

P U B L I C I N T E R E S T

Mayor's Budget Cuts Should Include Phila. Prison System

BY ANGUS LOVE

Special to the Legal

Major Strasser's been shot, round up the usual suspects." These words from Capt. Louis Renault in the closing scene of the epic film "Casablanca" sadly reflect criminal justice policies in Philadelphia for too many years.

All too often, quantity has replaced quality in the quest for public safety in our city. The usual suspects in our case are often people of color, the homeless, substance abusers and the seriously mentally ill. Are these the right folks to be targeting?

Given the financial crunch we are having, it's time to re-examine our policies to see if there is a better, safer and more fiscally responsible way. A report from March 2007 by the Pennsylvania Intergovernmental Cooperation Authority, or PICA, titled "City Budget Behind Bars: Increasing Prison Population Drives Rapidly Escalating Costs" provides some answers to this long-standing problem. The report recommends alternatives to incarceration, improved re-entry services and efficiency in the system.

I would add a re-examination of the policies associated with the war on drugs and the broken window theory of law enforcement could also help Philadelphia get a grip on the largest prison population in all major cities in the United States — a country that leads the world in the rate of incarceration.

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The Philadelphia Prison System daily headcount is approaching 10,000 inmates. When District Attorney Lynne Abraham took office in 1991 that figure was 4,500. The overall population of the city has actually dropped since 1990 by 8 percent from 1,585,577 to 1,463,281. Violent crime has been trending downward through this period.

New York City's jail population is 14,000 with an overall population of 8,274,527. Its jail numbers peaked in the early 1990s at 23,000 after a brief flirtation with the broken window theory but has dropped steadily in what is now America's safest city. They now have 6,000 vacant beds. There was also a 70 percent drop in the New York City homicide rate.

Based on this evidence, simply locking up people does not make us safer and might have the opposite effect. Prison can be a crime school for some and a breeding ground for contempt of authority for others (see "don't snitch" street mantra). It also inhibits marketability in the workforce excluding many from jobs, housing and benefits.

New York invested heavily in alternatives to incarceration. It allowed offenders a chance to avoid jail through sentences to community programs such as drug and alcohol treatment, educational opportunities and employment training. If they fail, then

incarceration could occur. The PICA report states that each such individual saves the city between \$1,400 and \$13,000 for each year spent in programming rather than in jail.

It is time for Philadelphia to look beyond the numbers and focus on what is effective in combating crime. We must go beyond sloganeering and fear mongering. This is especially important given the recent economic downturn and the budget cuts proposed by Mayor Michael Nutter. Sadly, he ruled the prison system off limits to the budget-cutting knife in a closed-door session.

One approach is to rethink the so-called war on drugs. This has been the fastest growing segment of the prison population since the term was first coined by President Nixon. Many years ago, drugs were considered an illness and treatment was offered in a hospital setting. Now it is a crime that can generate sentences longer than those for violent crimes. Given the profits that can be made, drug markets are thriving despite the potential for harsh penalties. The risk of going to jail is considered a cost of doing business or a way to put a competitor out of business. An educational campaign similar to the successful anti-tobacco effort could pay much greater dividends and save millions of dollars now spent on incarceration.

The broken window theory is another policy in need of re-examination. Pioneered in New York City by Mayor Rudolph Giuliani,

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whose disclosure "by their very nature" would prejudice a person's privacy, reputation or personal security. He said the balancing test between public disclosure and privacy rights has never mandated item-specific evidence to prove privacy interests are paramount to disclosure.

There is an argument to be made, McCaffery said, for the public interest in knowing how public officials use public property.

"However, the strong intrinsic interest of the possessor of telephone numbers to privacy, reputation or personal security may

out that the new law took into consideration types of information that should not be subject to disclosure. Those exceptions included "all or part of a person's Social Security number, driver's license number, personal financial information, home, cellular or personal telephone numbers [and] personal e-mail addresses." Other exceptions included correspondence between a person and a member of the General Assembly and records that would identify a person seeking assistance or constituent services.

McCaffery was joined in his opinion by Chief Justice Ronald D. Castille and Justices Max Baer, J. Michael Eakin, Debra Todd and Jane Cutler Greenspan. Justice Thomas G. Saylor wrote a concurring opinion in which he agreed with the result of the ruling but differed with some of the

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the homeowner association's belief that the lot owners could not landscape at all within the land devoted to the utility easement.

Even if there is proof of an encroachment, its mere existence does not necessarily guarantee injunctive relief. Citing to the Supreme Court of Pennsylvania's decision in *Moyerman v. Glanzberg*, the Commonwealth Court discussed the equitable considerations in deciding whether an injunction is appropriate.

