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It's a Gray Area: Reworking prison system could save us

By James P. Gray

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OK, now that the voters have told the politicians in Sacramento in the recent election that they oppose the continual raising of their taxes, and also disapprove of the way government has handled our finances, where we should go from here?

My definite view as a Libertarian continues to be that instead of raising taxes, we should reduce the size and expense of government, and require it to be more responsible and prudent in the way our tax money is being spent.

Prior to the recent election, our governor was quoted as saying that if the ballot initiatives did not pass, governments would probably be forced to sell such facilities as the Los Angeles Coliseum, Orange County fairgrounds and San Quentin Prison. Finally a good idea! Well, the initiatives failed decisively, so let's start by doing exactly that!

Why should governments own sports facilities or fairgrounds in the first place? If there is public interest and support for such facilities, the private sector will furnish and maintain them — and much more efficiently. And that would also allow us to disband the Coliseum Commission, which, you will recall, was so "successful" that it chased away such profitable tenants as the Los Angeles Rams and the UCLA football team!

With regard to closing San Quentin, from my perspective as a veteran trial court judge, there are

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far, far too many people in prison today than there should be. For example, we now have literally thousands of people in prison for doing nothing but smoking marijuana, at a cost to the taxpayer of about \$30,000 per inmate per year. This is something we can no longer afford.

Officials in the law enforcement community constantly say that we never put anyone in prison simply for using marijuana, but that is not true. Why? Because when inmates are placed on parole for prior offenses, it is always with the condition that they use no form of illicit substances.

So if they smoke marijuana, even once, that is detectable by drug testing for about 30 days, and failing their drug test almost automatically puts them back into prison. Of course, this often also puts their families back on welfare as well — with all of this being at taxpayer expense.

On this subject, I often quote Pat Nolan, who is a former ultra-conservative assemblyman from Glendale who was convicted of an election fraud offense and sentenced to two years in prison.

He said upon his release that "We have many too many people in prison who do not belong there." Then he went on to say that "We should put people in prison who we are afraid of, not people we're mad at." That is good advice.

Along those lines, since prison is always the most expensive option, I would also give serious consideration to the release of many prison inmates who are now elderly and frail. It costs taxpayers about \$100,000 per year to keep those people in prison because of their high medical expenses, and most of them couldn't actually hurt someone else at all — even if they wanted to.

I would also release many non-violent drug offenders from prison, such as those who were using marijuana and various other drugs. As a practical matter, if their drug usage does not harm anyone but themselves, they should not be in prison in the first place. What they have is a medical problem, not a criminal justice problem. But I would also make drug treatment available for anyone who requested it, since this would further reduce the costs to taxpayers in the long run.

We should also consider the release of many people who have been imprisoned for ridiculously long periods of time for non-violent drug offenses due to our mandatory minimum sentencing laws. Many of these people are women who ended up dating boyfriends who sold drugs and got them involved tangentially in their illicit business. Yes, they made a mistake and they have paid for it, but they are not a threat to our safety or well being. And five years in prison will serve as just as much deterrence and punishment as 10 or 20 years.

Historically, California from its inception until the year 1980 built only 13 state prisons. But since then, with the escalation of the war on drugs, we now have 33. Each prison costs hundreds of millions of dollars to build, and continues to cost additional hundreds of millions to staff. Because of its age, San Quentin is one of the most expensive prisons to maintain, so it would be a logical candidate to be the first one to be closed. And in addition, since it is on the waterfront just north of San Francisco, selling that property would bring in lots of revenue.

Picture this valuable property on the bay becoming a luxury resort or condominium complex, with a marina for boats. Then think of the property and sales taxes that this property would consistently generate. As a practical matter, San Quentin could become a new Catalina or Newport Coast. Why should we waste this valuable location on felons?

So yes, governor, closing San Quentin Prison would be the right thing to do! In fact, by following Nolan's recommendation we could also close several other prisons as well, all without any material risk to our safety!

