



# Don't Cut Spending On Our Safety

The primary concern of government at the local, state, and federal levels is to ensure the safety of the general public. In the last 20 years, jurisdictions across the U.S. have made significant progress in keeping Americans safe. The rate of homicide and other violent crimes has steadily decreased.

According to the FBI, in 1991 the national homicide rate was 9.8 per 100,000 inhabitants. By 2008, the murder rate declined to 5.4 per 100,000, the lowest level since 1965. According to the FBI's preliminary figures for 2009, the rate is likely to continue this decline. These are not just falling numbers, they are lives saved.

A number of factors have led to the decline in crime rates over the past two decades. Tough and sensible sentencing policies have kept career criminals in prison and off the streets. Investments in equipment and personnel and improved tactics, training, and technology have helped law enforcement officials to more effectively fight crime.

Following the recent financial collapse, many commentators feared that tough economic times would lead to an increase in lawlessness as citizens face additional financial pressures. Remarkably, the crime rate has continued to decline despite the downturn in the national economy.

But these financial pressures also affect state budgets. Because the recession has reduced the amount of tax revenue available for state programs, some governors and legislatures are considering drastic spending cuts in criminal justice and corrections programs as a way to save money.

Across the country, corrections ranks among the top budget items funded by state legislatures. On average, most states spend upwards of \$25,000 per prisoner per year. A few states, including California, spend almost \$50,000 per prisoner.

As a way to lessen some of these financial pressures, some states are considering reducing the number of inmates in prison — and the length of sentences served — in order to reap budgetary savings. According to the National Council of State Legislatures, 12 states have passed legislation to create inmate early-release programs or expanded eligibility under existing programs.

But this is one cost-saving proposal that will not pay off. While early releases may produce budget savings initially, they can lead to high rates of recidivism.

A 2005 study published by the Council of State Governments indicated that approximately two out of every three people released from prison in the U.S. are re-arrested within three years of their release. In a recent story out of Sacramento, an inmate who was sent home from county jail as part of an early release program was rearrested for attempted rape less than 24 hours after his release.

In January, Illinois Gov. Pat Quinn eliminated Illinois's early-release program after reports that the former inmates committed new crimes. Of the more than 1,700 inmates released for good behavior since mid-September 2009 under an accelerated early-release plan, 56 are already back in prison for parole violations or new infractions.

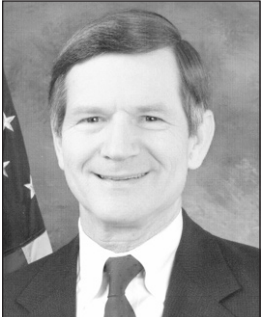
Despite the problems that Illinois and other states face with recidivism, in 2009 California state lawmakers approved a plan to release some offenders from prison if they have less than 20 months remaining on their sentences. Lawmakers say the plan will save \$400 million over the next year and a half.

Not surprisingly, prosecutors, police and prison officials have criticized the plan. They say that not only will current offenders be released early, but also future offenders will serve only a fraction of their sentences. As one prosecutor stated, "the message will get very strongly to the criminal community that, except for a crime of violence, you have nothing to fear."

While the governor and the state legislature wrangle over the budget, the judiciary is also getting involved in these issues. Last August, three activist federal judges ruled that California must decrease its prison population by nearly 43,000 inmates to address systemic overcrowding.

The fact that it is nearly impossible to reduce the prison population by that degree without releasing thousands of dangerous criminals back into communities is seemingly lost on this court. This shortsighted and dangerous decision shows the problems that can result when the executive and legislative branches put off tough decisions and an overactive judiciary jumps into the fray.

Drastic cuts in corrections and criminal justice spending are not safe solutions to bloated government spending. The primary role of government at every level is to keep the community safe. There must be better and safer ways to address state budget woes than releasing criminals into neighborhoods and communities.



Rep. **Lamar Smith**, R-Texas, is the ranking Republican on the House Judiciary Committee, which has jurisdiction over federal crimes, prisons and courts.



Rep. **Dan Lungren**, Calif., is a member of the House Judiciary Committee and former Attorney General of California.

# PERSPECTIVE

# You Just Won A One-Way Ticket to...?

Imagine winning a contest where the vacation is fully compensated and the only condition of acceptance is that you don't get to know where you're going. Any takers? Think that something just doesn't sit right with this scenario?

The U.S. Supreme Court answered that question last week, in *Padilla v. Kentucky*, by ruling that when a non-citizen client has pending criminal charges, and the deportation consequences of that plea are truly clear, he has a right to be advised of them. He has a right to know the destination of his ticket. Moreover, he certainly can't be told



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he's on his way to the Bahamas, when his ticket provides otherwise.

Practically speaking, the issue of deportation consequences relating to criminal convictions arise everyday, in both misdemeanors and felony practice. The Court is aware of this: "[D]eportation is an integral part, indeed, sometimes the most important part of the penalty that may be imposed on non-citizen defendants who plead guilty to specified crimes." When a client is in custody, one of the first things a keen defense attorney looks out for is an "ICE" (U.S. Immigration and Customs Enforcement) hold, which is a red flag that the person could likely be deported for the alleged offense. And it's one of those issues that no one is jumping at to assert a position on because the results are so unpredictable.

Strangely, someone's minor theft admission could trigger deportation, while another's DUI plea could have him or her home by supper. In all fairness, the judge, the prosecutor and of course, the defense attorney often try to make it clear to the client that a plea can result in deportation. But every time that admonition is given on the record, there is this deep-down feeling that I think everyone in the room has, which is that *the client should know if he or she is in fact going to be deported*. Rather, the client's immigration fate is to be decided in an immigration hearing at some future date and time.

