www.amnesty.org//ailib/aipub/1998/ACT/A5000898.htm>.

14. *Id.*

15. Death Penalty Information Center, *Foreign Nationals and the Death Penalty in the United States* (visited Feb. 21, 1999) <http://www.essential.org/dpic/foreignnatl.htm>.

16. Death Penalty Information Center, *The Death Penalty in 1998: Year End Report* (visited Feb. 21, 1999) <http://www.essential.org/orgs/dpic/yrendrpt98.htm>.

17. Much of this article is grounded in international law, but it still bears significance for attorneys in Virginia because there have been and continue to be instances where Virginia attorneys are involved in extradition issues pertinent to their clients or co-defendants of their clients.

18. BLACK'S LAW DICTIONARY 585 (6th ed. 1990).

19. WILLIAM R. SLOMANSON, FUNDAMENTAL PERSPECTIVES ON INTERNATIONAL LAW 205 (2nd ed. 1995).

20. *Id.*

21. *Id.* at 206. For example, the following provision appears in the 1978 Treaty on

clauses which empower the requested state with the discretion to deny extradition.[22]

A. Bilateral and Multilateral Agreements

International extradition agreements have traditionally been bilateral or multilateral treaties.[23] Under bilateral agreements, two countries, using a piecemeal approach, draft an agreement suited to the particular needs of their situation.[24] In contrast, multilateral agreements are typically regional conventions which create uniform procedures among countries with close geographical and historical ties.[25] Multilateral agreements are beneficial because they institute standard extradition procedures in a greater number of countries.[26] Nonetheless, these multilateral agreements have been criticized as giving actually "little more" protection to individual rights than bilateral agreements.[27] Specifically, in negotiating these multilateral agreements, countries are arguably pressured into accepting lower standards for human rights requirements in order to achieve accord within the group.[28]

B. The Emergence of Human Rights Agreements

Prior to the advent of human rights agreements, suspected criminals had limited power to challenge their extradition proceedings.[29] Under the doctrine of non-inquiry, the judiciary of the requested state, even at the beseeching of the suspect, could not review the judicial and penal circumstances of the requesting state.[30] Instead, the judiciary acceded to the discre

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Extradition Between the United States of America and Japan:

> Extradition shall be granted in accordance with the provisions of this Treaty for any offense listed in the Schedule annexed to this Treaty . . . when such an offense is punishable by the laws of both Contracting Parties by death, by life imprisonment, or by deprivation of liberty for a period of more than one year; or for any other offense when such offense is punishable by the federal laws of the United States and by the laws of Japan by death, by life imprisonment, or by deprivation of liberty for a period of more than one year.

Treaty on Extradition, 1978, U.S.-Japan, 31 U.S.T. 892.

22. *Id.* at 213.

23. GEOFF GILBERT, ASPECTS OF EXTRADITION LAW 20 (International Studies in Human Rights Vol. 17, 1991).

24. *Id.*

25. *Id. See* Mark E. DeWitt, Comment, *Extradition Enigma: Italy and Human Rights vs. America and the Death Penalty*, 47 CATH. U. L. REV. 535, 539 (1998).

26. GILBERT, *supra* note 23, at 25.

27. DeWitt, *supra* note 25, at 539.

28. *See id.* at 539 & n.20.

29. *Id.* at 537.

30. *Id.* For further discussion of the doctrine of non-inquiry, see John Quigley, *The Rule of Non-Inquiry and the Impact of Human Rights on Extradition Law*, 15 N.C. J. INT'L L.

tion of the executive branch which supposedly could give more thoughtful consideration to foreign policy and to the importance of upholding duties under treaties.[31]

International human rights agreements, such as the International Covenant on Civil and Political Rights[32] and the European Convention for the Protection of Human Rights and Fundamental Freedoms,[33] demand more from member nations than such exclusive executive control.[34] These agreements require requested nations to examine the conditions awaiting an extraditee in the requesting nation and to afford individuals a means by which to challenge judicially their possible extraditions.[35] Consequently, some of these agreements have established judicial bodies to which extraditees can make claims of human rights violations.[36]

& COM. REG. 401, 415-16 (1990); Jacques Semmelman, *Federal Courts, the Constitution, and the Rule of Non-Inquiry in International Extradition Proceedings*, 76 CORNELL L. REV. 1198, 1198 (1991); David B. Sullivan, Note, *Abandoning the Rule of Non-Inquiry in International Extradition*, 15 HASTINGS INT'L & COMP. L. REV. 111, 116 (1991).

31. *Id.* at 538. *See* I.A. SHEARER, EXTRADITION IN INTERNATIONAL LAW 197-98 (1971) (discussing that only a minority of countries retain exclusive executive control over extradition while most states use a combination of judicial and executive control; notes that, though this has not been an issue previously, the growing concern over human rights may change that fact).

32. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

33. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter European Convention].

34. DeWitt, *supra* note 25, at 540.

35. John Quigley, *The Rule of Non-Inquiry and the Impact of Human Rights on Extradition Law*, 15 N.C. J. INT'L L. & COM. REG. 401, 418-19 (1990). In interpreting the European Convention, the European Court of Human Rights has stated the following:

> [Article 1] cannot be read as justifying a general principle to the effect that, notwithstanding its extradition obligations, a Contracting State may not surrender an individual unless satisfied that the conditions awaiting him in the country of destination are in full accord with each of the safeguards of the Convention.

