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## Letter to the Editor

# Death penalty report author responds to accusations

If educating voters "sways" them to vote in a certain direction then that must certainly be a good thing, because an informed electorate is essential to any successful democracy. But it was wrong for The Daily Journal to ascribe a nefarious purpose to the timing of the publication of the law review article I co-wrote with Senior 9th Circuit Judge Arthur L. Alarcón, published last week in the *Loyola of Los Angeles Law Review*. ("Report attempts to sway voters to quash death penalty," Sept. 14). We wrote the article in response to *Loyola's* request that we update the findings in our earlier publication, "Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debate," 44 *Loy. L.A. L. Rev.* S41 (2011), based on more recent research by Trisha McMahon and Tim Gage regarding the costs of our death penalty system. We complied with that request. Rather than claiming that our article was written to "sway" the voters, the *Daily Journal* would better serve its readers by either acknowledging the accuracy of the findings in our research, or pointing to specific flaws therein.

Judge Alarcón and I began researching the serious problems in California's death penalty system seven years ago, in 2005. Between then and now, we have written and lectured extensively on the need for reform in the administration of the state's death penalty system. In our article published last year, we suggested

alternatives for reform that an educated electorate should consider, any one of which would be an improvement over our current system. These suggestions included a revision of the state constitution to expedite the appellate process. We also pointed out that imposition of capital punishment could be narrowed to apply to fewer crimes, or crimes involving specific evidence that is objectively verifiable, such as DNA evidence. We also noted that if voters concluded that the death penalty system was beyond repair, life imprisonment without the possibility of parole could be considered as punishment for the worst of the worst. We did not express a view as to whether capital punishment should be eliminated. Our goal was to disclose the reasons for the failure of the present system, and the enormous cost involved so that California voters can decide what should be done.

Finally, I must comment on last week's opinion piece by James Bozajian. ("Proposition to end the death penalty an ill-conceived measure," Sept. 17). The explanations offered by Bozajian as to why California's death penalty system has broken down are simply insufficient by half, and even if true, offer no real solutions.

He complains that our system has become defunct because "a successful crusade by a small cadre of detractors," including state and federal court judges are in cahoots to shamelessly manipulate the system. He points to

*Gomez v. U.S. District Court for the Northern District of California*, as an example of death penalty jurisprudence at its best. What he conveniently failed to mention, however, is that it was Judge Alarcón who authored the opinion for the 9th U.S. Circuit Court of Appeals, vacating the district court's order halting the execution of Robert Alton Harris, and which was affirmed the next day by the U.S. Supreme Court.

Blaming state and federal court judges for the current dysfunctional system is especially silly when one considers that the courts are among the hardest hit by the backlog of death penalty cases. The courts are not the problem. Similarly, the argument that our system has broken down because a few never do wells have mucked things up is simply insufficient. Taxpayers have spent billions of dollars financing a non-existent death penalty for three decades. No one can say with a straight face that the current system is effective. Voters are entitled to know the full story when forming their views about whether the death penalty system can be salvaged or whether it should be replaced with a sentence of life in prison without the possibility of parole as the state's most severe penalty.

Bozajian's statement that Proposition 34's "most prominent advocates are the same individuals who have sought to derail our criminal justice system during the past four decades," is completely ridiculous. The proponent of

Prop 34 is Jeanne Woodford, former Warden of San Quentin. She has overseen four executions. How is that derailing the criminal justice system? Other prominent advocates of Prop 34 are Ron Briggs and Don Heller, both of whom helped write the Briggs Initiative (our current death penalty law) and who now believe the law needs to be changed, and Gil Carcetti, former Los Angeles County District Attorney who was responsible for prosecuting capital cases for L.A. County. Unless I have missed something, these gentlemen had no hand in "derailing" our criminal justice system over the last 40 years.

It is not a "ruse" to say that eliminating the death penalty will save taxpayers money. We are now financing 30 years of litigation in state and federal courts per death row inmate. There are now over 700 people on death row. The math is not that hard to do. We already have a de facto system of life imprisonment without parole, because the vast majority of inmates on death row die of natural causes long before their execution dates are every scheduled. We already pay to provide death row inmates with healthcare for the entirety of their lives. These are the facts an informed electorate should be aware of in casting their ballots on Nov. 6.

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