As a further matter, we should pass sunset laws for each of our governmental agencies, which is what I suggested in one of my earlier columns. That would mean that each governmental agency would be required to get an affirmative vote from the legislature every five or six years before its funding would be renewed.

Agencies that could not show productive results from their past activities, and positive and workable plans for the future, would have their funding either seriously reduced or even abolished. This routinely occurs in the private sector, so shouldn't we adopt the same accounting approach in government? Continuing with bureaucracies that are not productive is a luxury that we can no longer afford — if we ever could. Think of the tax money we could save.

So that is my vision for the future in these difficult economic times. What's yours? When contemplating that question, remember that although there is a definite need for governments to provide such things as police and fire protection, a justice system, and a stable form of currency, governments themselves do not produce wealth. If there is a need for goods and services, that need will be met by the private sector.

Instead, governments only take money from their citizens, keep a lot of it, and then distribute the rest of it to others. In my mind, individual people are in a much better position to decide how best their money should be spent.

So you decide where we go from here, because it is your choice.

JAMES P. GRAY is a retired judge of the Orange County Superior Court, the author of *Wearing the Robe – the Art and Responsibilities of Judging in Today's Courts* (Square One Press, 2008), and can be contacted at jimgray@sbcglobal.net or via his website at www.judgejimgray.com.

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"It's a Gray Area: Reworking prison system could save us"

MSH01 wrote on **May 25, 2009 7:08 AM:**

" Judge Gray sets out interesting observations and outstanding recommendations. Why indeed should government involve itself in entertainment franchises while abdicating responsibility to punish criminal conduct to for-profit corporations? These corporations have every incentive to lobby for the criminalization of a broader range of conduct and ever harsher criminal penalties since they are paid a per diem for each prisoner housed.

And how is it we so easily confuse vice with crime? We have no business punishing conduct that competent adults choose which harms no one else simply because we don't agree with their choices. 2.5 million incarcerated! "

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Concerned_Citizen wrote on **May 25, 2009 6:41 AM:**

" Judge Gray has ALWAYS had a clear mind on this subject and is absolutely right about marijuana and the law. "

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HelloKitty wrote on **May 24, 2009 10:00 PM:**

" Great article and perfect timing. If only you were still working on the bench! we could use a lot more judges with your common sense and knowledge of these issues.

Keep educating the public as they will listen and respect an individual such as you.

Toni Sevchuk "

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robindaily wrote on **May 24, 2009 3:33 PM:**

" I don't always agree with the Judge but this time he is right on. He knows better than most of us the true costs of our penal system and how to keep it manageable. Tuesday's vote was a wake up call to everyone from the Governor south in Sacramento. Stop the ridiculous spending and act as if they're running a business which if fact they are. Remember after all the dust clears California will still be in business and hopefully run by people that know what spending a buck really means. Remember its our money, not theirs. "

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CorrectionsEmployee wrote on **May 24, 2009 1:29 PM:**

" ...than any sales price, esp. in this real estate market. Finally, you're going to sell off history? Think of the number of notorious felons who have died in the death chamber there. Think of the officers who died there. You want to throw that history away? SQ is Calif.'s first-built prison. SOMEDAY, after a new facility has been built, it MUST become a museum, a la Alcatraz. Not more ugly condos. Yes, I know about what I write because I work there and have very strong feelings on this subject. "

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CorrectionsEmployee wrote on **May 24, 2009 1:27 PM:**

" Sadly, your article is full of conclusions with no factual underpinning. Closing/selling San Quentin would be a classic case of throwing good \$ after bad. Why? Because CDCR just spent millions to build both a new hospital and death chamber there. Throw that \$ away now? I think not. San Quentin houses more than 5 prisoners, including the nearly 700 on Condemned Row.

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And where would you put them, considering that EVERY OTHER PRISON IS JUST AS OVERCROWDED? Nowhere. Until a new prison is built at a substantially higher cost... "

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