Soering v. United Kingdom, 161 Eur. Ct. H.R. (ser. A) at 86 (1989). However, the court later stated in the *Soering* decision that:

> [T]he Contracting Parties [are not absolved] from responsibility under Article 3 for all and any foreseeable consequences of extradition suffered outside their jurisdiction. . . . the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective.

Id. at 86-87. Note also that in the Webster-Ashburton Treaty of 1842, Convention as to Boundaries, Suppression of Slave Trade, and Extradition, Aug. 9, 1842, 8 Stat. 572, T.S. No. 119, the United States and Britain concurred that they would provide a judicial hearing for extraditees. Quigley, *supra*, at 430.

36. DeWitt, *supra* note 25, at 28. *See* European Convention, *supra* note 33, art. 25(1), at 236-38 (providing that under this treaty, individuals are permitted to file petitions asserting violations of the treaty, as long as the state against which the assertion is made has acknowledged that the European Commission or European Court may hear such petitions).

C. *International Forums for Extradition Challenges*

As forums for extradition challenges, these international judicial bodies are not bound by the jurisprudence and rules of national courts.[37] Instead, these bodies are able to look to the tenets of human rights agreements, including "the right to life,"[38] the prohibition against prolonged arbitrary detention, and the prohibition against torture or other cruel, inhumane, or degrading treatment or punishment, in making their decisions.[39] The result of this expansion in extradition law has been the collision of human rights and capital punishment.[40] Countries which continue to impose capital punishment, such as the United States, are now facing increasing difficulty in extraditing suspected capital defendants[41] because for many countries the death penalty has become a human rights violation.[42]

D. *Reassuring "Assurances"*

In an attempt to reconcile this difference, retentionist countries, particularly the United States, have signed extradition treaties with abolitionist countries which often include a provision similar to the following:

> If the offense for which extradition is requested is punishable by death under the relevant law of the requesting Party, but the relevant law of the requested Party does not provide for the death penalty in a similar case, extradition may be refused unless the requesting Party gives assurances satisfactory to the requested Party that the death penalty will not be carried out.[43]

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37. Craig R. Roecks, Comment, *Extradition, Human Rights, and the Death Penalty: When Nations Must Refuse to Extradite a Person Charged with a Capital Crime*, 25 CAL. W. INT'L L.J. 189, 192-93 (1994).

38. WILLIAM A. SCHABAS, THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW 6 (2d ed. 1997). There are two major ways in which "the right to life" is defined. *Id.* at 8. Some narrowly limit it to such instances as capital punishment, abortion, disappearances, non-judicial execution and other forms of reckless life-taking by the State. *Id.* at 8-9. Others, taking a broader approach, define the "right to life" in economic and social context such as the right to food, to medical care, and to a healthy environment. *Id.* at 9.

39. Quigley, *supra* note 35, at 416 (citing RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 702(d)-(e) (1987); Fernandez v. Wilkinson, 505 F. Supp. 787, 791-92 (D. Kan. 1980), *aff'd on other grounds sub nom.*, Rodriguez-Fernandez v. Wilkinson, 654 F.2d 1382 (10th Cir. 1981); ICCPR, *supra* note 29, arts. 7, 14).

40. Roecks, *supra* note 37, at 231 (stating that there has been a "recent incorporation of the 'law of extradition' into human rights law").

41. DeWitt, *supra* note 25, at 542.

42. *See* SCHABAS, *supra* note 38, at 2-3. *See also* discussion *supra* Part I.

43. Extradition Treaty, June 8, 1972, U.S.-U.K., art. 4, 28 U.S.T. 227, 230, T.I.A.S. No. 8468 [hereinafter U.S.-U.K. Extradition Treaty]. *See* Extradition Treaty, Oct. 13, 1983, U.S.-Italy, art. 6, 35 U.S.T. 3023, 3031 [hereinafter U.S.-Italy Extradition Treaty] (stating that "extradition shall be refused unless the requesting Party provides such assurances as the requested Party considers sufficient"); Extradition Treaty, Dec. 3, 1971, U.S.-Canada, art. 6,

With this language, the requested state may require that the requesting state provide "assurances" that the death penalty will not be sought.[44] If such assurances are unsatisfactory to the requested state, it may refuse extradition.[45]

Nonetheless, problems still arise concerning the "assurances" doctrine, because of the near impossibility of defining what constitutes an "assurance."[46] Consequently, what requested nations have accepted as adequate "assurances" has varied greatly, thereby adding even more uncertainty to the determination.[47] The doctrine is also problematic because the adequacy of the "assurances" is typically a question left to the discretion of executive officials.[48] Such executive discretion is likely to run contrary to human rights agreements because the goals of foreign policy may be placed ahead of the rights and protections of the individual.[49] Therefore, the result is that even with the "assurances" doctrine, the United States and other retentionist countries may succeed in securing extradition of some suspects not yet afforded the protection called for by international human rights agreements.

III. Death Penalty Extradition Cases Face International Scrutiny

Recent international decisions have brought this issue of whether retentionist countries, particularly the United States, have in fact failed to preserve the rights of extraditees to the forefront of extradition law. These decisions highlight the evolving struggle between national death penalty laws and international human rights agreements. International courts' treatment of these cases further strengthens the proposition that death

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27 U.S.T. 983, 989 [hereinafter U.S.-Canada Extradition Treaty] (providing that "extradition may be refused unless the requesting State provides such assurances as the requested State considers sufficient").

44. Quigley, *supra* note 35, at 431 (citing M. BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 460-61 (1974)). *See* I. A. SHEARER, EXTRADITION IN INTERNATIONAL LAW 59 (1971) (citing European Convention, *supra* note 33, art. 11).

