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Carceral Catastrophe: The Challenge of Prison Overcrowding and the Rise of Mass
Incarceration, 1970-2000

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Abstract

Popular histories of United States mass incarceration often focus on federal wars on crime, law and order policing, and the passage of harsh sentencing laws to explain how the United States transformed into the world's leader in incarceration. My dissertation on the crisis of state prison overcrowding and prisoner resistance in late-20th-century Pennsylvania, however, uncovers a more contested history of mass incarceration's development. I show how punitive politics created a massive crisis of prison overcrowding for the state and local governments chiefly responsible for imprisonment under American federalism. Even as law and order politics reached its political zenith, state and local officials' desire to punish far outpaced their capacity to do so, creating administrative and legitimacy crises that carceral policymakers had to solve.

In Pennsylvania and in states across the nation, prison overcrowding posed governance challenges for policymakers, strained local finances, and created opportunities for prisoners to challenge an emergent – but not yet settled – carceral state. Indeed, this era of state prison overcrowding sparked a little-acknowledged period of Black-led prisoner resistance. Through an array of tactics ranging from lawsuits to work stoppages to full-scale prison rebellions, imprisoned people and their allies launched considerable challenges to state policymakers who scrambled to expand and toughen their criminal punishment systems. In doing so, they made legible the racialized state violence inherent to their detention in overcrowded, dilapidated, and repressive institutions.

In examining this more contested history of the prison nation's development, my dissertation shows that the United States' path to becoming the world's leader in incarceration was not set in stone. To be sure, mass imprisonment would ultimately become a horrific reality

in the United States, resulting in the premature death of disproportionately Black, brown, and poor people rendered surplus and deemed inherently criminal under late racial capitalism. But this little-known history of prison overcrowding makes clear the contingency of the prison nation. It recovers a time when the future of incarceration was profoundly unsettled, where prisoners, activists, and policymakers struggled over the future of imprisonment. Mass incarceration, in other words, is neither required for public safety nor an immutable feature of the United States' political economy – a lesson that can serve as an inspiration and offer guidance for local decarceration movements today.

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Introduction

“...It’s a cancer: the criminal justice system cannot be financially sustained. Thus the taxpayers must one day choose between trying to continue with the folly of supporting a bankrupt system until it saps all of the potential from their communities, or invest in something that works. Billions of dollars are being poured into the criminal justice/prison “hustle,” risking our children’s education and neglecting the crumbling roads of our neighborhoods, bridges, libraries, and water and sewage systems. Our open areas, parks, and housing options continue to deteriorate. We must refuse to continue allowing tax dollars to be poured down that sinkhole, while searching for an alternative to the failed ways that the state and federal government have been mishandling the situation...Right now, I’m sorry to inform you that you are living in a fool’s paradise.” – Russell Maroon Shoatz¹

“The conditions in here sum up to dying.” – Joseph “Jo-Jo” Bowen²

“The prison cannot be victorious because walls, bars and guards cannot conquer or hold down an idea.” – Huey P. Newton³

“We live in a society that has been locked into a false sense of inevitability.” – Mariame Kaba and Kelly Hayes⁴

At a 2020 Dream Defenders panel, Dr. Angela Davis noted that "the temporality that capitalism urges is a perpetual present."⁵ The same goes for the prison industrial complex: prisons and jails persist when we do not know (and are encouraged by the state to forget) the true

¹ Russell Maroon Shoatz, in eds. Fred Ho and Quincy Saul, *Maroon the Implacable: The Collected Writings of Russell Maroon Shoatz* (Oakland: PM Press, 2013), 52.

² Chuck Stone, “The Prisons’ Brutal Inhumanity,” *Philadelphia Daily News*, November 19th, 1981.

³ Huey P. Newton, “Prison, Where is Thy Victory,” in Angela Y. Davis, *If they Come in the Morning...: Voices of Resistance* (London: Verso, 2016), 64.

⁴ Mariame Kaba and Kelly Hayes, “A Jailbreak of the Imagination: Seeing Prisons for What They Are and Demanding Transformation,” *Truthout*, 2018.

⁵ “Sunday School: Unlock Us, Abolition in Our Lifetime,” YouTube video, from a panel hosted by Dream Defenders on June 14th, 2020, <https://www.youtube.com/watch?v=RtpRiAoIoy4>.

history of their origins, operations, and the countless failed attempts to "reform" them.⁶ This routinized forgetting helps feed the legitimization of policing and imprisonment, masking their role in sustaining racial capitalism and making their outsized presence in our political systems and culture feel immutable. Abolitionist praxis thus requires historical analysis, because critical assessments of the purpose of crime and penal control over time reveal the nefarious function of these institutions and yield convincing arguments for their abolition. They demonstrate the white supremacist, capitalist, patriarchal, queer-phobic, ableist, and imperialist origins and function of policing, imprisonment, and criminalization.⁷ They show how, in the face of periodic criticisms

⁶ Mike Davis was the first person to coin the term "prison industrial complex." Since then, scholars and organizers have used the term to describe the "overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social and political problems." The PIC operates to sustain and entrench the "authority of people who get their power through racial, economic, and other privileges." See Mike Davis, "Hell Factories in the Field," *The Nation*, February 20th, 1995; "The Prison Industrial Complex," *Critical Resistance*, <https://criticalresistance.org/mission-vision/not-so-common-language/>.

⁷ See Tera Eva Agyepong, *The Criminalization of Black Children: Race, Gender, and Delinquency in Chicago's Juvenile Justice System, 1899–1945* (University of North Carolina Press, 2018); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010); Simon Balto, *Occupied Territory: Policing Black Chicago from Red Summer to Black Power* (Chapel Hill: University of North Carolina Press, 2019); Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (Oxford: Oxford University Press, 1997); Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill: University of North Carolina Press, 2014); Dan Berger and Toussaint Losier, *Rethinking the American Prisoner Rights Movement* (New York: Routledge, 2018); Douglas Blackmon, *Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War II* (Doubleday, 2008); Orisanmi Burton, "Attica Is: Revolutionary Consciousness, Counterinsurgency and the Deferred Abolition of New York State Prisons," (Ph.D. Dissertation, University of North Carolina, 2016); Robert T. Chase, *We Are Not Slaves: State Violence, Coerced Labor, and Prisoners' Rights in Postwar America* (Chapel Hill: University of North Carolina Press, 2020); Robert Chase, eds. *Caging Borders and Carceral States: Incarcerations, Immigration Detentions, and Resistance* (Chapel Hill: University of North Carolina Press, 2019); Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003); Gina Dent, Erica R. Meiners, Beth Ritchie, Angela Davis, *Abolition. Feminism. Now.* (Chicago: Haymarket Books, 2022); Miroslava Chávez-García, *States of Delinquency: Race and Science in the Making of California's Juvenile Justice System* (Oakland: University of California Press, 2012); Dennis Childs, *Slaves of the State: Black Incarceration from the Chain*

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about racism or excessive force, punitive institutions implement seemingly well-intended but ultimately self-reinforcing reforms that merely “tweak Armageddon” and deepen law

the Civil Rights Movement from Rosa Parks to the Rise of Black Power (New York: Alfred Knopf, 2010); Rebecca McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (Cambridge: Cambridge University Press, 2008); Joey Mogul, Andrea Ritchie, and Kay Whitlock, eds., *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Boston: Beacon Press, 2011); Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2014); David Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996); A. Naomi Paik, *Rightlessness: Testimony and Redress in the U.S. Prison Camps since World War II* (Chapel Hill: University of North Carolina Press, 2017); Anne Parsons, *From Asylum to Prison: Deinstitutionalization and the Rise of Mass Incarceration after 1945* (Chapel Hill: The University of North Carolina Press, 2018); Lydia Pelot-Hobbs, “The Contested Terrain of the Louisiana Carceral State: Dialectics of Southern Penal Expansion, 1971-2016,” (PhD Dissertation, The City University of New York, 2019); Beth Ritchie, *Arrested Justice: Black Women, Violence, and America’s Prison Nation* (New York: NYU Press, 2012); Dylan Rodríguez, “Abolition as a Praxis of Human Being: A Foreward,” *Harvard Law Review* 132, no. 6 (2019); Dylan Rodríguez, *Forced Passages: Imprisoned Radical Intellectuals in the U.S. Prison Regime* (Minneapolis: University of Minnesota Press, 2005); Judah Schept, *Progressive Punishment: Job Loss, Jail Growth, and the Neoliberal Logic of Carceral Expansion* (New York: NYU Press, 2015); Judah Schept, *Coals, Cages, Crisis: The Rise of the Prison Economy in Central Appalachia* (New York: NYU Press, 2022); Stuart Schrader, *Badges Without Borders: How Global Counterinsurgency Transformed American Policing*, (Oakland: UC Press, 2019); Micol Seigel, *Violence Work: State Power and the Limits of Police* (Duke University Press, 2018); Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (Oxford: Oxford University Press, 2007); Eric Stanley and Nat Smith, eds., *Captive Genders: Trans Embodiment and the Prison Industrial Complex* (Oakland: AK Press, 2011) Carl Suddler, *Presumed Criminal: Black Youth and the Justice System in Postwar New York*, (New York: NYU Press, 2020); Heather Ann Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and its Legacy* (New York: Pantheon, 2016); Heather Ann Thompson, “Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History,” *Journal of American History* 97, no. 3 (2010): 703–34; Emily Thuma, *All Our Trials: Prisons, Policing, and the Feminist Fight to End Violence* (Champaign: University of Illinois Press, 2019); Michael Tonry, *Punishing Race: A Continuing American Dilemma* (Oxford: Oxford University Press, 2011); Vesla Weaver, “Frontlash: Race and the Development of Punitive Crime Policy,” *Studies in American Political Development* 21, no. 2 (2007): 230-265; Harsha Walia, *Border and Rule: Global Migration, Capitalism, and the Rise of Racist Nationalism* (Chicago: Haymarket Books, 2021); Jacqueline Wang, *Carceral Capitalism* (Boston: MIT Semiotext[e], 2018); Cookie Woolner, “‘Woman Slain In Queer Love Brawl’: African American Women, Same-Sex, Desire, And Violence In The Urban North,” *The Journal of African American History* 100,3 (Summer 2015): 406–27.

enforcement's capability to enact racialized state violence on an ever-growing scale.⁸ In charting the historical development of the racialized carceral state – as well as the numerous rebellions waged against it – historical scholarship also makes clear the contingency of our contemporary crisis of racialized mass imprisonment, a historically distinct formation in the late twentieth and twenty-first centuries that grew during what Ruth Wilson Gilmore calls “the age of human sacrifice.”⁹ Indeed, one of the most useful roles historians can serve in abolitionist

⁸ Ruth Wilson Gilmore, foreword to *The Struggle Within: Prisons, Political Prisoners, and Mass Movements in the United States* by Dan Berger, (Oakland: PM Press / Kersplebedeb), 2014, vii–viii. For more scholarship on how reforms fuel the growth and legitimization of the racialized carceral state, see Davis, *Are Prisons Obsolete?*; Newport, *This is My Jail*; Gray Fischer, *The Streets Belong to Us*; Gottschalk, *The Prison and the Gallows*; Muhammad, *The Condemnation of Blackness*; Manion, *Liberty's Prisoners*; Rodríguez, “Abolition as Praxis of Human Being;” Ashley Rubin, *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*; Maya Schenwar and Victoria Law, *Prison by Any Other Name: The Harmful Consequences of Popular Reforms* (New York: The New Press, 2021); Kay Whitlock and Nancy Heitzeg, *Carceral Con: The Deceptive Terrain of Criminal Justice Reform* (Oakland: UC Press, 2021).

⁹ Ruth Wilson Gilmore, “Fatal Couplings of Power and Difference: Notes on Racism and Geography,” in Ruth Wilson Gilmore, *Abolition Geography: Essays Towards Liberation* (London: Verso, 2022), 134. Some scholars take issue with the “mass” in mass incarceration. Dylan Rodriguez suggests that the term is sanitizing “misnomer” that “miserably fails to communicate how the *racist and anti-Black* form of the US state is also its paradigmatic form” and, more worryingly, misleads people into thinking that the problem is only the *overuse or excess* of incarceration, not incarceration itself. Loïc Wacquant similarly takes issue with the imprecision of mass incarceration, arguing that “hyperincarceration” is a better term because it better reflects the fact that it is disproportionately a “(sub)proletarian African American men from the imploding ghetto,” and thus not “mass.” I am similarly wary of those who opportunistically translate “mass imprisonment” towards liberal reformist projects that seek only to minimally reduce the scale of incarceration instead of interrogating the racialized violence inherent to U.S. penal incapacitation itself. And I am all for specificity when discussing the carceral state's disproportionate violence against Black people and people of color and believe that crime and penal control in the U.S. has always operated to uphold white supremacist capitalist hetero-patriarchy. At the same time, I think it the massive and unprecedented rise in prisoner populations between the 1970s and the 2000s is historically significant and should not be left unspecified within a greater history of the U.S.'s longstanding “racial-colonial carceral forms,” as Rodriguez writes. As Dan Berger argues, “the prison system is racist and violent, but in ways that constantly evolve.” To take one example, California's state prison population grew almost 500% between 1982 and 2000 despite the crime rate peaking in 1980 and, from then on,

movements is creating an archive of contingencies, contestations, and paths not taken, which help disrupt the normative belief that the contemporary anti-Black carceral state simply reflects increases in criminal behavior that forced policymakers to respond with tough-on-crime policies. Once equipped with this knowledge, we can more clearly see that prisons and police are not facts of life. They are relatively recent historical constructions designed and preserved by decisionmakers who profit from industrializing the premature death and dispossession of Black and brown working-class people in the prime of their lives.¹⁰ And they can be destroyed.

declining. These statistics require us to ask “why prisons now?” as Ruth Wilson Gilmore urges, even as we may recognize historical lineages with the history of U.S. anti-Black enslavement, Jim Crow, and racial-colonial domination. Indeed, given both the enduring presence of white supremacy in the U.S. and the diffuse nature of crime control under U.S. federalism, the explosion of disproportionately Black and brown prison and jail populations in the late-twentieth century moment requires analysis and explanation. Thus, I use the term “mass incarceration” and “mass imprisonment” to denote this historically specific moment between the 1970s and the 2000s where states monumentally expanded their power to punish and exponentially grew the number of people, disproportionately Black and brown, in prison and under some form of correctional control. See Dylan Rodríguez, “Abolition as Praxis of Human Being: A Foreward,” *Harvard Law Review* 132, no. 6 (2019): 1575-1612; Loïc Wacquant, “Class, Race & Hyperincarceration in Revanchist America,” *Daedalus* 139, no. 3 (2010): 74–90; Dan Berger, “Mass Incarceration and Its Mystification: A Review of The 13th,” *AAIHS*, October 22, 2016, <https://www.aaihs.org/mass-incarceration-and-its-mystification-a-review-of-the-13th/>; Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*, (Berkeley: University of California Press, 2007).

¹⁰ In invoking the role of mass racialized imprisonment in sustaining capitalism and economic inequality, I do not mean to fall into the common and imprecise trap of suggesting that prisons are a “chain of sweatshops and plantations” primarily used to force prisoners to work and generate surplus value for corporations. While extractive and forced labor certainly occurs in prisons and jails, less than 3% of the nation’s imprisoned population labored for private companies in 2018 and only 8% of the U.S. prisoner population are imprisoned in private prisons. When prisoners do work, they largely labor in ways that “reproduces the prison itself” or that produce materials and provide services for the state. Still other prisoners don’t work at all. What, then, is the profit motive of mass imprisonment? Following Ruth Wilson Gilmore, I understand prisons as accumulating profits and helping “money to move” through the “enforced inactivity of people locked in them,” or the extraction of “time”—life itself. More specifically, imprisoning people effectively halts and steals their wages and transfers it the paychecks of prison employees, private vendors, utility companies, contractors, debt service, and more. This transformation occurred because of a crisis of surplus capital, labor, land, and state capacity

This dissertation seeks to further denaturalize U.S. mass incarceration. Using Pennsylvania as a case study, I examine the history of late-twentieth century state prison overcrowding and prisoner resistance to a growing but not yet settled carceral state. I argue that overcrowding reveals that the ascent of racialized mass incarceration was a far more unstable and contested than it is commonly understood to be, even as tough on crime politics became ubiquitous in U.S. political culture. By throwing state and local correctional control into considerable crisis at just the moment when policymakers sought to crack down on crime, prison overcrowding generated meaningful openings for imprisoned people, allied prisoner rights activists, and state policymakers across the political spectrum to challenge the morality, constitutionality, political wisdom, and fiscal costs of tough punishment and mass incapacitation. This wave of counter-carceral critique – sometimes modest and reformist, sometimes more radical in its analysis and demands – sought to limit or even reverse the expansion of the state’s racialized carceral regime. At times, the protests even produced meaningful, if temporary experiments in *decarceration*.

To reconceptualize the ascent of the modern carceral state as a tale of struggle, one must probe its development at the state and local level. Much of the social scientific and historical

beginning in the 1970s that meant “people’s time” was “no longer needed.” As Gilmore recently articulated in *Jacobin*, “What turns into money, that circulates as wages and interest and rent and utility bills and so forth, is time...and it’s the fact of time that transforms into money that circulates in various ways.” See Ruth Wilson Gilmore and James Kilgore, “Some Reflections on Prison Labor,” *Brooklyn Rail*, June 2019; <https://brooklynrail.org/2019/06/field-notes/Some-Reflections-on-Prison-Labor#:~:text=Ruth%20Wilson%20Gilmore%3A%20A%20popular,generate%20profits%20for%20transnational%20companies>; Ruth Wilson Gilmore, Alberto Toscano, Brenna Bhnadar, “The Prison-Industrial Complex goes Beyond Cops and Jails. It’s All Around Us,” *Jacobin*, August 2nd, 2022, <https://jacobin.com/2022/08/prison-industrial-complex-race-capitalism-abolitionism>; Ruth Wilson Gilmore, “Abolition Geography and the Problem of Innocence,” in Gaye Theresa Johnson and Alex Lubin, *Futures of Black Radicalism* (London: Verso, 2017).

literature on U.S. punishment and criminalization has focused on tracking the rise of the carceral state at the federal level or in national political culture.¹¹ Yet the majority of America's prisoners are policed, charged, prosecuted, sentenced in state and local criminal punishment systems and are confined in state prisons and local jails.¹² Indeed, as Heather Schoenfeld and Michael Campbell suggest, the “national character of the punitive turn” should actually “puzzle” us, given that state and local decision-making across a “diversity of regional and state histories, cultures, and political ideologies” largely determines rates of imprisonment.¹³ When we turn our

¹¹ See, for example: Beckett, *Making Crime Pay*; Gottschalk, *The Prison and the Gallows*; Murakawa, *The First Civil Right*; Hinton, *From the War on Poverty to the War on Crime*; Jonathan Simon, *Governing Through Crime*; Alexander, *The New Jim Crow*; Weaver, “Frontlash;” Wacquant, *Punishing the Poor*.

¹² See, for example, Vanessa Barker, *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders*, (Oxford: Oxford University Press, 2009); Michael C. Campbell and Heather Schoenfeld, “The Transformation of America’s Penal Order: A Historicized Political Sociology of Punishment,” *American Journal of Sociology* 118, no. 5 (2013): 1375–1423; Chase, *We Are Not Slaves*; Mona Lynch, “Mass Incarceration, Legal Change, and Locale,” *Criminology & Public Policy* 10, no. 3 (2011): 673–98; Mona Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Palo Alto: Stanford University Press, 2010); Joshua Page, *The ‘Toughest Beat’: Politics, Punishment, and Prison Officers Union in California* (New York: Oxford University Press, 2011); Robert Perkinson, *Texas Tough: The Rise of America’s Prison Empire*, (New York: Picador/Henry Holt & Co, 2010); Miller, *Perils of Federalism*; Newport, *This Is My Jail*; Heather Schoenfeld, *Building the Prison State*; Jessica T. Simes, *Punishing Places: The Geography of Mass Imprisonment* (Oakland: University of California Press, 2021).

¹³ Campbell and Schoenfeld, “The Transformation of America’s Penal Order,” 1376. This is not to say, of course, that federal policymaking was unimportant in shaping the trajectory of the punitive state. As numerous scholars have discussed, the post-WWII politicization of crime and the federal government’s marked investment in local law enforcement and penal institutions played a formative role in creating new carceral capacities and generating crime control innovation at the state and county level. See Campbell and Schoenfeld, “The Transformation of America’s Penal Order;” Malcolm Feeley and Austin Sarat, *The Policy Dilemma: Federal Crime Policy and the Law Enforcement Assistance Administration, 1968-1978* (Minneapolis: University of Minnesota Press, 1980); Hinton, *From the War on Poverty to the War on Crime*; Murakawa, *The First Civil Right*; Vesla Weaver, “The Significance of Policy Failures in Political Development: The Law Enforcement Assistance Administration and the Growth of the Carceral State,” in eds. Jeffrey A. Jenkins and Eric Patashnik, *Living Legislation: Durability, Change, and the Politics of American Lawmaking* (Chicago: University of Chicago Press, 2012).

attention to the state and local level, or “where the power to punish resides,” a far more complex and contested history of mass incarceration’s ascent comes into focus.¹⁴

The massive crisis of prison overcrowding is one such site of contestation that emerges through close study of crime and penal control at the state level. For the first few decades of the carceral turn, state and local policymakers’ desire to get tough on crime far outpaced their capacity to imprison. While prison overcrowding has plagued prisoners, correctional administrators, and legislators since the dawn of the United States penitentiary, it reached crisis levels during the height of the incarceration boom of the 1970s and 1980s and became “endemic” in the 1990s.¹⁵ As numerous scholars have shown, an influx of federal funding for policing, waves of tough mandatory sentencing laws, and a toughening of criminal punishment led state and federal prisoner populations to skyrocket dramatically beginning in 1974, with

¹⁴ Lynch, “Mass Incarceration, Legal Change, and Locale,” 674.

¹⁵ Theodore Caplow and Jonathan Simon, “Understanding Prison Policy and Population Trends,” *Crime and Justice* 26 (1999): 74; Guetzkow and Schoon, “If You Build It, They Will Fill It: The Consequences of Prison Overcrowding Litigation.” Indeed, state prison populations actually *decreased* during the mid-1960s and into the early 1970s but spiraled upward beginning in 1973 and then quickly surpassed prior state prison population records in 1974. See Patrick A. Langan, John V. Fundis, Lawrence A. Greenfield, and Victoria W. Schneider, *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1935-1986* (Washington DC: US Department of Justice, Bureau of Justice Statistics, 1988). For scholarship on prison overcrowding in earlier eras, see Ashley T. Rubin, *The Deviant Prison: Philadelphia’s Eastern State Penitentiary and the Origins of America’s Modern Penal System, 1829-1913* (Cambridge: Cambridge University Press, 2021), 12–13; 16, 19, 22. Rubin details how overcrowding frequently beset Pennsylvania’s Eastern State Penitentiary, built in 1829, with a notable spike after the Civil War; see 303–18. See also Charles Bright, *The Powers That Punish: Prison and Politics in the Era of the “Big House,” 1920-1955*, (Ann Arbor: University of Michigan Press, 1996); Rebecca M. McLennan, *The Crisis of Imprisonment*; Dan Berger and Toussaint Losier, *Rethinking the American Prison Movement* (New York: Routledge, 2018); David J. Rothman, “Perfecting the Prison: United States, 1789-1865”; Edgardo Rotman, “The Failure of Reform: United States, 1865-1965,” in Norval Morris and David J. Rothman, eds. *The Oxford History of the Prison: The Practice of Punishment in Western Society* (New York: Oxford University Press, 1995).

nearly 300,000 prisoners added to the population by 1985.¹⁶ Because building new prisons and jails was both costly, politically contentious, and slow, this massive spike in prisoner populations led to prison overcrowding crises in state prisons and local jails across the country. By the end of 1986, 32 states had prison populations that met or surpassed their highest reported capacity.¹⁷ The number of state jurisdictions forced to detain state prisoners in local jails also

¹⁶ From 1973 to 2009, state and federal prison populations grew from 200,000 to 1.5 million people, not including an additional 700,000 people imprisoned in jails. Although prison and jail populations declined somewhat in the past decade—notably declining from 2.1 million in 2019 to 1.8 million by mid-2020 due to the pandemic—the United States is still the world’s leader in incarceration, imprisoning nearly 25% of the world’s prisoners despite containing only 5% of the world’s population. See U.S. Department of Justice, “Prisoners 1925–1981,” *Bureau of Justice Statistics Bulletin* (Washington, DC: U.S. Government Printing Office, December 1982), 2; Jacob Kang-Brown, Chase Montagnet, and Jasmine Heiss, *People in Jail and Prison in 2020* (New York: Vera Institute of Justice, 2021); Jeremy Travis, Bruce Western, and Steve Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: The National Academies Press, 2014).

¹⁷ U.S. Department of Justice, “Prisoners in 1986,” *Bureau of Justice Statistics Bulletin* (Washington, DC: U.S. Government Printing Office, 1987), 5. Beginning in 1983, the growing problem of prison overcrowding prompted the Bureau of Justice Statistics to ask jurisdictions to report capacity estimates. As the Bureau of Justice Statistics notes in their reports, the concept of prison capacity contains within it many potential definitions such that “capacity may reflect both available space to house inmates and the ability to staff and operate an institution. The Bureau of Justice Statistics (BJS) asked states to provide them with three measures to determine prison capacity: rated (“number of beds or inmates assigned by a rating official to institutions within the state”), operational (“number of inmates that can be accommodated based on a facility’s staff, existing programs, and services”), and design capacities (“the number of inmates that planners or architects intended for the facility”). Reporting jurisdictions, however, did not all provide each of these reports or reported imprecisely, choosing to submit only one capacity measure or gave the same figure for each capacity measure they reported. Given these data issues, the BJS measured prison overcrowding by assessing a state’s prison population compared with both their “highest capacity” and “lowest capacity,” pulling from the high and low ends of capacity measures provided by the states. Moreover, even among corrections professionals, guidance and standards regarding correctional space varied. For example, in 1980 the American Correctional Association recommended that adult correctional institutions maintain “one inmate per room or cell ... of at least 60 square feet” and the US Department of Justice recommended that “all cells and detention rooms rated for single occupancy house only one inmate,” with these cells having “at minimum, 50 square feet of floor space.” Capacity measures were generally determined by state correctional officials “using whatever criteria they believe to be most appropriate” and without meaningful federal oversight. See U.S. Department of Justice, “Prisoners in 1983,”

drastically increased during the 1980s. In 1976, 7,725 state prisoners were held in local jails due to overcrowding. In 1989 this number had jumped to 18,326, constituting 2.6% of the total state prison population.¹⁸ Another metric of the widespread dilemma of overcrowding is the rise in the number of state and local correctional institutions placed under court order to reduce overcrowding and/or eliminate unconstitutional conditions. By 1993, forty states, along with the Puerto Rico, the Virgin Islands, and the District of Columbia were under such court orders.¹⁹ As the National Conference of State Legislatures wrote in a 1985 report, “It is simpler to name the states that have not had the courts intervene in the operation of their state prison systems” than to name those that had.²⁰ Throughout the 1980s and 1990s, prison overcrowding made headlines as states and localities struggled to manage this explosive growth without straining taxpayer dollars.²¹ “The entire system is filled beyond capacity,” Anthony Trivisono, the director of the

Bureau of Justice Statistics (Washington, DC: US Government Printing Office, April 1984), “Prisoners in 1986,” *Bureau of Justice Statistics Bulletin* (Washington, DC: US Government Printing Office, May 1987), “Prisoners in 1987,” *Bureau of Justice Statistics Bulletin* (Washington, DC: US Government Printing Office, April 1988), “Prisoners in 1988,” *Bureau of Justice Statistics Bulletin* (Washington, DC: US Government Printing Office, April 1989), “Prisoners in 1989,” *Bureau of Justice Statistics Bulletin* (Washington, DC: US Government Printing Office, May 1990); Joan Mullen and Bradford Smith, *American Prisons and Jails, Volume III: Conditions and Costs of Confinement* (Washington, DC: National Institute of Justice, 1980), 40–42.

¹⁸ “Prisoners in State and Federal Institutions,” *National Prisoner Statistics Bulletin* (Washington, DC: US Government Printing Office, December 31, 1977), 1; US Department of Justice, “Prisoners in 1989,” *Bureau of Justice Statistics Bulletin* (Washington, DC: US Government Printing Office, May 1990), 5.

¹⁹ *Americans Behind Bars* (New York: Edna McConnell Clark Foundation, 1993), 2.

²⁰ Dale Nesbary, *Recent Trends in Corrections Spending* (Denver: National Conference of State Legislatures, 1985), 26.

²¹ Robert Press, “Role of prisons in society put under scrutiny,” *The Christian Science Monitor*, October 1st, 1975; John Barbour, “Crime Crunch: Prison Overcrowding Threatening to Bring Justice to a Standstill,” *The Atlanta Constitution*, October 23rd, 1977; Lee Mitgang, “U.S. Prison System Caught in Dilemma,” *Los Angeles Times*, September 6th, 1980; Bill Curry, “Population Bomb Hits U.S. Prisons,” *Los Angeles Times*, June 15th, 1982; Joseph R. Tybor, “Overcrowded prisons mushroom into nationwide epidemic,” *Chicago Tribune*, August 14th, 1983; Timothy

American Correctional Association remarked in 1989, “it’s clogged.” “It’s like trying to mop the bathroom floor without turning off the spigot on an overflowing bathtub,” civil rights lawyer Gordon Bonnyman added.²²

The ubiquity of state prison overcrowding raises critical questions about how the racialized carceral state came into being and offers necessary revisions to standard narratives of its rise. Far from a seamless transition into a prison nation driven by top-down directives to get tough on crime or sensationalist cultural narratives about crime, the story of state carceral incapacity reveals that policymakers and administrators had to grapple with tough punishment’s immediate crisis, its normalization of inhumane prison conditions that quickly became subject to public and judicial review, and its considerable drain on state budgets during a time of economic decline and anti-tax sentiment. Moreover, the calamity of overcrowding created openings for imprisoned people and their allies to challenge the constitutionality and morality of a mounting but not yet institutionalized punitive politics. Uncovering this more unsettled history of late-twentieth century mass imprisonment not only offers a more precise rendering of the carceral state’s ascent, but also helps to denaturalize the prevalent assumption that reversing the U.S.’s prison growth and dismantling the prison industrial complex is nothing but a dream. Even during the height of tough-on-crime politics, where virulently retributive and racist anticrime policymaking had become widespread, prison overcrowding generated opportunities for

Leland, “Behind Bars: A Burning Fuse,” *Boston Globe*, October 13th, 1982; Barbara Fink, “America’s Overcrowded Prisons,” *The Christian Science Monitor*, December 11th, 1984; Arthur Brisbane, “A Get-Tough Philosophy Starts a Building Boom,” *The Washington Post*, March 3rd, 1985; Jim Bencivenga, “State prisons crucibles for justice,” *The Christian Science Monitor*, July 26th, 1988; Robert Dvorchak, “Overcrowded Prisons: Swamped States Willing to Try Anything To Cope,” *Los Angeles Times*, July 2nd, 1989.

²² Robert Dvorchak, “Overcrowded Prisons: Swamped States Willing to Try Anything To Cope,” *Los Angeles Times*, July 2nd, 1989.

prisoners, the courts, and some state legislators to argue that mass imprisonment was political disaster and an ethical blight on the nation.²³ They pressured state and local politicians who carried enormous amounts of discretion over crime and penal control to choose a different, even decarceral path. While their efforts often failed or produced only temporary limits on the carceral state, this history demonstrates the potential for organizers and communities today to challenge these local infrastructures of punishment and push for meaningfully decarceral reforms that hasten the decline of the prison nation.

This history of prison overcrowding in Pennsylvania also contributes to a growing literature on imprisoned people's activism in the late-twentieth century. Writing against declensionist narratives that suggest the prisoner rights and prison rebellion era ended after California prisoner guards murdered George Jackson in August 1971 and New York state police crushed Attica prisoners' rebellion the following month, historians of prisoner resistance have demonstrated the persistence of prisoner insurgency and organizing, often led by Black and Latinx prisoners inspired by radical politics.²⁴ Building on this scholarship, I argue that prison overcrowding played a pivotal role in driving Pennsylvania's imprisoned people to take insurgent action against the nascent racialized carceral regime. Overcrowding made the already unbearable and violent experience of incapacitation even more torturous than it had been, sparking prisoners to challenge their captors and to publicize the racist and inhumane conditions

²³ Chase, "We Are Not Slaves."

²⁴ See Berger and Losier, *Rethinking the American Prison Movement*; Burton, "Attica Is;" Chase, *We Are Not Slaves*; Losier, "Prison House of Nations;" Staughton Lynd, *Lucasville: The Untold Story of a Prison Uprising*, (Oakland: PM Press, 2011); Pelot-Hobbs, "The Contested Terrain of the Louisiana Carceral State: Dialectics of Southern Penal Expansion, 1971-2016;" Newport, *This Is My Jail*; Schoenfeld, *Building the Prison Nation*.

of their confinement.²⁵ Overcrowding also placed a particular spotlight on the shift from the once-dominant approach to imprisonment that sought to rehabilitate and treat the imprisoned and towards a retributive project of simply warehousing and repressing presumed criminals – a “kind of waste management function,” as Malcolm Feeley and Johnathan Simon chillingly describe it.²⁶ This is not to suggest that the prior therapeutic orientation of imprisonment was ideal or even desirable; as numerous scholars have shown, the penal-welfarist approach was still quite stigmatizing, coercive, and racist in practice.²⁷ But politicizing prison overcrowding laid bare the purely punitive function of the new penal regime, which operated more like a “quarantine zone in which purportedly dangerous individuals are segregated in the name of public safety.”²⁸ An increasingly revanchist American public, fed a steady diet of racialized crime panics by politicians and media seeking to discipline and contain 1960s-era Black and radical activism, was increasingly desensitized to the state’s turn towards industrialized punishment.²⁹ Taking action against overcrowding offered prisoners a way to highlight the horrors and harms of nation’s racialized carceral build up. “The conditions inmates are subject to are undue, and every day inmates are getting backed up against the wall with these inhumane conditions,” a prisoner at Pennsylvania’s extremely overcrowded SCI-Graterford named Walker Holmes wrote to the *Philadelphia Tribune*. “Prisoners are being looked at as numbers, jailbirds, cons and animals, but

²⁵ Robert T. Chase, “We Are Not Slaves,” 75.

²⁶ Malcolm M. Feeley and Jonathan Simon, “The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications,” *Criminology* 30 (1992): 470.

²⁷ See Kohler Hausmann, *Getting Tough*; Anne Parsons, *From Asylum to Prison*.

²⁸ Garland, *The Culture of Control*, 128.

²⁹ Beckett, *Making Crime Pay*; Garland, *The Culture of Control*; Hinton, *From the War on Poverty to the War on Crime*; Gottschalk, *The Prison and the Gallows*; Kohler Hausmann, *Getting Tough*.

never have prisoners been looked at as human beings.”³⁰ Prisoners’ oppositional actions threatened the legitimacy of law-and-order politics at a moment when crime and corrections policymaking, especially at the state and local level, was more fraught and uncertain than is often recognized.³¹

³⁰ Walker Holmes, “What Cause Prison Strife,” *Philadelphia Tribune*, December 26th, 1989.

³¹ I do want to acknowledge that some scholars and imprisoned people see discourses around prison overcrowding as problematic, specifically for how they could lend themselves to reformist narratives. Focusing on overcrowding, they suggested, placed too much emphasis on prison conditions as the issue, distracting from “the institutionalized racism and class discrimination of the judicial system itself.” It is also true, as many scholars have shown, that reforms related to state prison overcrowding often resulted in “an astronomical growth in new prison construction” rather than decarceration. Indeed, prison administrators often utilized the crisis of prison overcrowding to successfully secure more funding from reticent state legislatures, which in turn expanded and legitimized state correctional systems and intensified their control over incarcerated populations. These critiques are more than warranted. But when prison populations first spiked in the 1970s and the 1980s, leading to extreme levels of prison overcrowding, some prisoners did view prison overcrowding as a lens that might offer openings for release and more long-term forms of decarceration. As Jeff Bleich writes, prisoners “benefit from the perception of crowding because it offers them a ‘hook’ for advocating...alternatives to prison, reduced sentences, early releases, decriminalization of certain crimes, or abolition of prisons generally.” Just because carceral boosters and correctional administrators coopted prison overcrowding and translated the crisis towards securing more corrections funding, building new prisons, and implementing tougher penal management should not lead us to overlook how it also provided meaningful opportunities for imprisoned people to critique the racialized carceral regime and channel it towards decarceral ends. See Mumia Abu-Jamal, “B-Block Days and Nightmares,” *The Nation*, April 23rd, 1990; Angela Y. Davis, *If they Come in the Morning...* (London: Verso, 2016); Dylan Rodríguez, “Abolition as Praxis of Human Being: A Foreword,” *Harvard Law Review* 132, no. 6 (April 2019): 1575–1612; Jeff Bleich, “The Politics of Prison Crowding,” *California Law Review* 77, no. 5 (1989): 1125; Susan P. Sturm, “The Legacy and Future of Corrections Litigation,” *University of Pennsylvania Law Review* 142, no. 2 (1993): 639–738; Schoenfeld, *Building the Prison State : Race and the Politics of Mass Incarceration*; Heather Schoenfeld, “Mass Incarceration and the Paradox of Prison Conditions Litigation,” *Law & Society Review* 44, no. 3–4 (September 1, 2010): 731–68; Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment*; Chase, “We Are Not Slaves”; Margo Schlanger, Malcolm M Feeley, and Edward L Rubin, “Beyond the Hero Judge: Institutional Reform Litigation as Litigation,” *Michigan Law Review* 97, no. 6 (1999): 1994–2036, <https://doi.org/10.2307/1290240>; Malcolm Feeley and Van Swearingen, “The Prison Conditions Cases and the Bureaucratization of American Corrections: Influences, Impacts and Implications,” *Pace Law Review* 24, no. 2 (April 1, 2004): 433; Malcolm Feeley and Ed Rubin, *Judicial Policy Making and the Modern State: How the Courts Reformed America’s Prisons*,

As in other states and time periods, Pennsylvania prisoners engaged in direct action tactics like mass uprisings, protests, and work strikes alongside launching challenges to prison overcrowding and prison conditions in the courts.³² All of these efforts “generated vital insights into the conditions that produce mass incarceration,” as Lydia Pelot-Hobbs writes, and provided new “conceptions and possibilities of safety, justice, and freedom in the lineage of abolition democracy.”³³ Indeed, these efforts should be understood as representative of the Black Radical Tradition and of a long Black freedom struggle, where predominantly Black imprisoned people – some of whom, but not all, were Black Power and radical activists – understood the growing carceral state to be a central site for struggling against racialized state violence and racial capitalist exploitation.³⁴

In my study, I especially want to highlight the role of prison conditions litigation as both an anti-racist challenge to the burgeoning prison nation and a mechanism for creating meaningful, if temporary experiments in decarceral reform. Most of the literature on imprisoned

Cambridge Criminology Series (Cambridge, U.K. ; New York: Cambridge University Press, 1998).