In *Moyerman*, the Supreme Court found that because the defendant had substantially completed his project before realizing he was building 16 inches onto his neighbor's property and the encroachment did not "materially interfere" with the plaintiff's use of his driveway that the "equities did not favor an injunction."

The Supreme Court, however, cautioned that equities will not matter when "a defendant has deliberately and willfully built upon plaintiff's property, tortiously or in bad faith, injunctive relief should be granted, regardless of the equities."

The Commonwealth Court said that "[i]f the easement forbade improvement in the utility easement area, then a lot owner's grass lawn would have to terminate ten feet shy of each of the four sides of a lot. This is illogical and unnecessary. When the Association finds it necessary to exercise its right under the utility easement, the Association can remove whatever grass, bush or flower bed has been planted in the easement area."

The Commonwealth Court found that the encroachment was not a significant interference with the use of the right-of-way and that, since building the wall was not performed tortiously or in bad faith, no injunction was merited.

Furthermore, the Commonwealth Court concluded that the equities did not favor

the homeowner association because of its long-standing tolerance of similar landscaping projects.

LESSONS LEARNED

The Commonwealth Court's ruling in *Big Bass Lake Community* shows why property interests should be vigorously protected. In *Big Bass Lake Community*, the Commonwealth Court was swayed by the homeowner association's failure to seek legal recourse against lot owners who had made similar encroachments. The Commonwealth Court basically found that the homeowner association could not selectively prosecute its property rights.

Another lesson learned from *Big Bass Lake Community* is the importance of defining property in the chain of title. Easements are generally disfavored by the courts. With that in mind, the Commonwealth Court restrictively read the language in the deeds granting the homeowner association a right of way over the lot owners' respective properties. •

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it suggests that a harsh response including incarceration for low-level offenses such as breaking windows, graffiti, vandalism and other petty crimes, acts as a deterrent to major violent crimes down the road. The New York City jail population peaked at 23,000 when it was implemented in the early 1990s.

To date, the jury is still out on the effectiveness of this idea. A statistical nexus between the two types of crime has yet to be discovered. Common sense suggests that keeping one's neighborhood clean, free of graffiti and fixing abandoned buildings as well as the broken windows will be to everyone's benefit, but doesn't necessarily mean that violent crime will cease. Nutter and Philadelphia have bought into this theory first expressed by Police Commissioner John Timoney and now by current Commissioner Charles Ramsey, who also calls for the construction of yet more prisons despite our dubious distinction of being a world leader in this category.

The history of prison conditions litigation and resulting court oversight has not been able to solve the overcrowding problem. It has only ensured that the system does not descend any further in ensuring that the basic

necessities of life are provided.

The Philadelphia Prison System has been subject to class action lawsuits for more than 35 years. Professor David Rudovsky brought the *Jackson v. Hendricks* case in the state courts in 1971 dealing with the conditions within the system. David Richman of Pepper Hamilton was appointed to represent the inmates in a federal action in 1982. *Harris v. City of Philadelphia* focused on overcrowding and became known as the "cap" case when Judge Norma Shapiro approved a consent decree that set a population cap of 3,750 for the entire Philadelphia Prison System. Both of these class actions, and their appointed court masters, fell victim in the early 2000s to the Prisoner Litigation Reform Act of 1995 and its termination provisions.

The highly publicized rollout focused on frivolous prisoner lawsuits but the meat of the act's prospective relief sought to end long-standing conditions litigation and court oversight. The city had several years of autonomy but continuation of the same policies and the continued population increases forced the Philadelphia Prison System to collapse under its own weight when it had to close its doors to new admission in the summer of 2006. More than 30 men were held for up to a week in an 8-by-12 barren intake cell without any bedding, medical care, legal assistance or any other services.

The Pennsylvania Institutional Law Project joined with Rudovsky and Richman in filing the *Bowers v. City of Philadelphia* class action challenging the conditions in the intake units. Yet another preliminary injunction issued by Judge Barclay Surrick declared the conditions in violation of the Eighth Amendment prohibition against cruel and unusual punishment. The city solved the intake unit problem by engaging in massive triple celling in the general population areas with temporary plastic boat/beds that added a third person to the cells originally designed for single occupancy. This led our litigation team to file yet another class action, *Williams v. Philadelphia*, which is awaiting a ruling on our motion for class certification. The city responded by moving to add the First Judicial District and the Pennsylvania Department of Corrections to the case.

Sadly, we are now debating the closure of libraries, pools, laying off city employees but maintaining a hands-off policy toward the Philadelphia Prison System. The simplistic policy of locking up the most people possible and hoping that it enhances public safety is too expensive and too ineffective for these difficult times. Now is the time for Nutter to exercise real leadership, follow New York City's successful lead, break with past traditions and get the prison system under control. •

Interest

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allow them to take care of their health and the health of their families will positively affect the