Time to stop defying prison overcrowding order

Erwin Chemerinsky *is dean and distinguished professor of law at the University of California, Irvine School of Law.*

Gov. Jerry Brown's defiance of a federal court order requiring reduction of the California prison population is reminiscent of Southern Governors in the 1950s declaring their defiance of federal court desegregation orders. Both were misguided efforts to undermine enforcement of the Constitution. Ultimately, the rule of law must triumph and California must comply with the court's order to reduce its prison population to 137.5 percent of the planned capacity by Dec. 31 this year.

The litigation over California prison overcrowding has a long history. A lawsuit was initiated in 1990 alleging that California was deliberately indifferent to the need of inmates for mental health care and in 1995 a federal district court ruled that there was "overwhelming evidence of the systematic failure to deliver necessary care to mentally ill inmates" in *California prisons. Coleman v. Wilson*, 912 F.Supp. 1282 (E.D.Cal. 1995). The court found that the prisons were "seriously and chronically understaffed," and had "no effective method for ensuring ... the competence of their staff." Mentally ill inmates "languished for months, or even years, without access to necessary care." "They suffer from severe hallucinations, [and] they decompensate into catatonic states." In 2007, a special master reported that the state of mental health care in California's prisons was deteriorating as a result of increased overcrowding. The rise in the prison population led to greater demand for care and existing programming space and staffing levels were inadequate to keep pace.

A separate lawsuit was filed in 2001, concerning the inadequate medical care provided inmates. The district court found that "the California prison medical care system is broken beyond repair," resulting in an "unconscionable degree of suffering and death." The court found: "[I]t is an uncontested fact that, on average, an inmate in one of California's prisons needlessly dies every six to seven days due to constitutional deficiencies in the [California prisons'] medical delivery system."

At the request of the district courts, a three-judge court was appointed by the chief judge of the 9th Circuit, as required by the Prison Litigation Reform Act, to consider the release of inmates as a remedy. The three-judge court heard 14 days of testimony and issued a 184-page opinion, making extensive findings of fact. The court ordered California to reduce its prison population to 137.5 percent of the prisons' design capacity within two years. Unless additional prisons were built, the order required a population reduction of 38,000 to 46,000 persons.

California aggressively contested this and took the matter to the Supreme Court. In *Brown v. Plata*, 131 S.Ct. 910 (2011), the Supreme Court affirmed the decision of the three-judge federal district court ordering the release of inmates as a necessary remedy for the prison overcrowding and the unconstitutional deliberate indifference to the prisoners' medical needs. Justice Anthony Kennedy wrote for the court and

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Criminal
Ex-South Gate city treasurer wins honest-services fraud reversal
The 9th Circuit reversed former South Gate official Albert T. Robles' convictions on 25 corruption counts, citing a U.S. Supreme Court decision limiting what constitutes honest-services fraud.

Corporate
Latham helps with $13.6 billion life sciences buy
Latham & Watkins LLP represented JPMorgan Chase & Co., financial adviser to Thermo Fisher Scientific Inc., in the company's $13.6 billion acquisition of Life Technologies Corp., announced Monday.

Judges and Judiciary
Judiciary proposes cuts to audits
The judiciary is pushing several new cost-saving measures, but critics are livid over a proposal to exempt branch from audits in effort to cut expenses.

Law Practice
Sheppard Mullin loses another corporate lawyer in Palo Alto
Gibson, Dunn & Crutcher LLP poached the chair of Sheppard, Mullin, Richter & Hampton LLP's technology transactions group Monday, adding Shaalu Mehra as a partner in Palo Alto.

Mergers & Acquisitions
Dealmakers
A roundup of recent mergers and acquisitions and financing activity and the lawyers involved.

Law Practice
LA bankruptcy boutique adds two new partners
Bankruptcy boutique Klee, Tuchin, Bogdanoff & Stern LLP added two new partners to its Los Angeles office to fully round out its corporate practice group, the firm announced Monday.

Judges and Judiciary
LA County Superior Court judge wins Senate confirmation to federal bench
The U.S. Senate unanimously confirmed Los Angeles County Superior Court Judge Beverly Reid O'Connell to a vacant spot on the federal bench in the Central District of California Monday afternoon.

spoke eloquently of the rights of prisoner: "Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment. The basic concept underlying the Eighth Amendment is nothing less than the dignity of man." The court concluded that the three-judge court had properly found that prison overcrowding resulted in violations of the prisoners' constitutional rights and there was no other alternative to solve the problem other than the release of inmates.

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After the court's decision, California's lawyers repeatedly refused to agree to a plan or a timetable to ensure compliance with the order to release inmates. On Jan. 8, 2013, Gov. Brown announced that the problem was over and that "prison crowding no longer poses safety risks to prison staff or inmates, nor does it inhibit the delivery of timely and effective health care services to inmates." He said that as of July 2013 he no longer would use emergency powers to help comply with the court's order.

