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# POSTSCRIPT

## RESPONSE TO *COURAGE OF THEIR CONVICTIONS*

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Responding to Jean Rosenbluth, *Would Californians Have the Courage of Their Convictions in the Face of a Fully Functioning Death Penalty?*, 81 S. CAL. L. REV. POSTSCRIPT 1 (2008).

I applaud Jean Rosenbluth for examining a question that has been troubling me since I relocated to California from New York last summer: would Californians support capital punishment if the State actually executed the almost 700 death eligible inmates who languish on death row for an average of eighteen years, and at least three years before appellate counsel is even assigned?<sup>1</sup> Further, would Californians support capital punishment if they were aware that criminal defense attorneys in this State forego raising potentially viable speedy appeal challenges in state court because they do not want to rush their condemned clients to the lethal injection chamber? Such challenges are routinely raised in direct appeals in New York, where the state's capital punishment scheme was ruled unconstitutional in 2004,<sup>2</sup> and where no condemned prisoner was executed during the ten years between the death penalty's reinstatement and invalidation.<sup>3</sup> Would Californians support the death penalty if they understood that federal judges reviewing state capital cases understandably stretch constitutional protections to invalidate convictions, and that these

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1. See Jean Rosenbluth, *Would Californians Have the Courage of Their Convictions in the Face of a Fully Functioning Death Penalty?*, 81 S. CAL. L. REV. POSTSCRIPT 1 (2008), available at <http://law.usc.edu/students/orgs/lawreview/J.RosenbluthCourageofTheirConvictions.cfm>.

2. *People v. LaValle*, 817 N.E.2d 341 (N.Y. 2004).

3. Nicholas Confessore, *New York's High Court Hears Death Penalty Arguments*, N.Y. TIMES, Sept. 11, 2007, at B3. The last execution in New York took place in 1963. *Id.*

decisions make it more difficult for prosecutors to get and keep convictions in noncapital cases presenting similar constitutional issues? Would Californians support the death penalty if they knew that, unlike the United States Attorney's Office, which hired Jean Rosenbluth into its criminal appeals unit despite her candid interview statement that she did not want to work on death penalty cases, the California Attorney General's Office does not permit death penalty-opposing new hires in its Appeals Writs and Trials Unit to opt out of capital cases (perhaps because so many attorneys would opt out that the almost 700 capital appeals would be severely understaffed)? Have Californians considered how many tax dollars are being diverted from meaningful crime prevention to finance the eighteen years of state and federal postconviction litigation for the almost 700 condemned inmates *and* to house these inmates in San Quentin as their cases slowly wend their way through the courts? Surely more than it would cost to keep the same inmates incarcerated for life following something far shorter than an eighteen-year appeal process.

The perverse effect of California's death penalty is evident to those of us who have worked within the criminal justice system. But is it evident to California voters outside the system? It might be if tomorrow's headline recounted the execution, in quick succession, of the five condemned California inmates who have, to date, exhausted their state and federal appeals.<sup>4</sup> Or the release of an inmate convicted of an egregious noncapital offense based on questionable precedent set in a capital case.

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4. Maura Dolan, *Executions Still on Hold in California*, L.A. TIMES, Apr. 16, 2008, at A12.