

CALIFORNIA'S DEATH PENALTY**Yes: System needs to be improved, not eliminated**

By Gregory D. Totten
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The death penalty is the just punishment for the most egregious murder cases. There is compelling evidence that it saves lives by deterring other murders. For those reasons, it is unfortunate that the report just issued by the California Commission on the Fair Administration of Justice unfairly attacks our death penalty law and wrongly casts doubt upon the fairness of our system.

The commission was established by the state Senate, with law professors, public defenders and other professionals appointed as commissioners. I was one of several law enforcement representatives who agreed to serve on the commission and regrettably found it necessary to dissent from its unbalanced report on the death penalty.

There are two themes in the report with which I wholeheartedly agree. First, delay on appeal and in habeas corpus in state and federal court – an average of 25 years from jury verdict to execution in California – is excessive and frustrates the effective administration of the death penalty. Second, a major source of that delay can be reduced by increasing the number of competent attorneys for both the condemned inmate and the state to handle the appeals and writs.

While I respect that persons of good conscience hold divergent views on the death penalty, the positive proposals in the report are unfortunately overshadowed by an obvious effort to undermine public confidence in the death penalty.

California's death penalty law was adopted by 72 percent of the voters who approved Proposition 7, an initiative measure, at the general election of Nov. 7, 1978. Now, nearly 30 years later, public support of the death penalty remains strong: a recent Field Poll shows 67 percent of registered voters support the death penalty, with 29 percent opposed, and 4 percent with no opinion.

Research establishes that the death penalty has a deterrent effect. A peer-reviewed study at Emory University concluded that capital punishment has a strong deterrent effect: in jurisdictions that have a death penalty, each execution results, on average, in 18 fewer murders. Of the 12 papers on this topic published in peer-reviewed journals, all 12 find a deterrent effect.

U.S. Sen. Dianne Feinstein offered a compelling example of deterrence in a statement to the Senate Judiciary Committee. (Hearing on S.221, April 1, 1993.) While serving on the parole board in the 1960s, she reviewed the case of a woman who had committed a first-degree robbery with an unloaded gun. The woman explained that her gun was unloaded so that she would not panic, kill somebody, and get the death penalty. Later, in the 1970s, during a period when California had eliminated the death penalty, Feinstein went to the scene of a mom-and-pop grocery store just after the proprietor, his wife and dog had been shot. She described the "terrible scene of carnage," and then stated: "I came to remember the woman who said to me in the 1960s, the gun was unloaded so I wouldn't panic and kill someone, and suddenly the death penalty came to have new meaning to me as a deterrent."

The Commission on the Fair Administration of Justice summarily dismisses the deterrent effect in a

footnote, stating merely that it is a "contested issue." A significant portion of the report is devoted to promising various purported cost savings of eliminating the death penalty. Remarkably, this discussion is not balanced with even a single argument in favor of the death penalty.

The report alternatively suggests a dramatic reduction in the types of cases that would be subject to the death penalty, including murders by paid killers, murders for the benefit of a criminal street gang, and murders in the course of a robbery, rape, child molestation or other serious crime. This proposal would release from death row hundreds of convicted killers responsible for some of California's most heinous murders.

Gregory Scott Smith, a child killer I prosecuted, would be one such beneficiary. After being fired as a teacher's aide, Smith abducted, handcuffed and gagged an 8-year-old boy. He then forcibly sodomized him, strangled him, and in an effort to destroy evidence, dumped the boy's body and set it on fire.

I strongly believe the vast majority of Californians would vehemently object to exempting such heinous murderers from the death penalty merely to gain the benefits of expedience and cost cited by the commission. Elimination of delays in our death penalty law is an attainable means of restoring the death penalty to its intended purposes of justice and deterrence.

We deserve a system that is fair, not only to those convicted of murder, but to the families of murder victims and the other residents of our state.

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