45. *Id.*

46. DeWitt, *supra* note 25, at 545. *See* U.S.-U.K. Extradition Treaty, *supra* note 43, art. 4, at 230 (lacking in any definition of "assurances;" instead only providing that the assurances must be acceptable to the requested Party). The definition of "assurances" is arguably whatever it takes to satisfy the requested party. Conceivably, for some countries there may be no acceptable assurances which satisfy them that the death penalty will not be used against an extraditee. *See* discussion *infra* Part III.C.2.

47. *See* Soering v. United Kingdom, 161 Eur. Ct. H.R. (ser. A) at 4, 19 (finding a promise to tell the sentencing judge the U.K. did not want the death penalty enforced to be an adequate assurance as required by the extradition treaty between U.S. and U.K.). The European Court of Human Rights [hereinafter European Court] heard and decided this case.

48. *See* Soering, 161 Eur. Ct. H.R. (ser. A) at 14-15 (noting that the Secretary of State in the United Kingdom has the authority to determine the adequacy of assurances given in extradition matters).

49. *See* discussion *supra* Part I.B.

penalty extradition can no longer be evaluated exclusively within national terms, but now must also address international concerns.

A. The Soering *Decision*

After being suspected of murdering a couple in Bedford, Virginia, Jens Soering, a German national, and Elizabeth Haysom, Soering's girlfriend and the victims' daughter, left the United States and went to the United Kingdom.[50] One year later, in 1986, the pair was arrested in the United Kingdom for a separate offense.[51] The United States then requested that the pair be extradited to face murder charges.[52] Following the United Kingdom's decision to extradite Soering, he filed a complaint with the European Commission on Human Rights,[53] alleging that his extradition violated the European Convention.[54] When the United Kingdom rejected Soering's claims, he turned to the European Court of Human Rights for relief.[55]

Soering claimed that his extradition would violate the rights afforded him by the European Convention,[56] because a sentence of death and confinement on death row qualified as cruel treatment, which the treaty prohibited.[57] The European Court agreed with Soering, holding that the United Kingdom would violate the European Convention if it extradited Soering to the United States to face a crime punishable by death.[58] Basing its holding on Article 3 of the European Convention, the European Court stated the following:

> [T]he decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country.[59]

In finding that capital punishment created such a risk to Soering, the court relied heavily upon what it deemed the "death row phenomenon," or the

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50. *Soering*, 161 Eur. Ct. H.R. (ser. A) at 11.

51. *Id.* at 11-12.

52. *Id.*

53. This commission enforces the European Convention to which the United Kingdom is a party. *See* European Convention, *supra* note 33.

54. *Soering*, 161 Eur. Ct. H.R. (ser. A) at 30-31.

55. Quigley, *supra* note 35, at 418-19.

56. *Soering*, 161 Eur. Ct. H.R. (ser. A) at 30-31.

57. European Convention, *supra* note 33, art. 3.

58. *Soering*, 161 Eur. Ct. H.R. (ser. A) at 44-45.

59. *Id.* at 45.

result of the lengthy detention time on death row and the physical and psychological stress created by the prolonged waiting.[60]

The *Soering* decision greatly impacted extradition law, particularly in Europe and the United States.[61] First, this decision mandated that requested European nations, before granting extradition, ensure that no foreseeable harm will be done to an extraditee within its own boundaries or within those of the requesting nation.[62] Second, this "foreseeable consequences" test standardized death penalty extradition review in Europe, clarifying what the European Convention required of its members.[63] Finally, in finding that this extradition violated Article 3 of the European Convention, the Court provided a means for abolitionist countries to protect their citizens and to preserve the "right to life."

B. The Soering *Aftermath*

The United Nations Human Rights Committee faced a situation similar to *Soering* in the case of *Kindler v. Canada*.[64] After being convicted

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60. *Id.* The "death row phenomenon" is made up of the following elements: (1) how long the defendant is incarcerated prior to his execution; and (2) the death row conditions, particularly the mental anguish. *Id.* at 42-43. In addition to the "death row phenomenon," the court also factored in the following conditions to its decision: (1) the defendant was eighteen at the time of the crimes; (2) the defendant had been diagnosed with a mental disorder in which a person becomes strongly influenced by another person; and (3) the West German government had also sought to extradite Soering to Germany. *Id.* at 12, 14.

61. *See also* Ahmad v. Wigen, 726 F. Supp. 389 (E.D.N.Y. 1989), *aff'd*, 910 F.2d 1063 (2d Cir. 1990). In *Ahmad*, the court deemed the *Soering* decision "an important precedent on the refusal to extradite because of anticipated torture, cruel conditions of incarceration or lack of due process at trial in the requesting country." *Id.* at 414. The *Ahmad* court further concluded that *Soering* accurately depicted the "present status of international and human rights law on this issue." *Id.* at 413. Though the *Soering* decision substantially affected international extradition law, it is Jens Soering himself who has felt and continues to feel its greatest impact. In February 1999, a federal district court judge found all three of Soering's appellate claims that he deserved a new trial to be without merit. Michael Hemphill, *Judge Rejects Soering's Claims, No New Murder Trial in Bedford Killings*, ROANOKE TIMES, February 25, 1999, at B4. Soering is currently serving two life sentences. *Id.*

62. *Id.* at 33-34. The European Court subjected not only the actions of the United Kingdom, but also the actions of the United States, to the requirements of the European Convention. *Id.*