³² Berger, *Captive Nation*; Berger and Losier, *Rethinking the American Prison Movement*; Burton, “Attica Is;” Chase, *We Are Not Slaves*; Garret Felber, *Those Who Know Don’t Say*; Pelot-Hobbs, “The Contested Terrain of the Louisiana Carceral State.”

³³ Pelot-Hobbs, “The Contested Terrain of the Louisiana Carceral State, 2.

³⁴ Indeed, this history contributes to a growing scholarship on the Black Imprisoned Radical Tradition, which refers to a long history of Black imprisoned people – as the historical targets of American racial state’s punitive capacities dating back to enslavement – articulating a “unique culture of liberation” rooted in an analysis of imprisonment as a core site for “suppress[ing] Black peoples’ struggles.” See Berger, *Captive Nation*; Berger and Losier, *Rethinking the American Prison Movement*; Burton, “Attica Is;” Chase, *We Are Not Slaves*; Felber, *Those Who Know Don’t Say*; Newport, *This is My Jail*; Rodríguez, *Forced Passages*; Schoenfeld, *Building the Prison Nation*; Stephen Wilson, Dylan Rodriguez, Joy James, Toussaint Losier, and Casey Goonan, “The Roots of the ‘Imprisoned Black Radical Tradition,” *Black Perspectives*, August 24th, 2020, <https://www.aaihs.org/the-roots-of-the-imprisoned-black-radical-tradition/>.

people's civil rights suits focus on their "paradoxical" or "unintended" consequences: according to that literature, prisoners civil-rights-inspired suits ultimately enabled state legislators to build more death-dealing prisons as a court-mandated "remedy" to overcrowding.³⁵ While I am not seeking to refute this history, I contend that these scholars are too quick to dismiss prisoner-initiated suits as nothing but failures that did nothing but enlarge and legitimize the carceral regime. Once the courts began to recognize imprisoned people as deserving of constitutional protection – a shift that only occurred as the result of imprisoned Muslims' legal activism and struggle against racist and religious discrimination in the 1950s and 1960s – a new and powerful prisoner-led struggle flourished in American courts.³⁶ As law-and-order politics edged out once-mainstream support for prisoners and their resistance movements, prison litigation offered a formidable arena for incarcerated people to counter the expansion of racialized state repression. Across the country, incarcerated people filed a flurry of suits against prison overcrowding, guard brutality, poor medical and mental health care, racial discrimination, lack of religious freedom and disability access, faulty or nonexistent grievance systems, and other issues, forcing the state to confront the inhumanities present in prisons and jails across the country. Between 1970 and 1995, prisoner civil rights filings in federal district courts increased

³⁵ Schoenfeld, "Mass Incarceration and the Paradox of Prison Conditions Litigation;" Schoenfeld *Building the Prison Nation*; Chase, *We Are Not Slaves*; Feeley and Rubin, *Judicial Policy Making and the Modern State*; Feeley and Swearingen, "The Prison Conditions Cases and the Bureaucratization of American Corrections;" Schlanger, "Beyond the Hero Judge: Institutional Reform Litigation as Litigation."

³⁶ For scholarship on imprisoned Muslims legal activism, see Felber *Those Who Know Don't Say*.

from 2,245 to 39,053, or from approximately six to twenty-five filings per one thousand prisoners.³⁷

In exposing the unsustainability of carceral strategies, prison-conditions litigation threatened to undermine the legitimacy of racialized tough-on-crime politics and carceral institutions. The ability to secure court rulings that affirmed the unconstitutionality of a given state prison system or, as was often the case, to negotiate a settlement requiring the state to make court-mandated reforms, created a hurdle for carceral stakeholders wishing to imprison with impunity. While true that these cases did often result in carceral expansion rather than decarceration, prisoners and their lawyers *did* sometimes push the courts to mandate strikingly radical experiments in prisoner release and diversion. These suits, in other words, posed real challenges to the efforts of state and local government to socially control a predominantly Black and brown working-class poor through heightened policing and get-tough politics. They undermined the authority of law enforcement and threatened to expose the targeted racial violence of anti-crime initiatives sold to the public as the only pathway for public safety. It would take an act of Congress -- the Prison Litigation Act of 1996, a law developed directly in response to Philadelphia's prison overcrowding struggle -- to crush this wave of late-twentieth century prisoner litigation and federal court intervention, suggesting that prisoner litigation constituted a far more powerful assault on the legitimacy and expansion of corrections in the U.S than is often acknowledged.³⁸

³⁷ Margo Schlanger, "Trends in Prisoner Litigation, as the PLRA Enters Adulthood Symposium Issue: Prisoners' Access to Justice: Exploring Legal, Medical, and Educational Rights," *UC Irvine Law Review* 5, no. 1 (2015): 157.

³⁸ For more discussion on the importance of prison conditions litigation in challenging the emergent carceral regime, see Charlotte E. Rosen, "Fighting From the Inside," *n+1* 43 (2022), <https://www.nplusonemag.com/issue-43/politics/fighting-from-inside/>.

A note on my engagement with reform. The primary actors in my story, even some of those who organized behind bars, were not explicit abolitionists. Indeed, some of them were liberals and conservative state bureaucrats with little interest in dismantling the carceral state wholesale or questioning the racialized roots of crime control in this country. Many of the concrete policy proposals and experiments discussed in this dissertation were severely limited in their scope and could reliably be accused of preserving the carceral regime; I do not seek to fetishize them as ideal or perfectly liberatory. Following decades of theorizing from imprisoned people and scholars of U.S. punishment, I agree that the prison is itself the *product* of reform and that its expansion and “bureaucratic multiplication” relies upon and requires reform.³⁹ Because late-twentieth century attempts to limit the racialized carceral regime were not sufficiently radical, however, does not make them unworthy of historical consideration. They still highlight the presence of debate and struggle over the nation’s carceral future, especially at the state and local level where much of the discretionary power to punish is located. This fact alone serves as a necessary reminder that the rise of mass incarceration at such a colossal scale was not inevitable. That the imaginations of some of these critics were so stifled by the propaganda of liberal technocracy and a normative, racist, and decontextualized belief in crime as solely the product of individualized behaviors should not lead us to miss these contingencies of history. On the other end of the spectrum, even if prison conditions litigation sometimes resulted in reforms that ultimately entrenched and enlarged of the carceral state, imprisoned people at the time had

³⁹ Rodríguez, “Abolition as Praxis of Human Being,” 27; Angela Davis, *Are Prisons Obsolete?*; Angela Davis, *Abolition Democracy: Beyond Empire, Prisons, and Torture* (New York: Seven Stories Press, 2005); Gilmore, *Abolition Geography*; Hinton, *From the War on Poverty to the War on Crime*; Murakawa, *The First Civil Right*; Newport, *This is My Jail*; Ashley Rubin, *The Deviant Prison*; Whitlock and Heitzeg, *Carceral Con.*

hope that they would produce more transformative, decarceral ends. As Robert Chase writes, through pursuing aggressive institutional litigation that charged U.S. prison systems unconstitutional, “prisoners pushed to be seen and heard in a crucial national debate over the growing power of America’s rising carceral state,” hoping to “check and challenge the construction of carceral states.”⁴⁰ We do a disservice to their struggle and to the possibilities of this more uncertain moment when we probe imprisoned people’s legal activism only through the lens of foregone failure.

Further, as abolitionist organizer and theorist Mariame Kaba argues, most abolitionists support “*some* reforms” – but they are “non-reformist reforms,” or reforms that meaningfully diminish the number of people behind bars and reduce the power and resources allocated to criminal punishment.⁴¹ In this dissertation, I am interested in highlighting political experiments that I believe meaningfully contributed to efforts to decarcerate and limit the power of carceral systems in and otherwise draconian era of crime control. They were far from flawless, and I make efforts to point out their limitations and shortcomings. But it is significant, for example, that a prisoner-initiated federal consent decree resulted in the pre-trial release of thousands of Philadelphians. When the city’s law enforcement officials vigorously smeared these reforms as a threat to public safety and pressured the judge to eliminate them, the city lost a meaningfully decarceral pathway for predominantly Black criminalized Philadelphians and the city’s pretrial prison population soared to new heights. In suggesting these politics were nothing but impure reforms, we erase a vital history of prisoner struggle and the knowledge that we can, in fact,

⁴⁰ Chase, “We Are Not Slaves,” 75, 86.

⁴¹ Mariame Kaba (interviewed by John Duda), “Toward the Horizon of Abolition,” in Mariame Kaba *We Do This ‘Til We Free Us: Abolitionist Organizing and Transforming Justice* (Chicago: Haymarket Books, 2021), 96.

organize and demand that our governments stop authorizing mass and racialized caging in our communities now – and not years into the future. My hope is not to romanticize or defend reform, but to help expand and sharpen our understanding of what is possible.

Pennsylvania offers a useful case study for examining the history of prison overcrowding and imprisoned people’s resistance in the late-twentieth century U.S. While most scholars of the United States carceral state focus on large, capital-rich Sunbelt states, by 1990 Pennsylvania had the fifth highest population and ninth largest prison population in the nation, making it a critical site for examining the nation’s late-twentieth century prison growth.⁴² After the Pennsylvania General Assembly passed mandatory sentencing and restrictive parole policies in the early 1980s, the state experienced a substantial spike in its prison population: between 1980 and 1996, the state’s prison population increased by 318%, going from 8,243 to 34,537 prisoners.⁴³ In that period the state regularly detaining between 30 and 50% more people than their prisons had the capacity to imprison.⁴⁴ In part, the bloated prison population stems from the Pennsylvania’s

⁴² Robyn L. Cohen, *Prisoners in 1990* (Washington D.C.: Bureau of Justice Statistics, 1991). For works that address Northeastern histories of late-twentieth century mass incarceration, see Heather Ann Thompson, *Blood in the Water*; Kohler-Hausmann, *Getting Tough*; Foreman Jr. *Locking Up Our Own*. There is also nascent historical scholarship on the late-twentieth century carceral state in Pennsylvania. Anne E. Parsons excellent book, *From Asylum to Prison* uses Pennsylvania as a case study to examine how the deinstitutionalization of mental asylums and broader divestment from mental health services in late-twentieth century fueled states’ expansion of corrections, where prisons and criminalizing frameworks became the state’s main public mental health strategy. See Parsons, *From Asylum to Prison*. See also Joshua Coene, “The Contentious Prison: From Rehabilitation to Incapacitation in New South Wales and Pennsylvania, 1965-1990,” (PhD Dissertation, University of Michigan, 2016).

⁴³ Lee T. Bernard II, *Statistical Report: 1980-1985* (Camp Hill: Pennsylvania Department of Corrections, 1986); Heather Yates, *Annual Statistical Report: 1996* (Camp Hill, Pennsylvania Department of Corrections, 1997).

⁴⁴ See Lee T. Bernard, *Pennsylvania Bureau of Correction 1980-1987 Annual Statistical Report* (Camp Hill: Pennsylvania Department of Corrections, 1988); *Pennsylvania Department of Corrections 1988-1989 Annual Statistical Report* (Camp Hill: Pennsylvania Department of Corrections, 1990); *Pennsylvania Department of Corrections 1990 Annual Statistical Report*

notoriously punitive use of mandatory life without parole sentences for first and second degree murder. As a result of this policy, the state has long held the highest number of people facing life without parole – what some prisoners call “death by incarceration” – in the nation and, as of today, in the entire world.⁴⁵ Pennsylvania is also a leader in racialized punishment and incapacitation. It has disproportionately imprisoned Black and Latinx prisoners since the early 1980s: in 2000, it ranked sixth in the nation for racial disproportionality between white and non-white prisoners.⁴⁶

Pennsylvania also makes a useful case study for examining imprisoned people’s resistance. In 1989, imprisoned people frustrated with overcrowded and generally abusive prison conditions at the disproportionately Black State Correctional Institution Camp Hill launched a two-day prisoner rebellion that resulted in hostage-takings, burned-out buildings, and 123 injuries. The uprising created a space for imprisoned people and some state bureaucrats to expose the horrors of the state’s carceral system and push for decarceral reforms, some of which

(Camp Hill: Pennsylvania Department of Corrections, 1991); *Pennsylvania Department of Corrections 1991 Annual Statistical Report* (Camp Hill: Pennsylvania Department of Corrections, 1992); *Pennsylvania Department of Corrections 1992 Annual Statistical Report* (Camp Hill: Pennsylvania Department of Corrections, 1993); *Pennsylvania Department of Corrections 1993 Annual Statistical Report* (Camp Hill: Pennsylvania Department of Corrections, 1994); *Pennsylvania Department of Corrections 1994 Annual Statistical Report* (Camp Hill: Pennsylvania Department of Corrections, 1995); *Pennsylvania Department of Corrections 1995 Annual Statistical Report* (Camp Hill: Pennsylvania Department of Corrections, 1996); *Pennsylvania Department of Corrections 1996 Annual Statistical Report* (Camp Hill: Pennsylvania Department of Corrections, 1997); *Pennsylvania Department of Corrections 1997 Annual Statistical Report* (Camp Hill: Pennsylvania Department of Corrections, 1998); *Pennsylvania Department of Corrections 1998 Annual Statistical Report* (Camp Hill: Pennsylvania Department of Corrections, 1999).

⁴⁵ Quinn Cozzens and Bret Grote, “A Way Out: Abolishing Death by Incarceration in Pennsylvania” (Pittsburgh: *Abolitionist Law Center*, 2018).

⁴⁶ *Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System* (Harrisburg: Committee on Racial and Gender Bias in the Justice System, 2001), 126.

gained traction until the election of ultra-conservative Republican Governor Tom Ridge stopped these efforts dead in their tracks.⁴⁷

Finally, the history of prison overcrowding and prisoner resistance in late-twentieth century Philadelphia yields critical insights into local struggles over prison overcrowding and get-tough politics, especially in the courts. Philadelphia's prisons became overcrowded a decade prior to the state's correctional system and, since the 1970s, were over 80% Black. They were also extremely antiquated and unsanitary, with the largest institution, Holmesburg Prison, having been built in 1896. Pre-trial detention in the city of Brotherly Love, in other words, was particularly torturous. The city's prison system thus became a crucible for conflicts over the racialized politics of punishment and the constitutionality of mass penal confinement. In particular, Philadelphia's imprisoned people launched consequential prison conditions suits in state and federal court that deemed the city's system unconstitutional and resulted in consent decrees that mandated decarceration. The city's court-enforced experiments in prisoner release and the elimination of bail for some pre-trial detainees were nationally recognized – and reviled by law enforcement – for their boldness. The federal case, *Harris v. Philadelphia*, provoked so much ire from the city's local District Attorney Lynne Abraham and Mayor Ed Rendell that the former helped write federal legislation, the 1996 Prison Litigation Reform Act, which severely limited the ability of federal judges to find overcrowded prison systems unconstitutional and order population reductions across the nation.

Pennsylvania notoriously birthed the modern penitentiary. While supposedly a reform of the state's extensive use of capital crimes and public corporal punishment, the penitentiary

⁴⁷ “Overcrowding drives prison spending over \$1B,” *The Philadelphia Daily News*, February 16th, 1998.

ultimately became a new site of subordination, exploitation, and repression, operating as a tool for state leaders to socially control presumed deviant populations and institutionalize racial and gendered hierarchies of difference.⁴⁸ Over two centuries later, Pennsylvania's penal systems would again become notable in the history of U.S. penal politics – this time, for producing one of the nation's most extreme prison overcrowding crises. Wracked with this crisis of carceral incapacity, Pennsylvania's turn towards industrialized punishment would not unfurl smoothly and without a fight. The struggles that crises created not only threatened the state's transformation into a mass imprisonment state but raised critical questions about the very morality and viability of incarceration itself.

⁴⁸ Manion, *Liberty's Prisoners*; Rubin, *The Deviant Prisons*; McLennan, *The Crisis of Imprisonment*.

Chapter One

“This Illegal Environment”: Prisoner Resistance, *Jackson v. Hendrick* and Crisis of Prison Overcrowding in Philadelphia, 1970-1984

On December 2, 1977, the Philadelphia Common Pleas Court threatened to throw Mayor Frank Rizzo in jail. The reason? The city had failed to “comply” with court-ordered agreements to reduce overcrowding and otherwise improve conditions in the city’s prison system after the court ruled those conditions to be unconstitutional.¹ Handed down in 1972 as part of a class action suit entitled *Jackson v. Hendrick*, the ruling by a three-judge panel found that Philadelphia prison system’s conditions constituted cruel and unusual punishment. In 1976, the Court issued a remedial decree requiring the city to reduce the prison population so that each imprisoned person had their own cell. In 1977, the city defendants and imprisoned plaintiffs entered a series of agreements that required the city to make significant improvements, especially in medical and food services. But the city had willfully failed to act on these court mandates, frequently missing court-imposed deadlines and refusing to aggressively decarcerate prisoners. In response, the three-judge panel ruled the city be held in contempt, fined \$250,000, and – if need be, its leading officials jailed – for violating their agreement to reduce the prison population and make improvements to food, medical care, and hygiene.² Demonstrating the intensity of their frustration with the city, the judges alleged that Rizzo’s administration had rendered only “token

¹ Scott Heimer and Stephen Rosenfeld, “Jail Edict Seen Threat to Pols,” *Philadelphia Daily News*, December 2nd, 1977.

² Scott Heimer and Stephen Rosenfeld, “Jail Edict Seen Threat to Pols,” *Philadelphia Daily News*, December 2nd, 1977; Johnathan Newmann, “Philadelphia fined for failing to make prison reforms,” *The Philadelphia Inquirer*, December 2nd, 1977.

compliance with the agreement.”³ The Court Master of the *Jackson* case, Walter Cohen, similarly lamented that “the city is breaking the law in the way they treat people who broke the law. There is no reason for that and it is irresponsible.”⁴

While the judges’ threat to throw the mayor in jail might have been mostly bluff, they were serious about the fine. Three days later, at an “impromptu” press conference, Mayor Rizzo stated that he would “follow the mandate of the court – and more” to comply with the consent decree, and that the city would pay both the \$250,000 payment and an extra \$75,000 in damages within 10 days, as mandated by the court. Rizzo even said that prisoners “should be treated like human beings” and ordered his managing director Hillel Levinson to “fire” any city officials determined to be “stalling” on fulfilling the agreement.⁵ If the city complied with the order to improve conditions, the courts would return the \$250,000. But the \$75,000 served as a fine that would be used to benefit the city’s imprisoned people directly. “It’s unfortunate that a third of a million dollars of taxpayers’ money has to go to pay a fine like this,” Cohen remarked, “but I think it’s the only course of action the court can take.”⁶ On December 10th, the city paid the Common Pleas Court \$325,000 as “part promise, part punishment.” The \$75,000 for the city’s prisoners represented the first time the courts had ordered a municipality to pay damages to a

³ Stephen Rosenfeld, “City to Comply on Prisons, Rizzo Says,” *Philadelphia Daily News*, December 5th, 1977.

⁴ Scott Heimer and Stephen Rosenfeld, “Jail Edict Seen Threat to Pols,” *Philadelphia Daily News*, December 2nd, 1977.

⁵ Stephen Rosenfeld, “City to Comply on Prisons, Rizzo Says,” *Philadelphia Daily News*, December 5th, 1977; Jill Porter, “Levinson: City to Upgrade Prisons,” *Philadelphia Daily News*, December 6th, 1977.

⁶ Johnathan Neumann, “City fined for failing on prisons,” *The Philadelphia Inquirer*, December 2nd, 1977.

prison system on behalf of imprisoned people as restitution for the maintenance of unconstitutional conditions.⁷

This chapter tells the history of Philadelphia imprisoned people's resistance against an emerging but not yet settled regime of racialized mass pre-trial detention in late-twentieth century Philadelphia. I argue that the crisis of prison overcrowding in the city's antiquated, notoriously abusive, and racially unequal prisons created openings for imprisoned people to challenge the growth of the nascent carceral state. Even during an apex of anti-Black tough-on-crime politics in the city, where Mayor Frank Rizzo's infamously pro-police and law-and-order administration normalized the aggressive use of racialized preventative detention, overcrowding in Philadelphia's jails gave prisoners a political and legal framework through which to resist the inhumanity of their incarceration. Moreover, in placing city's prison administration under judicial review, Philadelphia's imprisoned people channeled state power towards the *protection* of prisoners' constitutional rights at a time when local, state, and national policymakers were working to dehumanize them and denigrate their citizenship. In fighting to deem prison overcrowding in particular as unconstitutional, Philadelphia's prisoners created possibilities for *decarceration* during an era of otherwise ascendent punitive impulses in U.S. politics and culture.⁸

⁷ Jill Porter, "City's 75G Goes to Jails," *Philadelphia Daily News*, December 10th, 1977.

⁸ To be sure, overcrowding was not the sole issue driving imprisoned people to resist their imprisonment in Philadelphia and across the nation. But as historian Robert Chase writes, "overcrowding worsened [all] prison conditions, exacerbated racial tensions, and accelerated state-orchestrated sexual and physical violence" inherent to incarceration. Moreover, overcrowding provided prisoners and their allies a discourse for advocating the release of imprisoned people or their diversion from prison entirely. This contrasts with reforms focused on improving the programming, buildings, or services offered within prisons, which tended to increase resources devoted to prisons and strengthen the legitimacy of carceral institutions. imprisoned people's efforts to deem the practice unconstitutional, could produce strikingly

Indeed, contrary to scholarship that interprets late-twentieth century prison conditions litigation as a net negative that assisted get-tough policymakers in growing the prison nation, *Jackson v. Hendrick* shows how imprisoned plaintiffs and state judges attempted to use the judiciary to decarcerate. Despite the city's repeated intransigence towards the *Jackson* consent decrees, the court orders pushed city officials to release thousands of people who they would otherwise have imprisoned pre-trial in the city's overcrowded and dilapidating prisons. Admittedly, the court's success in remedying prison overcrowding and reducing the city's prison population was fraught. As the prisoners' lawyer David Rudovsky reflected, "This court, like many others in the country, has found it much easier to order an end to overcrowding than it has to enforce these orders."⁹ As this chapter will show, the city administration and District Attorney's office worked tirelessly to challenge and undermine the *Jackson* court orders, especially those related to prisoner releases or admissions moratoriums. Their efforts severely limited the Common Pleas Court's power to enforce prisoner releases and population. Moreover, even as the Court remained committed to holding the city accountable, the Pennsylvania

decarceration reforms, even during the zenith of late-twentieth century carceral politics. For scholarship on prison conditions litigation, see Chase, "We Are Not Slaves;" Chase, *We Are Not Slaves*; Feeley and Rubin, *Judicial Policymaking and the Modern State*; Felber, *Those Who Know Don't Say*; Hughett, "A 'Safe Outlet,'" Lynch, *Sunbelt Justice*; Pelot-Hobbs, "The Contested Terrain of the Louisiana Carceral State; Newport, *This Is My Jail*; Schoenfeld, *Building the Prison State*; Schoenfeld, "Mass Incarceration and the Paradox of Prison Conditions Litigation;" Lynch, *Sunbelt Justice*; Amanda Bell Hughett, "A 'Safe Outlet' for Prisoner Discontent: How Prison Grievance Procedures Helped Stymie Prison Organizing During the 1970s," *Law & Social Inquiry* 44, no. 4 (2019): 1–29; Margo Schlanger, "Inmate Litigation," *Harvard Law Review* 116, no. 6 (2003): 1555–1706; Margo Schlanger, "Civil Rights Injunctions over Time: A Case Study of Jail and Prison Court Orders," *New York University Law Review* 81, no. 2 (2006): 550–630; Emma Kaufman and Justin Driver, "The Incoherence of Prison Law," *Harvard Law Review* 135, no. 2 (2021): 515–584.

⁹ David Rudovsky, "Litigating Prison Conditions in Philadelphia," *The Prison Journal* 65, no. 1 (April 1, 1985): 64.

Supreme Court overruled the lower court's population reduction orders, relying on consequential rulings from the U.S. Supreme Court that argued double-celling was not inherently unconstitutional. While not the end of court-ordered decarceral reforms in the city, the ruling delivered a major blow to imprisoned plaintiffs and the Common Pleas Courts' attempts to decarcerate the city's overcrowded prisons.

The history of Philadelphia prisoners' attempts to free criminalized people and curb the city's carceral growth nevertheless yields critical insight into the history of U.S. mass imprisonment. It recovers a moment when imprisoned people and the Courts generated a powerful public record of the racialized violence and inhumanity of mass pre-trial detention that led the court to order the city to decarcerate. And it demonstrates the lengths to which state and local policymakers went to preserve and expand a racially violent and profoundly unjust carceral future, even when faced with alternative policy pathways.

A Looming Crisis

Overcrowding in Philadelphia's prison system began in the mid-1960s and escalated precipitously towards the end of the decade. The crisis stemmed from an increase in *unsentenced* prisoners in Philadelphia's prisons who were being held simply because they could not afford bail. This influx was distinctly racialized: as Philadelphia's prison population increased, it also became majority Black, and disproportionately so compared with the city's population of African Americans. Between January 1968 and June 1969, the number of detentioners received by Philadelphia prisons was 75% "non-white," despite the fact that Philadelphia county was only

33% Black in 1970.¹⁰ Given that in the early 1960s the prison system had experienced population declines, the “sudden upsurge” was notable.¹¹ As early as 1966, the inspector for the state’s Bureau of Corrections Commissioner Arthur Prasse reported on overcrowding at Holmesburg prison, which he noted had led the prison to impose double-celling.¹² In subsequent reports, Prasse reported that overcrowding continued to plague the institution, noting in 1967 that such “congestion [sic]” was “undesirable.”¹³

The reasons for this increase in primarily Black imprisoned people in Philadelphia’s prisons were manifold. The increased criminalization, arrest, and imprisonment of Black Philadelphians followed broader racialized transformations in the city’s political economy in the postwar era. Despite substantial anti-discrimination efforts spearheaded by new generation of liberal reformers, New Deal-era housing policies that tethered Blackness to low property values, urban renewal initiatives that further enclosed Black urban residents into under-resourced neighborhoods, longstanding racial discrimination in employment, and capital flight all coalesced to subject Black Philadelphians to higher rates of concentrated poverty,

¹⁰ Characteristics of the Population – Pennsylvania 1970, (Washington D.C., Bureau of the Census, 1973); Edward J. Hendrick, “Annual Report of the Philadelphia Prisons,” November 20th, 1969, Folder 9: Reports ’68, 70-81, Box 23, Prisoner Rights Council Papers, Temple University Special Collections (TUSC), Temple University, Philadelphia, Pennsylvania.

¹¹ Edward J. Hendrick, “Annual Report of the Philadelphia Prisons,” November 20th, 1969, Folder 9: Reports ’68, 70-81, Box 23, Prisoner Rights Council Papers.

¹² Arthur T. Prasse to Thorsten Sellin, July 12th, 1966, Folder: Corrections-Criminal Justice Improvement Alan for Phila.-Special File, Box 4, Record Group 15, Department of Justice, Attorney General, General Correspondence, Corrections, Pennsylvania State Archives (PSA), Harrisburg, PA.

¹³ Arthur T. Prasse to Thorsten Sellin, June 7th, 1967; Arthur T. Prasse to Board of Trustees, March 29th, 1968; Arthur Prasse and R. A. Itri to Board of Trustees, October 23rd, 1968; Arthur Prasse and R. A. Itri to Board of Trustees, June 25th, 1969, Folder: Corrections-Criminal Justice Improvement Alan for Phila.-Special File, Box 4, Record Group 15, Department of Justice, Attorney General, General Correspondence, Corrections, PSA.

criminalization, and premature death.¹⁴ Even after flagship Civil Rights legislation eliminated *de jure* racial discrimination, this spatialization of anti-Black racism made ongoing racial inequality and disorder appear natural rather than politically constructed, and justified the state's heightened criminalization and punitive control of working-class Black neighborhoods through aggressive surveillance and policing.¹⁵ When Black communities, Black Power radicals,

¹⁴ For literature on Philadelphia's persistent racial segregation, capital flight, and intensification of racialized state violence in the postwar era, see Matthew J. Countryman, *Up South: Civil Rights and Black Power in Philadelphia* (Philadelphia: University of Pennsylvania Press, 2006); Guian A. McKee, *The Problem of Jobs: Liberalism, Race, and Deindustrialization in Philadelphia* (Chicago: University Of Chicago Press, 2008); Guian Mckee, "Urban Deindustrialization and Local Public Policy: Industrial Renewal in Philadelphia, 1953-1976," *Journal of Policy History*, 16 (2004), 66-98; Carolyn Adams, David Bartelt, David Elesh, Ira Goldstein, Nancy Kleniewski, and William Yancey, *Philadelphia: Neighborhoods, Division, and Conflict in a Postindustrial City* (Philadelphia: Temple University Press, 1991); John F. Bauman, *Public Housing, Race, and Renewal: Urban Planning in Philadelphia, 1920-1974* (Philadelphia: Temple University Press, 1987).

¹⁵ For literature on the spatialization of anti-Blackness and enduring racial inequality in the post-Civil Rights era, see Martha Biondi, *To Stand and Fight: The Struggle for Civil Rights in Postwar New York City* (Cambridge: Harvard University Press, 2003); Lizabeth Cohen, *A Consumer's Republic: The Politics of Mass Consumption in Postwar America* (New York: Knopf Doubleday, 2003); Nathan D. B. Connolly, *A World More Concrete: Real Estate and the Remaking of Jim Crow South Florida* (Chicago: University of Chicago Press, 2014); Mike Davis, *City of Quartz: Excavating the Future in Los Angeles* (New York: Vintage, 1992); Brett Gadsden, *Between North and South: Delaware, Desegregation, and the Myth of American Sectionalism* (Philadelphia: University of Pennsylvania Press, 2012); Lily Geismer, *Don't Blame Us: Liberals and the Transformation of the Democratic Party* (Princeton: Princeton University Press, 2014); Jacquelyn Dowd Hall, "The Long Civil Rights Movement and the Political Uses of the Past." *Journal of American History* 91, no. 4 (2005): 1233-1263; Arnold R. Hirsch, *Making the Second Ghetto: Race and Housing in Chicago, 1940-1960* (Chicago: University of Chicago Press, 1998) Kenneth Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1987); Destin Jenkins, *The Bonds of Inequality: Debt and the Making of the American City* (Chicago: University of Chicago Press, 2021); Matthew Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton: Princeton University Press, 2006); Becky Nicolaides, *My Blue Heaven: Life and Politics in the Cold War Suburbs of Los Angeles, 1920-1965* (Chicago: University of Chicago Press, 2002); Suleiman Osman, *The Invention of Brownstone Brooklyn: Gentrification And the Search for Authenticity in Postwar New York* (New York: Oxford University Press, 2011); Pedro Regalado, "They Speak Our Language . . . Business": Latinx Businesspeople and the Pursuit of Wealth in New York City," in Destin Jenkins and Justin Leroy, eds., *Histories of Racial Capitalism* (New York:

and other anti-racist and anti-capitalist groups sought to challenge this postwar racial capitalist status quo – specifically anti-Black police violence in Black neighborhoods – the state responded by criminalizing their dissent, sometimes even partnering with white vigilantes to enact counterinsurgency.¹⁶ President Lyndon Johnson’s War on Poverty did feature a number of federal and local efforts to address persistent racial segregation and poverty in Black neighborhoods, suggesting some recognition among postwar liberals that racialized structural inequality, and not the inherent criminality of Black people, fueled high arrest rates in Black neighborhoods. But as Elizabeth Hinton and Naomi Murakawa have shown, these programs were also in part driven by a thoroughly racialized concern about “controlling crime” in Black neighborhoods, and they often helped to infuse police presence and heightened law enforcement surveillance into federally-funded neighborhood and social welfare programs.¹⁷ Nixon further built upon and intensified the federal government’s punitive federal intervention into crime control, deepening the government’s investment in professionalizing and toughening policing in Black low-income communities while more aggressively undermining support for liberal social welfare programs.¹⁸ In particular, the 1968 Safe Streets Act – introduced by and passed under Johnson but largely overseen by Nixon – created the Law Enforcement Assistance

Columbia University Press, 2021); Robert Self, *American Babylon: Race and the Struggle for Postwar Oakland*, (Princeton: Princeton University Press, 2003); Thomas Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton: Princeton University Press, 1996); Thomas J. Sugrue, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North* (New York: Random House, 2008); Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeowners* (Chapel Hill: University of North Carolina Press, 2019); Rhonda Williams, *The Politics of Public Housing: Black Women’s Struggles Against Urban Inequality* (New York: Oxford University Press, 2005).

¹⁶ Elizabeth Hinton, *America on Fire: The Untold History of Police Violence and Black Rebellion Since the 1960s* (New York: W.W. Norton, 2021).

¹⁷ See Hinton, *From the War on Poverty to the War on Crime*; Murakawa, *The First Civil Right*.

¹⁸ Hinton, *From the War on Poverty to the War on Crime*.

Administration, which funneled unprecedented amounts of federal funding towards local law enforcement, allowing local police departments to expand their capacity, purchase more lethal weapons, and adopt “community policing” tactics that placed law enforcement in more direct contact with primarily Black urban poor populations.¹⁹ In Philadelphia in particular, the availability of these funds aligned with the ascent of local racialized law and order politics, driven in large party by Police Commissioner Frank Rizzo. Serving as Democratic Police Commissioner from 1967 to 1971, Rizzo was notorious for his barely-veiled anti-Blackness, outspoken preference for tough policing, and open hostility towards civil rights and Black Power movements. His appointment, along with new LEAA funding, amplified the Philadelphia police’s criminalization and targeting of Black people in the city, helping to flood the city’s jails with Black detainees.²⁰ As one document on the LEAA’s impact in Philadelphia reported, Commissioner Rizzo used LEAA funds to “beef up’ the police force,” which triggered a “chain

¹⁹ Hinton, *From the War on Poverty to the War on Crime*; Murakawa, *The First Civil Right*; Heather Schoenfeld, *Building the Prison State*.

²⁰ For a useful detailing of Rizzo’s long track record of criminalizing Black people and especially Black dissidents, see the Philadelphia Black Panther Party’s “Bozo Rizzo Runs for Mayor,” *The Black Panther* VI, no. 4 (1971). Even prior to his appointment as Police Commissioner, Rizzo had a reputation for pushing a more punitive response to “Black militancy” and “crime” in Black working class neighborhoods that likely helped increase jail population levels. During the 1964 Columbia Ave. Riot, which had been sparked by an altercation between police and Black residents in North Central Philadelphia, then-Deputy Police Commissioner Rizzo commanded police on the ground and ordered them to remain in the streets rather than following a less aggressive strategy put forth by the Police Commissioner. At the end of the disturbance, police had made 308 arrests. In 1966, then acting Police Commissioner Rizzo infamously led a series of raids against the local Student Nonviolent Coordinating Committee. He would continue to not only direct Philadelphia police power towards the targeting of Black radicals and Black people in the city more generally, but would also galvanize a grassroots white supremacist, pro-police, reactionary politics among the city’s white working- and middle-classes that would help propel him into the mayor’s office in 1970 and further embolden the Philadelphia police department. See Timothy Lombardo, *Blue-Collar Conservatism: Frank Rizzo’s Philadelphia and Populist Politics* (Philadelphia: University of Pennsylvania Press, 2016); Countryman, *Up South*, 215-220, 226, 231- 2.

reaction” of more arrests, more people who needed to stand trial, and thus more people detained in the city’s jails.²¹

All three prisons in the system experienced increases in their population. In a report on the prison system for fiscal year 1969 (covering January 1st, 1968, to June 30th 1969), Philadelphia Prisons Superintendent Edward Hendrick noted that after three years of population declines, the in-custody population had increased by 23.4%, mainly due to increases in pre-trial detainees. In fact, although the number of sentenced admissions had decreased by 18% since 1967, detentioner admissions had increased by 18%. This rise in pretrial detainees, he noted, was a consequence of lengthier timelines for disposition due to court backlogs; the percentage of people held in custody for more than 12 months had increased by 116.7% since 1967. The result was a serious crisis of prison overcrowding, which Hendrick noted had “created a host of collateral problems” at the city’s largest and oldest correctional institution, Holmesburg Prison, that “are not immediately obvious but must be handled by the institution staff.” For example, more imprisoned people meant more mail to sort, more family and official visits to handle, and more people to shuttle to and from court. Overcrowding also “brought increased idleness” among prisoners, which he noted was “reflected by a sharp increase in the number of disciplinary reports.”²²

²¹ “Basic Information on Law Enforcement and the Administration of Justice,” presented to the Health and Welfare Council Inc., September 1st, 1971, Folder 16: Health and Welfare Council, City of Philadelphia 1971, Box 18, Accession 570, Prisoner Rights Council Papers, TUSC.

²² Edward J. Hendrick, “Annual Report of the Philadelphia Prisons,” November 20th, 1969, Folder 9: Reports ’68, 70-81, Box 23, Prisoner Rights Council Papers, TUSC.

With Philadelphia's prison crisis escalating, journalists began reporting on various forms of mismanagement and horrors in Philadelphia's prison system.²³ The scandal that raised the most attention was the uncovering of rampant sexual violence in the city's jails. In 1968, two young men testified in front of Common Pleas Judge Alexander F. Barbieri that they were sexually assaulted while under the control of the Philadelphia criminal legal system, one in a sheriff's van by a "gang of criminals" and one upon admission to the Philadelphia Detention Center.²⁴ The revelations led Judge Barbieri to order a dual Police Department and District Attorney's office "ground-to-roof" probe into the city's penal institutions.²⁵ Conducted by Chief

²³ For example, see Robert Terry, "Moore Calls City Negligent in Jail Death of Negro, 19," *Philadelphia Evening Bulletin*, May 5th, 1967; James C. Young, "City Prisoners Revolt, Demand Better Food and Sexology Books," *The Philadelphia Inquirer*, August 20th, 1967; "Holmesburg Prison Is Called Outmoded," *The Philadelphia Inquirer*, September 2nd, 1967; Marta Robinet, "How Women Live Behind Steel Bars," *Philadelphia Evening Bulletin*, November 12th, 1967; "Two Prisoners Captured After Flight from Van," *The Philadelphia Inquirer*, November 28th, 1967; "Inmate Falls Dead During Fight at Prison," *Philadelphia Evening Bulletin*, December 21st, 1967; Joseph Tractman, "City Will Spend \$30,000 for Research Into Problem of Untried Prisoners," *The Philadelphia Inquirer*, January 30th, 1968; "Cop Tackle Ends Second Escape," *The Philadelphia Daily News*, February 7th, 1968; Robert Fensterer, "Youths in House of Correction Upset Officials," *The Philadelphia Inquirer*, April 4th, 1968; "Zigzag Chase Catches Youth," *The Philadelphia Inquirer*, March 16th, 1969; "Holmesburg Guards Foil Escape of 2 Phila. Convicts," *The Philadelphia Daily News*, April 21st, 1969; Les Fuller, "Holmesburg Prisoners Conduct Hunger Strike," *The Philadelphia Inquirer*, June 2nd, 1969; "Phila Prisons 'Inhuman,'" *The Philadelphia Inquirer*, July 11th, 1969; Grand Jurors Call Quarters Cramped, Chairs Uncomfortable," *The Philadelphia Inquirer*, January 3rd, 1970; Dave Racher, "Death of Inmate Spurs DA Probe of Heroin Traffic in City Prisons," *Philadelphia Daily News*, February 9th, 1970; "Checkerboard Brawl Injures Prison Guards," *Philadelphia Daily News*, May 25th, 1970; "Inmate Found Hanged at Detention Center," *Philadelphia Evening Bulletin*, November 8th, 1970; "DA Investigates Treatment of Addicts in City Prisons," *Philadelphia Evening Bulletin*, November 12th, 1970. See also Joshua R Coene, "The Contentious PRison: From Rehabilitation to Incapacitation in New South Wales and Pennsylvania, 1965-1990," (PhD Dissertation, University of Michigan, 2016), 193-4.

