

Opinion : Op-Ed
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HARD TIME

Prison Fix: Call in the Feds
California's dysfunctional prisons need a judicial jump-start.

By Joe Domanick,

IF I WERE A BETTING MAN, I'd give 5-1 odds that U.S. District Judge Thelton Henderson will place the California Department of Corrections and Rehabilitation under his direct supervision within the next six months. John Hagar, Henderson's "special master" and chief investigator of the corrections department, may have foreshadowed a takeover last month when he caustically accused Gov. Arnold Schwarzenegger of prompting the resignations of two reform-minded prison chiefs by placating the California Correctional Peace Officers Assn., the powerful union of prison guards and parole officers.

Schwarzenegger's response was to call a special legislative session, beginning Monday, on the prison crisis. The governor is expected to ask legislators to spend \$6 billion to add 40,000 beds over the next decade by building two prisons and expanding the capacity of existing facilities. But this is just planning for more failure, not getting to the root causes of the system's severe overcrowding.

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Schwarzenegger entered office in 2003 vowing to transform the corrections system. He promised to reduce the inmate population significantly; institute drug treatment, education and prison diversion programs to bring down the state's exceedingly high recidivism rate; and end the guards union's extraordinary political and policymaking influence. A former inspector general of the department described the union as the "largest ball on the table, knocking around all the other balls at will."

At the time, the new governor enjoyed an unexpected advantage: The union was on the defensive. Its code of silence was generating one damning investigation after another. Prison guards were perjuring themselves, and potential whistle-blowers were being threatened and intimidated. As state Sen. Jackie Speier (D-Hillsborough), chairwoman of the Senate Select Committee on Government Cost Control, which monitors the state's prisons, pointed out, union practices were "so sinister and powerful that ... those who come forward ... find themselves sent to a job in the prison's Siberia or fearing for their lives."

Many people also remembered the prison unrest in the 1990s, when 39 inmates were shot to death and 200 were seriously wounded by guards using highpowered rifles to break up gang fights, some of which the guards had instigated. Above all, the union was widely criticized for thwarting departmental moves to reintroduce rehabilitation as a goal of the state's corrections system.

But things have gone from bad to worse. The inmate population is more than 172,000 today, about 200% over capacity. Race riots still rock prisons. The corrections budget has shot up from \$7.4 billion to \$8.2 billion.

Henderson already directly supervises the \$1.1-billion prison medical system, and a state judge oversees the California Youth Authority.

What's gone wrong is less a story of crime and punishment than of politics — a tale of political folly, power-brokering and conservative ideology triumphing over common sense and sound corrections policy. The folly was all Schwarzenegger's. Rather than targeting the guards union, he took on all of the state's public service unions — teachers, nurses, firefighters, cops. Calling them "special interests," the governor put three initiatives on last November's ballot to try to diminish their power. All went down to defeat, and

Schwarzenegger, not the unions, was weakened politically. Instead of curbing the power of the guards union, the governor strengthened it.

Critics blame the union for all the corrections system's failures, and it unquestionably has played a major role in creating problems. But union leaders are neither monsters nor morons. Over the last 20 years, they have seized on state residents' legitimate fear of crime to shape policy to their interests at a time when change (and views on crime and punishment) was veering rightward. The union was a strong backer of the three-strikes law, and TV ads it paid for were credited with killing Proposition 66, which would have modified the law's onerous sentencing requirements.

Politicians in the Legislature and the governor's office pre-Schwarzenegger deserve blame as well for allowing the guards union to dictate policy. For example, in 2002, then-Gov. Gray Davis signed off on a contract to give guards a 37% pay raise over five years, when many other state employees were receiving small or no pay increases.

State Sen. Gloria Romero (D-Los Angeles) and Speier have been pushing for reform of the corrections system. But a politically chastised Schwarzenegger, Democrats beholden to guards union contributions and ideologically driven Republicans have blocked any attempts to relieve prison overcrowding — the No. 1 problem — by moderating sentences for nonviolent crimes and drug offenses. As a result, 23,000 prisoners are projected to be added over the next five years, bringing the inmate population to about 193,000.

The Schwarzenegger administration's survival instincts have also sabotaged its own reform efforts. When nonviolent prisoners were being released this year to halfway houses or home confinement, for example, victims' rights groups, financed by the prison guards union, ran fear-mongering ads. Corrections quickly rescinded the program.

Similarly, when parole officers, backed by the union, complained that newly instituted rehabilitation-oriented policies endangered public safety and were poorly implemented, the Schwarzenegger administration reverted to the old, failed model responsible for the high-recidivism rate. The corrections department said it was rescinding the policies because it didn't know if they were working. But it later reported that the rehabilitation policies had dropped the recidivism rate to its lowest point since 1991.

"Reverting to the old model," San Diego State criminal justice professor Alan Mobley told me, "made the parole officers happy, but you can bet the old recidivism rates are going to return in 2006 and onward, with a vengeance."

The only hope to change a system everyone agrees is a disaster waiting to explode is for the crusty, tenacious, 73-year-old Henderson to seize control of the corrections system and place it on the road to reform. As a tenured federal judge, he has the political independence and statutory power to ignore the guards union; bypass the politicians; protect and encourage whistle-blowers; appoint corrections managers and leaders, people from outside the system who have reform track records; and hold corrections employees and managers accountable, criminally and civilly.

Without a federal takeover, the prospect of reforming California's prison and parole systems will remain a pipe dream.

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