63. DeWitt, *supra* note 25, at 552-53.

64. Kindler v. Canada, (No. 470/1991), UN Doc. A/48/40, Vol. II, p. 138, views adopted on July 30, 1993, 14 HUM. RTS. L.J. 307 (1993). Other judicial bodies besides the United Nations Human Rights Committee [hereinafter UNHRC] faced cases resembling *Soering*, such as the High Court in the Netherlands. John Dugard & Christine Van Den Wyngaert, *Reconciling Extradition with Human Rights*, 92 AM. J. INT'L L. 187, 193 (1998) (citing Netherlands v. Short, HR 30 Mar. 1990, NJ 249 (A. H. J. Swart), *excerpted and translated in* 29 ILM 1375 (1990), *and in* 22 NETH. Y.B. INT'L L. 432 (1991)). In *Netherlands v. Short*, the United States requested extradition of an American soldier (Short), accused of murdering his wife, from the Netherlands. Dugard & Van Den Wyngaert, 92 AM. J. INT'L

of murder and kidnaping in Pennsylvania, Joseph Kindler, a Canadian citizen, escaped from prison and returned to Canada.[65] Canadian authorities later arrested Kindler and a request for extradition from the United States followed.[66] The Supreme Court of Canada found the extradition, despite its lack of any assurances, not to be contrary to the Canadian Charter of Rights and Freedoms.[67] The UNHRC called for a delay in the extradition, but the Canadian government turned Kindler over to the United States the same day that the Supreme Court announced its decision.[68]

The UNHRC later concluded that Kindler's extradition did not violate the ICCPR,[69] making the following findings: (1) Kindler's "death row phenomenon" claims failed;[70] (2) the ICCPR contains no prohibition against the death penalty;[71] and (3) under the ICCPR, requested nations are not obligated to deny death penalty extraditions or to demand assurances from the requesting nation.[72] Distinguishing *Soering*, the UNHRC emphasized

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L. at 193. The United States based its request on the 1951 NATO Status of Forces Agreement between it and the Netherlands. *Id.* After the United States declined to give any assurances that it would not seek the death penalty, the Dutch trial court conducted a balancing test in which it found that Short's interest in not being extradited should supersede the Dutch interest in turning him over to the United States. *Id.* The United States thereafter decided not to indict Short for a capital crime; the Netherlands then extradited him. *Id.*

65. *Kindler*, 14 HUM. RTS. L.J. at 307-09.

66. *Id.*

67. *Id.* at 314.

68. *Id.* at 308.

69. *Id.* at 314.

70. *Id.* Kindler's complaint read in part as follows:

> The author claims that the decision to extradite him violates articles 6, 7, 9, 14 and 26 of the Covenant. He submits that the death penalty *per se* constitutes cruel and inhuman treatment or punishment, and that conditions on death row are cruel, inhuman and degrading. He further alleges that the judicial procedures in Pennsylvania, inasmuch as they relate specifically to capital punishment, do not meet basic requirements of justice.

Id. at 308. In arguing his claims, Kindler referenced the "death row phenomenon" doctrine which the European Court had upheld in *Soering*. *Id.* at 312-13. Nonetheless, the UNHRC had previously rejected this doctrine, stating that "'prolongued judicial proceedings do not *per se* constitute cruel, inhuman and degrading treatment, even if they can be a source of mental strain for the convicted persons.'" *Id.* at 309 (citing *Earl Pratt and Ivan Morgan v. Jamaica*, Communications Nos. 210/1986, 225/1987, U.N. GAOR, Hum. Rts. Comm., 44th Sess., Supp. No. 40, at 222, U.N. Doc. A/44/40 (1989)). Furthermore, the *Kindler* court opined that the alleged lengthy detention periods were not cruel and inhuman treatment because they frequently resulted from the numerous appeals filed by the defendant. *Id.* As a basis for rejecting Kindler's claim, the UNHRC also discussed the plenary review given Kindler's conviction because courts in both the United States and Canada had reexamined the evidence in his case prior to any extradition decision. *Id.*

71. *Id.*

72. *Id.* at 314. As to the issue of "assurances," this decision appears to have given requested nations two means by which to handle death penalty extraditions. DeWitt, *supra* note 25, at n.96. A requested state can employ the "foreseeable harm" test and if satisfied

that Kindler was not a minor at the time of the crime, he had no mental deficiencies, and he failed to proffer evidence as to the penal conditions in Pennsylvania.[73] In providing guidance to courts for future situations like Kindler's case, the UNHRC enumerated the following as pertinent criteria: (1) relevant personal characteristics of the fugitive; (2) the particular circumstances surrounding death row imprisonment; and (3) whether the proscribed form of execution is "particularly abhorrent."[74]

C. *Italy Denies Extradition to the United States*

In December of 1993, a disgruntled restaurant owner who had been experiencing financial problems murdered a state government collection agent in Florida.[75] The restauranteur, Pietro Venezia, was an Italian national who had moved to America fifteen years earlier.[76] Shortly after the murder, Venezia returned to Italy where he evaded authorities for more than four months before being captured in his home province in Italy.[77]

1. *Venezia's Extradition Proceedings*

The lower court and the appellate court both approved the United States request for extradition thereby subjecting the action to review by the Italian Justice Minister.[78] Following the extradition treaty between Italy and the United States,[79] the Justice Minister requested assurances from the United States that it would not use capital punishment. Once the United

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with the extradition, return the fugitive to the requesting state without any assurances. *Id.* Alternatively, the requested state can demand assurances from the requesting state and forego any use of the "foreseeable harm" test. *Id.*

73. *Id.* at 314.