²⁴ Alan J. Davis, "Sexual Assaults in the Philadelphia Prison System and Sheriff's Vans," *Trans-Action* 6, no. 2 (1968): 1.

²⁵ Joseph H. Trachtman, "60 Inmates in 3 Prisons Face Charges in Court, City Probe of Sexual Abuses," *The Philadelphia Inquirer*, August 9th, 1968.

Assistant District Attorney Alan J. Davis, the resulting 103 page report raised alarm not only about an “epidemic” of “homosexual rape” at Philadelphia prisons, but also about the unsafe conditions that, Davis alleged, allowed sexual violence to proliferate.²⁶ The report’s sensational and deeply racialized presentation of mass sexual violence dominated the public conversation about the findings.²⁷ The report also exposed a University of Pennsylvania-funded medical testing program at Holmesburg, which paid prisoners to serve as “human guinea pigs” to test often dangerous drugs and commercial products. In addition to the reprehensible ethics

²⁶ Davis investigated the period between June 1st, 1966 to July 31st, 1968. His research team interviewed 3,304 prisoners and 561 prison employees, in addition to taking 130 written statements. See Alan J. Davis, “Report on Sexual Assaults in the Philadelphia Prison System and Sheriff’s Vans,” Philadelphia District Attorney’s Office and Police Department, 1968, 2.

²⁷ See Davis, “Report on Sexual Assaults in the Philadelphia Prison System and Sheriff’s Vans.” For examples of news coverage of the report, see Hubert Stewart, “A Massive Evil—And Its Cure,” *The Philadelphia Inquirer*, September 15th, 1968; “Sexual Abuse in City Prisons Will Trigger Mass Arrests,” *The Philadelphia Inquirer*, September 12th, 1968; Rich Aregood, “DA Probe Cites ‘Sex Epidemic,’ In Jails, Blasts Sheriff Office,” *Philadelphia Daily News*, September 11th, 1968; Bill Fidati, “City Maps Emergency Steps To End Prison Sex Abuses,” *Philadelphia Daily News*, September 14th, 1968. As Regina Kunzel has argued, the focus on the interracial character of sexual violence in Philadelphia’s prison system, and Davis’s reporting that the majority of assaults involved Black prisoners raping white prisoners, fueled longstanding racist tropes about Black male sexual aggression that helped further criminalize Black men, undermined the demands of the Black freedom struggle, and justified the state’s continued maintenance of racial segregation. Set against the context of the growing visibility and, in some cases, celebrity of Black radical prisoners and the growth of Black Power politics more broadly, discussion of interracial prison sexual violence served as apparent evidence of the “excesses” of Black radical politics, a form of “reverse racism” that demonstrated civil rights had gone too far. Inquiries into sexual violence in prisons, then, not only documented sexual harm but also narrated a “story of black aggression and white victimization,” where black prisoners raped white prisoners out of desire to assert dominance and seek “racial retaliation” and specifically to “affirm” a masculinity otherwise barred from them in a racist society and the allegedly Black matriarchal family structure it produced. Notably, this framing of interracial sexual violence as the product of Black racial resentment or sexual dysfunction stemming from cultural pathologies in Black communities erased both white sexual violence against Black prisoners and the presence of genuine homosexual desire between imprisoned people. See Regina Kunzel, *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (Chicago: University of Chicago Press, 2008), 170-176.

underlying the project's exploitation of imprisoned people, the program also gave some imprisoned laboratory assistants the ability to use "economic coercion" to procure sexual favors from fellow prisoners.²⁸

Just as importantly, the Davis report provided critical documentation of the Philadelphia prison system's severely overcrowded and inhumane conditions, which Davis understood to exacerbate the sexual violence that so scandalized Philadelphia officials. The report highlighted the near doubling of the prison system's detentioner population and "new safeguards" for accused people, to the point where they made up almost two-thirds of the total prisoner population.²⁹ Calling this population "the most difficult, restless, and aggressive group of inmates" and noting that they were often charged with "serious crimes" (those with minor offenses were often prioritized for release), Davis wrote that this population "pose[d] a gigantic problem for the prison system."³⁰ His report also captured the fact that Philadelphia's prison system was over 80% Black, which not only served as evidence of racist policing and prosecutorial practices in the city, but also fomented the same "racial hostilities and tensions"

²⁸ See Alan J. Davis, "Report on Sexual Assaults in the Philadelphia Prison System and Sheriff's Vans," 28-32. For a detailed history of the ethically reprehensible medical experiments conducted on prisoners at Holmesburg, see Allan M. Hornblum, *Acres of Skin: Human Experiments in Holmesburg Prison* (New York: Routledge, 1998).

²⁹ District Attorney Arlen Specter's *1970-1971 Report to the People of Philadelphia* further elaborates on the crisis of trial delay in late 1960s and early 1970s Philadelphia, which plagued DA Specter greatly. The core culprits of trial delay, he argued, were a lack of "judicial manpower" to hear criminal cases, greater protections for the rights of defendants to appeal and access to pre-trial litigation, "unwarranted continuances" from defense attorneys, and "too many cases in the hands of a small number of defense attorneys." See Arlen Specter, *1970-1971 Report to the People of Philadelphia* (Philadelphia: Philadelphia District Attorney's Office, 1971) 98-103 in Folder 13: District Attorney Report to the People, 1970-1, Box 2, Arlen Specter Senatorial Papers, Group 1: Pre-senatorial Career Files, 1953-1980, TJU.2010.01.01, Thomas Jefferson University (managed by the University of Pittsburgh Library System) (TJS-UPLS).

³⁰ Alan J. Davis, "Report on Sexual Assaults in the Philadelphia Prison System and Sheriff's Vans," Philadelphia District Attorney's Office and Police Department, 1968, 60-62.

among imprisoned people as existed “in the community.”³¹ As one of the more probing public documents on Philadelphia’s prison system, the report served as crucial evidence of the system’s population crisis and its disastrous effects on imprisoned people.

Although the Davis report outlined possible reform, such as hiring more guards and making capital improvements, the city’s refusal to allocate more funding for the proposed changes and the continued pressure of increases exacerbated the prison crisis.³² The following year, the state’s Bureau of Corrections inspected Holmesburg prison and found conditions unchanged, if not worse. Although Holmesburg had a capacity of 680 people, it had 1,335 prisoners during the time of the report’s inspection. The prison was so “overtaxed” that most cells contain three prisoners, though they’d been built for one. Overcrowding also quickened the wear on already “outmoded” basic facilities – the prison had been built in 1896 – such that “the repair program cannot keep abreast of demand.” “The extent of human congestion is now at the danger point,” the report concluded, “...with regard to the health and welfare of the inmates.”³³

³¹ Alan J. Davis, “Report on Sexual Assaults in the Philadelphia Prison System and Sheriff’s Vans,” Philadelphia District Attorney’s Office and Police Department, 1968, 84. Notably, while Davis recognized that the growing population of idle, primarily Black detentioners frustrated by an imprisonment based solely on a lack of bail money served as a key root cause for prison sexual violence, he dismissed suggestions for reducing detentioner population. “There will always be a large detentioner population in the Philadelphia prisons,” he noted, pointing instead towards how the prison administration can provide more “constructive programming,” work opportunities, guard supervision, and classification measures. See Davis, 62.

³² “District Attorney Report to the People of Philadelphia, 1970-1971,” Folder 13, Box 2, Arlen Specter Senatorial Papers, 1953-2011, TJS-UPLS; John F. Clancy, “Tate Seeks Funds For More Guards At Holmesburg Jail,” *the Philadelphia Inquirer*, July 9th, 1970.

³³ Arthur T. Prasse and R. A. Itri to Daniel B. Mitchie, June 25th, 1969, Folder: Corrections-Criminal Justice Improvement Alan for Phila.-Special File, Box 4, Record Group 15, Department of Justice, Attorney General, General Correspondence, Corrections, PSA; Charles Montgomery, “1969 Report Gave Warning at Holmesburg,” *The Philadelphia Evening Bulletin*, July 6th, 1970.

For Philadelphia's imprisoned people detention in the city's prisons was an excruciating experience. One former prisoner, Turner DeVaughn, told the *Inquirer* that Holmesburg was a "pigpen" filled with "rats and roaches." William Campbell described the mess hall as smelling "like a garbage can that hadn't been washed in about 13,000 years." While the prison was not officially segregated, prisoners reported that the administration kept Black and white prisoners apart, stoking racial tensions. Sexual assaults were still rampant, as was drug use.³⁴ As more and more imprisoned people were forced to live in strained conditions, prisoners began to organize in protest. In June 1969, 900 prisoners (out of 1200) launched a hunger strike. According to Hendrick, the protestors initially struck to highlight the poor "quantity and preparation of the food," but their demands soon grew "more... militant" regarding the "prison budget, commissary prices and profits, custodial control." As rumors circulated about planned violence led by "the leadership of...young Muslim prisoners," the superintendent ordered a shakedown, transferred suspected leaders, and "acknowledged publicly" the problems with the food, assuring the prisoners that he would take "remedial action."³⁵ The prisoners were not so easily mollified. The crisis of overcrowding and abysmal conditions would soon spark one of the biggest prisoner uprisings in the city's history, occurring a year before the historic prisoner uprising in Attica. In the process, Philadelphia prisoners unleashed a new era of prisoner resistance in the city of Brotherly Love.

Independence Day: The Holmesburg Uprisings

³⁴ Thomas Ferrick and Elliot Brown, "Ex-Holmesburg Inmates Tell of Beatings," *The Philadelphia Inquirer*, July 19th, 1970.

³⁵ Edward J. Hendrick, "Annual Report of the Philadelphia Prisons," November 20th, 1969, Folder 9: Reports '68, 70-81, Box 23, Prisoner Rights Council Papers, TUSC.

Holmesburg erupted on July 4th, 1970. The incident was triggered by a prisoner named Raymond Moon punching Guard Richard Coan in the dining hall at 12:45 PM. The altercation inspired other prisoners to begin fighting, throwing metal trays, and yelling phrases such as “Power to the people, kill these honkies.”³⁶ What ensued was a two and a half hour uprising, during which an estimated 250-400 Black prisoners stabbed, beat, and otherwise attacked both white and Black prison guards as well as white prisoners. Prisoners successfully seized six guards at hostages, and then later, fifteen white imprisoned hostages.³⁷ One white prisoner had his hand nearly severed by a cleaver.³⁸ The violence only ended when “three busloads of riot-helmeted officers” and some additional law enforcement and correctional officers arrived at the institution; in total, Police Commissioner Rizzo estimated, it took 500 to 600 men to quell the uprising.³⁹ In the end, 73 prisoners and 23 guards were injured, and the prison had suffered \$50,000 dollars of damage.⁴⁰ The authorities confiscated over 40 weapons from imprisoned people, a fact that cause much media fanfare in the subsequent weeks. Superintendent of Prisons Hendrick deemed it the “worst riot Holmesburg has ever seen.”⁴¹

³⁶ “Chronology of Events – July 4th, 1970,” Folder 24: Holmesburg Riot of 1970, Box 24, Prisoner Rights Council Papers, TUSC.

³⁷ Edward Eisen and James S. Lintz, “80 Inmates, 25 Guards Injured as 400 Riot at Holmesburg; Police Quell 2 ½ -Hour Melee,” *The Philadelphia Inquirer*, July 5th, 1970.

³⁸ Edward Eisen and James S. Lintz, “80 Inmates, 25 Guards Injured as 400 Riot at Holmesburg; Police Quell 2 ½ -Hour Melee,” *The Philadelphia Inquirer*, July 5th, 1970; Lee Daniels and Lous Antosh, “Probe Puts Pieces Together After Holmesburg Riot,” *Philadelphia Daily News*, July 6th, 1970.

³⁹ Edward Eisen and James S. Lintz, “80 Inmates, 25 Guards Injured as 400 Riot at Holmesburg; Police Quell 2 ½ -Hour Melee,” *The Philadelphia Inquirer*, July 5th, 1970.

⁴⁰ “Introduction,” Folder 24: Holmesburg Riot of 1970, Box 24, Accession 570, Prisoner Rights Council Papers, TUSC.

⁴¹ Edward Eisen and James S. Lintz, “80 Inmates, 25 Guards Injured as 400 Riot at Holmesburg; Police Quell 2 ½ -Hour Melee,” *The Philadelphia Inquirer*, July 5th, 1970. A full list of those injured in the uprising, including names and status as prisoners or correctional guards, can be found at “List of Injured in Holmesburg Prison Riot,” *The Philadelphia Inquirer*, July 5th, 1970.

Led in large part by Rizzo, city leaders and prison administrators called the Holmesburg uprising a “race riot,” blaming “militant black organization members” as the primary force behind the disturbance.⁴² A closer analysis paints a more complicated picture. Black prisoners did harm white guards and prisoners. But the record also suggests that Black prisoners targeted correctional officers broadly, regardless of their race.⁴³ Many guards at Holmesburg were Black, a fact that did not protect them from being targeted. Writing for *The Black Panther* a month later, a Black prisoner who referred to himself as Brother Reese and who wrote from the Detention Ward of the Philadelphia General Hospital due to injuries sustained

⁴² “Rizzo Insists Cause of Riot was Racial, *The Philadelphia Evening Bulletin*, July 7th, 1970; Bill Fidati and Bill Malone, “30 Cons Face Charges in Riot at Holmesburg,” *The Philadelphia Daily News*, July 7th, 1970. Lee Daniels and Lou Antosh, “Probe Puts Pieces Together After Holmesburg Riot,” *Philadelphia Daily News*, July 6th, 1970; “Rizzo, Specter Tour Riot Site at Holmesburg,” *Philadelphia Daily News*, July 7th, 1970; “Rioting Racial, Bruised Inmate Says,” *The Philadelphia Inquirer*, July 5th, 1970; James N. Riggio, “Prison Guards ‘Knew Riot Was Coming,’” *The Philadelphia Inquirer*, July 7th, 1970; “Rizzo, Specter Tour Riot Site at Holmesburg,” *Philadelphia Daily News*, July 7th, 1970. Rizzo would eventually slightly walk back his claims that the riot was “racial,” stating at a July 7th 1970 press conference “When I got there, it was a racial incident, but what happened before that, I don’t know.” See Ken Shuttleworth and John F. Clancy, “Top City Officials Ask Inmate Limit for Holmesburg,” *The Philadelphia Inquirer*, July 7th, 1970.

⁴³ While there is documentation that some white prisoners expressed racist resentments and actions against Black imprisoned people at Holmesburg, others appear less enthused by a white supremacist project of stoking racial divisions. In a 1972 memo from the Holmesburg warden Joseph P. McGowan to Louis S. Aytch, the Superintendent of Prisons, McGowan discussed a memo written by white inmates who “complained of various and sundry problems on the block,” including alleged “physical abuse of white inmates by 4 or 5 blacks.” The white prisoners’ memo also complained of the showing of a “racially tense-filled movie” where “white hoodlums abused the passengers of a subway train in New York, two of these passengers being black.” McGowan’s memo to Aytch, however, proceeded to cast major doubt on the white prisoners’ memo’s accusations of harm from Black prisoners, and upon further interrogation it appears that many of the white prisoners who signed had not actually read the details of what they were signing onto. The memo also included testimony from other white prisoners who denounced the memo, accusing the memo-writers of having a “5 year old brain in a 25 year old body.” See Joseph P. McGowan to Louise Aytch, “Investigation re: Memorandum from White Inmates of ‘G’ Block,” November 20th, 1972, Folder: Holmesburg, A-341, RG 60-2.6, Frank Rizzo Papers, Philadelphia City Archives (PCA), Philadelphia, Pennsylvania.

during the disturbance, said that the guards who provoked the uprising were Black, and that the fighting that initially ensued was “prisoners against the guards.” He notes that while white prisoners were “beaten, stabbed, cut, and kicked” so too were Black prisoners who disagreed with the approach of attacking white prisoners. The “real issues,” said Reese, were “overcrowdedness, poor food, harassment, etc.”⁴⁴ Another former prisoner at Holmesburg echoed Reese’s testimony, stating wryly to the *Philadelphia Daily News*, “If somebody tells you the Holmesburg riot was racial, he is a liar. There aren’t enough white people in that prison to make it a racist riot.”⁴⁵ Liberal reformers, such as a group of chaplains who ministered at the prison, also rejected Rizzo “race riot” framing, directing the blame towards the prison’s “overcrowding, bad food, poor ventilation, inadequate clothing, lack of programs and shortages of trained personnel.”⁴⁶ At the time of the uprising, the institution crammed 1,310 people in just 684 cells.⁴⁷

This is not to say that Holmesburg was free of racism, nor that systemic racialized violence played no role in triggering the uprising. As an institution that disproportionately caged Black men in cramped, unsafe, and toxic living environments where they were subjected to racially discriminatory treatment by prison administration, Holmesburg was a thoroughly anti-Black institution. Both Black and white guards routinely subjected Black prisoners to anti-Black

⁴⁴ Brother Reese, “A Letter from Brother Reese (Phila. General Hospital Prison Ward on the Holmesburg Rebellion – July 4th, 1970,” *Black Panther V*, no. 7 (August 15th, 1970): 25.

⁴⁵ “Kenyatta Wants Rioters Released,” *Philadelphia Daily News*, July 15th, 1970.

⁴⁶ Acel Moore and James N. Riggio, “Chaplains Blame Poor Conditions for Prison Riot,” *the Philadelphia Inquirer*, July 6th, 1970; Ken Shuttlesworth and John F. Clancy, “Top City Officials Ask Inmate Limit for Holmesburg,” *The Philadelphia Inquirer*, July 7th, 1970.

⁴⁷ James D. Crawford, “Preliminary Report on the July 4th, 1970 Riot at Holmesburg Prison,” Submitted to District Attorney Arlen Specter and the District Attorney’s Advisory Committee on Prisons, 1970, 67, in Item 2: Holmesburg Prison, 13-2544, Carton 20, Record Group 15, Department of Justice – AG – General Correspondence, PSA.

terror. “The closest thing I could relate Holmesburg prison to,” former Holmesburg prisoner Turner DeV Vaughn told the *Philadelphia Bulletin*, “is a plantation in the old South.”⁴⁸ Holmesburg guards’ production of racialized state violence was especially on display in the immediate aftermath of the uprisings, where they launched retaliatory attacks on Black prisoners. Ex-prisoner and then Executive Director of the Philadelphia-based Prisoner Rights Council Victor E. Taylor wrote that for imprisoned people, the “days that followed [the uprising] were of nightmarish, three dimensional scope.”⁴⁹ Guards attacked Black imprisoned people regardless of whether or not they had participated in the rebellion.⁵⁰ The District Attorney’s Office produced a report on the guard’s brutality that noted “fractured limbs and bones, bruises, welts, and lacerations that marked numerous black inmates after the 4th of July.” Yet despite “overwhelming evidence” that officers maintained a “regime of retaliation...for perhaps one or two weeks,” the DA’s report refused to recommend prosecution of the guards, all but confirming the city’s sanctioning of racialized hostility against the majority Black detainees.⁵¹ As Taylor scathingly remarked, the DA’s office had to justify the “violence emanating from the twisted

⁴⁸ Kitsi Burkhart, “Ex-Inmate Tells of Boredom, Terror of Daily Life in Prison,” *The Philadelphia Evening Bulletin*, July 16th, 1970, Folder 213: Prison Research, 1970-1975, Box 23, Philadelphia Commission for Effective Criminal Justice Papers (PCECJ), TUSC.

⁴⁹ Victor E. Taylor “Beyond the Siege: Holmesburg Revisited,” Folder 4: PRC – Subject files – Papers, 1969, 71-73, 1980, Box 25, Accession 570, Prisoner Rights Council Papers, TUSC.

⁵⁰ “Regarding Riot,” Folder 27A, Box 24, Prisoner Rights Council Papers, TUSC.

⁵¹ “Report on Investigation of Charges of Guard Brutality Following the July 4th 1970 Riot at Holmesburg Prison,” Philadelphia District’s Attorney Office, Folder 24: Holmesburg Riot of 1970, Box 24, Accession 570, Prisoner Rights Council, TUSC. See also Charles Montgomery and Dave Racher, “Holmesburg Guard Confirms “Revenge” Beatings,” *Philadelphia Daily News*, July 20th, 1971; Ken Shuttleworth, “Holmesburg Guards Accused of Revenge,” *Philadelphia Inquirer*, July 20th, 1971.

brains of euphemistically dubbed ‘Correctional Personnel’” to sustain the legitimacy of the city’s penal apparatus and criminal legal system.⁵²

It was not that Black prisoners at Holmesburg wished to harm white prisoners or guards solely for being white – or at least this was not the case for a substantial segment of the participants. Rather, they rebelled against a racist structure of mass imprisonment that subjected them to overcrowded, unsanitary, and violent conditions, a structure upheld and perpetuated in large part by Holmesburg’s Black guards.

Despite their attempts to smear Holmesburg prisoners as Black nationalist provocateurs and out-of-control criminals, the city understood that the overcrowding crisis had played a significant role in the uprising and required immediate attention. Receiving extensive press coverage, some of which featured insights from imprisoned people about the horrendous state of the city’s prisons, the uprising brought the overcrowding crisis public attention and requiring public officials to take some kind of action in response.⁵³ Three days after the uprising, Mayor James Tate, Police Commissioner Rizzo, and District Attorney Arlen Specter asked the courts to stop sending men to Holmesburg “until critical overcrowding there is relieved.”⁵⁴ They also made desperate if futile pleas to Pennsylvania officials to allow the city to send Philadelphia

⁵² Victor E. Taylor “Beyond the Siege: Holmesburg Revisited,” Folder 4: PRC – Subject files – Papers, 1969, 71-73, 1980, Box 25, Accession 570, Prisoner Rights Council Papers, TUSC.

⁵³ See, for example, Kitsi Burkhart, “Ex-Inmate Tells of Boredom, Terror of Daily Life in Prison,” *The Evening Bulletin*, July 6th, 1970; Charles Montgomery, “1969 Report Gave Warning at Holmesburg,” *The Evening Bulletin*, July 6th, 1970; “Prison Riot Blamed on Laxity, Lack of Personnel,” *Philadelphia Daily News*, July 6th, 1970; Mike Willmann, “Specter and Rizzo Assailed by Judges in Prison Inquiry,” *The Philadelphia Inquirer*, July 14th, 1970; Ken Shuttleworth and John F. Clancy, “Top City Officials Ask Inmate Limit For Holmesburg,” *The Philadelphia Inquirer*, July 7th, 1970; Pamela Erbe, “Criticism of Prisons Is Abundant But Support for Reforms is Scarce,” *The Philadelphia Inquirer*, July 19th, 1970.

⁵⁴ Ken Shuttleworth and John F. Clancy, “Top City Officials Ask Inmate Limit for Holmesburg,” *The Philadelphia Inquirer*, July 7th, 1970.

prisoners to state prisons, which they contended were “empty” while the “city prisons are bulging at the seams.”⁵⁵ To ease the population pressure at Holmesburg and punish alleged “ringleaders” of the uprising, the city attempted a frenzied transfer of Holmesburg’s “hardcore troublemakers” to the antiquated Eastern State Penitentiary, which the state had recently emptied and slated for closure.⁵⁶ But a crowd of 100 people -- made up of members of Philadelphia Black Power groups and former Holmesburg prisoners -- gathered outside Eastern State to protest the transfer. Calling out the racism in the Philadelphia criminal legal system and the city’s “scapegoating of Black Panthers and Muslims,” they demanded that Eastern State be permanently closed.⁵⁷ Notably, city officials did not consider expanding the city’s prison capacity, a viable alternative. As Common Pleas Court Judge James Cavanaugh said, “It’s no secret that the beleaguered taxpayers of Philadelphia can no longer meet the financial burden brought about by the social ills of a larger city.”⁵⁸

One month later, the District Attorney’s office published a preliminary report on the uprisings. While it was largely unsympathetic towards Holmesburg prisoners, primarily blaming the uprising on “violent acts of violent men” with “no substantive grievance,” the DA’s office did not deny that conditions at Holmesburg served as a “necessary precondition of the riot.”⁵⁹

⁵⁵ Ken Shuttlesworth and John F. Clancy, “Top City Officials Ask Inmate Limit for Holmesburg,” *The Philadelphia Inquirer*, July 7th, 1970.

⁵⁶ Bill Fidati, “30 Cons Face Charges in Riot At Holmesburg,” *Philadelphia Daily news*, July 7th, 1970; Howard Shapiro and Hoag Levins, “30 in Prison rioting Sent to Eastern Pen,” *The Philadelphia Inquirer*, July 6th, 1970.

⁵⁷ “Kenyatta Wants Rioters Released,” *Philadelphia Daily News*, July 15th, 1970.

⁵⁸ Ken Shuttlesworth and John F. Clancy, “Top City Officials Ask Inmate Limit for Holmesburg,” *The Philadelphia Inquirer*, July 7th, 1970.

⁵⁹ James D. Crawford, “Preliminary Report on the July 4th, 1970 Riot at Holmesburg Prison,” Submitted to District Attorney Arlen Specter and the District Attorney’s Advisory Committee on Prisons, 1970, 70, in Item 2: Holmesburg Prison, 13-2544, Carton 20, Record Group 15,

“Pervasive frustration with the prison situation” among Holmesburg detainees, the report read, especially the “uniformed uncertainty” about the status of their case and their freedom, served as the “the fuel which fed the riot.”⁶⁰ “Not only is the prison overcrowded to twice its capacity, destroying even the minimal privacy which prison life can afford,” the report continued, “but the cells are aging, dingy, and in many cases windowless.”⁶¹ The authors cited a “need to reduce overcrowding,” whether through “reactivating Eastern State,” transferring prisoners to state prisons, reducing court backlogs, or reviewing bail procedures, if the city wanted to avoid future disturbances in their prison system.⁶²

Prisoners at Holmesburg, however, knew they could not rely on city officials to address their plight swiftly and meaningfully, especially so long as such as powerful figures like Frank Rizzo smeared them as “barbarians” and the “most vicious’ criminals he’d ever seen.”⁶³ They and their lawyer allies therefore turned to a new venue to challenge the conditions of their confinement: the courts.

Jackson v. Hendrick and the Unconstitutional Prison

On July 13th, 1970, a young lawyer with Philadelphia’s Defenders’ Association, David Rudovsky, filed a habeas corpus suit against the city on behalf of two of Holmesburg untried

Department of Justice – AG – General Correspondence, PSA; Mike Willmann, “Holmesburg Uprising Not Racial, D.A. Says,” *The Philadelphia Inquirer*, August 11th, 1970.

⁶⁰ Ibid, 61-2.

⁶¹ Ibid, 61.

⁶² Ibid, 110-115.

⁶³ Bill Fidati and Bill Malone, “30 Cons Face Charges in Riot at Holmesburg,” *The Philadelphia Daily News*, July 7th, 1970.

detentioners, Cephus Bryant and James Goldstein.⁶⁴ While a habeas corpus suit offered only narrow relief – the goal was the release of just these two individuals – Rudovsky pursued that route rather than seeking an injunction to improve conditions because doing so required speedier action from the state courts. Despite the District Attorney’s office’s best efforts to stop the case from proceeding, *Commonwealth ex. Rel. Bryant v. Hendrick*, was heard within a week of its filing by a three-judge panel of the Court of Common Pleas headed by Hon. Robert N. C. Nix, Hon. Edmund Spaeth, and Hon. Theodore Smith.⁶⁵

Although its reach was limited, the hearings for the petition still afforded prisoners and former prisoners the opportunity to speak on what they had witnessed at Holmesburg.⁶⁶ Their testimonies offered first-hand insights into the perils of detention at an overcrowded facility. Multiple prisoners described living in cells with two other people. In addition to corroborating that guards beat prisoners after the uprising – Bryant said that the guards unleashed a dog on

⁶⁴ “Defenders Ask Quick Trials for Holmesburg Inmate,” *Philadelphia Daily News*, July 14th, 1970; Mike Willman, “Defenders Seek to Free Suspect Held on Bail,” *The Philadelphia Inquirer*, July 16th, 1970.

⁶⁵ See Bill Malone, “Judges’ Prober Barred from Prison,” *Philadelphia Daily News*, July 14th, 1970; Dave Racher and Bill Malone, “DA’s Jail Prober Raps Interference,” *Philadelphia Daily News*, July 14th, 1970; Mike Willmann, “Specter and Rizzo Assailed by Judges in Prison Inquiry,” *the Philadelphia Inquirer*, July 14th, 1970; Mike Willmann, “Did Specter Renege on Judges to Keep his Aide Happy,” *The Philadelphia Inquirer*, July 15th, 1970; Mike Willmann, “Specter Denies ‘Reneging’ on Prison Probe,” *The Philadelphia Inquirer*, July 16th, 1970; “Specter Raps Judges Over Separate Probe in Holmesburg Riot,” *The Philadelphia Inquirer*, July 17th, 1970; Mike Willmann, “3 Probers Refuse to Step Aside in Case of Holmesburg Prisoner,” *The Philadelphia Inquirer*, July 18th, 1970; “Court Denies Move to Bar Judges in Holmesburg Case,” *The Philadelphia Inquirer*, July 21st, 1970; David Rudovsky, “Litigating Prison Conditions in Philadelphia,” *The Prison Journal* 65, no. 1 (1985): 66.

⁶⁶ Cephus Bryant was being held in \$3,500 bail for burglary charge. He was also being held on a military detainer for being “absent without leave” from the US Marine Corps. and James Goldstein was being held in \$7,500 bail for illegal possession of drugs. They were being held at Holmesburg simply because they could not afford bail; they had not been sentenced yet. See *Com. ex rel. Bryant v. Hendrick*, 444 Pa. 83 (1971); Dave Racher and Lou Antosh, “2 at Holmesburg Transferred,” *Philadelphia Daily News*, August 11th, 1970.

prisoners – prisoners spoke of the “lousy” conditions of their cells, where they were forced to press their clothing against broken skylight windows to prevent water from leaking in. They also detailed roaches “crawling up the walls” and a prevalence of “rats and mice” – Turner DeVaughn said the kitchen’s infestation “staggered the imagination” – along with rampant drug use and prison-imposed racial segregation.⁶⁷ Numerous prisoners reported having trouble receiving medical care. Bryant, for example, detailed how, despite having major stomach pains that he believed was a hernia, prison officials rejected his requests to visit the sick bay, and he never once saw a doctor.⁶⁸ The District Attorney’s office did not even present witnesses, insisting, in the words of First Assistant District Attorney Richard A. Sprague, “the petitioners didn’t show they were subject to cruel or inhuman treatment, therefore there is nothing to respond to.”⁶⁹

The three-judge panel vehemently disagreed with the DA’s assessment. On August 11, 1970, the panel ordered Bryant and Goldstein transferred from Holmesburg. If this transfer was not possible within 48 hours, the judges said, the two prisons were to be released. Judge Spaeth

⁶⁷ Thomas Ferrick and Elliot Brown, “Ex-Holmesburg Inmates Tell of Beatings,” *The Philadelphia Inquirer*, July 19th, 1970; Testimony of Tyrone Walters, 345, in the Court of the Common Pleas, First Judicial District of Pennsylvania Trial Division, July 18th, 1970, 264, 284, Item 2: Holmesburg Prison, 13-2544, Carton 20, Record Group 15, Department of Justice – AG – General Correspondence, PSA.

⁶⁸ Testimony of Cephus Bryant in the Court of the Common Pleas, First Judicial District of Pennsylvania Trial Division, July 18th, 1970, 264, 284, Item 2: Holmesburg Prison, 13-2544, Carton 20, Record Group 15, Department of Justice – AG – General Correspondence, PSA.

⁶⁹ “Judges Hear Holmesburg Inmate,” *Philadelphia Daily News*, July 28th, 1970. The DA’s decision to write off the petition unfounded was clearly a political and preservationist move, given that their own report on the uprising, released just a few weeks later, provided clear evidence of overcrowded, unsanitary, and generally heinous conditions at Holmesburg, even if their presentation cagily referred to the forces behind the uprising as “intangible factors” rather than intentional political products. See “District Attorney Report to the People of Philadelphia, 1970-1971,” Folder 13, Box 2, Arlen Specter Senatorial Papers, 1953-2011, TJS-UPLS.

in particular was an ardent believer in the power of the courts to force prison reform, and he likely welcomed the opportunity to hand down an opinion that would improve prison conditions.⁷⁰

What's more, the judges issued a 66-page opinion that found that the conditions at Holmesburg constituted cruel and unusual punishment.⁷¹ Drawing on the testimony they had heard, they found that the prison was dangerously overcrowded, deteriorating structurally, and staggeringly unsanitary. Guards were barely trained and engaged in particularly brutal discipline, sexual assaults occurred regularly, and the prison willfully segregated prisoners by race. Another "riot" or "other dreadful events," they found, was likely to occur "in the near future."⁷²

The judges' decision sent shockwaves through both Philadelphia and Pennsylvania's criminal legal system. Although the relief ordered was narrow – the release of Bryant and Goldstein – the judges' scathing opinion on Holmesburg's conditions opened the floodgates for further challenges.⁷³ Specter immediately filed an appeal, worrying that the decision "could

⁷⁰ See Edmund B. Spaeth, Jr. "The Courts' Responsibility for Prison Reform," *Villanova Law Review* 1031 (1971). Spaeth argues for a more active role of the courts in directing prison improvements, where they do not "await legislative or executive initiative," but rather go as far to petition legislative and executive branches to allocate funds and improve prisons and to "compel by writ of mandamus the appropriation of such funds" if these branches do not comply.

⁷¹ See Dave Racher and Lou Antosh, "2 at Holmesburg Transferred," *Philadelphia Daily News*, August 11th, 1970.; *Com. ex rel. Bryant v. Hendrick*, 444 Pa. 83, 280 A.2d 110 (1971)

⁷² *Com. ex rel. Bryant v. Hendrick*, 444 Pa. 83, 280 A.2d 110 (Pa. 1971); Ken Shuttleworth and Mike Willman, "3 Judges Call Holmesburg 'Cruel Place,'" *The Philadelphia Inquirer*, August 12th, 1970.

⁷³ After the ruling, the head of the Defender Association Vincent Ziccardi, stated that organization would work to release 600 people from Holmesburg through the filing of habeas corpus petitions, calling it "law by duplicating machine." See Ken Shuttleworth and Mike Willman, "3 Judges Call Holmesburg 'Cruel Place,'" *The Philadelphia Inquirer*, August 12th, 1970.

result in the release of more than 600 defendants” at Holmesburg, which he contended “may endanger the community.”⁷⁴

To give the city time to remedy the prison’s issues, the court announced that it would hear no new petitions from prisoners for 30 days.⁷⁵ But despite some attempted “crash remedies,” Holmesburg’s overcrowding crisis raged on.⁷⁶ That November, the *Philadelphia Inquirer* reported that there had been “few improvements” at Holmesburg, and that “rats, beatings ‘harassment,’ and...having nothing to do” continued to vex the imprisoned there. While overcrowding was reduced from 1,310 people to 866, many prisoners still “crammed into stifling cells that have no effective cooling system and no hot, running water.”⁷⁷ Another multi-part exposé in the *Philadelphia Evening Bulletin* found that the city spent more on feeding animals at the Philadelphia Zoo (\$1.28 a day) than imprisoned people in the city’s prison system (\$0.95 a day). Noting that the Pennsylvania Crime Commission had found that the more time a person spent behind bars, the more “apt he is to return to crime,” the journalist accused the city of

⁷⁴ “D.A. Fears Transfer Ruling Could Release 600 Inmates,” *Philadelphia Daily News*, August 12th, 1970.

⁷⁵ Rudovsky, “Litigating Prison Conditions in Philadelphia,” 67.

⁷⁶ See “Crash Remedies Set at Holmesburg,” *Philadelphia Daily News*, August 13th, 1970; “DA Oks Plan for Holmesburg” *Philadelphia Daily News*, August 24th, 1970; Dave Racher, “Deputy DAs Set Up Review to Cut Bail for Nonviolents,” *Philadelphia Daily News*, August 25th, 1970; Jeremy Heymsfeld, “Council Gets Tate Proposal On Tax Hike,” *The Philadelphia Inquirer*, August 28th, 1970; “Shafer Signs State Jail Bill,” *The Philadelphia Inquirer*, September 2nd, 1970; “Overcrowding at Holmesburg Slowly Easing,” *The Philadelphia Inquirer*, September 11th, 1970; “Defenders Sue to Close Holmesburg Prison,” *Philadelphia Daily News*, September 16th, 1970; “Close Prison or Improve It, Suit Demands,” *The Philadelphia Inquirer*, September 16th, 1970; “459 Inmates Moved from Holmesburg,” *The Philadelphia Inquirer*, October 6th, 1970; Lou Antosh, “200 Holmesburg Inmates Due for Move,” *Philadelphia Daily News*, October 2nd, 1970; William Ecenbarger, “State Launches Plan to Eliminate ‘Shame’ From Phila. Justice,” *the Philadelphia Inquirer*, October 18th, 1970.

