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The 137.5% Solution: Court-Mandated Prisoner Release to Reduce Overcrowding

The US Supreme Court decision, May 23, 2011, in Brown, Governor of California, et. al. v. Plata et. al., Appeal from the U.S. District Courts of Eastern and Northern Districts of California

News: In a controversial 5 to 4 Supreme Court decision, mandated prison population limits were found to be necessary to remedy violations of prisoners' constitutional rights ensured by the Eighth and Fourteenth Amendments and judicially authorized by the Prison Litigation Reform Act (PLRA)of 1995. The US Supreme Court upheld the three-judge court's decision regarding Coleman v. Brown, filed in 1990, a federal class action about the mental health treatment of prisoners, and Plata v. Brown, filed in 2001, a federal class action about prisoner healthcare. California's prisons had operated at about 200% capacity for eleven years. The limit will now be set at **137.5%** of design capacity. Something will need to be done with the roughly **46,000** prisoners above that capacity limit, and concerns for public safety grow.

This article will summarize the Supreme Court decision for forensic psychiatrists who are students of correctional psychiatry, the Prison Litigation Reform Act, Coleman v. Brown, and Plata v. Brown. This US Supreme Court decision relied heavily on expert testimony given to the three-judge court in the cases of Coleman and Plata, and may now result in the release of 46,000 convicted felons. The issue of public safety and prediction of recidivism were debated in the written opinions of this close and important decision.

Federal court decisions, especially those issued by the US Supreme Court are extremely important to forensic psychiatry, which has awaited the outcome of this decision for more than a decade. The High Court wrestled with a particularly vexing problem concerning overcrowding in California's prisons. The prisons of California were designed for 80,000 inmates, but the actual population is nearly double that. This degree of overcrowding has caused that prison system to be unable to deliver appropriate medical and mental health care to its population. Two important federal cases sought to address this, Coleman v. Brown and Plata v. Brown. These were consolidated before the PLRA authorized three-judge court, which determined that ample time had passed for the prison system to correct the severe deficiencies.

The three-judge court found that overcrowding was the primary, but not exclusive, cause of all of the violations of prisoner constitutional rights under the Eighth and Fourteenth Amendments. The Eighth Amendment bars cruel and unusual punishment, which can result from grossly inadequate prison healthcare, is applied to states through the Fourteenth Amendment. The deficiencies were chiefly in the areas of health care and mental health services. California prisons had great difficulty filling physician vacancies, the vacancy rates for surgeons and

psychiatrists were 20% and 54%, respectively. The lack of adequate care also related to insufficient workspace. These factors led to significant delays in treating the mentally ill and long backlogs of prisoners waiting to see a doctor for physical care. This degree of overcrowding lead to unsafe and unsanitary conditions which promoted unrest and violence. Prisons were finding it necessary to rely on lockdowns to keep order which further impeded the delivery of adequate healthcare.

The three-judge panel found that California's efforts to date had been in adequate, including transfers to county jails and enhanced parole through use of good time credits. The three-judge court ordered the California prisons reduce the total prison population to **137.5%** of the design capacity within two years. This decision was upheld by the US Supreme Court. Both the three-judge court and the US Supreme Court gave weight to the potential adverse impact on public safety. The Supreme Court decision was delivered by Justice Kennedy in which Justices Ginsburg, Breyer, Sotomayor and Kagan joined. The dissenting opinion was authored by Justice Scalia in which Justice Thomas joined. Justice Alito also filed a dissenting opinion in which Chief Justice Roberts joined.

The majority opinion discussed the extent of the overcrowding, its relationship to preventable deaths, its adverse effects upon prisoners with mental illness, the rate of suicide, as well as the risk of the spread of infectious diseases such as influenza and antibiotic resistant staph. Even if California filled all of its vacant healthcare positions the present degree of overcrowding would still overwhelm the State's prisons ability to provide adequate care. The majority opinion acknowledged that prison population caps were a remedy of last resort, and found that the three-judge court had appropriately applied the clear and convincing standard to the evidence presented to it. The things done, or promised to be done, by the prison system were found to have been insufficient to relieve the overcrowding, and continued efforts by the Receiver and Special Master appointed in the two class action cases would not yield the constitutionally required result. The Supreme Court acknowledged the political and fiscal reality of these matters, but the California legislature had not solved the problem. The three-judge panel and the Supreme Court found no reason to believe that the state of California would adequately address the significant problems related to prison overcrowding. The majority opinion states, "Without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill in California's prisons."