74. *Id.* The UNHRC later addressed this issue in a 1994 case involving Charles Ng, a British citizen and U.S. resident, who fled the U.S. for Canada after being suspected of killing twelve people in California. Ng v. Canada, Communication No. 469/1991, U.N. GAOR, Hum. Rts. Comm., 49th Sess., Supp. No. 40, U.N. Doc. A/49/40 (1994), at 189. Concentrating its inquiry on California's method of execution, cyanide gas asphyxiation, the UNHRC found that in extraditing Ng to the United States, Canada violated the ICCPR. *Id.* at 205. Specifically, the UNHRC concluded that cyanide gas asphyxiation did not qualify as punishment causing "the least possible physical and mental suffering," as proscribed by the ICCPR. *Id.* With this decision, the UNHRC imposed on requested nations the obligation to use ICCPR standards in determining whether to extradite, thereby creating "a level of uniformity" for countries bound by the ICCPR. DeWitt, *supra* note 25, at 560.

75. DeWitt, *supra* note 25, at 566 (citing Robert Graham, *Allies at Odds over Extradition*, FIN. TIMES (London), July 8, 1996, at 9)).

76. *Id.* at 565-66.

77. *Id.* at 567.

78. *Id.* at 568.

79. Extradition Treaty, Oct. 13, 1983, U.S.-Italy, TIAS No. 10,837, 24 ILM 1525 (1985) (entered into force Sept. 24, 1984).

States offered such assurances, the Justice Minister found the extradition permissible under the bilateral treaty and Italian law.[80]

Venezia eventually appealed the Minister's decision to the Italian Constitutional Court, arguing that both the Italian statute incorporating the U.S.-Italy extradition treaty and an article in the Italian Code of Criminal Procedure violated the Italian Constitution.[81] The Italian Constitution preserves basic human rights and prohibits capital punishment.[82] Conversely, the two provisions which Venezia challenged stated the following:

> [W]hen the offense for which extradition is requested is punishable by death under the laws of the requesting Party, extradition shall be refused, unless the requesting Party provides such assurances as the requested Party considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed.[83]

2. *The Italian Constitutional Court's Ruling*

In ruling on Venezia's argument, the Italian Constitutional Court held both the article of the Code of the Criminal Procedure in question and the statute incorporating the U.S.-Italy Extradition Treaty, specifically Article IX, to be unconstitutional.[84] The court examined two principal issues in reaching this decision.[85] First, the court evaluated the weight of the Italian Constitution's prohibitions against the death penalty and inhuman treatment in the context of extradition cases.[86] These prohibitions are derived from the absolute "right to life," one of the fundamental human rights guaranteed by the Italian Constitution.[87] Determining that this absolute right applied to the actions of all public officials, the court found that the

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80. Andrea Bianchi, International Decision, 91 AM. J. INT'L L. 727, 727 (1997). Note that while Venezia sought these various appeals, much controversy over capital punishment existed within Italy. DeWitt, *supra* note 25, at 569 & nn.165-66. While Venezia's attorney used this conflict to strengthen support for his client, abolitionist groups used Venezia to further their cause. *Id.*

81. Bianchi, *supra* note 80, at 727. Venezia challenged Article 698, paragraph 2, of the Italian Code of Criminal Procedure, which required that a judicial court and the Justice Minister review extradition requests. DeWitt, *supra* note 25, at n.175. Venezia also argued against Article IX of the U.S.-Italy Extradition Treaty which placed the determination of the adequacy of a requesting nation's assurances within the discretion of the Justice Minister. *Id.*

82. *Id.* at 727-28.

83. *Id.* at 727 (quoting Italian Code of Criminal Procedure, art. 698 & U.S.-Italy Extradition Treaty, *supra* note 79, art. IX, at 3031).

84. *Id.* at 728.

85. *See id.*; DeWitt, *supra* note 25, at 571.

86. Bianchi, *supra* note 80, at 728.

87. *Id.* (citing COST. arts. 2 & 27).

"right to life" superseded the need for cooperation in international judicial matters, including extradition proceedings.[88]

The court then turned to the issue of whether the assurances given by a requesting nation could adequately protect the guarantees offered by the Italian Constitution.[89] Relying on the Italian Constitution's prohibition against the death penalty and the absoluteness of the "right to life," the court held that "sufficient assurances" that capital punishment will not be enforced are inherently unconstitutional.[90] The court stated that the determination of "sufficient assurances" necessitates a reliance upon the discretion of public officials, and such discretion makes improbable the extraditee's right to absolute protection.[91] Consequently, the only assurances which the Italian Constitutional Court would seemingly accept as adequate for extradition are those which are absolute.[92]

The United States had assured the Italian government that it would not seek the death penalty against Venezia, reiterating this promise in a letter from the U.S. Department of Justice.[93] In light of the fact that he would be tried in a state court, Venezia questioned these assurances because they came from the federal government and potentially had no binding effect on the state.[94] In response, the Italian Government, relying on the United States oral and written assurances, argued that the Supremacy Clause in the United States Constitution mandates that all international treaties are the "supreme law of the land."[95] Therefore, these federal assurances would take precedent

88. Bianchi, *supra* note 80, at 728; DeWitt, *supra* note 25, at n.176. The Italian Constitutional Court had previously held that any effort made by Italy to impose penalties "'which in no hypothesis, and for no kind of crime, would be inflicted in Italy in time of peace'" constituted a constitutional violation. Bianchi, *supra* note 80, at 728 (quoting Re Cuillier, Ciamborrani & Vallon, 78 ILR 93, 99 (Corte cost. 1979) (discussing a constitutional challenge to a national law incorporating the 1870 Extradition Treaty between Italy and France to the extent it allowed the extradition of fugitives from Italy to France for crimes punishable by death)). Similarly, the UNHRC and the European Court have given the rights afforded by the ICCPR and the European Convention comparable preeminence. DeWitt, *supra* note 25, at n.176.