⁷⁷ Mike Willmann and Jeremy Heymsfeld, “Few Improvements Made Since Holmesburg riot,” *The Philadelphia Inquirer*, November 1st, 1970.

preferring to keep imprisoned people in “overcrowded and inhumane conditions the public would not allow for its animals” than grappling with “the machinery of outmoded law.”⁷⁸

With “little or nothing” done to alter the conditions outlined in *Bryant*, in February 1971 Rudovsky and Community Legal Services helped Philadelphia prisoners file a new, more expansive class action suit in equity that sought declaratory and injunctive relief for people incarcerated at all three Philadelphia County Prisons.⁷⁹ The plaintiffs— five prisoners in the Philadelphia prison system who brought the action on behalf of all those imprisoned in the city’s jails—claimed that the prisons violated their rights under the state and federal Constitutions.⁸⁰ The transcripts from the subsequent trial, *Jackson v. Hendrick*, held before the same three-judge panel that had ruled in *Bryant*, amounted to a staggering 3,014 pages. The panel issued its ruling in April 1972. “The prisons are a corner of our community that most would like to forget, or at least ignore,” the opinion’s preliminary statement read. “We suspect but flinch from learning what happens there.” In their 263-page opinion and decree nisi, the judges ruled that the city’s prison system violated the US Constitution by constituting cruel and unusual punishment. Noting their 1970 ruling in *Bryant*, which said that Holmesburg was a “cruel, degrading, and disgusting place, likely to bring out the worst in a man,” the judges’ contended that the “Court...now finds

⁷⁸ Kitsi Burkhart, “Detention Job Overloads Phila. Prisons,” *Philadelphia Evening Bulletin*, January 14th, 1971.

⁷⁹ David Rudovsky, “Litigating Prison Conditions in Philadelphia,” 67.

⁸⁰ After the complaint was filed in February 1971, the defendants filed preliminary objections regarding court’s jurisdictions, the validity of the class action, and other elements of the case. In September 1971, however, the Court dismissed the preliminary objections and directed that the prison administration post a notice “advising the prisoners as member of the affected class of the filing of the complaint” and that imposed a schedule for responding to the complaint and completing pretrial discovery with which defendants had to comply. See “Opinion and Decree Nisi,” *Jackson v. Hendrick*, no. 71-2347, Folder 2: PRC Civil Actions - Court Cases + Decisions - Legal Suits (Gerald Jackson vs. Edward J. Hendrick) 1979, Box 15, Prisoner Rights Council Papers, Accession 570, TUSC.

this description to be true for the entire Philadelphia Prison System.” Contending that their ruling went beyond merely the right to have one’s “safety and health...reasonably assured,” the judges found that “the cruelty of the Philadelphia prisons inheres not merely in the physical danger of confinement but also in the dehumanizing effects of confinement.”⁸¹

The watershed opinion detailed at great length the crisis of overcrowding and brutal conditions that marred Philadelphia’s prison system. All the city’s prisons were overcrowded, with many prisoners being doubled or tripled up in cells designed for one person. Cells at House of Correction were 10 feet deep and 7 feet wide, with a ceiling around 8 or 9 feet high. At Holmesburg, cells were 12 feet deep, 8.5 to 9 feet wide, and had arched ceilings about 10 or 12 feet at their highest point. Both cell designs had toilets and a cold-water spigot but no sink. Making matters worse, the judges’ noted in a footnote that at Holmesburg’s F block toilets could only be flushed by someone outside the cell. More than simply describing the barbarism of cramming individuals in such small spaces, the opinion explained how overcrowding wreaked havoc on the prison system. Overcrowding, for example, meant imprisoned people got less access to medical care, social workers, and other programming. “There can be no doubt that many of the difficulties in the prisons would be alleviated,” the judges wrote, “were the prisons not so overcrowded.”⁸²

The opinion also detailed other inhumane conditions imprisoned people faced in Philadelphia prisons, including inedible food; rat and cockroach infestations in cells and prison

⁸¹ “Opinion and Decree Nisi,” *Jackson v. Hendrick*, no. 71-2347, Folder 2: PRC Civil Actions - Court Cases + Decisions - Legal Suits (Gerald Jackson vs. Edward J. Hendrick) 1979, Box 15, Prisoner Rights Council Papers, Accession 570, TUSC.

⁸² “Opinion and Decree Nisi,” *Jackson v. Hendrick*, no. 71-2347, Folder 2: PRC Civil Actions - Court Cases + Decisions - Legal Suits (Gerald Jackson vs. Edward J. Hendrick) 1979, Box 15, Prisoner Rights Council Papers, Accession 570, TUSC.

kitchens; vastly inadequate and even “barbaric” medical, detoxification, and psychiatric care; and a lack of educational and recreational opportunities. The opinion also included robust footnotes that editorialized on the horrors of the city’s penal system. The judges noted that “the impression was powerfully conveyed to the Court that generally speaking the attitude of those responsible for the prisoners’ meals was indifferent to the point of callousness.” In the same footnote, the judges recoiled at some witnesses’ use of the word “feeding” to describe imprisoned people’s mealtimes, noting “One would expect references to be to ‘eating’ and to ‘after each meal’; animals engage in ‘feeding.’” One imprisoned witness noted being refused medical care for swelling in their face after having their teeth extracted. They noted that a Sergeant Partridge remarked, “Well, you don’t look like you are in too much pain to me.” At Holmesburg, an imprisoned person who complained of stomach pains was refused care for a week. When he finally saw the prison doctor, he learned that he likely “had appendicitis,” which was confirmed when he was finally admitted to Philadelphia’s General Hospital.⁸³

A substantial portion of the opinion focused on the prison’s abysmal detoxification program, which essentially forced imprisoned addicts -- 70% of the city prison system’s admissions -- to undergo cold turkey withdrawal without supervision, a practice that one of the doctors called to the stand called “barbaric and inhumane.” Methadone treatment was rare, and when doctors did provide drugs to those going through withdrawal, they used tranquilizers, which one doctor called “not proper” for treating addiction. The footnotes included portions of testimony from imprisoned people going through withdrawal, detailing the extensive pain they

⁸³ “Opinion and Decree Nisi,” *Jackson v. Hendrick*, no. 71-2347, Folder 2: PRC Civil Actions - Court Cases + Decisions - Legal Suits (Gerald Jackson vs. Edward J. Hendrick) 1979, Box 15, Prisoner Rights Council Papers, Accession 570, TUSC.

experienced. In the end, the judges concluded that “the procedures and programs that prevail in the prisons will most certainly return the prisoner to the community worse than when he was committed to prison.” “The Philadelphia prison system is in almost every aspect of its operations a failure,” the opinion concluded.⁸⁴

Given the futility of attending only to “particular areas of prison life” when the scale of the prison disaster required more systemic reforms, the court appointed a Special Master to oversee the “large array of problems and institutions” involved in fueling Philadelphia’s prison crisis.⁸⁵ Once a Master was selected, the city would have 60 days to develop a plan for reform, with a clear indication of how long the reforms would take to be completed and how much they would cost. The Master and prison officials would then provide an update on the reforms every 60 days for the four months following the development of the plan, after which the court would enter its final decree.⁸⁶

Having just been elected Mayor, Frank Rizzo balked at the *Jackson* decision’s ruling that the city’s prisons were unconstitutional. He ordered his legal department to immediately appeal, contending that the required reforms would be “prohibitively expensive” and that, in any case, the court had “overstepped its bounds.”⁸⁷ The city also filed an exception to the decree nisi

⁸⁴ Folder 2: PRC Civil Actions - Court Cases + Decisions - Legal Suits (Gerald Jackson vs. Edward J. Hendrick) 1979, Box 15, Prisoner Rights Council Papers, Accession 570, TUSC.

⁸⁵ Rudovsky, “Litigating Prison Conditions in Philadelphia,” 68.

⁸⁶ See “Opinion and Decree Nisi,” *Jackson v. Hendrick*, no. 71-2347, Folder 2: PRC Civil Actions - Court Cases + Decisions - Legal Suits (Gerald Jackson vs. Edward J. Hendrick) 1979, Box 15, Prisoner Rights Council Papers, Accession 570, TUSC.

⁸⁷ Maxwell King, “City Sues to Avoid Jail Reform,” *The Philadelphia Inquirer*, June 9th, 1972.

regarding the appointment of a Master, which tied the case up in litigation and delayed its implementation.⁸⁸

While the appeals were pending, the city's prison system attempted to make nominal changes to their administration, including using Law Enforcement Assistance Administration funding to add more programming and employment opportunities. But conditions continued to be miserable, prompting Philadelphia's imprisoned people to take action. Holmesburg prisoners organized two hunger strikes that year to demand better food, a doctor on 24-hour call, and more humane visitation policies.⁸⁹ Prisoner plaintiffs in the *Jackson* case also expressed their frustrations to the court. As the city fought the *Jackson* ruling tooth and nail, they wrote, "overcrowded conditions remain and are essentially unaltered from the time of the Opinion," as were the unacceptable living conditions. "Quite frankly, the time for investigation, study, litigation, discussion, and further delays is long past," the plaintiffs' counsel added.⁹⁰ Allan Lawson, the formerly incarcerated head of the Prisoner Rights Council, explicitly named the racialized element of the city's overcrowding crisis. The city "blatantly continue[s] to accept...20 to 30 thousand Black males per year and detain them in prisons which the courts...ruled were unfit for human habitation," he wrote to the Angelo J. Galeone, Rizzo's

⁸⁸ John Mattioni, Deputy City Solicitor to G. Richard Bacon, Executive Director of the Pennsylvania Prison Society, April 24th, 1972, Folder: City Prisons, A-3544, RG 60-2.6, Frank Rizzo Papers, PCA.

⁸⁹ "Fasting Spreads at Holmesbug," *Philadelphia Daily News*, August 24th, 1972; "Holmesburg Warden Agrees to Some Pleas," *Philadelphia Daily News*, August 25th, 1972; Robert Terry and Jack Hurst, "700 At Holmesburg Begin Peaceful Hunger Strike," *The Philadelphia Inquirer*, December 12th, 1972; Jack McGuire and Gunter David, "After Holmesburg Strike, Guards Balk, Discuss Policy," *Philadelphia Daily News*; Acel Moore, "Holmesburg Strike Ends as Warden is Replaced," *The Philadelphia Inquirer*, December 13th, 1972.

⁹⁰ "Synopsis of Plaintiffs' Response to Defendants' Statement Re: Paragraph Five of Decree Nisi," July 14th, 1975, Folder 201: Plaintiffs' Synopsis, 1975, PCECJ, TUSC.

appointee as the Chairman of the Philadelphia Prisons Board of Trustees. “Black males by the thousands are being castrated in Philadelphia prisons....I resent it and Black people resent it.”⁹¹

The defendants secured a minor win when the Commonwealth Court affirmed the lower court’s ruling but said that they did not have the authority to appoint a master.⁹² On the plaintiffs’ appeal, however, the Supreme Court of Pennsylvania reinstated the master, contending that the lower court “properly exercised its discretion” in appointing a master to help develop and oversee remedies for “correct[ing] the existing substandard conditions.”⁹³ As plaintiffs’ lawyer David Rudovsky later reflected, “four years of litigation” had generated “numerous opinions condemning the conditions as constituting cruel and unusual punishment,” but because of the appeals, no “judicially mandated relief” had been ordered. Settling the master’s appointment allowed the courts to open negotiations over the scope and timeline for the city to remedy the prison system’s unconstitutional conditions.⁹⁴

The Court appointed Walter W. Cohen in October 1974.⁹⁵ A former aide in the city’s District Attorney’s office and unsuccessful Republican candidate for a Common Pleas Court judgeship, Cohen was tasked with conducting an extensive investigation into the prison system which he would use to develop “recommendations and a plan to correct the evils” of the city’s

⁹¹ Allen H. Lawson to Angelo Galeone, July 18th, 1974, in Folder 20: Holmesburg beatings, 1872-4, Box 24, Prisoner Rights Council Papers, Accession 570, TUSC.

⁹² *Hendrick v. Jackson*, 10 Pa. Cmwlth. 392, 309 A.2d 187 (1973), 457 Pa. 405, 321 A.2d 603 (1974).

⁹³ Rudovsky, “Litigating Prison Conditions in Philadelphia,” 68; *Jackson v. Hendrick*, 457 Pa. 405, 321 A.2d 603 (1974).

⁹⁴ Rudovsky, “Litigating Prison Conditions in Philadelphia,” 68.

⁹⁵ “City Prisons Get Reform Overseer,” *The Philadelphia Inquirer*, October 22nd, 1974.

prisons.⁹⁶ Although only 33 years old, Cohen already had an impressive resume as a consultant of criminal legal systems management, having worked with the Courts Task Force of the National Advisory Commission on Criminal Justice Standards and Goals from 1971-1973 and serving as special technical consultant to the National Conference on Criminal Justice from 1972-73.⁹⁷ Cohen insisted that “he did not see himself as an advocate of prisoners’ rights” but rather as a “impartial fact-finder and arm of the court.” Still, he committed to consulting with and involving imprisoned people in his analyses, stating that he planned to personally visit all the city’s prisons and speak with prisoners to “see if conditions have changed since the court made its initial ruling back in 1972.”⁹⁸

Cohen’s appointment coincided with the launch of the Philadelphia Commission for Effective Criminal Justice, a highly connected, public-private research and advocacy organization that sought to reform Philadelphia’s criminal legal system. Formed in April 1974 by Chancellor of the Philadelphia Bar Association William Klaus, the PCECJ was privately funded by the Greater Philadelphia Movement, a corporate advocacy organization composed of prominent business leaders in the city. The organization’s purpose was to promote inter-agency and multi-constituency cooperation in “keeping people out of the criminal justice system who would be better never there,” promoting “fair and swift administration of justice,” and disposing of “cases that would enhance the potential for future lawful behavior.”⁹⁹ From the start, the

⁹⁶ Dave Racher, “Former DA Aide Named to Probe City’s 3 Prisons,” *Philadelphia Daily News*, October 21st, 1974.

⁹⁷ “Unit Names Cohen to Top Position,” *The Retainer: Official Newspaper of the Philadelphia Bar Association*, March 20th, 1975, Folder: Basics - Final Report, 1974-1975, Box 31, URB 41, PCECJ, TUSC.

⁹⁸ “City Prisons Get Reform Overseer,” *The Philadelphia Inquirer*, October 22nd, 1974.

⁹⁹ “Progress Report – Coordination Project,” July 15th, 1974, Folder: 64, Criminal Justice Coordination, 1972-74, Box 9, P12, URB 41, PCECJ, TUSC. The Greater Philadelphia

PCECJ had a tight link to the *Jackson* case. Although formed by Chancellor Klaus, Common Pleas Judge Edmund Spaeth -- one of the members of *Jackson*'s three-judge panel -- soon took over its leadership. Cohen worked closely with the PCECJ as Master and in March 1975, he was appointed Executive Director of the PCECJ, which formalized its "partnership" with the PCECJ and the Court "on the basis of their common interests." Indeed, given that the three-judge panel's opinion "stressed the responsibility of other parts of the criminal justice system for the prisons' problems," this "unique partnership" between the Master and the PCECJ appeared to be "in accordance with their complementary priorities."¹⁰⁰ With Cohen at the helm, the PCECJ would become an unofficial arm of the courts.

Movement was formed by corporate leaders in Philadelphia wishing to dislodge the Republican machine's hold on the city in the wake of massive corruption and criminal scandals from party leaders. Despite many being Republicans themselves, the GPM leaders sought to restore order and efficiency to city government that would facilitate their firms' development and revitalization of Philadelphia's downtown. The organization, which had a small staff and was primarily run through its large board of directors made up of business leaders in law, finance, insurance, and real estate, spearheaded the revision of the city's charter and eventually helped displace Republican hold on the city entirely with the successful election of reform Democratic mayor Joseph Clark in 1951. Some GPM board members ended up gaining government positions in the new reform government, such as Walter Phillips, who was appointed by Mayor Clark as Commerce Director and City Representative. As historian Matthew Countryman describes them, the GPM's leaders believed in the power and necessity of "technocrats and rationalized planning to solve urban problems." Although the GPM sometimes partnered with civil society, union, and civil rights groups in pursuit of particular political ends, their goal was not the creation of more economically just or democratic city per se but rather the removal of political barriers preventing the smooth private development of downtown, which promised GPM members windfall profits. Unsurprisingly, then, after successfully beating the Republican machine, the GPM turned their attention more directly to downtown redevelopment and to public school reform, where their powerful advocacy for slum clearance, downtown office construction, and highway development arguably facilitated the concretization of racial segregation and inequality in the city. See Matthew Countryman, *Up South*, 44; John F. Bauman, *Public Housing, Race, and Renewal*; Guian McKee, *The Problem of Jobs*.

¹⁰⁰ "Three Year Report," *Connections: The Newsletter of the Philadelphia Commission for Effective Criminal Justice*, August 1977, 1, 5, Folder 26: Progress Reports, 1975-1977, Box 2, P12, URB 41, PCECJ, TUSC.

Catalyzed by imprisoned people's legal activism, the Common Pleas Court now had the power to oversee wide-ranging remedies to the city's prisons. To be sure, the judges saw their power as limited, and they contended they would "not reach into the day-to-day management of the prisons." But they did see it as their "responsibility to require the [prison] trustees... fulfill their statutory obligation" and to "protect the prisoners' rights."¹⁰¹ Amid a seemingly impenetrable tough-on-crime politics, now all-the-more emboldened by Frank Rizzo's pro-police administration, the city's pre-trial detainees had won a major victory. A new and promising era of prison reform in the city had begun.

Delays and Manipulations

In the year following the 1974 Pennsylvania Supreme Court decision, city officials and imprisoned plaintiffs entered a number of consent decrees that required Philadelphia to drastically improve the prison system's operation and conditions. These improvements included implementing major upgrades to medical care, food service, recreation offerings, social service provisions, drug treatment, visiting procedures, grievance procedures, and phone privileges, and more.¹⁰² In 1976, the court wrote an order focused on remedying prison overcrowding by placing limits on the prison population. Based on the belief that the prison should adhere to a one-person, one cell standard recommended by corrections professionals, the court mandated that the city's prisons could not exceed their rated capacity and instituted a "cap" on the prison population.

¹⁰¹ "Opinion and Decree Nisi," *Jackson v. Hendrick*, no. 71-2347, Folder 2: PRC Civil Actions - Court Cases + Decisions - Legal Suits (Gerald Jackson vs. Edward J. Hendrick) 1979; Draft - Jackson v. Hendrick in Folder 1: PRC Civil Actions - Court Cases + Decisions - Jackson v. Hendrick 1979, Box 15, Prisoner Rights Council Papers, Accession 570, TUSC.

¹⁰² Rudovsky, "Litigating Prison Conditions in Philadelphia," 68.

They also required that the city release prisoners held on bails of \$1,500 or less to assist in lowering the prison population.¹⁰³ Finally, the order required the city to remove juveniles from adult facilities and transfer women detainees out of male prisons.¹⁰⁴ The judges gave the city 90 days to comply. At the time, there were 2,183 imprisoned people in the system, which had only 1,700 usable cells.¹⁰⁵

The Rizzo administration immediately appealed the orders and otherwise engaged in “daily...delays and manipulations.”¹⁰⁶ In March 1976, for example, the frustrated court ordered the city to “show cause” regarding why the city “will not – or should not – make improvements” that Prison Master Walter Cohen had ordered a month earlier.¹⁰⁷ Just a few months later, Cohen reported that he was “increasingly frustrated” by the “procedural delay” of the city’s appeals and their refusal to “implement reforms,” leading him to petition the state Supreme court to make a “prompt and final determination” on the matter.¹⁰⁸ The city’s recalcitrance angered a wide range of prisoner rights and criminal legal practitioners. PRC Executive Director Allan Lawson accused the city of engaging in “procrustean methods of suspension, side-stepping, and injurious delay” that made the court a “toothless tiger.”¹⁰⁹ The Chancellor of the Philadelphia Bar Association similarly expressed his dismay with the city’s “unnecessary delay” that allowed for

¹⁰³ *Jackson v. Hendrick*, 509 Pa. 456, 503 A.2d 400 (1986).

¹⁰⁴ Dave Racher, “City to Miss Deadline for 1-Man, 1-Cell,” *Philadelphia Daily News*, July 12th, 1976.

¹⁰⁵ Dave Racher and Carol Towarnicky, “City told to Provide Since Cells for Inmates,” *Philadelphia Daily News*, June 16th, 1976.

¹⁰⁶ Alyson Scott Larrabee to Reverend Henry Nichols, re: Background – *Jackson v. Hendrick*, August 9th, 1976, Folder 2: Affidavits, Box 5, URB 41, P12, PCECJ, TUSC.

¹⁰⁷ “Phila. Reply Ordered in Prison Fix Up,” *Philadelphia Evening Bulletin*, March 17th, 1976.

¹⁰⁸ Dave Racher, “Lawyer Asks Court to Speed Reform of Conditions in City Jail,” *Philadelphia Daily News*, August 24th, 1976.

¹⁰⁹ “Affadavit,” August 9th, 1976, Folder 2: Affidavits, Box 5, URB 41, P12, PCECJ.

the "denial of the constitutional rights to any of Philadelphia's citizens."¹¹⁰ Cohen warned that "unless conditions improved soon, "the level of frustrations felt by the (inmates) who are still awaiting relief from conditions labelled in 1972 as constituting cruel and unusual punishment will be increased."¹¹¹

Even as they appealed the Common Pleas Court's orders, the city claimed it was making "great strides" towards remedying conditions. Indeed, Rizzo's administration went out of its way to insist that prisoners were "not being mistreated or abused," as City Managing Director Hillel Levinson claimed after a tour through the prisons.¹¹² But imprisoned people made clear to Cohen and staffers at the PCECJ that conditions remained inhumane. In one meeting with the Inmate Action Council, a prisoner organization at Holmesburg, prisoners told the PCECJ of continued "inadequate" food, "deplorable" kitchen conditions, and "backlash" from guards.¹¹³ Moreover, Mayor Rizzo's internal assessment confirmed their claims. One report cited food being left out over night that would be "a subject of rodent infestation unquestionably" and the absences of trained medical personnel. At House of Correction, an inspector noted "overloaded" garbage cans and an active cockroach infestation in the women's showers.¹¹⁴ In 1977, the City's Public

¹¹⁰ Thomas O'Neill to David Rudovsky and Edmund Daley August 6th, 1976, Folder 2: Affidavits, Box 5, URB 41, PCECJ, TUSC.

¹¹¹ Dave Racher, "Lawyer Asks Court to Speed Reform of Conditions in City Jails," *Philadelphia Daily News*, August 24th, 1976; Gunter David, "Prison Master Takes Plea to High Court," *Philadelphia Bulletin*, August 24th, 1976.

¹¹² Jerome Mondesire, "City Claims Progress in Jail Reforms," *Philadelphia Inquirer*, May 3rd, 1976; Dave Racher, "City Contends Its Prison Are in 'Pretty Good Shape,'" *Philadelphia Daily News*, November 30th, 1976; Scott Heimer, "Officials Go Directly Through Jail," *Philadelphia Daily News*, December 9th, 1977.

¹¹³ "Inmate Action Council," November 22nd, 1975, Folder 207: Prison Grievances, 1974-5, PCECJ, TUSC.

¹¹⁴ M. Mark Mendel to Mayor Rizzo – Inspection Report – Detention Center and House of Correction, July 15th, 1975, Folder: Philadelphia Prisons, Board of Trustees, A-3859, RG 60-2.6, Frank Rizzo Papers, PCA.

Health Inspector told the Court that he found over 20 violations, including “mouse droppings and rotten food” in Holmesburg’s kitchen and “three-inch long cockroaches” in the cellblock tunnel. He said that he would have given a restaurant or a hotel only 10 days to correct the violations before imposing a fine.¹¹⁵ Another inquiry found that the city’s prisons also regularly denied prisoners medical care and special diets needed because of medical issues.¹¹⁶

After three years of delay, the three-judge panel moved on December 2nd, 1977, to fine the city \$325,000 and threatened to jail city officials for their failure to comply with the order. The panel contended that “lengthy and stern admonitions in the past do not seem to have made any difference whether our orders are followed.” “The plaintiffs have been deprived of the most basic rights to live in a human, decent environment, and (we) will not treat this knowledge casually,” they wrote. The Court gave the city a month to fix twelve areas of particular concern, with the promise that \$250,000 of the \$325,000 fine could be returned should the city comply.¹¹⁷

The Court’s threat of contempt finally moved the city to act. As David Rudovsky later wrote, “Up until the time that this fine was imposed, the City thought it could ignore its obligations, delay the realization of prisoners’ rights by appeals, and disregard court orders with impunity.” The “shock of this contempt award,” he argued, “awakened the City to the realities of the litigation.”¹¹⁸ After the contempt order, the city appeared to make “substantial progress” towards improving prison conditions.¹¹⁹ By 1979, the Court Master said, the city had met “about

¹¹⁵ Robert Kotzbauer, “City Jail Still Unfit, Trial Told,” *The Evening Bulletin*, June 20th, 1977.

¹¹⁶ Robert Kotzbauer, “Prison Care is Disputed,” *Philadelphia Evening Bulletin*, July 28th, 1977.

¹¹⁷ Johnathan Neumann, “City fined for failing on prisons,” *The Philadelphia Inquirer*, December 2nd, 1977.

¹¹⁸ Rudovsky, “Litigating Prison Conditions in Philadelphia,” 68.

¹¹⁹ Rudovsky, “Litigating Prison Conditions in Philadelphia,” 69.

85 percent” of the court-ordered requirements.¹²⁰ Population levels, while still high, had plateaued.¹²¹ Rudovsky even suggested that the “case might soon enter a dormant stage requiring only monitoring of compliance with consent decrees.”¹²² Yet, the Common Pleas Court panel refused to return the \$250,000 fine to the city because of the “snail’s pace” of compliance. Moreover, the prisons were still overcrowded, with over 2,300 people imprisoned in facilities that had a total capacity of 1,900.¹²³ Lawson admonished the court for allowing this “illegal environment” to fester.¹²⁴ Prisoners too told their lawyers of continued problems, ranging from the long-standing unsanitary conditions in the kitchens to systemic guard brutality.¹²⁵

Making matters worse, the promising slowdown in prison growth proved only temporary. In the early 1980s, the city’s prison population skyrocketed again, from 2,200 in 1979 to 3,000 in 1981 and nearly 4,000 in 1984, despite the system’s 2,000-person capacity.¹²⁶ Holmesburg in particular held 1,300 people in a prison constructed to only detain 688 prisoners. Three hundred individuals were forced to not only double but triple up. The prison also had one hundred people sleeping on mattresses on its gym floor.¹²⁷

¹²⁰ Dave Racher and Gloria Campisi, “City’s 250G Prison Fine Stands,” *Philadelphia Daily News*, September 18th, 1979.

¹²¹ Rudovsky, “Litigating Prison Conditions in Philadelphia,” 69.

¹²² Rudovsky, “Litigating Prison Conditions in Philadelphia,” 69.

¹²³ Dave Racher and Gloria Campisi, “City’s 250G Prison Fine Stands,” *Philadelphia Daily News*, September 18th, 1979; Allan H. Lawson to Edward J. Bradley, October 12th, 1979, Folder 3: PRC – Subject Files – Overcrowding in Prisons, 1979, Box 25, Prisoners’ Rights Council Papers, Accession 570, TUSC.

¹²⁴ Allan H. Lawson to Edward J. Bradley, October 12th, 1979, Folder 3: PRC – Subject Files – Overcrowding in Prisons, 1979, Box 25, Prisoners’ Rights Council Papers, Accession 570, TUSC.

¹²⁵ Linn Washington, “City Prisons Called Better but Still Lacking,” *Philadelphia Daily News*, July 24th, 1980.

¹²⁶ Rudovsky, “Litigating Prison Conditions in Philadelphia,” 69.

¹²⁷ Rudovsky, “Litigating Prison Conditions in Philadelphia,” 69.

The sharp increase in pre-trial detainees likely stemmed from the election of Ed Rendell in 1977 as District Attorney. He explicitly ran on a platform that claimed his predecessor, F. Emmett Fitzpatrick, had diverted too many people from pre-trial detention. Once elected, Rendell immediately reversed Fitzpatrick's relative leniency and focus on screening and diversion.¹²⁸ For example, he ordered his staff to toughen prosecution of drug dealers, "whether it's 10 or 12 bags or a quarter of million dollars worth," even if they lacked prior convictions.¹²⁹

As the prison population increased, the Courts attempted to ramp up its enforcement with its most radical action yet: mandating that the city release prisoners and set a population limit for its prison system.

A Prison "Cap"

The Court had issued a remedial decree in 1976 that ordered the city to reduce its population so that each prisoner had their own cell or to begin releasing people with bails of \$1,500 or less on their own recognizance. As with other *Jackson* remedial decrees, the city immediately appealed the ruling and delayed instituting the release mechanisms. In a 1977 settlement, the city dropped its appeal and agreed to meet the one-prisoner-one-cell mandate by July of that year. In keeping with their general non-compliant posture, however, they never implemented sufficient bail review and prisoner release mechanisms.¹³⁰ Finding the city's

¹²⁸ Rendell frequently positioned himself and his tougher approach to prosecutions in contrast to Fitzpatrick's "abandonment" of prosecuting serious crimes. See Mike Leary, "D.A. 'found guilty,'" *The Philadelphia Inquirer*, June 3rd, 1978.

¹²⁹ Dave Racher, "Rendell Seeks to Jail All Pushers," *Philadelphia Daily News*, May 31st, 1978.

¹³⁰ The first *Jackson* "emergency" bail hearings were held in 1979. Bailmaster Paul Dandridge oversaw the hearings and, upon reviewing the bails of certain individuals slated for release, approved or denied their discharge. Robin Clark, "Trying to keep tabs on inmates on bail," *The*

action's lacking, the Court expanded its order in 1980 to mandate that the city release individuals held pretrial on misdemeanor offenses, those detained with bails of \$3,000 or less, and anyone else who would "not pose undue danger to the community or undue risk of non-appearance."¹³¹ Despite ramping up releases – Rudovsky estimates "hundreds" were released during this period – the city fell significantly short of the Court order.¹³² In response, the three-judge panel of the Common Pleas Court, now made up of Judges Theodore B. Smith Jr., Paul A. Dandridge, and Calvin T. Wilson ordered in 1981 that "every inmate in Philadelphia's three overcrowded prisons must have his own cell by August 1st" or the courts will "begin releasing people held on low bail to achieve and maintain that goal."¹³³ To meet the order, the Courts required that the city provide the Court, the Master, Court Pre-trial Services, plaintiffs' council, Defender Association, and the District Attorney with a "daily list of seventy-five inmates held in the lowest bail without detainers," who the Courts would then have the authority to release. The District Attorney was able to "object" to any individual's release, and the Defender Association was permitted to respond to the objection, but the Court had the final say over whether an individual was released or not.¹³⁴ Rudovsky deemed the order a "victory" for the pre-trial detainees in the city's prisons, calling it a "significant sign that the courts are not taking [the problem of overcrowding] lightly."¹³⁵

Philadelphia Inquirer, March 19th, 1984; John Woestendiek, "Despite move by city, prison squeeze still on," *Philadelphia Inquirer*, October 3rd, 1983.

¹³¹ *Jackson v. Hendrick*, 498 Pa. 270, 446 A.2d 226 (1982); Julia Lawlor, "Pact to Set Free 300 Jail Inmates," *Philadelphia Daily Nes*, March 22nd, 1980.

¹³² Rudovsky, "Litigating Prison Conditions in Philadelphia," 68.

¹³³ Joyce Gemperlein, "Judges issue one-man, one-cell order for city jails," *Philadelphia Inquirer*, March 28th, 1981.

¹³⁴ *Jackson v. Hendrick*, 498 Pa. 270, 446 A.2d 226 (1982).

¹³⁵ Joyce Gemperlein, "Judges issue one-man, one-cell order for city jails," *Philadelphia Inquirer*, March 28th, 1981.

The order represented one of the most substantial interventions into the city's prison system. It undermined the power of the District Attorney, who had significant discretionary power over whether to charge an arrested individual and the severity of bail set for their charge. To be sure, the police also had great discretion over the flow of arrests and the charges imposed on an individual – a fact that the DA's office regularly lamented, although they struggled to wrest control entirely from the police. But the District Attorney's office also had a significant amount of discretion over an individuals' path once they had been arrested – by deciding whether or not to prosecute the accused and by having substantial influence over the amount of bail set, as judges typically accepted the DA's recommendations when assigning bail.¹³⁶ The Court's order therefore provoked outrage from D.A. Ed Rendell, who worked tirelessly to oppose it, despite not being a formal party to the case.

A vocal supporter of the death penalty, trying juveniles as adults, mandatory sentencing, and a number of other tough-on-crime policies, Rendell considered accused individuals inherently dangerous and thus in need of pre-trial detention. Indeed, his aggressive approach to prosecution undoubtedly contributed to the surge in the city's pre-trial prison population in the early 1980s. In keeping with his previous positions, Rendell argued that the court's release order threatened the "safety of law-abiding citizens." While he "agreed" with the judges' opinion that the prisons were overcrowding, he insisted that the judges' "solution" should not be "releasing prisoners." Instead, he sent "suggestions" to the Common Pleas Court administrators on "how to

¹³⁶ "Interview with F. Emmett Fitzpatrick and John O'Riordan," June 2nd, 1976, Folder 237: Screening and Diversion Study - Interviews, 1976-77; "Screening and Diversion Practices in Philadelphia," 1977; Folder 235: Screening and Diversion Study Draft, 1977, Box 25, URB 41, 11-13; Ed Rendell, "Efficient Exercise of the Charging Function," in Folder 88: District's Attorney, 1978, Box 11, URB 41, PCECJ, TUSC; Zachary Stalberg and Dave Racher, "Fitz: Questions & Answers," *Philadelphia Daily News*, July 29th, 1974.

reduce the prison population without releasing inmates,” which included reassigning civil court judges to criminal courts, requiring longer hours for judges, and holding hearings on Saturdays.¹³⁷

The Court took up a few of Rendell’s recommendations, such as holding Saturday hearings, albeit while kicking and screaming. In doing so, however, they blamed city officials for “failing to provide sufficient prison space,” putting the onus on them to “reduce the necessity of releasing defendants being held on low bail.”¹³⁸ Despite their deflection of blame – a common practice among many of the city’s criminal legal agencies in response to the overcrowding crisis – the Court’s efforts underscored the gravity of the *Jackson* order.

Rendell was not content to simply make demands of the Common Pleas Court. Amid the looming August 1st deadline for the city to meet the court-ordered releases, Rendell worked with Democratic state Senator Michael O’Pake to pass a “last ditch” bill that would allow correctional administrations to detain more than one prisoner in one cell.¹³⁹ The bill would repeal a 150 year old state law that required county prisoners to have “confinement separate and apart from other

¹³⁷ Joyce Gemperlin, “Rendell suggests ways to cut jail populations,” *The Philadelphia Inquirer*, April 1st, 1981.

¹³⁸ Joyce Gemperlein, “Courts order steps to ease jail crowding,” *The Philadelphia Inquirer*, April 10th, 1981.

¹³⁹ Claiming that prisoner releases would present a “devastating threat to the safety and well-being of law-abiding citizens,” Rendell, hoped that repealing this law, which was part of the legal basis for the judges’ order mandating one-man-one-cell, would give a higher court justification to overrule the lower Court’s order. Joyce Gemperlein, “Fighting Pa. ruling on prisons,” *The Philadelphia Inquirer*, June 23rd, 1981; Vernon Loeb, “House Oks prison cell measure,” *the Philadelphia Inquirer*, July 1st, 1981; “Rendell asks Supreme court to halt prisoner releases,” *The Philadelphia Inquirer*, July 3rd, 1981; Legislative Bill Analysis for HB 644, June 30th, 1981, in Folder: Double Cellings 1981-2, Carton 5, RG: 58, Department of Corrections Press and Communications Office Files, 1968-2010, Series Number: 58.5, Location Number: 13-1981, PA State Archives.

inmates.”¹⁴⁰ It passed overwhelmingly one month prior to when the Court’s order was to take effect.¹⁴¹ Rendell then pleaded with the state Supreme court to halt the ordered releases. In his petition, he alleged that prisoners accused of violent crimes such as murder, rape, and aggravated assault would “have to be released to depopulate the prisons to meet the judges’ order.”¹⁴²

Whether or not the law would nullify the *Jackson* order was up for debate. Rudovsky called the move “more than a stunt than anything else.”¹⁴³ Moreover, the Supreme Court did not immediately set a date to hear Rendell’s appeal, suggesting some reticence on their part in wading into the case.¹⁴⁴ But two state Supreme Court justices “partially blocked” the order by ruling that the city did not have to release prisoners accused of violent crimes even if this refusal allowed “double-celling” to persist. The stay – which was issued in part by Justice Robert N.C. Nix Jr., who had been an original member of the three-judge panel that ruled the city’s prison system unconstitutional – would be valid until the full court heard Rendell’s appeal.¹⁴⁵

The order delivered a major blow to the plaintiffs. Prison and city officials anticipated that stay would “make it impossible to comply with the three-judge panel’s order” by taking

¹⁴⁰ Joe Clark and Jim McTague, “Private Cell Law Faces Repeal,” *Philadelphia Daily News*, June 23rd, 1981; Legislative Bill Analysis for HB 644, June 30th, 1981, in Folder: Double Cellings 1981-2, Carton 5, RG: 58, Department of Corrections Press and Communications Office Files, 1968-2010, Series Number: 58.5, Location Number: 13-1981, PA State Archives.

¹⁴¹ “Rendell asks Supreme court to halt prisoner releases,” *The Philadelphia Inquirer*, July 3rd, 1981; Vernon Loeb, “Pa. to act to ease law on jail use,” *The Philadelphia Inquirer*, July 10th, 1981.

¹⁴² “Rendell asks Supreme court to halt prisoner releases,” *The Philadelphia Inquirer*, July 3rd, 1981

¹⁴³ Vernon Loeb, “Senate approves bill repealing law on 1 man, 1 cell,” *Philadelphia Inquirer*, June 24th, 1981.

¹⁴⁴ Vernon Loeb, “House Oks prison cell measure,” *the Philadelphia Inquirer*, July 1st, 1981

¹⁴⁵ Vernon Loeb, “Pa. to act to ease law on jail use,” *The Philadelphia Inquirer*, July 10th, 1981.

many pre-trial detainees off the table for release.¹⁴⁶ Unsurprisingly, come August 1st, city officials had failed to meet the Common Pleas Court's March order. By then, in fact, the prison population had risen to 3,119 detainees. Rendell conceded that without the stay from the state Supreme Court, the city would have likely gotten to the "one-man-per-cell order by now," although he contended that, in doing so, the "public would have suffered immensely."¹⁴⁷

In response, Rudovsky prepared a contempt petition that charged the city with violating the March order. The city, now represented by Mayor Bill Green, claimed that they had made "good faith" efforts to decarcerate their prisons by reducing the number of those charged with non-violent crimes. City Managing Director Wilson Goode also announced plans to increase prison capacity by the end of the following year.¹⁴⁸ For his part, Rendell continued to insist that prisoner releases would jeopardize public safety.¹⁴⁹ "It doesn't work and should be stopped immediately," he insisted, arguing that the Court was "releasing tons of dangerous people who go out and commit new crimes."¹⁵⁰

Despite Rendell's opposition, the new release order went into effect after the city failed to meet the August 1st deadline. Between August 1981 and November 1982, 703 prisoners were released.¹⁵¹ While the order was "helping some," however, the DA's office continued to do all it

¹⁴⁶ Joyce Gemperlein, "Jail rolls continue to grow," *the Philadelphia Inquirer*, August 17th, 1981.

