

## **Rudolph J. Gerber: Let's stop, reconsider: Should executions continue?**

**By Rudolph J. Gerber - Special to *The Sacramento Bee***  
*Monday, April 21, 2008*

Six months ago, the execution chambers in the United States shut down. During the past 10 years, our country averaged one execution per week; now, suddenly, there are none.

There has not been a nationwide pause in executions for 25 years - not even when the U.S. Supreme Court was considering such vital issues as innocence or racial bias in the death penalty system.

The current halt in executions is the result of the Supreme Court's decision to review whether Kentucky's lethal-injection procedures violate the Eighth Amendment's prohibition against cruel and unusual punishment.

The court's ruling Wednesday on lethal injection will undoubtedly prompt some eager politicians to schedule executions in the immediate future. The disparity of opinions in that decision - seven differing opinions by the nine justices - suggests, however, that the topic of capital punishment remains such a hot-button issue that agreement on principle and method still escapes us. In particular, Justice John Paul Stevens' opinion ought to give pause to resuming executions: The conservative Republican (when appointed) now says after 33 years on the court, that our executions fail both constitutional and practical tests, and ought to end.

The de facto moratorium on executions has had several ripple effects. Around the country, no judges are staying up late awaiting the final appeals from the condemned. Governors and justices of the Supreme Court are not worrying that the person about to be executed may be the exceptional one who is innocent. Prison guards, family members of victims and of death row inmates, and even the media are relieved of the tension and uncertainty that each pending execution brings.

But much of the death penalty system remains unaffected by this hold on executions. Prosecutions, trials, appeals and the rituals of death row continue to absorb an enormous share of the judicial system's time and resources. Justices from some of the states' highest courts have complained about the extraordinary strain this one issue places on the bench. In many states, there are not enough qualified lawyers willing to handle the appeals.

According to a recent report, in a state with more than 660 men and women on death row, California spends an estimated \$117 million per year on death penalty cases that are in the judicial review process and at least \$20 million annually on capital trials. On average, California carries out one execution every other year. In Georgia, the death penalty has drained the public defender system dry. One capital case can bankrupt a county, and the chances of execution for even those who are sentenced to death remain low. The average time between sentencing and execution is more than 10 years, and in many states such as California it takes much longer. And because of the exposure of glaring mistakes in the past, there is little prospect that the death penalty will become swifter or cheaper in the foreseeable future.

The halt in executions does demonstrate that the death penalty is not essential to our society. Many people are probably unaware, as its absence has no effect on people's daily lives, that the death penalty has been on hold since September.

The cases, however, are stacking up. At some point, executions may resume in greater numbers than we have been used to. This present period of quiet could be used to reflect on whether the death penalty is doing us any good.

Only 10 states had executions in 2007. The overwhelming number of executions carried out occurred in just one state - Texas. Are the residents of those states with no executions any less safe than the inhabitants of the few states in which executions occurred?

The death penalty without executions is just another term for life without parole. Based on opinion polls, that is already the punishment of choice for the public, and that is the typical punishment that all but a small percentage of people convicted of murder receive. Every death penalty state except New Mexico has the alternative sentence of life without parole. In a poll of police chiefs, law enforcement officials put the death penalty as the least-important way of combating violent crime.

The idea that we must take a "life for a life" is pure myth. Some states have abandoned capital punishment; others may be moving in that direction. In December, the New Jersey legislature voted to end the death penalty; it had not carried out an execution for more than 40 years. It is estimated that capital punishment cost New Jersey \$250 million since executions resumed in 1976. The savings can be used to help crime victims and on a host of crime prevention programs.

New York has also given up on capital punishment. It will save tens of millions of dollars that the state spent on the cost of prosecuting and defending capital cases.

North Carolina, Tennessee and California have initiated studies of their death penalty systems.

In other states, the death penalty remains on the books, gathering dust and absorbing millions of dollars, but is rarely carried out. The death penalty is overdue for examination as a public policy - its burdens and alleged benefits should be fairly weighed. For many years, we have only considered the death penalty in theory - whether it might be appropriate for the most horrible crime. But the death penalty in practice is what needs to be examined. The pause in executions presents an excellent opportunity to consider if we need to continue this practice any longer.

#### **About the writer:**

- Rudolph J. Gerber, a former prosecutor, trial judge and a judge of the Arizona Court of Appeals for 13 years, teaches at Arizona State University. He drafted Arizona's death penalty law.