89. Bianchi, *supra* note 80, at 728.

90. *Id.*

91. *Id.*

92. DeWitt, *supra* note 25, at 573.

93. Bianchi, *supra* note 80, at 729. The letter from the United States to the Italian Ministry of Justice clarified that according to Article VI of the United States Constitution, international treaties qualified as the supreme law of the land, and consequently superseded any contradictory state law. *Id.* at 729. *But cf.* Breard v. Greene, 118 S. Ct. 1352, 1355 (1998) (rejecting defendant's argument that he had a viable Vienna Convention claim because as an international treaty, the Vienna Convention constituted "the supreme law of the land," and consequently trumped Virginia's procedural default doctrine); Mary K. Martin, Case Note, 11 CAP. DEF. J. 39 (1998) (analyzing Breard v. Greene, 118 S. Ct. 1352 (1998)).

94. DeWitt, *supra* note 25, at 572.

95. U.S. CONST., art. VI, cl. 2.

over any state law or state constitution.[96] The Italian Constitutional Court left this question open, instead making its broader ruling that no "sufficient assurances" could satisfy the constitutional requirements of absolute protection.[97]

Arguably, the Italian Constitutional Court could have addressed this issue and still maintained its position that "sufficient assurances" were unconstitutional.[98] If the court believed that the Italian Constitution called for absolute assurances, not subject to discretionary review, then it simply could have interpreted the U.S.-Italy Extradition Treaty accordingly.[99] One possible explanation for the court's decision not to pursue this line of reasoning is that it simply placed more emphasis on constitutional protections such as the "right to life," than on the need to reconcile the U.S.-Italy Extradition Treaty and the Italian Constitution.[100] Simply stated, the court chose to strike down part of an extradition treaty rather than to send a man to a country which could potentially deny him his "right to life."

3. *Implications of the* Venezia *Decision*

The *Venezia* case generated a significant amount of publicity, gaining the attention of many Italian citizens.[101] Some disagreement over the use of the death penalty existed,[102] but the focus of much of the outrage in Italy arose out of the struggle between "Italian sovereignty and American strong-arm politics."[103] Italian politicians and citizens, already unhappy with the American judicial system,[104] saw this case as an opportunity to put Italy in the forefront of international abolitionism and to let the United States know that Italy did not support the death penalty and would not aid in its facilitation.[105] Public outcry prompted the Italian Constitutional Court to hear

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96. DeWitt, *supra* note 25, at 572 & n.181.

97. *Id.* at 573.

98. *Id.* at 575.

99. *Id.* In demanding absolute assurances, the court could require states, in addition to federal officials, to commit to a non-capital prosecution. *Id.* at 576. It is suggested that a state could satisfy such a commitment by enacting legislation, making an executive agreement, or by obtaining a judicial order. *Id.* at n.201.

100. *Id.* at 576-77.

101. *Id.* at 569-570.

102. *Id.* at 569 & n.165 (noting that in 1991 almost 60% of Italians supported reinstating capital punishment but by 1996 the percentage had declined to 45.7% (citing John Tagliabue, *Italians' Extradition Ruling May Hamper War on Organized Crime*, HOUSTON CHRON., June 28, 1996, at 22A)).

103. DeWitt, *supra* note 25, at 570.

104. Robert Graham, *Allies at Odds Over Extradition*, FIN. TIMES (London), July 8, 1996, at 9.

105. DeWitt, *supra* note 25, at 569.

Venezia's case and, it is likely, to reach the decision it did.[106] Reactions such as this are demonstrative of the power which citizens in abolitionist states can wield in not only their own countries, but in the United States as well.

This apparent distrust of the American judicial system by the citizens of Italy extended to Italian judicial and governmental officials. Both the Italian parliament and the Italian Constitutional Court doubted the sufficiency of the assurances given to them by the United States. Past actions by the United States and its continued use of the death penalty prevented the court from believing that if it approved extradition, Venezia would not be executed. Such a complete lack of faith on Italy's part could be a predictor of the opinions of other abolitionist countries, and consequently an indication of the outcomes in future extradition proceedings between them and the United States.

IV. The Future of Death Penalty Extraditions in the United States

The state of death penalty extradition law is currently on the brink of change. With the present balance between the number of abolitionist and retentionist countries tipping in favor of the abolitionists, death penalty extraditions have become more difficult. Growing international sentiment against capital punishment can simply no longer be ignored even in the context of extradition controversies arising out of conflicting domestic laws.

A. Measure by Measure: The Progression of Extradition Law

Cases such as *Soering*, *Kindler*, and *Venezia*, demonstrate a progression in international extradition law. The executive branches of governments at one time had exclusive control over extradition proceedings. Nonetheless, with the emergence of international human rights agreements, judicial bodies, both international and domestic, gained more power in reviewing extradition decisions. Similarly, in *Soering* and *Kindler*, human rights agreements prevailed over provisions in bilateral extradition treaties.[107] Furthermore, these decisions allowed for a requested nation to inquire into the judicial and penal conditions of the requesting nation before deciding to extradite. Each of these measures translated into the growing preeminence of international human rights as a factor in extradition proceedings.