¹⁴⁷ Joyce Gemperlein, "Jail rolls continue to grow," *the Philadelphia Inquirer*, August 17th, 1981.

¹⁴⁸ Joyce Gemperlein, "Jail rolls continue to grow," *Philadelphia Inquirer*, August 17th, 1981; Joyce Gemperlein, "Agreement made to ease crowding in the city's prisons," *The Philadelphia Inquirer*, October 20th, 1981.

¹⁴⁹ Joyce Gemperlein, "Jail rolls continue to grow," *Philadelphia Inquirer*, August 17th, 1981.

¹⁵⁰ Robin Clark, "Trying to keep tabs on inmates on bail," *The Philadelphia Inquirer*, March 18th, 1984.

¹⁵¹ George Anastasia, "Rendell says he opposes releasing prisoners to ease overcrowding," *The Philadelphia Inquirer*, March 18th, 1983.

could to slow the process by objecting to releases.¹⁵² As the process slowed Rudovsky requested a “one time only” release of 500 sentenced prisoners who were legally exempt from the Court’s population reduction orders.¹⁵³ The three-judge panel agreed and ordered the early releases in 1983, along with threatening to fine the city \$1,000 a day if they did not meet an August 15th, 1983 deadline for opening a new 150-bed women’s prison. They also ordered the city to appoint a special bail master to expand their release program for nonviolent pre-trial prisoners.¹⁵⁴ Again Rendell vehemently objected, warning that the Court was forcing the city to send a “dangerous group out the back door.” He also said that, of the 703 prisoner released over the past year, some were accused of “dangerous” crimes, a large portion had “failed to appear” for court hearings, and others “were arrested for another crime” upon their release.¹⁵⁵

But reports from Offender Aid and Restoration, a nonprofit funded by the city to monitor and support individuals released by the *Jackson* orders, offered a strikingly different analysis. Run by Arnold Mitchell, himself an ex-prisoner who “knew the system inside and out,” OAR helped find pre-trial detainees who would be eligible for *Jackson* release and supported them once they were free. Only nine of 74 individuals released into the agency’s supervision between November 1982 and February 1983 were arrested on new charges and only six failed to appear in court.¹⁵⁶ Reports from 1984 indicated that, once the OAR took over the city’s pretrial supervision

¹⁵² John Woestendiek, “City prison population hits record,” *The Philadelphia Inquirer*, October 1st, 1982.

¹⁵³ George Anastasia and Roger Cohn, “Court panel asked to cut jail ranks by early releases,” *The Philadelphia Inquirer*, December 11th, 1982.

¹⁵⁴ George Anastasia, “panel orders early release of convicts,” *The Philadelphia Inquirer*, July 2nd, 1983.

¹⁵⁵ George Anastasia, “Rendell says he opposes releasing prisoners to ease overcrowding,” *The Philadelphia Inquirer*, March 18th, 1983.

¹⁵⁶ Robin Clark, “Trying to keep tabs on inmates on bail,” *The Philadelphia Inquirer*, March 18th, 1984.

program, the failure to appear rate among *Jackson* releases dropped by 13 percent.¹⁵⁷

OAR's provision of "the first human touch in a very impersonal process" offered a promising means of ensuring that *Jackson* releases attended all their hearings and avoided new criminal charges. Moreover, OAR's findings showed that, for many clients, their turn to criminal activity stemmed from a dire lack of jobs. This suggested that the individuals detained in the city's prisons were not incorrigible or irredeemably dangerous people, but rather individuals in need of social and economic support.¹⁵⁸

The three-judge panel announced in February 1984 that they were considering an even stricter proposal to ban the admission of new prisoners if the city did not comply with the population reduction order within 90 days.¹⁵⁹ They also reiterated their threat to fine the city \$1,000 for every day they miss their construction deadlines for new facilities.¹⁶⁰ With the population now at 3,860 people, Judge Smith deemed the prison system a "time bomb that is ticking" and reprimanded the city for treating prisoners more inhumanely than they treated "polar bears and monkeys and other animals in the zoo."¹⁶¹ Now under Mayor Wilson Goode's leadership, City Hall "strenuously object[ed]" to the Court's proposal and tried to point to plans for new prison construction and increased use of early release. But Rudovsky argued that their counterproposals would only lead to the "maintenance of the status quo." "We are entitled to a

¹⁵⁷ John Woestendiek, "Despite move by city, prison squeeze still on," *Philadelphia Inquirer*, October 3rd, 1984.

¹⁵⁸ Robin Clark, "Trying to keep tabs on inmates on bail," *The Philadelphia Inquirer*, March 18th, 1984.

¹⁵⁹ George Anastasia, "Judges consider halting prison admissions," *The Philadelphia Inquirer*, February 28th, 1984.

¹⁶⁰ Linn Washington, "Judges Weigh Ban on Jail Admissions," *Philadelphia Daily News*, February 28th, 1984.

¹⁶¹ George Anastasia, "Judges consider halting prison admissions," *The Philadelphia Inquirer*, February 28th, 1984.

cap to make sure orders issued eight years ago are adhered to,” he stated. Rudovsky brushed off claims that the releases would threaten the community as misleading and inaccurate. “There are hundreds of people in jail charged with insignificant crimes who will eventually be acquitted or have their charges dropped,” he said.¹⁶²

To help make their decision, the three-judge panel toured the city’s three prisons, with the press alongside them. They found “leaky cells, cells holding as many as three inmates, and former recreation areas jammed with beds.” At the Detention Center, three dayrooms served as makeshift cells for 92 prisoners, who slept on “narrow beds two feet apart from one another.” The dayrooms had only one toilet, located in a corner and “partially screened” by “plywood halves of disassembled ping pong tables.” At House of Correction, one female prisoner yelled to the judges, “It’s not sanitary to live here. Let us out” as the judges passed their “chilly cellblock.” At Holmesburg, a prisoner shouted, “The ceiling’s leaking in 16 cells, boys.” The judges observed “wet newspapers cover[ing] the floor of that cell.”¹⁶³

Now confident that their decision was warranted, the judges “placed a cap” on the number of prisoners allowed in the city’s prisons. The order was the “first of its kind” in the 13-year court case and among the first uses of population caps in the nation.¹⁶⁴ Noting that the Court had “indulged the city and its unconstitutional practices for 10 years,” Judge Smith affirmed that double and triple celling prisons was a “denial of [prisoners’] constitutional rights.” Those in

¹⁶² Linn Washington, “Judges Weigh Ban on Jail Admissions,” *Philadelphia Daily News*, February 28th, 1984.

¹⁶³ John Woestendiek, “Three judges tour city prisons, finding crowding and leaky cells,” *The Philadelphia Inquirer*, March 30th, 1984.

¹⁶⁴ M. Kay Harris and Dudley P. Spiller, *After Decision: Implementation of Judicial Decrees in Correctional Settings* (Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, 1977); Sturm, “The Legacy and Future of Corrections Litigation.”

prison were “errant citizens,” he remarked, but “still citizens.”¹⁶⁵ The city had to get their population down to 2,700 for all their facilities by June 30th, 1985, with deadlines for gradual reductions built into the order.

Goode’s administrators responded by arguing that the cap “presented a safety hazard to the citizens of Philadelphia” and by insisting that they were working towards building more cell capacity for the city.¹⁶⁶ Rendell predicted “disastrous consequences” from the required release of “close to 900 additional people.” “Prison overcrowding has basically been caused by one group,” he argued, “the criminals.” “They are dangerous, they can hurt, they can kill, they can maim, they can rape, they can rob, they can mug, they can burglarize. They can make the city of Philadelphia an untenable place to live.”¹⁶⁷ “The answer is not to make them [pre-trial detainees] the beneficiaries,” he claimed, calling such a path an “Alice-in-Wonderland, Mad-Hatter approach.”¹⁶⁸

Donald Bronstein, assistant public defender and co-counsel for the prisoner plaintiffs refuted Rendell’s charges by noting that “the vast majority of inmates are individuals awaiting trial,” and that individuals accused of serious charges were barred from release. Moreover, he pointed out that most of the individuals would be out the street if they had sufficient money for bail. “I think what the court is saying is that the city has been on notice since 1976, and that it

¹⁶⁵ John Woestendiek, “City Told: End Prison Crowding,” *The Philadelphia Inquirer*, June 23rd, 1984; Linn Washington, “City to Fight Limit on Jail Crowding,” *Philadelphia Daily News*, June 23rd, 1984.

¹⁶⁶ Linn Washington, “Court order on prisons is appealed,” *Philadelphia Daily News*, July 5th, 1984.

¹⁶⁷ John Woestendiek, “Court Oks release of 31 inmates,” *Philadelphia Inquirer*, October 2nd, 1984.

¹⁶⁸ John Woestendiek, “City Told: End Overcrowding,” *The Philadelphia Inquirer*, June 23rd, 1984.

has been given any number of opportunities to eliminate overcrowding” Bronstein explained. “The court...seeing that this was going to continue for five years, just drew the line.”¹⁶⁹ Howard Green, an individual imprisoned at Detention Center, had a more direct and pointed opinion of Rendell’s statements. In a letter to the *Philadelphia Daily News*, Howard accused Rendell of sounding like a “red-necked Southern bigot.”¹⁷⁰

The city immediately filed yet another appeal, this time accusing the Court of “abus[ing]” its power by issuing the cap without “specifying how the city was to reduce the prison population and without taking proper account of the dangers the order posed to city residents.”¹⁷¹ Rudovsky felt confident, however, that the order would remain in place. “There is absolutely nothing new in the exceptions filed by the city,” he argued,” noting the defendants’ track record of lost appeals. “The city lost and I think it will lose again,” he added.¹⁷² His confidence appeared justified. While waiting for their appeal to be heard, the city asked the Commonwealth Court to stay the order. The President Judge refused.¹⁷³ Arguing that the city had not “attempted in good faith to comply with the trial court’s order,” the President agreed that a “significant percentage of the prison population represents non-dangerous individuals whom the [city] should expeditiously release.”¹⁷⁴

¹⁶⁹ John Woestendiek, “City Told: End Prison Crowding,” *The Philadelphia Inquirer*, June 23rd, 1984.

¹⁷⁰ Howard L. Green, “Inmate Assails DA,” *Philadelphia Daily News*, July 16th, 1984.

¹⁷¹ Linn Washington, “Court order on prisons is appealed,” *Philadelphia Daily News*, July 5th, 1984.

¹⁷² Linn Washington, “court Order on Prisons is Appealed,” *Philadelphia Daily News*, July 5th, 1984.

¹⁷³ John Woestendiek, “City faces fines Monday for jail crowding,” *Philadelphia Inquirer*, September 29th, 1984.

¹⁷⁴ John Woestendiek, “Despite move by city, prison squeeze still on,” *Philadelphia Inquirer*, October 3rd, 1984.

With the population reduction deadline now firmly in place, the city doubled down on its non-compliance.¹⁷⁵ Mayor Goode stated outright that he would not release prisoners, in direct violation of the Court order. “I will not permit people who work for me to simply go out there and willy-nilly release people,” he stated. “We do not plan to release anyone until we’re told by name which ones to release by a court and a judge.”¹⁷⁶

Incensed, the plaintiffs and their lawyers convinced the already unhappy three-judge panel to find the city in contempt and impose fines. The panel would charge the city \$44 per day for every prisoner held over the limit specified in the June 1984 order. Based on the numbers of the city’s prison population, this would amount to \$4,664 a day. The panel also ordered the city to pay \$1,500 per month as a fine for failing to fix a number of issues required in the *Jackson* consent decrees.¹⁷⁷ In total, the fines would require the city to pay the Court \$3 million per year.¹⁷⁸ Additionally, because of the city’s “continuous disregard,” the Court ordered city to forfeit its payment of \$250,000 in 1977 – plus interest – that was supposed to be returned to the city upon its compliance with *Jackson* court orders. The funds would be placed in a Prison Relief Fund, which the city was barred from using to fund compliance with the court order.¹⁷⁹

¹⁷⁵ John Woestendiek, “Despite move by city, prison squeeze still on,” *Philadelphia Inquirer*, October 3rd, 1984.

¹⁷⁶ John Woestendiek, “City faces fines Monday for jail crowding,” *Philadelphia Inquirer*, September 29th, 1984.

¹⁷⁷ Linn Washington, “City Fined 4.6 G a Day in Jail Case,” *Philadelphia Daily News*, October 11th, 1984; Henry Goldman, “City held in contempt fined for jail crowding,” *The Philadelphia Inquirer*, October 12th, 1984.

¹⁷⁸ Henry Goldman, “City held in contempt, fined for jail crowding,” *the Philadelphia Inquirer*, October 12th, 1984.

¹⁷⁹ Linn Washington, “City Fined 4.6 G a Day in Jail Case,” *Philadelphia Daily News*, October 11th, 1984; Henry Goldman, “City held in contempt fined for jail crowding,” *The Philadelphia Inquirer*, October 12th, 1984.

The Court's imposition of such substantial, ongoing fines marked its most dramatic move yet to force the city to reduce its prison population. Aguilar, the Court Master, called the order a "breakthrough to alleviate a long-festering problem," noting that the court "waited more than eight years before taking this step."¹⁸⁰ "I hope it convinces the city that it can't continue to violate court orders with impunity," Rudovsky said, adding that hoped some of the fine money would go towards prisoners whose "constitutional rights have been violated."¹⁸¹

Three million dollars a year was indeed enormous, and Mayor Goode was irate. Because he so desperately wanted to prevent the release of prisoners, he responded by stating that the city would begrudgingly pay the fines. "The city cannot afford this," he remarked, "but the city has no choice. The city is not going to let out prisoners who may be a threat to public safety."¹⁸² Before the city would begin cutting checks, however, Goode's Deputy City Solicitor, Richard Gold, appealed the order.¹⁸³

In a stunning turn of events, just six days after the three-judge panel ordered the fines, State Supreme Court Judge Robert N.C. Nix – again, one of the original judges on the three-judge panel– granted a stay of the June court order requiring the population reductions. "The indiscriminate wholesale release of, or the refusal to accept prisoners without consideration for the security and safety of the citizens of the city, would represent the epitome of irresponsibility and obviously not provide a permissible solution to the present problem," Nix wrote. His

¹⁸⁰ Henry Goldman, "City held in contempt fined for jail crowding," *The Philadelphia Inquirer*, October 12th, 1984.

¹⁸¹ Henry Goldman, "City held in contempt fined for jail crowding," *The Philadelphia Inquirer*, October 12th, 1984.

¹⁸² Henry Goldman, "City held in contempt fined for jail crowding," *The Philadelphia Inquirer*, October 12th, 1984.

¹⁸³ Henry Goldman, "City held in contempt fined for jail crowding," *The Philadelphia Inquirer*, October 12th, 1984.

decision effectively prevented the Common Pleas Court from using large fines to coerce the city to reduce its overcrowded prison population.¹⁸⁴

Mayor Goode's administration was elated. District Attorney Rendell called it "the first bit of common sense that I've heard from the judiciary" since the beginning of the *Jackson* case. He contended that Nix's decision confirmed, once and for all, that all pre-trial detainees and sentenced prisoners in the city's prisons were "too dangerous to be released," and that the only way forward was constructing new prisons.¹⁸⁵ Philadelphia's prisoner plaintiffs were crushed. Their attorneys argued that the stay "causes irreparable harm...by again subjecting them [prisoners] to the unconstitutional effects of overcrowding, including triple celling."¹⁸⁶ As Rudovsky wrote, "once again, with no legal basis, the City is given even more time to ease overcrowding without paying any penalty for its obstructionist tactics...The rights of the inmates to enforcement of their rights, is once again subordinated to the City's failure to come to terms with this crisis."¹⁸⁷

The stay was only in place until the Commonwealth Court heard the city's appeal. But in October 1984 jurisdiction over the case was transferred to the Pennsylvania Supreme Court, where Nix sat on the bench.¹⁸⁸ In January 1986, the Supreme Court finally issued its opinion, written by Nix himself. It was the final nail in the coffin for Philadelphia's imprisoned plaintiffs.

¹⁸⁴ Linn Washington, "Nix Stays June Edict on Prisons," *Philadelphia Daily News*, October 17th, 1984.

¹⁸⁵ Vernon Loeb, "Nix cancels inmate limit, stops fines," *The Philadelphia Inquirer*, October 18th, 1984.

¹⁸⁶ John Woestendiek, "Inmates attorneys as Pa. high court to handle city's appeal of jail rulings," *Philadelphia Inquirer*, October 31st, 1984.

¹⁸⁷ Rudovsky, "Litigating Prison Conditions in Philadelphia," 70.

¹⁸⁸ John Woestendiek, "Inmates attorneys as Pa. high court to handle city's appeal of jail rulings," *Philadelphia Inquirer*, October 31st, 1984.

The Supreme Court overturned the fines and deadlines imposed by the Common Pleas Court, claiming that the “one man one cell” provision was only the “law of the case” and not an “immutable principle engraved in stone.” The courts had to look at the “totality of conditions,” Nix argued, to determine the unconstitutionality of the city’s prison system. In particular, Nix dissected the three-judge panel’s 1984 ruling that he had helped to shape, arguing that they did not show that “current overcrowding together with other prison conditions, viewed in their totality, continued to violate the Eighth Amendment, or that single-celling was required to remedy that violation.” “The underlying basis” of the judges’ 1976 order, he contended, “has in large part evaporated.” Here, Nix referred to a recent US Supreme Court ruling, *Rhodes v. Chapman* (1981). In *Rhodes*, the US Supreme Court contended that overcrowding alone did not violate the Eighth Amendment because it did not directly “lead to deprivations of essential food, medical care, or sanitation,” “increase[ed] violence among inmates,” or “other conditions intolerable for prison confinement.”¹⁸⁹ With the Supreme Court’s decision in *Rhodes*, Nix argued, the Common Pleas Court’s “one man one cell” theory is “no longer in force” as constitutional law. The three-judge panel’s order to reduce the city’s population through prisoner releases was thus invalid.¹⁹⁰

Conclusion

Together, the city, District Attorney, and state Supreme Court had quashed imprisoned people and their allies’ struggle to reduce the city’s prison population and place powerful limits on the city’s practice of racialized policing, aggressive prosecution, and punitive bail practices.

¹⁸⁹ *Rhodes v. Chapman*, 452 U.S. 337 (1981).

¹⁹⁰ *Jackson v. Hendrick*, 509 Pa. 456, 503 A.2d 400 (1986).

In many ways, the history of *Jackson v. Hendrick* illustrates the difficulty of translating bold rulings on prison conditions and prisoner rights into meaningful decarceral reforms, especially given the deep hostility of local law enforcement and city officials towards those policy pathways. And although it would take a few more years before the city built new prisons, the fact remained that it could achieve compliance via new prison construction rather than decarceration – making the use of the courts as a broker for prison reform an always dicey endeavor. Yet just because *Jackson* ultimately failed to limit the city’s prison population does not mean that it should be tossed into the dustbins of carceral state history. At a time when Philadelphia’s politicians sought to normalize a politics of tough-on-crime premised on the mass imprisonment of primarily working-class people of color, Philadelphia’s imprisoned people and their lawyer allies fought back, placing the state on trial for its violent and inhumane penal practices. They secured a judicial ruling that deemed the city’s prisons unconstitutional and unleashed a wave of attempted reforms, including ones that, if the city had complied, offered the possibility of decarceration. Their struggle, and the history of *Jackson v. Hendrick*, reminds us that the rise of racialized mass imprisonment was not foreordained, and that primarily Black prisoners and their allies could resist and disrupt the anti-Black carceral status quo brewing in the city of Brotherly Love.

Chapter Two

No Free Lunch

“It is important to realize that punitiveness – like the proverbial ‘free lunch’ – does not come free,” the Chairman of the Pennsylvania Commission on Crime and Delinquency, Alfred Blumstein, wrote in a *Pittsburgh Post-Gazette* op-ed on May 7, 1981.¹ Appointed to his post by tough-on-crime Republican Governor Dick Thornburgh, the University of Pittsburgh criminologist may have worried that his article would rankle his boss, who had recently announced a three-bill anti-crime package meant to toughen Pennsylvania’s criminal punishment policies through a spate of mandatory sentences.² He made a point to warn Thornburgh of its publication, noting that it might provoke “questions...with respect to your sentencing legislation package.”³ In fact, Blumstein’s piece did raise questions about the wisdom of Thornburgh’s package.⁴ While Blumstein focused his discussion on the Sentencing Commission’s recently passed Sentencing Guidelines, his broader point was that locking up more people would require massive expenditures for new prison construction and administration. He proposed requiring a prison-impact statement for all sentencing bills, which would empower the legislature to “weigh much more carefully than they now do the price of any increase in sentencing stringency that is

¹ Alfred Blumstein, “Sentencing policy must weight impact on prison population,” *Pittsburgh Post-Gazette*, May 7th, 1981.

² “Press Conference – Media Center – April 28th, 1981 Re: Crime,” Folder 32, Box 264, Dick Thornburgh Papers, UPASC; Joyce Gemperlein, “Thornburgh to criminals: You’ve no friend in Penna,” *The Philadelphia Inquirer*, April 29th, 1981.

³ Alfred Blumstein to Dick Thornburgh, May 15th, 1981, in Folder 34, Box 264, Dick Thornburgh Papers, UPASC.

⁴ “Press Conference – Media Center – April 28th, 1981 Re: Crime,” Folder 32, Box 264, Dick Thornburgh Papers, UPASC. Joyce Gemperlein, “Thornburgh to criminals: You’ve no friend in Penna,” *The Philadelphia Inquirer*, April 29th, 1981.

mandated.”⁵ In his draft version of the op-ed, which he also sent to Thornburgh, he added that “the price [of new prison] is high, not only in dollars, but also in finding acceptable location of housing new prisons within reasonable reach of our metropolitan areas.”⁶

Thornburgh ignored Blumstein and other administrators’ warnings about how tough sentencing legislation would overload the state’s prison system and require ever-expanding expenditures for new prisons. Throughout the 1980s, the governor and the Pennsylvania state legislature would transform Pennsylvania’s criminal legal system from one of the more progressive in the nation into one of the most punitive, featuring an array of mandatory minimums, tough Sentencing Guidelines, a stark reduction in commutations, and a restrictive Parole Board. Thornburgh also oversaw the state’s first substantial prison expansion effort. He secured legislative approval for the construction of four new prisons – SCI Cresson, SCI Frackville, SCI Retreat, and SCI Smithfield – and added more cells to already-existing prisons, resulting in over 2,000 new cells to the state’s correctional system at a cost of over \$200 million. Thornburgh’s toughening of the state’s sentencing policies and augmentation of Pennsylvania’s penal system ballooned the state’s prison population, intensifying its criminalization of predominantly non-white Pennsylvanians. Between 1980 and 1987, Pennsylvania’s correctional population doubled, from 8,243 to 16,302.⁷ Pennsylvania disproportionately imprisoned non-white people prior to the passage of tough policies. But the state’s punitive turn deepened the

⁵ Alfred Blumstein, “Sentencing policy must weight impact on prison population,” *Pittsburgh Post-Gazette*, May 7th, 1981.

⁶ Alfred Blumstein, “Seeking Responsible Sentencing Policy: Prison Impact Statements,” in Folder 34, Box 264, Dick Thornburgh Papers, UPASC.

⁷ Lee T. Bernard, *Statistical Report 1980-1987* (Harrisburg: Pennsylvania Department of Corrections, 1988).

targeted violence against and imprisonment of Black and brown Pennsylvanians.⁸ In 1987, Black Pennsylvanians made up 56.55% of the state's prison population despite making up only 9% of the state's population.⁹

That Governor Thornburgh's administration transformed the Commonwealth into a racialized carceral state is thus undisputed. "Tough policies won out" in Pennsylvania, chiefly because they sustained United States racial apartheid and economic inequality in an ostensibly post-Civil Rights era.¹⁰ Especially when contextualized alongside Thornburgh's slashing of the state's welfare benefits and other social services, the governor's transformation of the Commonwealth into a leading incarcerator in the Northeast can only be understood as a central piece of his overarching conservative, anti-Black, and anti-poor politics.¹¹

Yet, as this chapter will show, this transformation did not occur without extensive debate and contestation among Thornburgh's own advisors. I show how members of his administration raised alarm about how passing tough policies would overburden the state's prison system and create a massive crisis of prison overcrowding. This fact of course most directly harmed the state's prisoners, subjecting them to inhumane conditions that prisoners frequently compared to a form of torture. It also created administrative and fiscal challenges for the state that policymakers worried would spiral out of control. In particular, they warned Thornburgh that prison

⁸ Gerard Massaro and David L. Gearhart, *Statistical Analysis and Correctional Population Data – 1976* (Harrisburg: Pennsylvania Bureau of Corrections, 1977).

⁹ Lee T. Bernard, *Statistical Report 1980-1987* (Harrisburg: Pennsylvania Department of Corrections, 1988); *1990 Census of Population – Social and Economic Characteristics – Pennsylvania* (Washington, DC: Bureau of the Census, 1993), 49.

¹⁰ Julilly Kohler-Hausmann, *Getting Tough: Welfare and Imprisonment in 1970s America*, Politics and Society in Modern America (Princeton, NJ: Princeton University Press, 2017), 4.

¹¹ See Parsons, *From Asylum to Prison*, 129-132; Michael B. Katz, *In the Shadow of the Poorhouse: A Social History of Welfare in America* (New York: Basic Books, 1996), 292-294; William Robbins, "Welfare, Full Jails and Fish," *The New York Times*, October 8th, 1984.

overcrowding would lead to prisoner unrest, generate unwanted court intervention, wear out prison infrastructure, and unnecessarily lock the state into enormous expenditures on prison construction and administration. Sometimes, these advisors offered more moderate policy alternatives that would limit the toughness of the state's sentencing regime and halt the growth of the state's prisoner population, which they urged the Governor and the legislature to pursue.

While Thornburgh and the Pennsylvania legislature would ultimately disregard these warnings, revisiting this moment of contestation over the future of Pennsylvania's criminal legal system and the centrality of prison overcrowding in such struggles is instructive. Even as racialized law and order politics gained traction among legislators and in American political culture more broadly, the sudden shift from a rehabilitative framework towards a politics of retribution and incapacitation represented a "collapse of the status quo in the penal field."¹² This collapse destabilized criminal legal and correctional systems at the state level, producing serious debates over the administrative and fiscal wisdom of tough-on-crime and carceral expansion while also creating crises of prison overcrowding that raised substantial governance problems for state leaders. Analyzing this unsettled period helps to demonstrate that contemporary racialized mass imprisonment is not the product of seemingly inevitable political forces or empirical increases in criminal activity. Nor is it simply the result of federal Wars on Crime and Drugs that induced the toughening of state law enforcement. State policymakers had choices when it came to getting tough, and those who understood the political and administrative costs of doing so raised considerable concerns about embarking on this carceral project.

¹² Campbell and Schoenfeld, "The Transformation of America's Penal Order."

I do not mean to suggest that the advisors who sought to moderate Thornburgh's carceral politics did so from a concern for the state's imprisoned people or for how such policies would expand racialized state violence. The primary actors in this story were not radicals or even liberals; they had few qualms about subjecting Pennsylvanians of color to punitive and repressive policies, whether through intensifying the state's capacity to police and imprison them, raiding and weakening the state's social welfare programs, or passing business-friendly economic development policies, all of which were central features of Thornburgh's administration. Thornburgh's advisors nevertheless recognized the immense damage that the politics of mass imprisonment would unleash on the state and made attempts to steer the Governor towards more moderate solutions. I do not seek to valorize them for their efforts, but rather to demonstrate that even conservative state technocrats had considerable disagreement over the wisdom of get-tough policymaking and correctional expansion, suggesting that the ascent of the racialized carceral state was far less institutionalized in the late-twentieth century than is commonly understood.

A final and related note on this chapter. Given the conservative political commitments of the primary actors in this story, their discussion of sentencing, parole, and imprisonment is often deeply abstracted, dwelling little on how policies and practices result in harrowing racialized state violence that real people were subjected to daily. This willingness to translate the mass caging and, arguably, mass torture of working-class people, who were disproportionately Black, into faceless abstractions itself illustrates how the carceral state was built and is sustained through a U.S. racial capitalist ideology that renders Black and criminalized people surplus and

subhuman, as property from whom the “resource of life—time” can be cruelly extracted.¹³

In writing this history, I do not seek to naturalize this cold, statistical, dollars-focused, and obfuscatory way of discussing racialized mass criminalization. I seek only to interrogate the contingencies and doubts within a cohort that was seemingly committed to punitive politics, revealing a more undetermined future.

Pennsylvania’s Punitive Turn

As numerous scholars have discussed, the turn to mass criminalization and imprisonment in the late-twentieth century U.S. is particularly striking given that in the 1960s, prison populations were on the decline. Many predicted that the practice of incarceration would be gradually phased out, with “out-prisoner” programs focused on rehabilitation and community integration of imprisoned people were in vogue.¹⁴ While Philadelphia’s penal system exemplified the punitive turn towards racialized punishment and mass caging, Pennsylvania’s state corrections was actually a leader in liberal and rehabilitative penal administration in the 1960s and early 1970s. Across the state’s criminal legal system, policymakers opposed new prison construction, embraced community corrections, liberally awarded prison furloughs, and frequently utilized probation and parole. Pennsylvania’s liberal Commissioner of Corrections, Allyn Sielaff, embodied this trend. Appointed in 1971, Sielaff actively sought to “humanize the prison.” Along with giving imprisoned people more freedom, such as by allowing them to grow their hair long, Sielaff focused intensively on rehabilitation and sought to give Pennsylvania

¹³ Ruth Wilson Gilmore, “Abolition Geography and the Problem of Innocence,” in *Futures of Black Radicalism*, 227.

¹⁴ See Parsons, *From Asylum to Prison*; Garland, *The Culture of Control*; Gottschalk, *The Prison and the Gallows*.

prisoners more access to the community. He particularly supported the practice of awarding them furloughs to spend time with family or look for jobs and housing. During his tenure, Pennsylvania prisoners left on furloughs nearly 10,000 times. He also utilized smaller, regional prisons that commentators described as “non-prisons by design” because of their focus on integrating imprisoned people back into the community.¹⁵ This is not to suggest that this era of liberal penal administration was somehow utopic or humane: as Anne Parsons notes, Black imprisoned people reported issues with the discretionary nature of the state’s community corrections and release programs, reporting that administrators regularly discriminated against them based on their race.¹⁶ But the period highlights the notable absence of a punitive law and order sentiment in the state’s official crime and penal administration throughout the 1970s, even as other states began to toughen their criminal punishment policies and administration.

In the late 1970s and early 1980s, Pennsylvania legislators, judges, law enforcement officials, and grassroots community groups began to push for the state to get tough on crime. Frequently deploying racist imagery and rhetoric to fearmonger about “dangerous predators” – who were always presented as Black, usually young men from poor and segregated areas of major cities – these groups shifted the state away from the belief that people convicted of crimes were capable of reform and towards the belief that they were inherently transgressive, lacking in remorse, and requiring lengthy incapacitation. But Pennsylvania’s adoption of such carceral policies was far from settled. In 1976, Pennsylvania legislators narrowly rejected mandatory sentencing laws, not only because of opposition from judges wishing to protect their discretion,

¹⁵ Parsons, *From Asylum to Prison*, 85-89.

¹⁶ Parsons, *From Asylum to Prison*, 116.

but also because of the extreme costs of adding thousands of prisoners to the prison system.¹⁷ Democratic Floor Leader K. Leroy Irvis successfully moved to table the legislation in favor of “more study” of mandatory sentences. His request led to a series of analyses that detailed at length the adverse and expensive effect that mandatory sentences would have on the state’s penal administration.

Later that year the House Judiciary Committee staff completed its study. It found that, assuming conviction rates stayed the same, requiring mandatory sentences for individuals who committed rape and for those who used a firearm in a violent crime would add at least 3,100 prisoners to the state’s prison population. At the time, the prison system was substantially under capacity, imprisoning only 7,500 people in a system with space for 8,500. The cost of adding the extra 2,100 prisoners, the report found, would be approximately \$30,000 to \$50,000 per cell, for total of \$63 million to \$105 million. Operational costs for this expansion would calculate to \$8,000 per prisoner, adding another \$16.8 million to the costs. The study warned that this estimate did not account for “inflation in construction costs” or estimates regarding “increased employee costs such as raises and benefits.” The report also cited New York state’s experience with mandatory sentences, which they found increased the state’s prison population from 12,444 to 16,000 between 1973 and 1975. While the report did not explicitly reject mandatory sentences, it recommended that the Legislature “recognize the fiscal cost of implementing such provisions” and including the necessary appropriations.”¹⁸

¹⁷ “Willing to Pay for Safety?” *Philadelphia Daily News*, November 19th, 1976; Mason Denison, “Mandatory Sentence Bill Is Killed,” *The Daily American*, November 24th, 1976; “Repeaters given reprieve,” *The Daily News*, November 24th, 1976; “Pa’s laws compared with other states,” *The Indiana Gazette*, November 27th, 1976.

¹⁸ Sam McClea, “Staff Report on the Use and Impact of Mandatory Sentencing in Pennsylvania, 1976, in Folder 21, Box 264, Dick Thornburgh Papers, UPASC.

A Another study, completed by the Pennsylvania Association on Probation, Parole, and Correction in 1978, found that a law that required confinement of every individual convicted of a felony for one year would add nearly 5,000 people to the state's prison system at a cost of \$196,769,000. A law that required a one-year minimum sentence for individuals with prior felony convictions would add 1,200 prisoners at a total cost of \$33,154,000. And a one-year minimum sentence law for individuals who used a weapon during the commission of their crime would add 220 new prisoners at a cost of \$1,760,000. Should the Commonwealth fail to consider the fiscal implications of mandatory sentencing, the report noted, it would join the "struggles of many of her bordering states and others throughout the nation trying to squeeze people into a space that doesn't exist and inviting the Federal courts into the review and operation of our state prisons."¹⁹ Again, the report did not urge the state to reject mandatory sentencing laws or avoid building new prisons. By outlining the massive costs associated with this policy pathway, though, its authors sought to warn and deter the legislature from pursuing such a demonstrably costly route.

Beyond the capacity issues and fiscal strain that mandatory sentences would produce, government data indicated that getting tough on crime was neither a required nor particularly wise pathway. According to a 1978 report from the Governor's Justice Commission, between 1972 and 1977 Pennsylvania had remarkably low rates of major crime. In fact, the report found that "reported crime has stabilized in recent years and experts are predicting a gradual decline in the near future." The report contended that "although it may be an effective emotional rallying call...public clamor for 'law and order' cannot be substantiated." The state's prison population

¹⁹ Sam McClea, Phillip Renninger, and James Alibrio, "Sentencing in Pennsylvania," 1978, Folder 23, Box 264, Dick Thornburgh Papers, UPASC.

was also “stabilizing,” with an expected “gradual aging” and “gradual decline in crime” likely to offer “relief” from “existing overcrowding now being experienced in correctional facilities.”²⁰ In sum, this report suggested that it was ill-advised and unnecessary for public safety to pass sentencing legislation, other than for the purely political purpose of proving to the public that the state was getting tough on criminals.

State legislators, law enforcement, and judges across the political spectrum nevertheless increasingly called for laws that would crack down on crime through retributive sentencing laws.²¹ The election of Republican law-and-order governor Richard Thornburgh seemed to solidify this shift. A former federal prosecutor under Presidents Richard Nixon and Gerald Ford, Thornburgh’s reputation as a law-and-order candidate proved fruitful in the 1978 gubernatorial race. While at the Department of Justice, he earned a reputation as a “crime buster,” especially with regards to misbehaving bureaucrats and politicians. This record served Thornburgh well as he campaigned for governor, given that by 1978, Pennsylvania’s Democratic Governor Milton Shapp’s administration had become engulfed in high-profile corruption cases.²² As Thornburgh said throughout his campaign, “the only way to clean up Harrisburg is to clean out Harrisburg.”²³

²⁰ Walt Plosila to Governor Thornburgh and Rick Stafford re: Report on Pennsylvania’s Criminal Justice System, May 29th, 1979; “Major Policy Issues Pertaining to the Criminal Justice System in Pennsylvania,” Folder 3, Box 303, Dick Thornburgh Papers, UPASC.

²¹ See “New Effort Anticipated for Mandatory Sentencing,” *Simpson’s Leader-Times*; Tom Masland, “Battle likely on uniform jail terms,” *The Philadelphia Inquirer*, May 25th, 1978; Rich Kirkpatrick, “Repeaters in prison DA’s aim,” *Pottsville Republican*, June 6th 1978.

²² “Corruption issue tops in state,” *The Pocono Record*, November 1st, 1974; William Ecenbarger, “Corruption haunts Shapp,” *The Philadelphia Inquirer*, July 8th, 1975; Bob Warner, “Shapp Appears Before Probers Again,” *The Evening Standard*, October 7th, 1974; “Shapp Lays Corruption Charges to Politics,” *York Daily Record*, January 19th, 1976; “Butera Rips Shapp On Corruption,” *The Pittsburgh Press*, April 12th, 1978.

²³ Gregory Jaynes, “Liberal Vote Helped Elect Thornburgh,” *Intelligencer Journal*, November 16th, 1978.

Thornburgh's appetite for cracking down on political corruption and racketeering would eventually translate into his anti-crime package, where he sought to implement tougher sentencing reforms, abolish parole, and build new prisons in the Commonwealth.

But it would take two years for Thornburgh to put his package before the legislature. In the meantime, questions surrounding the toughening of the state's sentencing structure emerged around the creation of the state's Sentencing Commission. In 1978, as a form of détente between law-and-order politicians who wanted mandatory sentencing, liberal legislators who had doubts, and state judges who wished to protect their judicial discretion, the General Assembly passed, and Governor Shapp signed into law, a bill that created an 11-member Sentencing Commission. This Commission would "recommend statewide minimum and maximum sentences" for all offenses in the state's Criminal Code, in hope of inducing judges to sentence more uniformly, eliminating disparities, and imposing stiffer sentences without passing mandatory sentencing legislation.²⁴ While initially presented as a more judicious path for toughening the state's sentencing practices while still attending to strains on the prison population, the state legislature would ultimately push the Sentencing Commission to implement a harsh sentencing regime. It is to the resulting debates that this chapter will now turn.