Both of the three-judge panel and the US Supreme Court acknowledged that this decision would likely affect inmates without medical conditions or serious mental illness, because reducing California's prison population will require reducing the number of prisoners outside the plaintiff class through steps like parole reform, new sentencing guidelines, use of good time credits for parole and other means selected by California. A release order limited to prisoners within the plaintiff category might limit the ability of state officials to adequately determine which prisoners should be released to address overcrowding. The US Supreme Court agreed with the three-judge court that it would be possible to reduce the prison population "in a manner that

preserves public safety and the operation of the criminal justice system." Expert witnesses testified that prison populations had been lowered in other states without harm to public safety in Wisconsin, Illinois, Texas, Colorado, Montana, Michigan, Florida, and in Canada. There was discussion about punishing technical parole violators in community-based programs. Other possible solutions included shifting prisoners found guilty of certain felonies from state prisons to county jails following parole violations. The ordered 137.5% cap was found to be similar to the long-term goal of population level established by the Federal Bureau of Prisons. The three-judge court ordered California to achieve the 137.5% within two years. However, that court retains the authority to make amendments to the existing order as needed. The Supreme Court suggested that California may wish to move for an extension to five years to achieve the required reduction in prison overcrowding. The High Court noted that California had already shifted "thousands" of prisoners to county jails, and California should be allowed appropriate contingencies to deal with issues that arise during the remedial process.

The language found within the Supreme Court's dissenting opinions is forceful, Justice Scalia, with whom Justice Thomas joins, writes:

> Today the Court affirms what is perhaps the most radical injunction issued by a court in our Nation's history: An order requiring California to release a staggering number of 46,000 convicted criminals.
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> There comes before us, now and then, a case whose proper outcome is so clearly indicated by tradition and common sense, that its decision ought to shape the law, rather than vice versa. One would think that, before allowing the decree of a federal district court to release 46,000 convicted felons, this court would bend every effort to read the law in such a way as to avoid that outrageous result. Today, quite to the contrary, the court disregards stringently drawn provisions of the governing statute, and traditional constitutional limitations upon the power of a federal judge, in order to uphold the absurd.
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> The proceedings that lead to this result were a judicial travesty. I dissent because the institutional reform the District Court has undertaken violates the terms of governing statute ignores bedrock limitations on the power of Article III judges and takes federal courts wildly beyond their institutional capacity.

Justices Scalia and Thomas deemed the order to release 46,000 prisoners to be inappropriate because it included prisoners whose constitutional rights had not been violated. These Justices also predicted a negative impact on public safety.

Justice Alito, with whom Chief Justice Roberts joined, writes that the three-judge court improperly refused to consider evidence regarding current conditions in California's prisons, that it erred when it found no other remedy short of massive prisoner release, and that it gave inadequate weight to the impact of its decree on public safety. The constitutional violations could

be addressed in more direct and practical ways through acquiring additional space and healthcare providers. These justices found it hard to believe that the constitutional violations could not be overcome by some other means than massive prisoner release. The justices recalled the outcome of a similar event in Philadelphia. In the 1990s federal courts enforced a cap the number of inmates in the Philadelphia prison system. Thousands of prisoners were set free and during an 18 month period the released prisoners committed 9,732 new crimes including 79 murders, 90 rapes, 1,113 assaults, 959 robberies, 701 burglaries, and 2,748 thefts, in addition to numerous drug offenses.

Lastly, these justices expressed concern that some of the experts who testified before the three-judge court had the opinion that California should rethink the place of incarceration in the criminal justice system. This view was described as controversial and said to endanger public safety.

Justice Alito writes:

> The prisoner release ordered in this case is unprecedented, improvident, and contrary to the PLRA. In largely sustaining the decision below, the majority is gambling with the safety of the people of California. Before putting public safety at risk, every reasonable precaution should be taken. The decision below should be reversed, and the case should be remanded for this to be done.
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> I fear that today's decision, like prior prisoner release orders, will lead to a grim roster of victims. I hope that I am wrong.
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> In a few years, we will see.

Comment: Forensic psychiatrists are uniquely qualified to assist California in assessing the risk of recidivism generally and in mentally ill prisoners in particular. If public safety is to be adequately addressed within the order to release sufficient numbers of felons to achieve the 137.5% cap, much work will need to be done analyzing the criminal records and mental health conditions of those selected for lesser levels of secure incarceration and especially for prisoners under consideration to be released. California is not the only state with prison overcrowding. For more than a decade, forensic psychiatrists have awaited the outcome of this decision which pits the health and constitutional rights of prisoners against reasonable concerns for public safety. The burden on California's community mental health services and hospitals to treat the newly released will grow. Released prisoners also have recently recognized constitutional rights to adequate discharge planning and related services.

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