The *Venezia* decision represents the latest progression because the Italian Constitutional Court, unlike the *Soering* and *Kindler* courts, did not even reach the inquiry into the existing conditions in the United States.[108] Instead, examining only its (Italian) domestic law, the court determined that a death penalty extradition would violate the Italian Constitution's protec-

106. *Id.* at 569-70. *See also* Bianchi, *supra* note 80, at n.7.

107. DeWitt, *supra* note 25, at 560-61.

108. *Id.* at 583-84.

tion of the "right to life." Consequently, abolitionist countries now have the choice of refusing extradition to the United States based on international human rights agreements or their constitutions and domestic laws.

B. New Grounds for Refusing to Extradite

As a result of this choice and the international human rights factor, abolitionist countries have an increased number of grounds on which to challenge death penalty extraditions to the United States.[109] For instance, many human rights agreements forbid the execution of juvenile offenders[110] and the mentally retarded.[111] However, the United States, in spite of international objections, permits the execution of both of these classes of persons.[112] In 1998 alone, three juvenile offenders were executed, two in Texas and one in Virginia, and two men suffering from mental retardation were executed.[113] If the extraditee falls within either of these classes, the requested nation could deny extradition based on a human rights agreement or on one of its own laws if such a prohibition exists.

Other grounds for refusing extradition to the United States include the alleged racial discrimination which exists in capital cases.[114] Racial discrimination is prohibited by human rights law.[115] Nonetheless, the American death penalty system is often accused of discriminating on the basis of race.[116] If abolitionist countries believed that race is in fact a discriminatory

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109. Quigley, *supra* note 35, at 434-35.

110. *See* ICCPR, *supra* note 32, art. 6(5).

111. *See* AMNESTY INTERNATIONAL, WHEN THE STATE KILLS: THE DEATH PENALTY: A HUMAN RIGHTS ISSUE 42 (1989); Death Penalty Information Center, *The Death Penalty in 1998: Year End Report* (visited Feb. 21, 1999) <http://www.essential.org/orga/dpic/yrendrpt98.htm> (stating that virtually all of the other countries in the world do not execute people who are under eighteen at the time of commission of their crime).

112. *See* Stanford v. Kentucky, 492 U.S. 361 (1989) (holding that any individual over the age of sixteen can be subject to execution); Penry v. Lynaugh, 492 U.S. 302 (1989) (holding that the execution of mentally retarded capital murderers of the defendant's mental ability [an IQ between fifty and sixty-three with a mental age of a six-and-a-half year old] was not categorically prohibited by the Eighth Amendment). *See also* Julian S. Nicholls, Comment, *Too Young to Die: International Law and the Imposition of the Juvenile Death Penalty*, 5 EMORY INT'L L. REV. 617 (1991); Marjorie A. Caner, Annotation, *Propriety of Imposing Capital Punishment on Mentally Retarded Individuals*, 20 A.L.R. 5th 177 (1998).

113. Death Penalty Information Center, *The Death Penalty in 1998: Year End Report* (visited Feb. 21, 1999) <http://www.essential.org/orga/dpic/yrendrpt98.htm>.

114. Quigley, *supra* note 35, at 435.

115. RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 702(i) (1987); European Convention, *supra* note 33, art. 14.

116. *See* David C. Baldus et al., *Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview, with Recent Findings from Philadelphia*, 83 CORNELL L. REV. 1638 (1998). In a recent systematic review of empirical studies conducted in the 1970s and the 1980s, the General Accounting Office made the following findings: (1) in eighty-two percent of the studies, the race of the victim was found to have influenced the

factor in the American death penalty system, they could reason that an extraditee's human rights would be violated if he were sent to the United States to stand trial.

The appellate review system in the United States also represents a potential violation of the domestic laws of other nations.[117] Many other countries provide for a broader scope for appellate review than that of the United States.[118] Consequently, if the requested nation engages in a comparison of its appellate review with that of the United States and finds such discrepancies, it could refuse extradition.

Finally, the treatment of burdens of proof in affirmative defenses raises the issue of a likely human rights violation in the United States.[119] International human rights law operates under a presumption of innocence for the defendant; even when the defendant raises a defense, it is the prosecution who must disprove the defense.[120] Conversely, in the United States, the accused is typically required to prove the elements of any affirmative defenses.[121] Such a divergence could give rise to a requested nation's denial of a United States extradition request.

C. Forcible Abduction: A Possible Alternative to Extradition

If the success of the United States in extraditing fugitives continues to decline, as evidenced by recent international decisions, it may employ alternative means of "relocating" fugitives to American soil. One such alternative, currently being practiced by the United States, is the forcible

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likelihood of the accused being charged with capital murder or receiving the death penalty, i.e. those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks; (2) in more than half of the studies, the race of the defendant was found to have influenced the likelihood of being charged with a capital crime or receiving the death penalty; (3) the relationship between the defendant and the outcome of the case varied across studies. *Id.* at 1658-60 (citing U.S. General Accounting Office, DEATH PENALTY SENTENCING: RESEARCH INDICATES PATTERN OF RACIAL DISPARITIES (1990)).

117. Quigley, *supra* note 35, at 436.

118. *Id.* at 436-37.

119. *Id.* at 437-38.