Sentencing Guidelines

The Sentencing Commission's origins stemmed from a coordinated effort to prevent legislators from passing mandatory sentencing. After mandatory sentencing almost passed in 1976, the Pennsylvania Joint Council for Criminal Justice, an LEAA-funded criminal justice

²⁴ "Straight Sentences," *The Daily American*, December 5th, 1978.

organization that opposed mandatory sentencing, formed a task force to study sentencing in the state. In February 1977, the Council convened a statewide sentencing conference where attendees “concluded that mandatory sentencing was inappropriate” due to its treatment of “diverse offenders equally,” its encouragement of plea bargaining, and its tendency to “increase prison populations.” After this conference, legislative attendees wrote and introduced Act 319, that would create a sentencing commission in the state. The bill was enacted just as Thornburgh was winning the gubernatorial election in November 1978. As part of its mandate, the commission had to “set sentencing guidelines that incorporated the gravity of the current offenses, prior felony convictions, and use of a deadly weapon.” It also had to determine ranges for “aggravating and mitigating circumstances.”²⁵ The General Assembly would then approve or reject the guidelines.²⁶

At first, Thornburgh’s staff advised him to respect the Sentencing Commission’s process rather than pressing for mandatory sentences or parole abolition as he had planned to do once in office. In one memo, staffer Harold Miller noted that pushing for mandatory sentences over the sentencing guidelines ran the risk of making Thornburgh appear “anti-Black’ again,” given that those sentences would disproportionately affect Black Pennsylvanians.²⁷ Although mark ups

²⁵ John H. Kramer and Cynthia Kempinen, “History of Pennsylvania Sentencing Reform,” *Federal Sentencing Reporter* 6, no. 3 (1993): 152–57.

²⁶ Richard P. Conaboy and John H. Cramer, Pennsylvania Commission on Sentencing Proposed Initial Guidelines, October 25th, 1980, Folder: Sentencing Commission, Carton 109, Record Group 404, Location Number 4-2824, Dick Thornburgh Papers, PSA.

²⁷ Harold Miller to Richard Glanton re: Testimony to Sentencing Commission, November 24th, 1980, Folder: Sentencing Commission, Carton 108, Record Group 404, Location 4-2823, Dick Thornburgh Papers, PSA. It seems likely that Miller was referring in part to Black political and religious leaders criticizing Thornburgh for his welfare reform proposals, which they argued were disproportionately harmful to African Americans, the continued high unemployment rate for Black Americans in the state, and to his failure to appoint more African Americans to state

from Thornburgh in administration memos indicate he was less than enthusiastic about this approach, he appears to have followed his staff's counsel to allow the sentencing guidelines to play out.²⁸

While not required to consider the impact of new sentencing guidelines on the state's prison populations, the Sentencing Commission wanted to be mindful of how the guidelines would affect carceral capacity. In a May 1980 report on the Sentencing Commission's activities, Thornburgh staffer Rene Burns reported that Commission members "specifically do not want to flood the prison population."²⁹ In his mark up on the memo, Thornburgh wrote, "I agree," next to this sentiment.³⁰ In a similar vein, Miller wrote, "the Commission originally started out trying to keep the total man-months of incarceration the same so that prison populations would not increase."³¹

But pressures to stiffen sentences from the legislature and local district attorneys pushed the Sentencing Commission to embrace tough guidelines.³² For example, the commissioners

posts. See Scott MacLeod, "Blacks Dismayed by Thornburgh," *United Press International*, January 22nd, 1980.

²⁸ When Burns wrote "I wonder if it's advisable to push for parole abolition at this time?" in his August 12th memo, Thornburgh's red-pen annotations read "It is..." See (With Gov. Thornburgh annotations) Rene Burns to Rich Glanton and Rick Stafford re: Update on the Work of the Sentencing Commission, May 22nd, 1980; Rene Burns to Governor Thornburgh re: Sentencing Commission and Parole Reform, August 12th, 1980, Folder: Sentencing Commission, Carton 108, Record Group 404, Location Number 4-2823, Dick Thornburgh Papers, PSA.

²⁹ Rene Burns to Rich Glanton and Rick Stafford re: Update on the Work of the Sentencing Commission, May 22nd, 1980, Folder 16, Box 374, Dick Thornburgh Papers, UPASC.

³⁰ Rene Burns to Rich Glanton and Rick Stafford re: Update on the Work of the Sentencing Commission, May 22nd, 1980 (Thornburgh Red Pen Markup Version), Folder: Sentencing Commission, Carton 108, Location Number 4-2823, RG 404, Dick Thornburgh Papers, PSA.

³¹ Harold Miller to Richard Glanton re: Testimony on Sentencing Commission, November 24th, 1980, in Folder 3, Box 268, Dick Thornburgh Papers, UPASC.

³² "Report on the Potential Impact of the Proposed Initial Guidelines on Incarceration Rates and Incarceration Lengths in Pennsylvania" *Pennsylvania Commission on Sentencing*, November 6th, 1980, Folder: 2, Box 268, Dick Thornburgh Papers, UPASC.

likely took note of Philadelphia District Attorney Ed Rendell's criticism of the sentencing guidelines for the local Common Pleas Court, which he alleged were too lenient.³³ Rendell also worked with state representative M. Joseph Rocks (R-Phila) to introduce mandatory sentences for individuals who committed crimes on mass transit during the height of the commissioners' deliberations, adding pressure on them to produce tough guidelines.³⁴ Moreover, commissioners likely felt the force of a growing political culture of tough-on-crime that pervaded late 1970s and early 1980s American politics.³⁵ As John Kramer, the Chairman of the Sentencing Commission in the 1980s and 1990s wrote, "When the impact on prison populations became a concern, commissioners quickly expressed the view that the legislature did not want to base the guidelines on current prison capacity," causing the issue to be "dropped."³⁶

The commission issued its guidelines in October 1980. Although they did not set *mandatory* sentences, they did make it difficult for judges to give out sentences that deviated from the guidelines by requiring them to explain their reasoning for doing so.³⁷ The projected

³³ Connie Langland, "Rendell attacks new sentencing guidelines," *Philadelphia Inquirer*, March 21st, 1979.

³⁴ Vernon Loeb, "Legal aid groups fight for money," *The Philadelphia Inquirer*, July 24th, 1980.

³⁵ See Beckett, *Making Crime Pay*; Gottschalk, *The Prison and the Gallows*; Hinton, *From The War on Poverty to the War on Crime*; Kohler Hausmann, *Getting Tough*; Murakawa, *The First Civil Right*; Paul Renfro, *Stranger Danger: Family Values, Childhood, and the American Carceral State* (New York: Oxford University Press, 2020).

³⁶ John H. Kramer and Jeffrey T. Ulmer, *Sentencing Guidelines: Lessons from Pennsylvania, Sentencing Guidelines* (Boulder: Lynne Rienner Publishers, 2022), 17.

³⁷ Utilizing a "complex grading system," the Sentencing Commission created guidelines that established "specified minimum ranges of punishment" for particular crimes and included a tool for taking into account additional contingencies, such as whether or not the offender used a weapon or if the offender's had a past history of offenses. Using the Commission's ranking of each crime according to their gravity, judges would first calculate the "offense score" of a particular offender, which had a corresponding sentence. The calculated minimum sentence could then be altered by additional facts of the case, such as whether the offender used a deadly weapon or by "aggravating and mitigating circumstances," defined by the commission, such as if the offender had a "history of violent conduct" (aggravating) or the offender had "physical or

result of these guidelines was a substantial increase in the state's prison populations, far beyond what the correctional system had the capacity to humanely house. One memo indicated that the average minimum incarceration in a state institution would increase by a whopping 86% under the guidelines, which would add 16 months to the average sentence for each imprisoned person.³⁸ The new guidelines would also increase the number of people receiving sentences of incarceration instead of probation. For example, under the new sentencing guidelines, the percentage of people incarcerated for robbery would increase from 68% to 97%, with the average minimum sentence increasing by 87%. As a result, the state's prison system would not only receive a surge of newly incarcerated people, but they would now be serving one full year more on average. More broadly, the average estimated increase in the state prison population was 10.4%, or an added 940 imprisoned people per year, at a cost of over \$10 million. At the time of the report, Pennsylvania's prison system was "within 100 inmates of capacity," leading the report to urge that a new prison "be built now," despite earlier recommendations that only suggested one be built "soon." "The bottom line," the report warned, "is that the State Legislature must be prepared to allocate an additional \$80 million to the state prisons in the next year to

mental defects" (mitigating). See Paul Maryniak, "State Policy Proposes More Jail Terms," *The Pittsburgh Press*, October 19th, 1980; Janet Novak, "Pa. panel outlines guidelines for making jail terms uniform," *Philadelphia Evening Bulletin*, October 25th, 1980; Richard Conaboy, Pennsylvania Commission on Sentencing: Proposed Initial Guidelines, October 25th, 1980, Folder: Sentencing Commission, Carton 108, Record Group 404, Location 4-2823, Dick Thornburgh Papers, PSA.

³⁸ Their calculations were based on a 12% random sample (2,907 cases) of sentences given in 1977. See "Report on the Potential Impact of the Proposed Initial Guidelines on Incarceration Rates and Incarceration Lengths in Pennsylvania" *Pennsylvania Commission on Sentencing*, November 6th, 1980, Folder: 2, Box 268, Dick Thornburgh Papers, UPASC.

cover the costs of housing in a new facility for sentenced prisoners who have not been incarcerated prior to the implementation of state guidelines.”³⁹

Other internal memos affirmed that the sentencing guidelines would significantly increase the state’s prison and jail population. While noting that the projects were still “uncertain” given that they did not yet know how judges would use the guidelines, Miller noted to Thornburgh’s Deputy Counsel Richard Glanton that projections indicated a 16% increase in total prison and jail populations. “If such an increase did occur,” he wrote, “we would need another institution the size of Graterford in the state prison system alone, in addition to the space we project we’ll need because of the demographic effects.”⁴⁰ Miller also noted that while he believed Thornburgh should support the guidelines and “urge compliance,” their administration could testify at a Sentencing Commission hearing “how difficult it will be for us to afford constructing the new prisons that increased sentences would require,” especially given the fact that the prison population was expected to rise regardless of sentence increases.⁴¹ Indeed, while experts once predicted the decline of prisoner populations, Thornburgh’s Chairman of the Pennsylvania Commission on Crime and Delinquency, Alfred Blumstein, wrote to Thornburgh in January 1980 regarding two studies on the state’s future prison commitments that indicated “projected growth of prison populations.” While the overall crime rate was expected to decrease,

³⁹ Report on the Potential Impact of the Proposed Initial Guidelines on Incarceration Rates and Incarceration Lengths in Pennsylvania” *Pennsylvania Commission on Sentencing*, November 6th, 1980, Folder: 2, Box 268, Dick Thornburgh Papers, UPASC.

⁴⁰ Harold Miller to Richard Glanton re: Testimony to Sentencing Commission, November 24th, 1980, Folder: Sentencing Commission, Carton 108, Record Group 404, Location 4-2823, Dick Thornburgh Papers, PSA.

⁴¹ Harold Miller to Richard Glanton re: Testimony to Sentencing Commission, November 24th, 1980, Folder: Sentencing Commission, Carton 108, Record Group 404, Location 4-2823, Dick Thornburgh Papers, PSA.

he said, “demographic effect of the Baby Boom moving into high-imprisonment ages of the 20s and early 30s” and the “growth...of time served in prison” due to “upward trend in sentences” from state judges – notably independent of sentencing guidelines or mandatory sentencing – promised to increase prison population. Given this “inevitable” surge in prison population, the state was facing a correctional crisis of incapacity even without the passage of sentencing guidelines. Passing the guidelines would simply exacerbate the predicted “shortage” even further.⁴²

Whatever hopes Thornburgh’s advisors may have had for tempering the Sentencing Guidelines’ impact on the state’s prison population were quickly dashed by a bipartisan group of legislators, state judges, district attorneys, and the attorney general elect, who immediately smeared the guidelines as too lenient. Accusing the guidelines of privileging “rehabilitation” over “punishment,” the Republican attorney general-elect Leroy Zimmerman claimed the guidelines were “inappropriate to the severity and effect of the crime involved” and called for them to be rewritten. Ed Rendell’s colleague, Democratic State Senator Michael O’Pake of Berks County, joined Zimmerman in railing against the guidelines for allowing “deliberate criminals and repeat offenders to escape a just and appropriate sentence.” Stating that he already supported mandatory sentencing, he felt the released guidelines now “multiplied his concern” and that he would be “forced” to vote against them” when they came up for a vote in the state Senate.⁴³ For his part, Ed Rendell prepared for the Governor an entire report on the “problems with the propose sentencing guidelines,” which he said judges would ignore. “Only the use of

⁴² Alfred Blumstein to Governor Richard Thornburgh, January 10th, 1980, Folder: 41: Correspondence, 1981-1983, Box 264, UPASC.

⁴³ Carmen Brutto, “Sentencing Guidelines Criticized,” *The Patriot-News*, December 11th, 1980.

mandatory minimum sentences...will guarantee adequate protection for the public,” he insisted.⁴⁴ Members of the Commission itself appeared split, with some vocal members, including the vice chairman, Alfred S. Pelaez, calling the guidelines “more fluff than substance” and urging for them to be rejected.⁴⁵

Due to the divisions among the Sentencing Commission members and legislators assault on the guidelines, both houses rejected the guidelines and directed the Commission to come up with a tougher version in March 1981.⁴⁶ Sentencing Commission member and House representative Lois Hagerty led the charge against guidelines in the House, introducing the resolution that directed the Sentencing Commission to revise and resubmit their guidelines. While supportive of them in theory, she contended that, as written, they “pose[ed] an ominous threat to law enforcement.”⁴⁷ Making matters worse, by this time Thornburgh had introduced his own mandatory sentencing proposals, which “sent the message that the governor did not support

⁴⁴ “Problems with the Proposed Sentencing Guidelines,” Philadelphia District Attorney’s Office, in Folder: Sentencing Commission, Carton 108, Record Group 404, Location 4-2823, Dick Thornburgh Papers, PSA.

⁴⁵ Alfred S. Palaez and Michael J. Minney, “Sentencing guidelines are more fluff than substance,” *Pittsburgh Post-Gazette*, January 28th, 1981.

⁴⁶ Eleanor Chute, “Sentence Guidelines Blasted as ‘Toothless’,” *The Pittsburgh Press*, March 26th, 1981; “Sentencing Guidelines rejected by the House,” *Associated Press*, April 2nd, 1981; “Jail Sentencing Guides Rejected by State Senate,” *Press Harrisburg Bureau*, April 9th, 1981; “Sentencing Impasse,” *The Pittsburgh Press*, April 20th, 1981; Joyce Gemperlein, “O’Pake urges abolition of sentencing panel,” *The Philadelphia Inquirer*, April 25th, 1981; “Proposed Sentencing Guidelines: Revised Edition,” *Pennsylvania Commission on Sentencing*, October 17th, 1981, Folder 4, Box 265, Dick Thornburgh Papers, UPASC. Specifically, the General Assembly asked that the Commission increase the upper limit of guideline sentences, give judges more ability to increase sentences where “aggravating or mitigating circumstances are found,” to make it possible for judges to add aggravating and mitigating circumstances not listed in the guidelines, to get rid of a guideline that hindered judges ability to imposed consecutive sentences, and to make sentences more severe for crimes that involved “serious bodily injury or the likelihood or threat of serious bodily injury.”

⁴⁷ Legislative Journal—House, April 1st, 1981, in Folder 1, Box 268, Dick Thornburgh Papers, UPASC.

the guidelines as proposed.” His “indirect assessment” gave credence to law-and-order politicians who claimed the guidelines were too soft on crime.⁴⁸

After the legislature’s rejection of its first proposal, the Sentencing Commission wrote even “simpler and tougher” guidelines.⁴⁹ Presented in January 1982, the new version recommended incarcerating 100% of those convicted of aggravated assault, for example, compared with judges’ pre-guidelines practice of imposing incarceration 46% of the time. What’s more, the guidelines recommended that sentences be a mammoth 229% longer than pre-guidelines sentence.⁵⁰ The Sentencing Commission and Thornburgh’s administration recognized that the guidelines would “result in increased prison populations.”⁵¹ One account estimated that they would produce a striking 70% increase.⁵² As Thornburgh staffer Raymond Pepe wrote, “there is a substantial danger that the revised guidelines will generate a need for even more prison cells” than the administration was considering building, though “the exact magnitude of the need for additional cells has not yet been estimated.”⁵³ Yet there was no legislative or public support for the commission to consider the impact of tough sentencing on the state’s correctional system.⁵⁴ If anything, the Commission was trying to appeal to tough-on-crime politicians. In a far cry from the Commission’s initial hesitancy to overload the state’s prison population, its

⁴⁸ Kramer and Ulmer, *Sentencing Guidelines*, 34.

⁴⁹ Anthony J. Scirica to Richard A. Stafford, January 26th, 1982, in Folder 4, Box 268, , Dick Thornburgh Papers, UPASC.

⁵⁰ Summary – Sentencing Guidelines, January 26th, 1982, Folder 1, Box 268, Dick Thornburgh Papers, UPASC.

⁵¹ Summary – Sentencing Guidelines, January 26th, 1982, Folder 1, Box 268, Dick Thornburgh Papers, UPASC.

⁵² Alfred Blumstein to Dick Thornburgh, March 24th, 1981, Folder 41, Box 264, Dick Thornburgh Papers, UPASC.

⁵³ Raymond Pepe to Rick Stafford and Richard Glanton re: Public Position on Sentencing Guidelines, November 16th, 1981, Folder 5, Box 268, Dick Thornburgh Papers, UPASC.

⁵⁴ Kramer and Ulmer, *Sentencing Guidelines*, 35.

chairman, Common Pleas Court judge Anthony J. Sirica, contended that the commission's members "refused to limit incarceration to current prison capacity" because they believed that "violent criminals should be sent to jail rather than placed on probation."⁵⁵

The state legislature passed the revised guidelines in April 1982, with implementation to take place in July.⁵⁶ While some legislators and judges celebrated, others saw them as a harbinger for penal crises to come. Blumstein privately told Governor Thornburgh that he was "dismayed to learn" that the second round of guidelines were "adopted before the Commission had the opportunity to consider its impact on prison population."⁵⁷ Republican Philadelphia Senator Milton Street similarly wondered, "What will happen when we start overcrowding the overcrowded prisons?"⁵⁸ Indeed, prison overcrowding was already getting markedly worse.⁵⁹ Just two years earlier, in May 1980, imprisoned people at Graterford prison, a maximum security prison just outside Philadelphia, had launched protests against the inhumane conditions of their confinement that bled into local headlines, leading some to call Pennsylvania's correctional system an "Attica waiting to happen."⁶⁰

⁵⁵ Anthony J. Sirica, "Sentencing guidelines are only guidelines," *The Philadelphia Inquirer*, May 14th, 1982.

⁵⁶ George Lobsenz, "Sentencing Guidelines okayed by state Senate," *Latrobe Bulletin*, April 21st, 1982.

⁵⁷ Alfred Blumstein to Dick Thornburgh, March 24th, 1981, Folder 41, Box 264, Dick Thornburgh Papers, UPASC.

⁵⁸ George Lobsenz, "Sentencing Guidelines okayed by state Senate," *Latrobe Bulletin*, April 21st, 1982; Stephanie Waite, "Guidelines find favor in county," *Pottsville Republican*, July 17th, 1982.

⁵⁹ George Lobsenz, "Sentencing Guidelines okayed by state Senate," *Latrobe Bulletin*, April 21st, 1982; Stephanie Waite, "Guidelines find favor in county," *Pottsville Republican*, July 17th, 1982.

⁶⁰ Stephen Salisbury, "Graterford starts a lockup in strike," *The Philadelphia Inquirer*, May 13th, 1980; "State prisons system is Attica waiting to happen," *The Philadelphia Inquirer*, November 22nd, 1980.

The state's new sentencing guidelines were poised to flood the state's prison system with prisoners who previously might have been diverted from the prison system or receive shorter sentences. By the time of their passage, however, the guidelines were in some ways the least of legislators and correctional officials worries. Shortly after the General Assembly rejected the first draft of the guidelines, the Governor announced his 1981 anti-crime package, which included a series of mandatory sentencing laws and a bill to abolish parole. Thornburgh's announcement indicated his unflinching commitment to remaking the state's criminal legal system and penal administration into a thoroughly carceral, retributive set of institutions that primarily targeted Pennsylvania's working-class communities of color. Even as the Governor had little qualms with increasing the state's imprisonment of purported criminal offenders, however, his administration had to contend with the looming crisis of carceral incapacity.

A Prison Overcrowding Disaster

From the beginning of his administration, Thornburgh indicated his commitment to making once relatively liberal Pennsylvania into a law-and-order bastion. In his 1979 legislative address to the state General Assembly, he alleged that crime in the state had increased and said that the state government should "solidly commit itself to insuring each citizen's right of domestic security," calling for the abolition of parole and tougher sentences.⁶¹ Even as his tough-on-crime politics gained momentum among legislators and voters, however, Thornburgh expressed private concerns about how his "proposals to change the character of existing state

⁶¹ Dick Thornburgh, A Legislative Agenda for 1979-1980, October 2nd, 1979, Folder: 1979 Legislative Agenda, Carton 107, Record Group 404, Location Number 4-2822; "Dick Thornburgh Papers, PSA.

correctional facilities” would affect the “existing capacity” of the state’s prison system.⁶²

Perhaps in anticipation of those capacity problems, Thornburgh had appointed to his staff individuals who had pioneered a new mode of criminological analysis called “correctional forecasting,” which used data on past levels of and trends in imprisonment to predict future incarceration levels, making them especially equipped to analyze how tough policies would impact Pennsylvania’s prison populations.⁶³ In his most significant appointment Thornburgh named influential criminologist and core correctional forecasting innovator Dr. Alfred Blumstein as the Chairman of the Pennsylvania Commission on Crime and Delinquency. Thornburgh also hired many of Blumstein’s students and co-authors to serve in his administration, such as Harold Miller as his Director of the Office of Planning and Policy; Daniel Nagin as his Deputy Secretary for Fiscal Policy and Analysis in the Pennsylvania Department of Revenue; and Rick Stafford as his Secretary of Legislative Affairs.

The forecasters were deeply unsettled by the administrative, legal, and fiscal challenges that overcrowded prisons posed for the state. But they were not progressive or liberal figures interested in interrogating the underlying political and economic reasons why prisons were filling so rapidly. They were even less interested in the experiences or effects of mass imprisonment upon criminalized people or the racially disproportionate application of tough punishments against Black Pennsylvanians. They developed their models “out of a need to plan” rather than a concern for “finding explanations” for why incarceration rates rose or fell and were strikingly

⁶² Dick Thornburgh to Dr. Alfred Blumstein, Undated, in Folder 1, Box 267, Dick Thornburgh Papers, UPASC.

⁶³ Franklin E. Zimring and Gordon Hawkins, *The Scale of Imprisonment* (Chicago: University of Chicago Press, 1991), xiii.

uninterested in the “social forces that influence the decision to imprison.”⁶⁴ Indeed, even as they raised concerns with how mandatory sentencing or other tough sentencing policies would overload the state’s prison system, they viewed these policy changes as inevitable and in need of accommodation. As Miller co-wrote in a 1981 volume entitled *Corrections at the Crossroads*, their primary occupation was with managing the fact that “important policy decisions will be forced on the system, and these decisions will determine the character of the correctional process for years to come.”⁶⁵

Thornburgh’s correctional forecaster advisors were thus conservative-leaning technocrats seeking to pursue policies that would cause the least administrative problems for the state. Still, they had concerns about the Governor’s law-and-order proposals, especially regarding their strain on the state’s correctional system, and they made these concerns clear to the Governor. Early in his administration, Thornburgh was especially interested in abolishing parole, which he believed would “force felons to serve their full jail terms.”⁶⁶ Should the law pass, it would eliminate the Parole Board entirely and instead allow prisoners to be released upon the completion of their minimum sentence. Blumstein immediately shared his concerns about this approach. Writing in response to “newspaper stories” about the Governor’s “legislative message,” Blumstein told Thornburgh that the proposal for the “abolition of parole” struck me as less than adequately considered by your staff.” In addition to worrying that abolishing parole would eliminate “post-release services and supervision,” he argued that “the most important

⁶⁴ Zimring and Hawkins, *The Scale of Imprisonment*, xiii.

⁶⁵ Sherwood Zimmerman and Harold Miller, *Corrections at the Crossroads: Designing Policy* (Beverly Hills: Sage Publications, 1981), 11.

⁶⁶ Dick Thornburgh, A Legislative Agenda for 1979-1980, October 2nd, 1979, Folder: 1979 Legislative Agenda, Carton 107, Record Group 404, Location Number 4-2822; “Dick Thornburgh Papers, PSA.

function of parole is as a necessary ‘relief valve’ for the prison system.” “Without it, prison populations will exceed the capacity of prisons by about 10-20%,” he wrote, “even if current crime, arrest, and commitment rates continue, and if time-served remains the same as today.”⁶⁷ A few weeks later, Blumstein sent the Governor a copy of his testimony before the United States House of Representatives Committee on the Judiciary, where he expressed his opposition to parole abolition. “I believe similar considerations prevail in Pennsylvania,” he told Thornburgh.⁶⁸

At first, Blumstein did not have to worry, since Thornburgh’s parole abolition proposal “failed to generate” much “enthusiasm” among legislators in his first year.⁶⁹ Indeed, some legislators criticized the proposal in part because of its potential to produce untenable increases in state prison populations.⁷⁰ But parole abolition and the Governor’s proposals for tough mandatory sentencing laws reappeared in his 1981 anti-crime package, generating a new wave of alarm about the state’s prison population and carceral capacity.

Dubbed “one of the toughest anti-crime programs in any state,” Thornburgh’s package had three foci.⁷¹ First, he proposed imposing a minimum five-year sentence for individuals

⁶⁷ Alfred Blumstein to Governor Thornburgh, October 9th, 1979, Folder 2, Box 267, Dick Thornburgh Papers, UPASC.

⁶⁸ Alfred Blumstein to Governor Thornburgh, October 26th, 1979; Testimony of Professor Alfred Blumstein before the Subcommittee on Criminal Justice in the Committee on the Judiciary in the House of Representatives, October 25th, 1979, Folder: Corrections, Department of, Carton 109, Record Group 404, Location Number 4-2824, Dick Thornburgh Papers, PSA.

⁶⁹ Gov. Thornburgh Has Good First Year, *The Times-Tribune*, December 27th, 1979.

⁷⁰ Paul Maryniak, Judges, DA: Don’t Abolish Parole, *The Pittsburgh Press*, October 7th, 1979; John Langdon, Governor’s Proposal to End Parole Poses Big Problems, *United Press International*, October 8th, 1979; Twilight for Parole? *The Pittsburgh Press*, October 10th, 1979.

⁷¹ Press Conference, April 28th, 1981, Re: Crime, Folder 32: Thornburgh announces proposal of an anti-crime package to be introduced into state legislature, April 28th, 1981, Box 264, Dick Thornburgh Papers, PSA.

convicted of using firearms during the commission of violent crimes; mandatory life terms for individuals convicted of second- or third-degree murder (first degree already carried a mandatory life term); and a minimum five-year sentence for people convicted of violent crimes on public transportation. Second, he proposed abolishing parole and imposing fixed sentences. And third, he called for new prison construction to account for the inevitable increase in prisoner populations the package's tough sentencing proposals would trigger.⁷² In the lead up to his administration's announcement of its anti-crime initiative, however, Thornburgh's administrators privately raised grave concerns about its adverse impact on the state's correctional system, even with its commitment to new prison cells.

Harold Miller was particularly nervous about the proposals. In a February 1981 memo, he noted that the Governor's proposed five-year mandatory sentencing bills were "relatively severe sentences" compared to current practice, and that "to the extent that a broad range of offenders would get much longer sentences under the bill, there would be a large impact on prison populations."⁷³ He offered more extensive concerns in a March 1981 memo to Rick Stafford, Thornburgh's Secretary of Legislative Affairs. Each one of the bills, he wrote, could increase the prison populations by 35-40%, and the combined impact could be "as much as a 70% increase in prison populations." Although he acknowledged the "inherent uncertainty in such impact estimates, he emphasized that "If the bills were implemented precisely as stated...the impacts would likely be as large as projected." Given this assessment, he wrote, "obviously, the

⁷² Joyce Gemperlein, "Thornburgh to criminals, you've no friend in PA," *The Philadelphia Inquirer*, April 29th, 1981.

⁷³ Harold Miller to Rick Stafford re: Mandatory Sentencing Bills and the Sentencing Commission Guidelines, February 6th, 1981, Folder 3, Box 267, Dick Thornburgh Papers, UPASC.

mandatory sentencing bills are a cause for concern,” since “existing capacity is full” and the “additions which are now planned” would only be enough to “meet the increases in prison populations project to result from demographic factors.” He estimated that a 40% increase – which, again, would be the highest increase projected if just *one* of the mandatory sentencing bills were passed – would require eight 500-bed facilities, would cost \$200 million to construct, and would increase yearly operating costs by \$48 million.⁷⁴

What’s more, he said, the “fiscal impact of additional capacity” was “only part of the problem.” If the prison population increased only 10-15%, the state would be able to accommodate the change by building on existing state prisons and using old welfare institutions, but anything above that would require new sites that would likely face opposition from local residents who didn’t want a prison in their area. The next consideration was “timing.” It normally “takes 4-5 years to construct a new prison...and probably cannot be done in less than 3 years,” which he warned does not include the time the administration would need to “identify sites and gain legislative approval.” “Even if the Administration quickly identified sites and proposed a capital budget bill,” he said, “it would probably run well into 1986 before the necessary capacity could become available.” It was true that the effects of bills with a five-year mandatory sentencing minimum would also take some time to influence the prison population. Still, he said that “some impact will result immediately” just from the sheer increase in the numbers of people being sent to prison, which will only “increase over time.”⁷⁵

⁷⁴ Harold Miller to Rick Stafford, “Strategies for Mandatory Sentencing,” March 24th, 1981, Folder 30, Box 264, Dick Thornburgh Papers, UPASC.

⁷⁵ Harold Miller to Rick Stafford, “Strategies for Mandatory Sentencing,” March 24th, 1981, Folder 30, Box 264, Dick Thornburgh Papers, UPASC.

More broadly – and worryingly – Miller explained that mandatory minimum bills carried “principal dangers” that threatened to expand prison populations beyond the state’s capacity on an ongoing and accelerating basis. First, he said that “mandatory minimums will be increased to impractical levels,” referencing (although, diplomatically not stating outright) the fact that once legislatures pass mandatory minimum bills, they will likely be pushed to drive them upwards. He also worried that legislatures would continue to add “additional offenses” that would “escalate the impact of the bill dramatically.” Thus, he said, it “seems wise” to begin with the “smallest-impact bill possible,” if only because the floor was sure to shift upward over time.

The “potentially large impact” of the administration’s proposed sentencing bills were so disconcerting that Miller outlined several policy alternatives to consider.⁷⁶ By no means did Miller call for a rejection of mandatory sentencing outright, nor did he wish to abandon a project of toughening crime control in the state. Still, his presentation of alternatives suggests that the crisis of state prison overcrowding prompted considerable debate even among law-and-order’s advocates.

First, he recommended imposing specific maximum sentences, but “leaving the minimum sentence to the discretion of the judge.” If that policy were paired with parole abolition, he explained, judges would be “more accountable for the minimum sentences they impose” because offenders would not be able to get out early on parole, thus assuring the certainty of sentence desired by mandatory minimum advocates. Although Miller preferred this option because it retained “flexibility” for judges to set minimums that would “create no net increase in prison populations” while also ensuring “all offenders covered by the bills” would be sent to prison, he

⁷⁶ Harold Miller to Rick Stafford, “Strategies for Mandatory Sentencing,” March 24th, 1981, Folder 30, Box 264, Dick Thornburgh Papers, UPASC.

noted that it would likely not be tough enough to satisfy the legislature, given the outrage in response to the Sentencing Commission's first guidelines. The other alternative was to propose lower mandatory minimums for robbery and aggravated assault cases where "no serious bodily injury actually occurred." Because most individuals entering the state's prison system fell into this category, lowering the mandatory minimum would limit the impact on the state's prison population. Perhaps out of wishful thinking, Miller noted that eliminating those cases *entirely* from the mandatory minimum legislation would reduce the anticipated increase in the state's prison population to a much more manageable 13%.⁷⁷

Even with alterations to the mandatory sentencing bills, however, Miller warned that there would be a "significant risk that [the] prison population will exceed available capacity" because prison populations were expected to rise regardless of sentencing legislation. "This would result in overcrowding and the likelihood of court suits," he cautioned. Thus, Miller outlined potential "relief valves" that would allow some individuals to be released if the correctional system reached dangerous levels of capacity. The only mechanism that the system had at the time was a "pre-release" that allowed imprisoned people who had served one-half of their minimum and at least nine months of their sentence to be sent to minimum security centers overseen by the Bureau of Correction. Miller noted this system was "underutilized," with "about a third of the prison population" being "technically eligible" while less than 300 people were in CSCs at any given time. Still, for CSCs to be a meaningful source of relief for prison overcrowding, the state would need to greatly expand it, which Miller noted was a "difficult process due to community opposition." He also suggested that the state could pass a Prison

⁷⁷ Harold Miller to Rick Stafford, "Strategies for Mandatory Sentencing," March 24th, 1981, Folder 30, Box 264, Dick Thornburgh Papers, UPASC.

Overcrowding Emergency Powers Act. Recently implemented in Michigan, the act gave the Governor the power to reduce the prison population if overcrowding persisted. He also said that the state could pass a “Good Time” provision as part of the administration’s parole abolition proposal, which would allow imprisoned people to secure sentence reductions for good behavior. And he suggested that the state could give the Secretary of Corrections the authority to halt admissions if population rose above capacity (although this threatened to offload the overcrowding problem to county jails, which had their own crises to manage).⁷⁸

Blumstein raised similar concerns with the Governor’s anti-crime agenda. Even as he recognized the “necessity to offer an appropriately punitive response” to the public’s “concern over crime and violence,” he also offered grave warnings about how those policies would overload the state prison system while failing to have a “noticeable effect on crime.” The anti-crime package, he argued, would “lead to serious prison overcrowding” that “makes prison violence much more likely” and “has also come to be widely regarded as inhumane,” placing the state at risk of federal court intervention. Given these possibilities, he felt it was his duty “both personally and as Chairman of the PCCD” to “take account of the impacts of the increase in punitiveness on the criminal justice system” and make recommendations for how the Governor could “begin planning for those impacts through emergency safety valves” and the construction of additional prison capacity. “If we are unwilling to provide for the impacts,” he contended, “then we must think hard about the appropriateness of the policy.” Indeed, Blumstein pleaded with the Governor to consider the state’s already overloaded prisons and the high likelihood of an overcrowding disaster should his administration pass his anti-crime package. “At a time when

⁷⁸ Harold Miller to Rick Stafford, “Strategies for Mandatory Sentencing,” March 24th, 1981, Folder 30, Box 264, Dick Thornburgh Papers, UPASC.

prisons are congested,” he wrote, “we ultimately must look at imprisonment decisions as a process of allocating the ‘scarce resource’ of available prison capacity.”⁷⁹

Blumstein was especially skeptical of mandatory minimum sentences and parole abolition. On the former, he noted that a “robbery” covers a wide variety of actions,” from an “armed bank robbery to a forceful collection of a disputed five-dollar debt from one’s neighbor,” so applying a mandatory five-year sentence uniformly would be “excessively long in most cases.” Moreover, he argued that the “pressure for longer sentences” actually “runs in the face of an accumulating body of research” that showed increase in sentence “severity” was less effective than increasing the “certainty” of imprisonment in preventing recidivism. Blumstein also reiterated his warnings against parole abolition that he had expressed to Thornburgh back in 1979, albeit with perhaps more fatalism given his recognition that the Governor had a firm “commitment to abolish parole.” Abolition, he said, would place “additional upward pressure on sentences” that “compounded by the demographic shifts, will combine to create a major problem of increase prison populations that could severely trouble our corrections system throughout the 1980s.” In particular, he worried about a component of the bill that sought to eliminate the rule that judges could not set minimum sentences that were more than half the statutory maximum. Should judges be able to set higher minimum sentences, they would feel pressured to do to appease a public that increasingly desired toughness.⁸⁰

Although clearly resigned to the likelihood that the legislature would pass many of the administration’s proposed policies, Blumstein offered some recommendations for how to

⁷⁹ Alfred Blumstein to Governor Thornburgh, March 24th, 1981, Folder: 41: Correspondence, 1981-1983, Box 264, Dick Thornburgh Papers, UPASC.

⁸⁰ Alfred Blumstein to Dick Thornburgh, March 24th, 1981, Folder 41, Box 264, Dick Thornburgh Papers, UPASC.

minimize the damage. If the legislature must pass mandatory sentences, he advised that they do so for a “restricted group of violent offenses” and call only for mandatory *imprisonment*, allowing judges to determine time served. He also recommended that the legislature pass a version of the Michigan act that empowered the Governor to reduce minimum sentences by up to 90 days should the system become overcrowded. “Especially if we abolish parole,” Blumstein wrote, “we will have little flexibility to react quickly when prisons become seriously overcrowded.”⁸¹

Both Blumstein and Miller recognized that the Governor could build more prison capacity. Given the “time lag from decision to final construction” for new prison building, the enormous costs of \$50,000 per bed and added yearly costs of \$10,000 per prisoner, Blumstein found this approach unwise. Miller viewed new prison construction a requirement should the state elect to pass mandatory sentencing legislation. “The bottom line of a ‘tough’ mandatory minimum bill,” he concluded “is that new prisons will have to be built to meet the resulting increase in prison population.” At the same time, he recognized that the “clear policy tradeoff” between “how tough you want to get and how many prisons you want to build” was “not typically made explicit in legislative debate,” suggesting that if legislators were better informed about the costs of new prison construction, they might feel less eager to pass tough sentencing legislation. At a minimum, Miller urged that the Governor incorporate a “capital authorization for one or more new prisons directly in the mandatory sentencing bill” to ensure that it would only get passed with some legislative commitment to building more carceral capacity.⁸²

⁸¹ Alfred Blumstein to Dick Thornburgh, March 24th, 1981, Folder 41, Box 264, Dick Thornburgh Papers, UPASC.

⁸² Harold Miller to Rick Stafford, “Strategies for Mandatory Sentencing,” March 24th, 1981, Folder 30, Box 264, Dick Thornburgh Papers, UPASC.