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remain in custody while her case is pending because of the immigration hold. What does she do? Will she be comforted by the following advice, "You might be deported if you plead no contest or you might not be...You might not be seeing your two daughters tomorrow if you plead no contest."

There is no satisfaction in uncertainty. There is almost no excuse for it, especially in this day in age where, in the palm of our hands, our cell phone can tell us Kobe Bryant's field goal percentage from the previous night's game.

The optimal solution would be for the passing of legislation for immigration lawyers to staff the courthouses, via public funding, to provide immigration advice on-demand. This idea is by no means suggesting that the criminal defense lawyer should "pass the buck" off to an immigration lawyer. Rather, it is ensuring that the right person is handling the job.

In a way, the Court hints at this when it says, "[I]mmigration law can be complex, and is a legal specialty of its own." It realizes that the criminal defense lawyer is no substitute for an attorney who specializes in immigration law. In fact, they are separate courses in law school. To put it another way, asking a criminal defense lawyer to also be an immigration attorney is like asking the criminal defense lawyer to learn Spanish, in lieu of using the assistance of the court-appointed Spanish language interpreter. Immigration law is another language, and there needs to be someone in the court who can speak it fluently.

Irrespective of whether immigration lawyers can be appointed in criminal proceedings, there should be a system in place where criminal defense lawyers can communicate directly with a U.S. Immigration and Customs Enforcement representative about the fate of a particular client. Preferably, they should have representatives in-person, in the major courthouses. At the very least, they should be available for immediate communication via telephone. Much like a parole officer, this representative could explain what their feelings are about the case, what outcome will be recommended to the Hearing Officer, and what will be of assistance in this particular case.

That way, at least the client will be more informed and equipped at the time of pleading as to what his or her outcome will likely be.



As a criminal defense lawyer, it would be easy to walk away from this ruling, being confident that as long the bare minimum of immigration advice is provided to the client that the job of the criminal defense lawyer is done. But as a member of a conscience society, which believes in fairness and decency, we all share a duty to take this ruling and build on it, to find ways to ensure that the accused stands informed of both criminal and immigration consequences. The Court did its job, now we need to do ours.

## Beverly Hills Bar Association

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## EVENTS CALENDAR April, 2010

- Tuesday, April 6, 2010, 6 P.M., BHBA Conference Center  
**Barristers Workshop – ENTERTAINMENT PAPARAZZI**
- Thursday, April 8, 2010, Noon, Lawry's Restaurant  
**Business Law Section – ADVICE TO REAL ESTATE CLIENTS: OBTAINING LOANS TODAY**
- Thursday, April 8, 2010, 6 P.M., Porterhouse Bistro  
**Southern California Business Litigation Inn of Court  
A GAME SHOW: E-DISCOVERY—WHO WANTS TO CYBER LITIGATE?**
- Tuesday, April 13, 2010 Noon, Lawry's Restaurant  
**Entertainment Law Section  
NEW DIRECTIONS IN ENTERTAINMENT FINANCING**
- Wednesday, April 14, 2010, Noon, Lawry's Restaurant  
**Litigation Section – WAGED BATTLE: LITIGATING THE BIG DOLLAR WAGE HOUR ACTION CASE**  
Sponsored by Mayer Hoffman McCann
- Tuesday, April 20, 2010, 11:45 A.M., Lawry's Restaurant  
**Trusts & Estates Section  
DRAFTING AND ADMINISTERING SPECIAL NEEDS TRUSTS**  
Sponsored by The Sanborn Team
- Tuesday, April 20, 2010, 6 P.M., Beverly Hills Hotel  
**Entertainment Lawyer of the Year  
HONORING ERIC WEISSMANN**  
Weissmann Wolf Bergman Coleman Grodin & Evall LLP
- Wednesday, April 21, 2010, 6 P.M., BHBA Conference Center  
**Family Law Nuts & Bolts – CUSTODY EVALUATIONS**  
Sponsor: White Zuckerman Warsavsky Luna Wolf Hunt, LLP
- Thursday, April 22, 2010, Noon, BHBA Conference Center  
**Elder Law Committee of the Trusts & Estates Section  
APPEALS FOR VETERANS BENEFITS**  
Sponsored by The Sanborn Team
- Tuesday, April 27, 2010, Noon, Lawry's Restaurant  
**Real Estate Law Section – 2009 LEGAL UPDATES**
- Wednesday, April 28, 2010, Noon, Lawry's Restaurant  
**Taxation Law Section – PARTNERSHIP BURNOUTS: PUTTING OUT FIRES AND SAVING TAXES**  
Sponsored by Hochman Salkin Rettig Toscher & Perez PC
- Wednesday, April 28, 2010, 6 P.M., Beverly Hills Hotel  
**Family Law Section**  
Sponsor: White Zuckerman Warsavsky Luna Wolf Hunt, LLP
- Thursday, April 29, 2010, Noon, Lawry's Restaurant  
**IP, Internet & New Media Section**
- Sunday, May 2, 2010, Noon, Greystone Mansion  
**22nd Annual Vintage Bouquet  
Wine and Food Tasting and Auction**
- Thursday, May 6, 2010, Noon, Lawry's Restaurant  
**Business Law Section – STOCK OPTIONS, BACK DATING AND WHITE COLLAR CRIME**
- Thursday, May 6, 2010, 6 P.M., Porterhouse Bistro  
**Southern California Business Litigation Inn of Court**

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