120. ICCPR, *supra* note 32, art. 14(2); European Convention, *supra* note 33, art. 6(2).

121. *See* Martin v. Ohio, 480 U.S. 228, 230 (1987) (finding that though the state must prove guilt beyond a reasonable doubt with respect to every element of the offense charged, it may place on defendants the burden of proving any affirmative defenses); Patterson v. New York, 432 U.S. 197, 206-07 (1977) (concluding that defendant charged with murder who says he was provoked by the victim, must prove provocation under a preponderance of the evidence standard); United States v. Vachon, 869 F.2d 653, 659 (1st Cir. 1989) (stating that defendant has the burden of proving an insanity defense by clear and convincing evidence); Annotation, *Modern Status of Rules as to Burden and Sufficiency of Proof of Mental Irresponsibility in Criminal Cases*, 17 A.L.R. 3d 146 (1968) (stating that some states require the defendant to prove an insanity defense); 22A C.J.S. *Criminal Law* § 52 (1989) (stating that some states place the burden of proving duress upon the defendant).

abduction of the fugitive from the requested nation. The United States Supreme Court approved of such "forcible abductions" in *United States v. Alvarez-Machain*.[122]

In *Alvarez-Machain*, a Mexican citizen, suspected of participating in the murder of a federal agent and his pilot, was forcibly kidnaped from his home in Mexico and flown to Texas to stand trial.[123] The Court held that the U.S.-Mexico Extradition Treaty should not be read to incorporate an implicit provision forbidding the prosecution of a defendant obtained by means other than those provided for in the treaty.[124] The treaty did not expressly forbid "forcible abduction," so, in the opinion of six United States Supreme Court Justices, the United States could employ it as an alternative to extradition.

The *Alvarez-Machain* holding has recently been applied in a Virginia Supreme Court case in which FBI agents "forcibly abducted" a Pakistani citizen, accused of murdering two people in Virginia, from a Pakistani hotel and returned him to the United States.[125] No extradition treaty between the United States and Pakistan exists, so the court instead relied upon the U.S.-United Kingdom Extradition Treaty.[126] Following *Alvarez-Machain*, the Virginia Supreme Court reasoned that because the treaty did not prohibit trying a defendant acquired by "forcible abduction" in either express or implied terms, the United States had jurisdiction over Aimal Kasi.[127]

"Forcible abduction" is certainly a drastic alternative to extradition, but for the United States, it is a legitimate one. Attempts can be made to

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122. 504 U.S. 655 (1992).

123. United States v. Alvarez-Machain, 504 U.S. 655, 657 (1992).

124. *Id.* at 666, 668-69.

125. Kasi v. Commonwealth, 508 S.E.2d 57 (Va. 1998). In *Kasi*, the police suspected Kasi of murdering two people and wounding three others in a 1993 shooting that occurred outside of the headquarters of the Central Intelligence Agency in Fairfax, Virginia. *Id.* at 59. Almost four and a half years later, Federal Bureau of Investigation [hereinafter FBI] agents located and apprehended Kasi. *Id.* At approximately 4:00 a.m., four FBI agents, dressed in "native clothing," knocked on a hotel room door in Pakistan. *Id.* at 60-61. When Kasi opened the door, the agents rushed into the room, and after several minutes, they subdued, handcuffed, and gagged him. *Id.* at 61. After leaving the hotel, the agents and the defendant, who was now handcuffed, shackled, and had a hood placed over his head, drove in a car for approximately an hour and then took an hour-long flight. *Id.* The agents then transported Kasi in a vehicle to a "holding facility" where Pakistani authorities took custody of Kasi. *Id.* He stayed in the holding facility until the morning of June 17th when Pakistani officials released him into the custody of the FBI agents. *Id.* The agents then accompanied Kasi on a twelve hour flight back to the United States. *Id.* On the return flight, Kasi signed an FBI "Advice of Rights" form, waived his rights, and gave both an oral and written statement of the events surrounding the CIA shootings. *Id.* For discussion of this and other issues raised by Kasi, see Douglas R. Banghart, Case Note, 11 CAP. DEF. J. 437 (1999) (analyzing Kasi v. Commonwealth, 508 S.E.2d 57 (Va. 1998)).

126. *Kasi*, 508 S.E.2d at 62-63.

127. *Id.* at 63.

distinguish *Alvarez-Machain* by closely reading the language of the extradition treaty being applied, and arguing that such language only allows for the removal of the fugitive by the means enumerated in the treaty. Nonetheless, the United States may begin to implement this alternative to extradition more frequently if abolitionist countries increase their denials of extraditions.

V. Conclusion

The fate of Atif Rafay, Sebastian Burns, and other death penalty extraditees remains uncertain, but given the recent changes in international extradition law, the scales may be tipping in their favor. If the Supreme Court of Canada does in fact deny their extradition to the United States, it will mean another step in the progression of the incorporation of human rights into international extradition law. Another abolitionist country will convey the message to the United States that it will not assist in the imposition of the death penalty.

The reconciliation of abolitionists and retentionists on the issue of death penalty extradition is not a hopeless cause. Solutions, which enable one country to maintain its commitment to protecting human rights and another country to punish appropriately those violating its laws exist. For instance, an abolitionist country and the United States could draft an extradition treaty which allows for extradition if the requesting country agrees to use the same punishment that the requested country would have used for the crime in question. If the United States is unwilling to make such compromises in extradition proceedings, then it must be prepared to fight what is rapidly becoming an uphill battle for those countries retaining capital punishment.