Thornburgh did just that, including in the package a bill that would authorize \$135 million for the construction of 2,500 cells.⁸³ As he told the press during the conference announcing the package, “It doesn’t do much good to posture about tougher sentences and mandatory sentences and tightened release procedures if we do not provide the dollars for the facilities that can contain the prisoners who would be subject to this type of sentencing.”⁸⁴ Rendell and District Attorneys’ Association President Frank Hazel, who sat with Thornburgh at the table during the press conference, praised his approach. “It is certainly a hollow gesture to pass mandatory sentencing legislation and not have adequate facilities throughout Pennsylvania to place those sentenced,” Hazel said, while Rendell celebrated Thornburgh as one of the “first governors in America to couple tough sentencing legislation with...legislation to create more secure prison facilities.” The package, Rendell continued, constituted the “most significant step in the history of law enforcement in this Commonwealth.”⁸⁵

While Thornburgh tethered mandatory sentencing to new prison construction, he also appears to have underplayed the state’s penal incapacity in public discussion of his anti-crime package, falsely implying that his administration’s authorization for new construction would easily account for the new increase in prison populations. Initial drafts of his anti-crime proposal included a question “How Serious is Overcrowding in the State Prison System?” The governor crossed out the question in his signature red pen annotation. When he was asked about the

⁸³ Harold Miller to Governor Thornburgh/Jim Seif and Jay Waldman re: Information on Parole Reform and Mandatory Sentencing Proposals, May 27th, 1981, Folder 35, Box 264, Dick Thornburgh Papers, UPASC.

⁸⁴ “Press Conference – Media Center – April 28th, 1981 Re: Crime,” Folder 32, Box 264, Dick Thornburgh Papers, UPASC.

⁸⁵ “Press Conference – Media Center – April 28th, 1981 Re: Crime,” Folder 32, Box 264, Dick Thornburgh Papers, UPASC.

severity of the problem at a campaign launch, he denied that the state had capacity issues at all. His state correctional administrators would dispute this claim a few months later.⁸⁶ Indeed, in an anxious memo to House of Representatives Member Jeffrey Piccola, Commissioner of Corrections Ronald Marks referred to the “serious and dangerous situation in our state correctional institutions caused by overcrowding,” which he asserted would get worse – “far beyond present forecasts” – if “stringent guidelines or mandatory sentencing legislation are enacted.”⁸⁷

Thornburgh’s administrators would soon admit that their prison construction plans were far less airtight than the Governor had let on. In one memo, Miller wrote to the Governor that their “ideal’ configuration” of offenses that would receive a mandatory minimum of five years “would, by reasonable estimates, require twice as many new cells as we are prepared to build.” He even suggested that the Governor consider a more “desirable” alternative configuration, which would reduce the mandatory sentence for some offenses. In part, Miller’s concerns stemmed from the uncertainty of predicting prison populations. He noted that internal projections regarding the impact of mandatory sentencing on prison populations relied on old sentencing and prison population data that likely underplayed how much Thornburgh’s anticrime legislation would shape the state’s prison populations. While conceding that “impact projections are, like any projection, uncertain,” he warned that reliance on data from 1977 -- the most recent available --likely failed to capture increases in sentence lengths since then, meaning that their “projections

⁸⁶ “Press Conference – Media Center – April 28th, 1981 Re: Crime,” Folder 32, Box 264, Dick Thornburgh Papers, University of Pittsburgh Archives and Special Collections, Pittsburgh, PA (UPASC); Carl Manning, “Prison Overcrowding Worsens Each Day,” *The Indiana Gazette*, August 20th, 1981.

⁸⁷ Ronald Marks to Jeffrey Piccola, August 31st, 1981, Folder 16 - Prison Overcrowding (1 of 6), Box 12, Pennsylvania House of Representatives Archives (PHRA).

of what prison populations will be without new sentencing laws will be underestimates, and we will need additional capacity anyway.”⁸⁸ He repeated his concerns in a memo one month later, writing that their projections were “based on pre-1977 sentences, so any increase which has occurred in sentences will push prison populations higher and require additional prison capacity even if there are no mandatory sentences.” “Even if the impact of the mandatory sentences on individual offenders were less” than expected, he said, “an increase in the number of offenders qualifying for the mandatory sentences could increase the impact.”⁸⁹ In the end, Miller estimated that on the low end, the mandatory sentencing bill would require 2,160 cells, while on the high end it would require 4,800 cells.⁹⁰ In other words, passing mandatory sentencing bills had the potential to strain the system far beyond Thornburgh’s additional 2,500 cells.

Miller was not alone in his belief that the administration’s capital authorization would fall short of what was needed. In a memo to Thornburgh’s Secretary of Budget and Administration, Bob Wilburn regarding site selection for new prisons, budget staffer Bob Bittenbender noted that “using all these sites will not provide enough cells to meet the demands of the crime package.”⁹¹ In later communications, Thornburgh’s administrators appear to have amended their claims about their prison construction proposal: as they got ready to introduce the mandatory sentencing

⁸⁸ Harold Miller to Governor Thornburgh, Jim Seif, and Jay Waldman, re: Information on Parole Reform and Mandatory Sentencing Proposals, May 27th, 1981, Folder 35, Box 264, Dick Thornburgh Papers, UPASC.

⁸⁹ Harold Miller to Governor Thornburgh, Jim Seif, and Jay Waldman, re: Information on Parole Reform and Mandatory Sentencing Proposals, May 27th, 1981, Folder 35; Harold Miller to Rick Stafford re: Mandatory Sentencing Proposal, July 20th, 1981, Folder 36, Box 264, Dick Thornburgh Papers, UPASC.

⁹⁰ Harold Miller to Rick Stafford re: Mandatory Sentencing Proposal, July 20th, 1981, Folder 36, Box 264, Dick Thornburgh Papers, UPASC.

⁹¹ Bob Bittenbender to Bob Wilburn, re: Sites Selected for Prison Location, July 23rd, 1981, Folder 35, Box 264, Dick Thornburgh Papers, UPASC.

bill in the General Assembly, Miller wrote that while their “projections indicate that between 2200 and 4400 new prison cells will be required to house the new inmates,” the administration was only going to pursue the “minimum need for additional capacity,” or 2,205 cells at a cost of \$112 million.⁹²

The point is not to suggest that Thornburgh’s administration *should* built more prisons but rather to show that his staffers repeatedly raised concerns about his tough-on-crime approach. Moving forward with tough sentencing laws and new prison construction was not sound public policy. That Thornburgh and the legislature ignored their warnings is not surprising given the powerful and racialized law-and-order sentiment and antipathy towards criminalized Black and brown Pennsylvanians and imprisoned people among Pennsylvania legislators and the public. But this history reveals that even at the moment when state legislators passed tough sentencing laws, they were well aware of the political, administrative, and economic costs that carceral policymaking would reap. Suggestions that they simply could not have known the effect of such policies or that they had no other options thus begin to crumble.

Indications that the intensification of carceral policymaking promised horrors for the state’s imprisoned people emerged almost immediately. On October 28, 1981, five months after the Governor announced his anti-crime bill a group of prisoners at the State Correctional Institute at Graterford took 38 hostages, including correctional officers, after a failed escape attempt. They held the hostages for five days: only after the leader of the group, Jo-Jo Bowen, was able to speak with Black *Philadelphia Daily News* columnist Chuck Stone did they agreed to release the

⁹² Summary of the Thornburgh Administration Mandatory Sentencing Proposal, September 11th, 1981, Folder 35, Box 264, Dick Thornburgh Papers, UPASC.

final hostages.⁹³ The event generated a round of inquiries into conditions at Graterford. The Governor's report on the incident found that "overcrowding...has significantly contributed to tensions" by "tax[ing] inmate programs, cut[ting] into medical services, and creat[ing] a situation where inmates often have too much idle time on their hands."⁹⁴ "They are virtually warehousing people at Graterford," said Angus Love, a legal aid lawyer in Montgomery County, the suburban county outside Philadelphia where Graterford was located. In particular, commentators noted the high number of individuals serving life without parole at the prison – 500 in total – who had almost no hope for release given Governor Thornburgh's refusal to grant commutations.⁹⁵ But overcrowding affected all people at Graterford, no matter their sentence, making their time there rife with a litany of terrors. After serving as the mediator for the incident, Stone ran a series of pieces describing the "brutal inhumanity" of Graterford and his experience speaking with Bowen during the negotiations. "The conditions here sum up to dying," Bowen told him in their first meeting. Another prisoner, going only by F.H., likened it to the "Dachau concentration camp," citing "disrespect, racism, oppression, the violation of prisoner constitutional rights and a total disregard for human rights."⁹⁶

Acel Moore, the Associate Editor of the *Philadelphia Inquirer* and noted Black Philadelphia journalist, made the connection between the unrest at Graterford and Thornburgh's

⁹³ Sara Schweider and Stephen Salisbury, "Day by Day," *The Philadelphia Inquirer*, November 3rd, 1981.

⁹⁴ The Report of the Governor's Panel to Investigate the Recent Hostages Incident at Graterford State Correctional Institution, July 1982, Folder 2: Graterford: The Report of the Governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution, July, 1982, Box 328, Dick Thornburgh Papers, UPASC.

⁹⁵ Christopher Hepp, "the Walls Were Closing In," *Philadelphia Daily News*, November 2nd, 1981.

⁹⁶ Chuck Stone, "The Prisons' Brutal Inhumanity," *Philadelphia Daily News*, November 19th, 1981.

anti-crime package. If the package were passed, he wrote, “it is obvious that overcrowding of our institutions will be even more critical than it is now, and it is extremely critical now.” Even if politicians genuinely believed they were responding to rising crime, mandatory sentencing and prison construction only promised “more situations like what happened in Graterford.” Moreover, Moore made explicit something that Thornburgh’s advisors and state legislators rarely reckoned with: the violence and inhumanity of placing people in overcrowded, dilapidated, prisons with little opportunity for meaningful enrichment or release. “We simply can’t continue to warehouse prisoners in inadequate facilities, treat them like animals, and expect them to return to society and act like human beings,” he wrote. He “urge[d]” the governor to “re-examine” his anti-crime package and “consider some of the obvious things learned from the incident at Graterford.”⁹⁷

As Moore could have predicted, Thornburgh and a majority of the state legislature ignored his pleas. While Hardy Williams and David Richardson, two Democratic Black representatives from Philadelphia, fought vigorously against the legislation, detailing its disproportionate criminalization of Black Pennsylvanians and potential unconstitutionality, they couldn’t reverse the tide of tough-on-crime sentencing in the House.⁹⁸ Thornburgh signed the state’s first mandatory sentencing bills into law in March 1982. They required a sentence of at least five years for individuals who had been convicted of using a gun during a violent crime or

⁹⁷ Acel Moore, “Graterford questions don’t have easy answers,” *The Philadelphia Inquirer*, November 5th, 1981.

⁹⁸ Frederick Cusick, “In vote for mandatory sentencing, Pa. House shoots down the liberals,” *Philadelphia Inquirer*, November 29th, 1981 – cite the legislative text as well.

who had prior convictions for violent crimes.⁹⁹ The legislature also authorized an \$85 million bond issue to build 2,500 new prison cells, along with \$120 million to convert two state hospitals into prisons and to improve already-existing state correctional institutions.¹⁰⁰ But this new capacity would take years to come online, leaving the state to handle the more immediate influx of imprisoned people the new rules would create.¹⁰¹ Judges had already begun sentencing people to prison at higher rates and for longer periods of time.¹⁰² Between 1979 and 1983, the population had spiked from 7,905 to 10,905, a 38% increase in just four years. According to Commissioner of Corrections Marks, nearly 3,000 prisoners were double-celled in 1983.¹⁰³ Moreover the state's prisons had become 57% non-white, even though white Pennsylvanians made up 90% of the state's population in 1980.¹⁰⁴

With the state's prisons already overfilled and portending disaster, the governor and legislature's decision to pass mandatory sentencing hastened the development of a full-blown correctional catastrophe in the 1980s. Prison overcrowding exposed the racialized violence inherent to mass imprisonment. Moreover, managing prison overcrowding, which strained correctional infrastructure and administration, became the primary work of correctional

⁹⁹ "Tough new crime bill sent to Thornburgh for signing," *The Standard-Speaker*, February 24th, 1982; Robert Terry, "Mandatory-sentences bill signed," *The Philadelphia Inquirer*, March 9th, 1982.

¹⁰⁰ "Conferees vote to build new jail cells," *The Daily Item*, December 8th, 1981.

¹⁰¹ "Officials claim state prison overcrowding is worst ever," *Indiana Gazette*, January 8th, 1982.

¹⁰² Phillip Renninger and Craig C. Adelman, "Trends and Issues in the Pennsylvania Criminal Justice System," May 1986, Location 4-3266, Carton 851, Record Group 404, Dick Thornburgh Papers, PSA.

¹⁰³ Ronald J. Marks – Commissioner – Pennsylvania Bureau of Corrections – Task Force on Prison & Jail Overcrowding, April 22nd, 1983, Folder 16 - Prison Overcrowding (1 of 6), Box 12, House of Representatives Archives.

¹⁰⁴ *1980 Census Population – Detailed Population Characteristics – Pennsylvania* (Washington, D.C.: Bureau of the Census, 1983); Lee T. Bernard, *Pennsylvania Bureau of Correction: 1983 Annual Statistical Report* (Harrisburg: Pennsylvania Bureau of Corrections, 1984), 21-22.

administrators who struggled to keep their institutions under control. This overcrowding would generate some official discussion on how to remedy the crisis, often from the individuals who had urged Thornburgh to consider his policies' strains on the state's prison capacity. Their suggestions amounted to tinkering around the edges of the carceral regime. Even so, the governor and the legislature ignored their policy recommendations, out of fear of appearing "soft" on crime. The inevitable but avoidable result of policymakers' own making, Pennsylvania's new normal of prison overcrowding and carceral crisis had arrived.

Pennsylvania's New Normal

"Overcrowding now represents the most significant of all institutional problems," Commissioner of Corrections Marks told a state House Judiciary Subcommittee on Crime & Corrections to Investigation Conditions at State and County Prisons in June 1983. While Marks tried to emphasize how his agency had kept conditions under control with its "careful planning," he admitted that the dire conditions of the state's correctional institutions caused the "individual inmate" to "suffer." "Instead of one in a small cell there are two," he explained, along with "more noise in the dining room," "less time to spend in the shower" and "less opportunity to turn to a guard or counselor for advice because he is busy with someone else." Overcrowding also meant "less time for scheduled recreation, fewer programs to participate in because of the waiting lists, and increased chances of becoming involved in institutional violence." While

Marks praised the legislature's authorization of new cells, he said that legislators "must not lull ourselves into a false sense of security, thinking that this alone will meet our problems."¹⁰⁵

At the same hearing, Pennsylvania Prison Society Executive Director Rendell Davis emphasized the calamity of prison overcrowding and more directly linked it to the state's policymaking and politics. "The number of people we lock up is purely a matter of public policy," he stated. Despite data showing that crime hadn't risen dramatically, he explained, legislators and the media "frightened" the public and "dramatized every ugly crime as though it were happening on every street corner, and...insisted that we get tough." The result was a cascade of law-and-order policies and decision-making among the state's legislature and law enforcement agencies. Amid this thick air of tough-on-crime sentiment, Davis pleaded with the legislature to remember "we are dealing with human beings," adding that keeping people "under inhumane conditions – conditions that would have the SPCA take us to court if they were animals" would cause us the General Assembly, and all Pennsylvanians, to "lose our own humanity." He also outlined a few actions the legislature could take to ease the crisis, such as investing in community service centers, allowing prisoners to fulfill part of their sentence through a mix of parole and voluntary community service, or instituting an emergency overcrowding mechanism. "I entreat you as leaders elected to oversee the institutions of the Commonwealth to meet your responsibilities and to take decisive and corrective action to remedy prison overcrowding," he pleaded.¹⁰⁶

¹⁰⁵ Ronald J. Marks, "Public Hearing of the House Judiciary Committee on Crime & Corrections to Investigate Conditions at State and County Prisons," June 1st, 1983, Folder 16 - Prison Overcrowding (1 of 6), Box 12, PHRA.

¹⁰⁶ Rendell A. Davis, Testimony Before the House of Representatives Judiciary Sub-committee on crime and corrections, Special Hearings on Prison Overcrowding, June 1st, 1983, Folder 16 - Prison Overcrowding (1 of 6), Box 12, PHRA.

Internal documents among Thornburgh officials demonstrate the administration's continued awareness of and concern for the prison incapacity crisis. In a July 1984 memo sent to Deputy Secretary for the Budget Kant Rao, staffer David V. Ogurkis said that overcrowding worsened the already punishing experience of imprisonment for incarcerated people. He noted that there was "less of everything to go around," such that "menial prison jobs, other sources of distraction, and self-improvement programs such as academic education and vocational training" were "often non-existent because of the lack of staff," who were needed for "other duties stemming from over-capacity problems." Prisoners were thus forced to "spend an inordinate amount of time in [their] cell," leading them to become "frustrated, bored, and often...overly aggressive—leading to the possibility of a prison riot." In addition, Ogurkis admitted that the administration's slated prison expansion would be essentially meaningless if the population growth continued apace, causing "even those cells" to be filled years before the prison beds became available. Ogurkis concluded that "the inmate overcrowding problem has reached dangerous proportions." He urged the administration to "reduce the inmate population before the system becomes riotous" using a combination of mechanisms he outlined in his memo, such as passing a good time credit system, expanding the use of community service centers, and utilizing intensive parole.¹⁰⁷ But as Henry Brillinger, Chief of the state's Division of Planning and Evaluation, wrote to Robert Benko in Thornburgh's Office of Policy and Development, reducing the amount of time prisoners spend in prison "runs counter to the intent of the Governor, Legislature, and many sitting judges who advocate mandatory sentencing and adhere to

¹⁰⁷ David Ogurkis to Kant Rao, re: Prison Overcrowding, Folder: Corrections 1983-6, Carton 109, Record Group 404, Location Number 4-2824, Carton 16, Dick Thornburgh Papers, PSA.

sentencing guidelines.”¹⁰⁸ Budget staffer George Riddle noted in a memo to Bob Bittenbender that expanding community service centers or allowing the some prisoners to be released was “not being recommended because they do not conform to the Administration’s policy” of tough, carceral punishment.¹⁰⁹

For Pennsylvania’s imprisoned people, overcrowding constituted a heightened form of racialized state violence and brutality. An examination of SCI-Pittsburgh, a low-to-medium security men’s prison, which was 56% Black, is instructive.¹¹⁰ The institution, which was sometimes referred to as Western Penitentiary, became “severely overcrowded” in 1982, which is when officials there began double-celling prisoners. As the population skyrocketed after the state’s passage of mandatory sentencing laws and implementation of sentencing guidelines, so too did the use of double-celling: by 1986 the institution was at 142.7% of its capacity.¹¹¹ As one of the oldest prisons in the state, having been designed and built in 1882, its cells were meant to feel restrictive for just one person, measuring just 8 by 7 feet. By 1989, a “majority” of prisoners were doubled up in those tiny spaces. In *Tillery v. Owens*, a prison conditions case filed by imprisoned people at SCI-Pittsburgh in 1989, Chief Judge Maurice Cohill recounted how he entered “one of the small double cells” and was “unable to turn around once inside it and had to back out.” He also noted that individual cells were “dirty, decrepit, and unsanitary,” citing the

¹⁰⁸ Henry Brillinger to Robert Benko, November 23rd, 1984, Folder: Corrections 1983-6, Carton 109, Record Group 404, Location Number 4-2824, Carton 16, Dick Thornburgh Papers, PSA.

¹⁰⁹ George Riddle to Bob Bittenbender re: Actions to be Taken to Alleviate Some of the Problems in the Bureau of Correction, June 21st, 1983, Folder: Corrections 1983-6, Carton 109, Record Group 404, Location Number 4-2824, Carton 16, Dick Thornburgh Papers, PSA.

¹¹⁰ Lee T. Bernard, *Pennsylvania Bureau of Correction: 1983 Annual Statistical Report* (Harrisburg: Pennsylvania Bureau of Corrections, 1984), 21-22.

¹¹¹ Lee T. Bernard, *Pennsylvania Bureau of Correction: 1980-1986 Annual Statistical Report* (Harrisburg: Pennsylvania Bureau of Corrections, 1987), 6.

plaintiffs' expert in environmental health who deemed them "breeding places for vectors" that "encourage the growth of disease-causing micro-organisms." "Endemic bed bugs" existed across the institution, and the entire institution lacked proper ventilation. Imprisoned people experienced heightened instances of "stress, anxiety, and depression" due to the "close confinement" and "complete dearth of privacy," which also created opportunities for predation and assault.¹¹² Indeed, there had been numerous instances of prisoners being killed at SCI-Pittsburgh.¹¹³ Further, access to recreational space had decreased due to construction over the outdoor exercise area and because of a lack of staff available to oversee the gym and auditorium.¹¹⁴ As a prisoner named Norman Nusser wrote to the *Centre Daily Times*, "overcrowding is overwhelming," noting that it had caused "defensive inmate grouping" and led to a breakdown in control by guards, which was likely to produce unrest.¹¹⁵

The crisis did not solely affect men's prisons. The state's women's prison, State Correctional Institution at Muncy, which was 57% Black, was at 127% of its capacity in 1983.¹¹⁶ As with all prisons, conditions at Muncy had long been inhumane, with imprisoned women reporting rampant sexual abuse by guards, aggressive use of solitary confinement, druggings, and beatings.¹¹⁷ Overcrowding exacerbated these already unbearable conditions. According to the Muncy 11, a group of women MOVE members caged at the prison, "300 and some

¹¹² *Tillery v. Owens*, 719 F. Supp. 1256 (W.D. Pa. 1989), aff'd, 907 F.2d 418 (3d Cir. 1990).

¹¹³ Ann Carnahan, "Tension builds to lethal levels in overcrowded Western Pen," *The Pittsburgh Press*, August 11th, 1985.

¹¹⁴ *Tillery v. Owens*, 719 F. Supp. 1256 (W.D. Pa. 1989), aff'd, 907 F.2d 418 (3d Cir. 1990).

¹¹⁵ Norman Nusser, "Pen Too Crowded," *Centre Daily Times*, July 27th, 1983.

¹¹⁶ Tom Waseleski, "State's prisons, jails are bursting at the seams," *Pittsburgh Post-Gazette*, September 5th, 1983.

¹¹⁷ "Letters from prison, Muncy, PA," *Off Our Backs* 9, no. 6 (1979); "Muncy Update," Women's Program, Pennsylvania Prison Society, Folder 1: PRC - Subj. - Muncy Prison - Muncy Coalition 1979-82, Box 25, Prisoner Rights Council Papers, Accession 570, TUSC.

women...are jammed into 9 cottages, some with two in a room.” Due to these “overcrowded” “unhealthy” and “oppressive living conditions,” the Muncy 11 went on a hunger strike and encouraged other imprisoned women to join them.¹¹⁸

Overcrowding also created new opportunities for the state to punish imprisoned women when state correctional officials placed male prisoners at SCI-Muncy, making it a temporarily “co-ed” prison. A few women at Muncy became pregnant despite “strict warnings against having sex.”. As punishment, Muncy officials sent these women into solitary confinement. The Pennsylvania Prison Society reported that as a result some women were trying to “hide their pregnancies,” which meant they would not get “proper prenatal care.” A woman named Debra Ward recounted sleeping on a mattress on the floor in the Restricted Housing Unit for fifteen days after the prison found out she was pregnant. She slept alongside “maggots” and was only allowed to exercise for “two hours every day” in “these things like dog kennels.” Another woman recounted how she was placed in solitary confinement for two months after returning from having surgery for an ectopic pregnancy.¹¹⁹

Beyond creating reprehensible conditions for prisoners, overcrowding created substantial administrative headaches for correctional officials. Because the Bureau had not begun double celling individuals until 1981, “each new month,” Thornburgh’s Secretary of Policy and Development George Grode wrote, produced new “challenges for management, staff, and physical plants that are unprecedented in Pennsylvania history.”¹²⁰ By 1984, the Bureau of

¹¹⁸ Hunger Strikers Protest Prison Conditions at Muncy, *Big Mama Rag*, 1983.

¹¹⁹ John Woestendiek, “Penna. Inmates said to hide pregnancies,” *The Philadelphia Inquirer*, November 15th, 1986.

¹²⁰ George Grode to Hank Barr and Frank Wright re: Prison Population and Capacity, June 18th, 1984, Folder: Corrections 1983-6, Carton 109, Record Group 404, Location Number 4-2824, Carton 16, Dick Thornburgh Papers, PSA.

Corrections reported imprisoning 2,530 individuals over their designed capacity, leading to “double celling or multiple housing of slightly over 5,800 prisoners.”¹²¹ Glen R. Jeffes, who became Acting Commissioner of Corrections after Ronald Marks’ departure, wrote to Thornburgh’s Budget Secretary Robert Bittenbender that overcrowding had so overwhelmed the state’s institutions that they were facing “water and sewage constraints” that made “double-celling and the use of further modular housing units...problematic.”¹²² As a stop-gap measure, the Bureau of Corrections secured funding to add modular units at a number of state correctional institutions. But even these temporary units soon became overfilled. As Jeffes wrote to Grode and Bittenbender with the Office of the Budget, adding more modular units created a “high possibility that our already overcrowded support systems will be overtaxed – kitchens, laundries, sewage, water treatment plants, etc.”¹²³

In a last-ditch attempt to address the overcrowding crisis, Blumstein launched a Prison and Jail Overcrowding Task Force (PJOTC) in March 1983. Created as part of the Pennsylvania Commission on Crime and Delinquency, the task force included legislators, judges, academics, public defenders, police chiefs, and correctional administrators. “Given the growing problem [of overcrowding], and the scarcity of resources,” the group began its 1983 report, “we need to take

¹²¹ George Grode to Hank Barr and Frank Wright re: Prison Population and Capacity, June 18th, 1984, Folder: Corrections 1983-6, Carton 109, Record Group 404, Location Number 4-2824, Carton 16, Dick Thornburgh Papers, PSA.

¹²² Glen R. Jeffes to Secretary Bittenbender re: Strategies for Dealing with Project Population Increase in 1984, December 21st, 1984, Folder: Corrections 1983-6, Carton 109, Record Group 404, Location Number 4-2824, Carton 16, Dick Thornburgh Papers, PSA.

¹²³ Glen Jeffes to George Grode and Robert Bittenbender re: Strategies for Dealing with Project Population Increase in 1984, November 10th, 1983, Folder: Corrections 1983-6, Carton 109, Record Group 404, Location Number 4-2824, Carton 16, Dick Thornburgh Papers, PSA.

a systematic approach to deciding which offenders should use valuable prison space.”¹²⁴

Politics hampered the task force’s efforts from the start.¹²⁵ For one, the group refused to consider proposing a cap on the state’s prison population that would “trigger an emergency release of some inmates every time the limit was exceeded.” They also “rejected greater use of executive clemency,” contending that “it would have little real effect.”¹²⁶

Still, the PJOTC captured the enormity of the crisis and made a few recommendations for addressing the crisis through non-carceral means. In its 1985 report, it found that the average daily state prison population grew from 7,852 in 1979 to 12,532 in 1984, a 60% increase. At the time of the report’s publication, the prison system detained 13,126 people despite having capacity for only 9,863. Even once Thornburgh’s prison expansion program was finished, the system would only have a capacity of 12,499, so there would have to be yet more new construction if the state hoped to keep pace with its ballooning prison population. Noting the “substantial costs to build, maintain, and operate” new prisons, along with “the realization that the minor increases in incarcerated rate are not likely to have a major impact on the crime rate,” the PJTOC recommended that the legislature implement a system whereby prisoners could earn reductions in their sentence based on good behavior, to help speed up prisoner releases.¹²⁷ The

¹²⁴ *Prison and Jail Overcrowding in Pennsylvania: A Report to the Prison and Jail Overcrowding Task Force* (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1983).

¹²⁵ *Prison and Jail Overcrowding in Pennsylvania: A Report to the Prison and Jail Overcrowding Task Force* (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1983), 22.

¹²⁶ Roger Stuart, “No one cure for jail crisis, panel says,” *The Pittsburgh Press*, September 11th, 1983; *Prison and Jail Overcrowding in Pennsylvania: A Report to the Prison and Jail Overcrowding Task Force* (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1983), 24.

¹²⁷ *A Strategy to Alleviate Overcrowding in Pennsylvania’s Prisons and Jails* (Harrisburg: Prison and Jail Overcrowding Task Force, 1985).

concept gained broad support towards the end of the decade, with legislative members of the PJTOC working to push them through the legislature.

But “the Thornburgh administration failed to embrace much of the report,” so its proposals for reducing the state’s prison population went nowhere.¹²⁸ Making matters worse, Thornburgh relentlessly pushed for the addition of more and more tough sentencing laws, even as the state’s prison overcrowding crisis deepened. For example, in 1986, the final year of his governorship, he signed into law a bill that allowed a driver who left the scene of an accident that involved injury to pay a fine of \$10,000 or be sentenced to minimum 90-day prison term and a maximum five-year prison term. If the hit-and-run caused a death, an individual could be placed in prison for a maximum for seven years.¹²⁹ Such legislation, when paired with tough-on-crime judges, major reductions in eligible imprisoned people receiving parole, and a substantial increase in the number of prisoners serving life sentences as commutations precipitously decreased, strained the state’s correctional institutions to the breaking point. “We’re literally sitting on a powder keg,” Auditor General Don Bailey reported at the end of 1986 – a statement that would become all too true in just a few years’ time.¹³⁰

Conclusion

¹²⁸ Sen. Mike Fisher, “Tougher sentences require new ways to jail offenders,” *Citizen’s Voices*, July 1st, 1989; John Woestendiek, “Plan to let Pa. inmates earn early releases,” *The Philadelphia Inquirer*, July 19th, 1987; Charles Lyons, Executive Assistant to the Secretary Dept. of General Services to Task Force Members re: Corrections Task Force, June 5th, 1987, Folder October 22nd, 1987 Report of the Interdepartmental Task Force on the Task Force formed by Gov. Casey, April 20th, 1987, Box 3, Record Group 58, Location 13-2785, Governor Robert Casey’s Papers, PSA.

¹²⁹ “Penalties Toughened,” December 18th, 1986, *The Times Tribune*, Scranton, PA.

¹³⁰ Kenn Marshall, “Understaffing of prisons cited,” December 12th, 1986, *Patriot-News*, Harrisburg, PA.

Victor Hassine, a Pennsylvania prisoner and noted reform activist sentenced to life without parole, remembered discussing prison overcrowding with a friend while incarcerated at Graterford prison in the 1980s. “These people keep blaming everything in here on overcrowding,” his friend remarked, “It’s overcrowding this and overcrowding that. Well, who the hell *is* the guy that’s overcrowding us, anyway? And, if they know he’s causing all these problems, why the hell don’t they lock his ass up?”¹³¹

As Thornburgh’s administration came to a close, the state faced an overcrowding crisis entirely of its own making. Despite being fully aware of the empirically dubious impact of tough sentencing, the havoc it would wreak on the state’s prison system, the costs of prison expansion, and the possibility of alternative pathways, Governor Thornburgh and the state legislature forged ahead with Pennsylvania’s carceral state. Why they did so is not a mystery: driven by a racialized, gendered, and class politics that insisted upon the “inherent ungovernability of the poor,” policymakers elected to “get tough” because doing so helped beat back progressive distributional demands from communities rendered surplus by late racial capitalism.¹³² Policymakers’ were then buoyed by equally racist media hysteria over purportedly rising crime rates, popular demands for law and order, and calls for states to attend to victims’ rights, providing officials with easy political justification for their support of tough-on-crime, which appeared to be a demand of a retributive public.¹³³ Even as the history of Pennsylvania’s punitive turn does not alter the primary timeline or explanation for racialized law and order’s ascent and

¹³¹ Victor Hassine, *Life Without Parole: Living in Prison Today* (Los Angeles, Roxbury Publishing Company: 1999), 130.

¹³² Kohler-Hausmann, *Getting Tough*, 4-5.

¹³³ See Kohler Hausmann, *Getting Tough*; Renfro, *Stranger Danger*, Beckett, *Making Crime Pay*; Hinton, *From the War on Poverty to the War on Crime*; Gottschalk, *The Prison and the Gallows*; Garland, *The Culture of Control*.

impact, however, it does demonstrate that policymakers knew their pursuit of tough sentencing would generate substantial political, administrative, and fiscal crises for the state—indeed, some even tried to moderate the state’s implementation of such policies. Further, it makes clear that policymakers’ hands were not tied by an inescapable crisis of crime that only mass incapacitation could solve. Just as they could elect to place the Commonwealth on a carceral path, so too could they use their considerable direction to resist or dismantle it.

David Ogurkis’s warning that “care must be taken to not allow the prison population to reach overcrowding proportions that are conducive to rioting and misuse of Commonwealth dollars,” would prove prescient.¹³⁴ In large part due to severe overcrowding and its reverberating harms, imprisoned people at SCI-Camp Hill would launch a two-day uprising in October 1989. The uprising would force the state to reckon with the brutal human costs of prison overcrowding and the cruelty of the tough-on-crime politics from which they emerged.

¹³⁴ David Ogurkis to Kant Rao, re: Prison Overcrowding, Folder: Corrections 1983-6, Carton 109, Record Group 404, Location Number 4-2824, Carton 16, Dick Thornburgh Papers, PSA.

Chapter Three

“The Only Language that DOC Understands...is a Riot”

On October 25th, 1989, at around 2:45 PM, three correctional officers at Pennsylvania’s State Correctional Institution at Camp Hill led five hundred prisoners from the Main Stockade Yard back to their cells to prepare for dinner. Amid this routine movement, a correctional officer, J. Thomas, and an imprisoned person known as Scarboy, got into a physical altercation at E Gate. As Scarboy and Thomas traded punches, Sergeant Bernard Baker grabbing Scarboy and began to physically assault him, “literally grabb[ing] him and body slam[m]ing] him on the ground.”¹ Baker’s aggression prompted other prisoners to jump in, resulting in hand-to-hand combat between Baker, a towering presence at over six feet and close to 300 pounds, and groups of prisoners. Other officers ran, and Officer Thomas went to E-Gate House to call for assistance. Cognizant that they outnumbered the officers, imprisoned people began assaulting the incoming guards. When another round of twelve unarmed corrections officers tried to suppress the disturbance a half hour later, prisoners sprayed them with fire extinguishers. Although some guards and prison staffers were able to escape to the prison’s Control Center, prisoners breached E Gate and “ran throughout the compound,” taking over cell blocks, opening cell doors, and grabbing guards as hostages in the process. Soon enough, prisoners had gained control of six cellblocks and held as hostages eighteen people, six of them guards.²

¹ Testimony of James Dietrich, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, 44, in box entitled Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

² “The Final Report of the Governor’s Commission to Investigate Disturbances at Camp Hill Correctional Institution,” Folder 1/23 “Camp Hill Prison Riot,” Carton 1, Record Group 10,

As the uprising spread through the facility, prisoners began looting the commissary, commandeering vehicles, and setting buildings on fire.³ Within hours, cellblocks were in flames, producing “clouds of gray smoke” that “could be seen for miles” across the otherwise sleepy farmlands and suburbs of central Pennsylvania’s Cumberland County.⁴ Tito, a prisoner in A-Ward’s modular unit, where low-security prisoners primarily resided, remembered becoming aware of the uprising only when he saw a “huge black cloud of smoke” that “paint[ed] the sky.”⁵ Having gained access to cell block keys and radios, prisoners demanded to negotiate with Governor Robert P. Casey, Lieutenant Governor Mark Singel, prison officials, and the media. “These are the people we want to negotiate with. If not, we might as well go to war,” an imprisoned told prison officials over a police radio.⁶ They urged Pennsylvania officials to act fast, before their uprising at Camp Hill “spreads and becomes a disease all over Pennsylvania.”⁷

Records of the Office of the Governor, Governor Robert P. Casey, Governor’s Personal File, 1987-1995; Testimony of James Dietrich, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, in box entitled Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection; Sergeant Bernard Baker Written Testimony, Folder: Corrections (Camp Hill) IV, Carton 23, Record Group 10, Records of the Office of the Governor, Office of the General Counsel, PSA; Derrick Gibson, *Before Orange Was the new Black: The Camp Hill Story* (2015).

³ Arlin Adams, George M. Leader, and K. Leroy Irvis, “The Final Report of the Governor’s Commission to Investigate Disturbances at Camp Hill Correctional Institution,” Folder 1/23 “Camp Hill Prison Riot,” Carton 1, Record Group 10, Records of the Office of the Governor, Governor Robert P. Casey, Governor’s Personal File, 1987-1995, PSA.

⁴ Laird Leask, “Inmates Link Strife to Loss of Privilege,” *Patriot News*, October 26th, 1989, Folder SCI Camp Hill Riot October 26th, 1989, Carton 1, Record Group 58, Series Number 58.2, Camp Hill Prison Riot Press Clippings, 1989-1995 in Department of Corrections, Pennsylvania State Archives, Harrisburg, PA

⁵ Tito, “Rampage at Camp Hill,” *Convictions*, 1990.

⁶ Mike Feeley, David DeKok, Tom Bowman, “Prison rioting ends after 8 hours,” *Patriot News*, October 26th, 1989,.

⁷ Mike Feeley, David DeKok, Tom Bowman, “Prison rioting ends after 8 hours,” *Patriot News*, October 26th, 1989.

At first, Department of Corrections Commissioner David Owens and Camp Hill Superintendent Robert Freeman appeared to have dodged the worst of what a prisoner uprising at Camp Hill could have unleashed. Once a large contingent of heavily armed state troopers and local police arrived outside the prison gates, around 6:45 PM, prison officials and prisoners entered negotiations. Prisoners articulated numerous grievances, chiefly that the prison was unbearably overcrowded, which reduced their access to the educational and vocational programs they needed to make parole. They also cited endless verbal and physical abuse from prison guards, poor medical care (specifically a change in the sick line policy that significantly limited their access), and the prison's punitive elimination of a beloved Family Day event that allowed prisoners to spend time with their families and receive homemade food. Two hours of back-and-forth resulted in no firm agreements. But the promise of a meeting with Superintendent Freeman the next afternoon convinced prisoners to end their occupation, release their hostages as an act of "good faith," and return to their cells in full lockdown.⁸

Ostensibly, prisoners at Camp Hill had been subdued. Because the fires had destroyed some buildings, however, prisoners were placed in whatever cellblocks were available, some of them with six or seven other inmates. Damage to lighting meant that some cellblocks were in almost complete darkness. More strikingly, corrections officers immediately realized that the insurgents' extensive destruction of security panels meant that some prisoners were easily able to

⁸ Arlin Adams, George M. Leader, and K. Leroy Irvis, "The Final Report of the Governor's Commission to Investigate Disturbances at Camp Hill Correctional Institution," Folder 1/23 "Camp Hill Prison Riot," Carton 1, Record Group 10, Location 3-1858, Records of the Office of the Governor, Governor Robert P. Casey, Governor's Personal File, 1987-1995; Deposition of Robert Freeman – November 24th, 1989, pg. 21, Folder: Adams Commission Testimony, Freeman, Robert — Superintendent, SCIC (2) Folders containing (2) Transcripts + Exhibits; Folder 2 - Transcript of 11/24/89, Carton 22, Record Group 10, Location 8-4319, Litigation Files, 1983-1999, PSA.

unlock their cells. Prisoners had also destroyed the switch boxes where corrections officers posted orders that explained how to release imprisoned people “en masse,” suggesting that prisoners had seen those instructions. “We’re hearing doors popping,” corrections officer Tabb Jeffrey Bickell remembered of his time overseeing F Block that evening.⁹ Moreover, in some cell blocks, the power tools and other weapons that prisoners had seized were “lying about on the cell block floors.”¹⁰ Still, at 10:00 PM, Superintendent Freeman told the press that the riot had ended, and Camp Hill was secure. “We are fully in control of the institution,” he said.¹¹

The ink had barely dried on the following morning’s headlines about the state’s recapturing of Camp Hill when prisoners rendered them obsolete. The scheduled meeting between prisoners and Superintendent Freeman went poorly. As prisoner Ameen McKelvie remembered, the Superintendent “didn’t show no, like no concern...about what was happening.”¹² The Department of Corrections refused to budge on prisoners’ demands, and prisoners left the negotiating table incensed. Derrick Gibson, another prisoner at Camp Hill, remembered one of the prisoner representatives at the meeting coming back to his block and

⁹ Deposition of Tabb Jeffrey Bickell, November 20th, 1989, Folder: Deposition of Tabb Jeffrey Bickell – CO, Carton 23, Record Group 10, Location 8-4322, Litigation Files, 1983-1999, in Records of the Office of the Governor – Office of the General Council, PSA.