At the same time, California's lawyers filed motions to eliminate the order to reduce the number of inmates and to be relieved from the order to provide better mental health care for the inmates. Like Gov. Brown, the motions said that the problem was over and the court order should be ended.

On April 5, 2013, Federal District Judge Lawrence Karlton rejected the state's contention that the problem in providing mental health services to prisoners had been solved and that the court's order should be ended. In a 68-page opinion, he wrote: "Systemic failures persist in the form of inadequate suicide prevention measures, excessive administrative segregation of the mentally ill, lack of timely access to adequate care, insufficient treatment space and access to beds, and unmet staffing needs,"

On April 11, 2013, the three-judge court issued a 73-page opinion rejecting the state's arguments and mandating compliance with its order, which had been affirmed by the Supreme Court, to release inmates to bring the prison to within 137.5 percent of its planned capacity. The court powerfully declared: "Defendants have already lost this argument and they should not be allowed to relitigate it once again ... [T]hey have presented very little evidence. Most of this evidence is irrelevant, as it points to partial compliance with this Court's Order and not to a resolution of the problems of overcrowding. The remaining, relevant evidence is far too minimal" to prove that "overcrowding is no longer the primary cause of ongoing constitutional violations." The judges explained that the state's partial compliance with the order is not a reason to end the order, but to continue it to ensure its full enforcement.

The court made clear that disobedience with its order would be punishable, including by contempt. The judges stated: "That Governor Brown may believe, contrary to the evidence before this Court, that 'prison overcrowding [is] no longer ... inhibit[ing] the delivery of timely and effective health services' will not constitute an excuse for his failure to comply with the orders of this Court. Having been granted a six-month extension, defendants have no further excuse for non-compliance."

Gov. Brown's initial response has been to criticize the court decisions and to vow to take the matter to the Supreme Court. But the court already has ruled and was explicit that California must comply with the order to reduce its prison population. It is highly unlikely that the Supreme Court would take the matter again in light of the lower courts' rulings, backed up by detailed evidence, that the problems remain and the orders are not being implemented.

Currently, the prisons hold 119,542 inmates, or 149.5 percent of the number they were designed to hold, according to a report released by the corrections department. About 9,500 inmates would have to be removed to meet the goal of 137.5 percent. The original deadline for the reduction was June, but the judges granted a six-month extension.

Environmental
Oakland environmental group gets first settlement in nap mat toxic warning lawsuit
An environmental group suing several companies over toxic flame retardants in children's products announced Monday that a major supplier of children's nap mats has agreed to remove the targeted chemical.

Labor/Employment
New, smaller class in Wal-Mart gender discrimination case
The saga of a 12-year gender discrimination lawsuit against America's largest private employer continued Monday with the filing of a new motion for class certification in the Northern District.

Law Practice
Sidley partner on key California suit jumps to Orrick
Sidley Austin LLP partner Eric Shumsky joined Orrick, Herrington & Sutcliffe LLP as partner in its Supreme Court and appellate group in Washington, D.C. Monday.

Government
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Gov. Brown's initial response has been to criticize the court decisions and to vow to take the matter to the Supreme Court. But the court already has ruled and was explicit that California must comply with the order to reduce its prison population. By **Erwin Chemerinsky**

Appellate Practice
Clear lesson for navigating the complex post-trial world
The lesson from a recent case is clear: when you enter the sometimes complex post-trial world, know the controlling rules cold. By **Kasey Curtis and Paul D. Fogel**

Securities
Restricted stock units present high wire act for companies
Internal Revenue Code Section 409A governs this timing, and severely limits the ability of issuer to peg vesting to liquidity events like licensing deals or initial public offerings. By **Wendy Davis**

U.S. Supreme Court
Back in state court: patent-based malpractice
The high court's opinion in *Gunn v. Minton* appears to put an end to the fairly brief period of federal court "arising under" jurisdiction in patent-based legal malpractice cases. By **Jonathan W. Hughes**

It is time for the governor and the attorney general to pledge compliance with the courts' orders and to act to implement solutions. Declaring victory over the problem, as Gov. Brown has done, is not sufficient. Jerry Brown surely does not want to be the Orval Faubus of the early 21st century, but that is exactly how he is acting.

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Previous Next

Letter to the Editor
Licensing nonlawyers equals nonsense
What I see in the quest to license nonlawyers is my State Bar trying to save our standards of living rather providing access to justice. By **Kenneth Brooks**

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It is unclear how SB 115 would affect a situation where a teenager decides to seek out his or her natural parents. By **Peter J. Logan**

Nonlawyer licensing an ill-conceived idea
Just when I thought that I had heard everything imaginable in my 28 years of practicing family law, the State Bar is now considering licensing "nonlawyers." By **John Smith**

Judicial Profile
Brett H. Morgan
Superior Court Judge San Joaquin County (Stockton)

Labor/Employment
Employees try new tack with misclassification class actions
An increasingly high bar for class certification and changing employer behavior have made the seemingly lucrative misclassification cases more challenging to find and win.