¹⁰ Arlin Adams, George M. Leader, and K. Leroy Irvis, “The Final Report of the Governor’s Commission to Investigate Disturbances at Camp Hill Correctional Institution,” Folder 1/23 “Camp Hill Prison Riot,” Carton 1, Record Group 10, Location 3-1858, Records of the Office of the Governor, Governor Robert P. Casey, Governor’s Personal File, 1987-1995, PSA.

¹¹ Mike Feeley, David KeKok, and Tom Bowen, “Camp Hill Prison Riot Injures 42,” *Patriot News*, October 26th, 1989, Folder SCI Camp Hill Riot October 26th, 1989, Carton 1, Record Group 58, Location 16-0378, Camp Hill Prison Riot Press Clippings, 1989-1995 in Department of Corrections, PSA.

¹² Testimony of Ameen McKelvie, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

saying that after they made their list of demands for “immunity and family picnic day brought back, jobs for parole violators, and so on” Superintendent Freeman “just laughed at us” and told them to go back to their cells.¹³ Freeman’s evening media appearance further fanned the flames. He insulted prisoners by alleging that they were only mad about the Family Day policy because their families had been bringing in drugs, which had been the PADOC’s reason for ending the practice. The claim was not only odious for its criminalization of prisoners’ families but for its perpetuation of a flagrant lie. According to David Luis “Suave” Gonzalez, who was imprisoned in Camp Hill during the uprising, prisoners well knew that guards were the only people bringing in narcotics; Suave himself was one of their dealers at the time.¹⁴ Freeman further offended prisoners by alleging that the prisoners’ anger stemmed from the fact that they “couldn’t understand” the memos that were sent out about the policy changes.¹⁵ “The air is filled with a strong sense of betrayal by the warden,” Tito remarked in his accounting of events immediately following this meeting.¹⁶

In an atmosphere thick with disappointment and anger, some COs overheard prisoners making renewed threats, and although they sent messages to their superiors about what they were observing they received no confirmation or follow up security orders. Kenneth Hill, a prisoner at Camp Hill, remembered that as soon as imprisoned people heard Freeman on the TV news, prisoners started opening doors.¹⁷ Derrick Gibson also remembered the “clicks” of the doors

¹³ Gibson, *Before Orange Was the New Black*, 47.

¹⁴ “Camp Hill Prison Riot w/ Suave & Kevin,” *Crawlspace*, <https://player.fm/series/crawlspace-true-crime-mysteries-2475576/ep-346-camp-hill-prison-riot-w-suave-kevin>.

¹⁵ “Camp Hill Prison Riot w/ Suave & Kevin,” *Crawlspace*, <https://player.fm/series/crawlspace-true-crime-mysteries-2475576/ep-346-camp-hill-prison-riot-w-suave-kevin>.

¹⁶ Tito, “Rampage at Camp Hill,” *Convictions*, 1990.

¹⁷ Testimony of Kenneth Hill, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title:

opening. “We’re out again!” he remembered hearing fellow prisoners scream, “No justice, no peace!”¹⁸ At around 7:00 PM, prisoners from six cellblocks rushed into the yard, causing a “roar” to reverberate across the prison grounds.¹⁹ Given the quick and more organized direction of the prisoners on that second night – some heading for the main Control Room, others to the modular units -- Superintendent Freeman and other observers believed that the evening’s uprising had been planned. At least one prisoner account suggests that block representatives signaled to prisoners that they would take action again that evening.²⁰ Prisoners blanketed the institution, some equipped with hammers, saws, and screwdrivers. They set additional fires in the Education building, eight modular units, the gymnasium, and D cellblock. Some prisoners set fire to the Control Center with fifty corrections staff members trapped inside until the State Police rescued them.²¹ Elsewhere, someone got a hold of one of the maintenance trucks and attempted to “ram it into the fence” to try to create an escape hole.²² Imprisoned people also took a new group of hostages, eight in total.

Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁸ Derrick Gibson, *Before Orange was the New Black*, 52.

¹⁹ Arlin Adams, George M. Leader, and K. Leroy Irvis, “The Final Report of the Governor’s Commission to Investigate Disturbances at Camp Hill Correctional Institution,” in Folder 1/23: Camp Hill Prison Riot,” Carton 1, Record Group 10, Series Number 10-138, Records of the Office of the Governor – Governor Robert P. Casey, Governor’s Personal File 1987-1995, PSA.

²⁰ Deposition of Robert Freeman – November 24th, 1989, pg. 43-44, Folder: Adams Commission Testimony, Freeman, Robert — Superintendent, SCIC (2) Folders containing (2) Transcripts + Exhibits; Folder 2 - Transcript of 11/24/89, Carton 22, Record Group 10, Location 8-4319, Litigation Files, 1983-1999, PSA; Derrick Gibson, *Before Orange Was the New Black*, 46.

²¹ Deposition of Robert Freeman – November 24th, 1989, pg. 65, Folder: Adams Commission Testimony, Freeman, Robert — Superintendent, SCIC (2) Folders containing (2) Transcripts + Exhibits; Folder 2 - Transcript of 11/24/89, Carton 22, Record Group 10, Location 8-4319, Litigation Files, 1983-1999, PSA.

²² Gibson, *When Orange Was the New Black*, 53.

At one point, late in the evening, a standoff occurred between prisoners and guards stationed behind their respective barricades. Prisoners allegedly chanted “Burn Camp Hill” and threw a firebomb at the guards.²³ Images of billowing black smoke and piercing bright orange flames reaching 200 feet into the air ran yet again on late night news. Amid what one observer called “total chaos,” top prison officials rushed back to the site to hastily develop another de-escalation plan. “Last night was a riot,” a prison guard told reporters, “tonight is a war.”²⁴

This chapter offers the first historical account of the 1989 Camp Hill prisoner uprisings. I argue that it represented a radical refutation and attack on the state’s maintenance of dangerously overcrowded, notoriously anti-Black, and inhumane prisons. Camp Hill’s insurgents were not clearly organized by one political organization or program. But in spontaneously taking over and destroying the prison, which was majority non-white, Camp Hill prisoners offered a proto-abolitionist, counter-carceral critique that sought to expose the state’s “warehouse prisons” as sites of racial fascism.²⁵ As Robin D.G. Kelley writes, in their power to “transport us to another place, compel us to relive horrors and more importantly, enable us to imagine a new society,” Camp Hill prisoners’ insurrection offered an expression of Black imprisoned “freedom dreams” during an era known for its hyper-institutionalization of anti-Black punishment, punitive

²³ Testimony of Dan Murdoch, Senate Judiciary Committee Hearing, December 11th, 1989, Folder: Corrections (Camp Hill) IV, Carton 23, Location Number: 8-4322, Record Group 10, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel, PSA.

²⁴ Carmen Amerson, Hugh Bronstein, and Dan Miller, “Surrender Ends Night of Violence,” *The Sentinel*, October 27th, 1980; Folder SCI Camp Hill Riot October 27th, 1989, Carton 1, Record Group 58, Camp Hill Prison Riot Press Clippings, 1989-1995 in Department of Corrections, PSA.

²⁵ Lee T. Bernard, *Commonwealth of Pennsylvania Department of Corrections: Statistical Report 1980—1987* (Camp Hill: Pennsylvania Department of Corrections); Dan Berger and Toussaint Losier, *Rethinking the American Prison Movement*, American Social and Political Movements of the Twentieth Century (New York: Routledge, 2018), 8.

neoliberal governance, and the normalization of post-civil rights racial and economic inequality.²⁶ Their radical action complicates declensionist histories of both the long Black freedom struggle and of the prisoners' rights movement, which tend to deemphasize prisoner organizing and Black radical imprisoned struggle in the 1980s and 1990s.²⁷ In part facilitated by the state's relentless overcrowding of its prison system, which made the social control of imprisoned people more difficult than the state desired, Camp Hill prisoners launched a powerful assault on the administration and legitimacy of industrialized punishment in the Keystone state.

The state quickly regained control of the prison, of course, and the Camp Hill uprisings did not result in abolitionist or even modestly decarceral policymaking. In the immediate aftermath of the uprising, though, Camp Hill reverberated beyond the event itself, destabilizing the legitimacy of the state's criminal punishment practices and penal administration. Prompted by imprisoned people's radical action, this rupture in the state's carceral growth and punitive policymaking created a new terrain for incarcerated people and their families, state legislators, correctional officials, and prison personnel to struggle over the future of tough policymaking and penal. "For two nights the state's most overcrowded prison stole the public's attention," Mumia Abu-Jamal, a Black political prisoner then caged at SCI-Huntingdon, which experienced its own disturbances just a few days prior to Camp Hill, wrote after the uprising.²⁸ In this suddenly unstable political space, where claims about the necessity of tough sentencing policies, growing

²⁶ Robin D.G. Kelley, *Freedom Dreams: The Black Radical Imagination* (Boston: Beacon Press, 2002), 9.

²⁷ Berger and Losier, *Rethinking the American Prison Movement*, 143; Chase, "We Are Not Slaves."

²⁸ Mumia Abu-Jamal, "Letter from Death Row: B-Block Days and Nightmares," *The Nation*, April 23rd, 1990.

prisoner populations, and the prison's treatment of prisoners faced substantial criticism, Pennsylvania's policy pathway appeared strikingly uncertain.

But the crisis of Camp Hill also empowered reactionary, retributive, and racist political constituencies invested in bolstering the state's investment in racialized tough-on-crime governance. The scandal and embarrassment of the uprising discredited the state's correctional leaders, especially Commissioner Owens. The state's first Black Commissioner of Corrections, Owens embraced a liberal approach to correctional administration that urged investment in treatment, education, and support for prisoners and criticized the state's prison expansion initiatives. After Camp Hill, he became a target of long-simmering criticism from largely white rank-and-file correctional officers – some of whom were allegedly members of local white supremacist organizations – who bristled against his treatment-oriented approach and blamed him for the insurgency at Camp Hill. Framing themselves as front-line victims of prisoners' violence and of poor, overly-prisoner-focused DOC leadership during the uprising, Pennsylvania prison guards and their unions used the crisis as an opportunity to position themselves as penal experts and to deepen the state's investment in racialized punishment.²⁹ Even as Camp Hill officers did not express overtly racist views on the record, their policy prescriptions sought to expand the state's capacity to repress and torture Black imprisoned Pennsylvanians. Just as Camp Hill created space for imprisoned people to expose the horrors of prison overcrowding and racialized mass imprisonment, so too did the crisis embolden those seeking to intensify the state's capacity to punish and incapacitate, thereby deepening racial apartheid in Pennsylvania.

²⁹ For further discussion of how prison guards fueled the toughening of criminal punishment in the late-twentieth century, see Joshua Page, *The Toughest Beat: Politics, Punishment, and the Prison Officers Union in California* (New York: Oxford University press, 2011).

“Where are We Going to Put All These People?”

Manufactured by Governor Thornburgh’s tough on crime agenda and the General Assembly’s compliance, Democratic Governor Robert Casey inherited a fast-unraveling correctional crisis upon his election in November 1986. Despite the near-completion of the four new prisons and the addition of cells at existing prisons authorized by the legislature under Thornburgh, the number of people imprisoned far exceeded the state’s correctional capacity.³⁰ Indeed, in Casey’s first year in office, SCI-Frackville, a Thornburgh-era maximum security prison built in Schuylkill County and designed to imprison 540 people, exceed its capacity by 50%.³¹

Initially, Casey seemed inclined to address overcrowding through modestly decarceral measures. While prison overcrowding did not figure heavily in his campaign, he did state that he wished to avoid overseeing another “major prison expansion program to relieve overcrowding.”³² To signal this shift back towards a more rehabilitative approach, Casey appointed a new Commissioner of Corrections, David Owens, who had liberal correctional credentials and who fit with his administration’s promise to hire more minorities in state leadership. A Black man from Philadelphia, Owen had worked in the city’s prison system since 1964, beginning as a correctional officer and advancing through leadership until becoming

³⁰ Borys Krawczeniuk, “New prisons may soon ease burden at overcrowded correctional institute,” *The Times Leader*, June 25th, 1986; Lois Fecteau, “Pa. prison population up 73%,” *Public Opinion*, September 25th, 1986; Walter Kraus, “Report indicates state’s prisons 38% over capacity,” *The Morning Call*, December 2nd, 1987.

³¹ Walter Kraus, “Report indicates state’s prisons 38% over capacity,” *The Morning Call*, December 2nd, 1987.

³² David Marziale, “Casey to concentrate on economy, education,” *Public Opinion*, November 17th, 1986.

superintendent in 1980. Widely praised by the state's Black Caucus and endorsed by prisoner rights groups, Owens positioned himself as a penal-welfarist sensitive to prisoners' rights. He was outspoken about his "great concerns" regarding the use of the death penalty, referencing the importance of considering the "sociological factors that lead to an individual engaging in a pattern of crime" when determining its use. Pressed on the proper remedy for state prison overcrowding, Owens stressed the importance of "developing alternatives to incarceration," such as funding drug and alcohol rehabilitation programs and passing an earned time bill presently in the legislature, which would allow prisoners to earn good behavior credits that could secure them an earlier parole date. Owens also cited the extreme toll that overcrowding placed on the state's correctional administration, both in terms of "strain" on food, medical, support, plumbing and sewer systems and the "tax" on correctional staff." Even as he welcomed the opening of the prisons built under the Thornburgh administration and asserted that building more prisons was "part of the answer," he also said that "there's no way we can build our way out of the situation."³³

Casey paired his appointment of Owens with the inauguration of an Interdepartmental Task Force (ITF) to examine the corrections system. Chaired by the governor's general counsel Morey Myers and including eight cabinet members, the ITF's job was to make recommendations

³³ "Corrections Press Conference," April 22nd, 1987, Folder: 23: Corrections, 1987-89, Box 1, MG 47, Robert Casey Papers (HCLA 1467), Eberly Family Special Collections Library, Pennsylvania State University, State College, PA, (EFSCCL-PSU); "Owens nominated to top corrections post," April 21st, 1987, *Associated Press*; John M. Baer, "Death Penalty Troubles Nominee for Prisons Commissioner," *Philadelphia Daily News*, April 23rd, 1987; Dan Meyers, "Blacks Hail Selection of Owens," *Philadelphia Inquirer*, April 22nd, 1987; Eric Conrad, "State reports prison population rose 85 percent since '80," *Patriot News*, November 14th, 1987; Walter Kraus, "State plans to overcrowd its new prison in Schuylkill," *The Morning Call*, September 16th, 1987.

for the state's correctional system and develop strategies for their implementation. Internal memos indicated that the system was "approximately 34% over capacity," a figure staffers based on the standard of having one person for one cell as outlined by the American Correctional Association. Even with the addition of 500 cells at SCI-Graterford and the new construction of SCI-Cresson, SCI-Frackville, SCI-Smithfield, and SCI-Retreat by the end of 1987, all of which were the products of Thornburgh's prison expansion effort, the new capacity could not outpace the growth of prison populations.³⁴ The internal report warned that "if anything, the gap between the actual population and the system's capacity will widen," noting that "unless measures are taken to alleviate the problem" the state's prison population will "outpace the state's capacity by 4,297 by the year 2000."³⁵

The ITF's final report, which Owens hailed as a "road map to the future," made a number of proposals that reflected a new, more progressive era in correctional administration. The report urged the state to focus on offering imprisoned people outlets for enrichment and rehabilitation, improving health care and other conditions of confinement, and reducing the state's bloated prison population.³⁶ The report also called for major policy changes regarding prisoner care and treatment, such as allowing extended family visits, implementing a "comprehensive mental health care" program, significantly expanding job training and educational offerings, reducing the maximum punishment for disciplinary infractions, and assisting exiting prisoners with post-

³⁴ "Reduction of Overcrowding" Folder: October 22nd, 1987 Report of the Interdepartmental Task Force on the Task Force formed by Gov. Casey, April 20th, 1987, Box 3, Record Group 58, Location 13-2785, Governor Casey Papers, PSA.

³⁵ Charles Lyons, Executive Assistant to the Secretary Dept. of General Services to Task Force Members re: Corrections Task Force, June 5th, 1987, Folder: October 22nd, 1987 Report of the Interdepartmental Task Force on the Task Force formed by Gov. Casey, April 20th, 1987, Box 3, Record Group 58, Location 13-2785, Governor Casey's Papers, PSA.

³⁶ "Study asked of conjugal inmate visits," *Associated Press*, October 23rd, 1987.

release benefits. When it came to prison overcrowding, the report lamented the severe strain the crisis placed on all aspects of prison administration, including “a higher incidence of violence (involving both inmates and staff) but also to increased disease rates,” both of which “overburdened” medical staff and facilities broadly. The report also noted that more prisoners had “diminished” opportunities to participate in education, job training, and other services. The Task Force recommended that the DOC “maintain its historical support for the concept of ‘one inmate/one cell’ and develop a “comprehensive plan to address overcrowding” as part of its long-range planning process.³⁷ More concretely, it urged the legislature to pass earned time legislation, support the use of intensive parole, and expand community service centers. While the Task Force acknowledged that expanding prison capacity could ease overcrowding and serve as an “economic development tool” in struggling counties, it warned that this was an “expensive proposition” that should “be considered only after all other options are exhausted.”³⁸

As with previous attempts to address overcrowding, the task force acknowledged the DOC’s inability to unilaterally affect one of the primary drivers of prison overcrowding: the sentencing laws set by the General Assembly and the tough sentencing practices of individual judges. Indeed, even as Commissioner Owens vocally supported alternatives to incarceration and warned against relying on prison construction as a solution to overpopulation, the funding requests he sent to the Governor and the ITF sought to secure funds for expanding prison

³⁷ Charles Lyons, Executive Assistant to the Secretary Dept. of General Services to Task Force Members re: Corrections Task Force, June 5th, 1987, Folder October 22nd, 1987 Report of the Interdepartmental Task Force on the Task Force formed by Gov. Casey, April 20th, 1987, Box 3, Record Group 58, Location 13-2785, Department of Corrections General Records PSA.

³⁸ Draft – The Report of the Governor’s Interdepartmental Task Force on Corrections, Prepared August 4th, 1987, Folder: October 22nd, 1987 Release: Report of the Interdepartmental Task Force on Corrections, Box 3, Record Group 58, Location 13-2785, Department of Corrections General Records, PSA.

capacity, one of the only sites of discretionary power his agency had for mitigating the overcrowding crisis.³⁹ Owens' request for new cells was much smaller and cheaper than Governor Thornburgh's prison expansion package, though: his initial request was for only 1,150 new cells and 353 units at existing institutions or therapeutic communities. Further, he placed his request within a larger plan to reduce overcrowding through prisoner release mechanisms and alternatives to incarceration such as intensive probation, restitution, electronic monitoring, and community service work.⁴⁰

Published shortly before the Department of Correction's Annual Report revealed the state's prison system was 38% over capacity even as the state's crime rate had declined, the ITF recommendations appeared timely and urgent. "Never before in the history of corrections in Pennsylvania has there been such a dramatic increase in the number of prisoners confine," Owens remarked, adding that prison overcrowding was the "No. 1 concern" of his department.⁴¹

But the Pennsylvania legislature refused to implement alternatives to incarceration. Its failure to pass one of the more common prison population reduction measures, earned time, is instructive. The legislature had abolished the state's earned time policy in 1965 when it switched to indeterminate sentencing. Since then, there had been multiple attempts to reinstate an earned time program, which would have allowed for the earlier release of some imprisoned people, but

³⁹ "Department of Corrections Presentation to Governor Casey, December 11th, 1987," Folder: October 22nd, 1987 Release: Report of the Interdepartmental Task Force on Corrections, Box 3, Record Group 58, Location 13-2785, Department of Corrections General Records, PSA.

⁴⁰ "Department of Corrections Presentation to Governor Casey, December 11th, 1987," Folder: October 22nd, 1987 Release: Report of the Interdepartmental Task Force on Corrections, Box 3, Record Group 58, Location 13-2785, Department of Corrections General Records, PSA.

⁴¹ Walter Kraus, "Report indicates state's prisons 38% over capacity," *The Morning Call*, December 2nd, 1987.

all had failed to clear the legislature.⁴² The Prison and Jail Overcrowding Task Force recommended the adoption of an earned time bill in 1985, and although Republican Senator Michael Fisher of Allegheny county tried to move it through the legislature, the bill went nowhere.⁴³ In 1987, Fisher again attempted to introduce an earned time bill that would allow some prisoners to receive a certain number of days per month off their minimum sentences depending on the length of their sentence.⁴⁴ One estimate showed that by 2000, the legislation could reduce the state's prison population by nearly 1,500 people and save the state \$17.4 million in prison costs in its first year alone.⁴⁵

While recognized as a “bottom of the line” bill that was relatively conservative in scope, the bill received wide-ranging support, including from Owens, prison superintendents, the Pennsylvania Board of Probation and Parole, and a coalition of left-of-center prisoner rights and church organizations.⁴⁶ “We thank God every day that we see a prisoner leaving because it’s a relief,” George Petsock, SCI-Pittsburgh’s Superintendent told the *Pittsburgh Post-Gazette*. “It seems the public demands retribution but, at the same time, he’s going to get out anyway when

⁴² John Woestendiek, “Plan to let PA. inmates earn early release has broad support,” *The Philadelphia Inquirer*, July 19th, 1987.

⁴³ “Panel proposes solution to prison crowding,” *Associated Press*, February 14th, 1985.

⁴⁴ I say “some prisoners” because those sentenced to life were denied the opportunity to earn good time. See “The earned time incentive,” *The Philadelphia Inquirer*, April 20th, 1987.

⁴⁵ “The earned time incentive,” *The Philadelphia Inquirer*, April 20th, 1987; “Report of the Correctional Population Projection Committee on the Population Impacts of Proposed Legislation,” Pennsylvania Commission on Crime and Delinquency, July 27th, 1989, Carton 19, Record Group 10, Location 4-3997, Office of the Governor, Pennsylvania Commission on Crime and Delinquency, PSA.

⁴⁶ “The earned time incentive,” *The Philadelphia Inquirer*, April 20th, 1987; John Woestendiek, “Group urges time off for some in jail,” *The Philadelphia Inquirer*, November 20th, 1987; Jim McKinnon, “Bill for good-time in prisons is opposed,” *Pittsburgh Post-Gazette*, December 7th, 1987; Rep. Dwight Evans and Angus Love, “Earned time eases crowded prisons,” *The Philadelphia Inquirer*, January 13th, 1988.

his sentence is up.”⁴⁷ A imprisoned person at SCI-Graterford named Omar Askia Ali wrote to the *Philadelphia Daily News* urging the legislature to pass the bill, stating that “thoughtful lawmakers should be asking themselves not so much why we need earned time, as why it has taken us so long to adopt it. The prison system is so overcrowded and overburdened that the burnout rate for prison personnel, as well as prison residents, is unbelievable. It’s everyone’s problem.”⁴⁸

Although Fisher’s bill passed in the Senate in 1988, the House Judiciary Committee approved a more conservative, “watered down” version that restricted the number of days per month a prisoner could earn to only four, less than the national average.⁴⁹ Local prosecutors and some Representatives expressed their vehement opposition to even that limited bill, alleging that earned time would harm crime victims and “seriously undermine the public’s confidence in the criminal justice system.”⁵⁰ . In negotiations on an abortion bill that included a tacked-on amendment to start an earned time program, the Legislature struck the earned time amendment at the last minute. Hundreds of prisoners at SCI-Pittsburgh launched a hunger strike in response, and a weary Commissioner Owens continued to sound the alarm that a “major criminal justice

⁴⁷ Jim McKinnon, “Bill for good-time in prisons is opposed,” December 7th, 1987, *Pittsburgh Post-Gazette*.

⁴⁸ Omar Askia Ali, Letter to Editor: A Vote for Earned Time, *Philadelphia Daily News*, April 14th, 1988.

⁴⁹ Allen Hornblum and Edmund Lyons, “Guest Opinion – ‘Earned Time’ Program in Penna. Prisons Long Overdue,” *Philadelphia Daily News*, January 29th, 1988.

⁵⁰ “Stevens blasts ‘earned time’ bill,” *The Standard Speaker*, March 8th, 1988; Lois Fecteau, “Prison population growth ‘alarming,’” *Scrantonian Tribune*, March 4th, 1988; Eric Conrad, “Senate Oks abortion control bill, sends it to Casey,” *Patriot News*, March 22nd, 1988; Jeffrey B. Roth, “Local DA against good time for state prisoners,” *The Gettysburg Times*, March 30th, 1988.

crisis” could soon ravage the state should prison overcrowding go unaddressed.⁵¹ By the end of the decade, Pennsylvania was just one of two states that had not implemented some form of earned time for imprisoned people.

Governor’s Casey’s embrace of a more aggressive “tough on drugs attitude” midway through his first term further undermined efforts to remedy prison overcrowding. Proclaiming that “drug trafficking” posed the “greatest danger to...our families in the modern history of the Commonwealth,” and referencing the “crack epidemic” plaguing the state, Casey proposed a doubling of the state’s anti-drug funds for the 1989-1990 budget, including a 120% increase in funding for the tough-on crime Republican Attorney General Eddie Preate, who stated that his goal was to make Pennsylvania the “toughest state in the nation against drug pushers.”⁵² Casey’s initiative did sustain a long-central focus on funding drug treatment and rehabilitation. He proposed that the state allocate \$80 million for treatment and prevention and created PENNFREE, a bipartisan “drug free community trust fund” that would use \$140 million once set aside for local tax reform to fight drugs through investment in anti-drug education, treatment, and law enforcement. But his initiative also included unabashedly retributive and carceral measures, such as a new law that imposed tough criminal penalties on drug dealers who sold drugs to children or within 1,000 feet of a school or college. Casey also supported mandatory life prison terms for individuals convicted three times on drug felonies.⁵³ As the legislature continued

⁵¹ Bill Moushey, “Inmates demand new law, refuse meals,” *Pittsburgh Post-Gazette*, April 2nd, 1988; “Prison crowding threatens justice system, state says,” *The Philadelphia Inquirer*, December 15th, 1988.

⁵² “Legislators urge action on drug bills,” *Patriot News*, February 17th, 1989.

⁵³ Kenn Marshall, “Governor supports drug bills,” *Patriot News* March 15th, 1989; David Morris, “House votes to restrict PA abortions,” *Associated Press*, March 17th, 1988; “Underage drinking law starts May 24th,” *Associated Press*, March 26th, 1988; Governor Endorses Sweeping Anti-Drug Initiatives – Press Release, March 14th, 1989, Office of the Governor, Folder 18:

to introduce tough sentencing laws, the PCCD issued a report on the legislation's population impacts. Its analysts found that the new drug laws would add hundreds of prisoners to the state's prison system, thousands if they were passed without alternatives to incarceration and population reduction laws.⁵⁴

Commissioner Owens publicly worried about the impact of Governor Casey's anti-drug campaign on the state's overloaded prison system, asking frankly "Where are we going to put these people?"⁵⁵ Casey eventually announced a proposal to expand the state's correctional system by at least 3,300 cells, which would include using PENNFREE funds to convert Farview State Hospital into a state correctional institution equipped with 1,000 beds and using capital funds to build a new maximum security 1,000 bed prison, and 650-cell "drug treatment prison."⁵⁶ But as Owens and others repeatedly insisted, the state could not "build their way out of the problem."⁵⁷ While three Republican legislators put forward a series of bills aimed at mitigating the overcrowding crisis that July, including earned time and alternative housing for DUI offenders, two minimum security prisons, and special prisons for individuals addicted to drug and alcohol, the proposals did not gain traction. Some observers even worried that their

Issues/Drugs and Pennfree 1988-89, Box 7; A Report of the Governor's Drug Policy Council on the Pennsylvania Drug-Free Community Trust Fund, "PENNFREE," Folder 10: Penn Free/Report presentation 1989, Box 22, Governor Robert Casey Collection, EFSCL-PSU.

⁵⁴ "Report of the Correctional Population Projection Committee on the Population Impacts of Proposed Legislation," Pennsylvania Commission on Crime and Delinquency, July 27th, 1989, Carton 19, Record Group 10, Location 4-3997, Office of the Governor, Pennsylvania Commission on Crime and Delinquency, PSA.

⁵⁵ Irvin Kittrell III, "State proposal could worsen jail crowding," *York Daily Record*, February 11th, 1989.

⁵⁶ "Casey proposes new prison space," *Philadelphia Tribune*, June 20th, 1989.

⁵⁷ Testimony of Pennsylvania Prison Society Before the Judiciary Committee of the Pennsylvania House of Representatives in Response to Bills Pending before the Committee, July 18th, 1989, Folder 20, Box 12, Papers of Jeffrey Piccola, PHRA.

proposals would worsen the problem. As the Pennsylvania Prison Society noted at a July hearing on the proposed bills, the new version of an earned time bill also included provision – long desired by Republican lawmakers – to repeal a law that restricted minimum sentences to no more than one-half of the maximum sentence, allowing judges to set minimum sentences for much longer periods and thus contributing to the state’s prison overpopulation crisis.⁵⁸

By May 1989, the state’s prison population had grown 53% in just five years. That June, the prison system experienced the largest ever one-month population increase of 423 prisoners, putting the population at nearly 20,000 people in a system equipped to house 13,468, a number that put it at 144 % of its capacity.⁵⁹ With the crisis escalating, Owens attempted to chart a path forward. As per the ITF’s recommendations, he offered three options for the state: the maintenance of the status quo, a construction-based plan, and a plan that focused on increasing capacity through alternatives to construction. Maintaining the status quo, he said, would result in the state’s prison population reaching 168% of capacity by 1994. A construction-based plan would require the state to build 9,300 new cells at a cost of \$796,274,000. The third plan factored in already approved or soon-to-be approved plans for prison expansion and sought to tackle the rest of the capacity shortage via alternatives to construction such as the policies he had

⁵⁸ Testimony of James Thomas, Executive Director of the Pennsylvania Commission on Crime and Delinquency before the House Judiciary Committee, Public Hearing on Prison and Jail Overcrowding, Monday, July 17th, 1989, Folder 20, Box 12, Papers of Jeffrey Piccola, PHRA; Mike Fisher, “Alternative solutions to prison overcrowding,” *Pittsburgh Post-Gazette*, June 14th, 1989.

⁵⁹ Testimony of Pennsylvania Prison Society before the House Judiciary Committee, Public Hearing on Prison and Jail Overcrowding, Monday, July 17th, 1989, Folder 20, Box 12, Papers of Jeffrey Piccola, PHRA.

already endorsed. The costs of plan three came to \$239,741,000, or \$556,533,000 less than the construction-based proposal.⁶⁰

State prison overcrowding, and its exacerbation of fundamentally repressive prison conditions and management, also prompted imprisoned people in Pennsylvania to take their grievances to the federal courts. In August, federal Judge Maurice B. Cohill Jr. ruled in favor of three imprisoned plaintiffs at SCI-Pittsburgh --Victor Hassine, Nelson Charles Mikesell, and Kenneth Davenport --who in 1987 had filed a suit after a fire at the over 100-year-old and overcrowded prison resulted in 26 prisoner injuries. “Every sentence can be a death sentence,” Victor Hassine, stated in a telephone interview. The three had long pushed for better conditions at the prison, but “nothing changed.” They filed suit when the fire not only threatened their lives – in addition to being vulnerable to burning, they had to evacuate to the yard for 10.5 hours in -4-degree weather – but led to beatings from guards. Judge Cohill ordered “sweeping physical and staffing changes” at SCI-Pittsburgh, which he characterized as an “overcrowded, unsanitary, and understaffed firetrap.” He also noted the futility of the state undertaking new construction at the prison, which had been put on hold because “the unprecedented surge in inmate population” made it impossible to clear one of the blocks slated for renovation. “The rising inmate population undercuts any realistic expectation of implementing the construction plan which, ironically, was designed to alleviate overcrowding,” Cohill wrote in his opinion.⁶¹

⁶⁰ David Owens, “A Five-Year Plan to Reduce Overcrowding in the Pennsylvania Department of Corrections,” June 5th, 1989, Folder 1/21: Prison Overcrowding, Carton 1, Location 3-1858, Series Number 10-138, Record Group 10, Records of the Office of the Governor, Governor Robert P. Casey, PSA.

⁶¹ Ed Philips, “Prison fire, riot spurred inmates to file suit,” August 21st, 1989, *Pittsburgh Post-Gazette*; *Tillery v. Owens*, 719 F. Supp. 1256 (1989), Civ. A. No. 87-1537, United States District Court, W.D. Pennsylvania.

While the opinion placed greater pressure on the Department of Corrections and the legislature, the plaintiffs admitted that they were “not expecting much.” “You talk about prison reform, and the public says, ‘What about the [crime] victims?’” Davenport told the *Pittsburgh Post-Gazette*. But they were adamant that improving prison conditions and eliminating overcrowding benefitted the public. “If you have more humane conditions behind the walls, you’ll have more humane individuals coming out,” Mikesell stated.⁶²

The culmination of a decade of retributive anticrime policymaking and willful legislative inaction, Pennsylvania’s crisis of prison overcrowding profoundly destabilized correctional administration and the politics of law and order in the state. Getting tough on crime was not, it turns out, as straightforward, simple, or uncontested as some legislators and voters may have hoped. This mismatch between the state’s thirst for tough punishment and its capacity to imprison generated enormous and costly challenges for the state’s penal administrators. But policymakers still refused to rollback tough policies, pass decarceral reforms, or massively expand the state’s prison capacity. For imprisoned people, the crisis of prison overcrowding, along with the state’s imposition of lengthier sentences and tougher restrictions on their ability to secure parole, made their incarceration in the state’s racist and abusive state prisons all the more agonizing and infuriating. When the opportunity to rebel, take over the prison, and express their frustrations emerged in late October 1989, imprisoned people at SCI-Camp Hill seized it with all their might.

Burn Camp Hill, Burn

⁶² Ed Philips, “Prison fire, riot spurred inmates to file suit,” *Pittsburgh Post-Gazette*, August 21st, 1989.

The explosion at Camp Hill unmasked the carceral crisis in Pennsylvania's correctional system. Over the uprising's two days, prisoners took control of a considerable portion of the prison; even prisoners in the highly-secured Restrictive Housing Unit were able to break free and release others.⁶³ Prisoners also attacked guards and took hostages, and there were reports of rapes, stabbings, and theft.⁶⁴ "All of us felt we were going to die," remembered correctional officer Joseph L. Keefer, who was taken as a hostage on the second day and suffered injuries from beatings.⁶⁵ One prisoner, Tito, remembered smoke filling A-block, and prisoners having to use sledgehammers to break holes through the walls to escape.⁶⁶ Prisoners fought not only with guards and staff, but also with each other.⁶⁷ The damage to the institution was substantial. "This is like Hurricane Hugo," one prison employee remarked; a pilot for a hospital's helicopter stated the grounds looked like "Vietnam."⁶⁸ In total, the prisoners burned fourteen buildings, including eight modular cell units, the education building, the greenhouse, laundry,

⁶³ Arlin Adams, George M. Leader, and K. Leroy Irvis, "The Final Report of the Governor's Commission to Investigate Disturbances at Camp Hill Correctional Institution," December 21st, 1989, Folder 1/23 "Camp Hill Prison Riot," Carton 1, Record Group 10, Records of the Office of the Governor, Governor Robert P. Casey, Governor's Personal File, 1987-1995

⁶⁴ Tom Bowman, "Living nightmare: Inmate writes of rapes, stabbings, thefts during riots," *Patriot News*, November 14th, 1989.

⁶⁵ Testimony of Joseph L. Keefer, Folder: Corrections (Camp Hill) IV, Carton 23, Location Number: 8-4322, Record Group 10, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel, PSA.

⁶⁶ Tito, "Rampage at Camp Hill," *Convictions*, 1990.

⁶⁷ Testimony of Douglas Walburn, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

⁶⁸ David Dekok, Mike Feeley, and Barry Fox, "Inmates set fires," *Patriot News*, October 27th, 1989; David Morris, "Camp Hill Prisoners Rampage," *The Associated Press*, October 27th, 1989, Folder: SCI Camp Hill Riot October 27th, 1989, Carton 1, Record Group 58, Series Number 58.2, in Camp Hill Prison Riot Press Clippings, 1989-1995 in the Department of Corrections, PSA.

and furniture factory.⁶⁹ It would take 600 volunteer firefighters from 48 fire companies from across the state to finally put the fires out.⁷⁰ Jeffrey Beard, who would be appointed acting superintendent at Camp Hill after Superintendent Freeman was fired due to his response to the uprisings, stated years later that “for a riot as bad as Camp Hill ...it’s really a miracle that there were no deaths.”⁷¹ With extensive aid from the Pennsylvania State Police, the Department of Corrections eventually repressed the uprising and retook the prison. There had been over 120 injuries and \$15 million in damage by the time it came to an end.

Unlike other prisoner revolts, Camp Hill prisoners did not cohere into an organized group with a unified politics or strategy.⁷² Still their rebellion represented a clear refutation and rejection of the carceral state. Following Cedric Robinson’s description of the Black Radical Tradition not always being “conscious of itself as a tradition,” I argue that there was clear historical and symbolic value in predominantly Black imprisoned people forcefully reducing the state’s capacity to punish and incapacitate them through the destruction of cellblocks and prison buildings.⁷³ That act clearly communicated the magnitude of the state’s abuse of Camp Hill

⁶⁹ Mike Feeley; Barry Box, Laird Leask, “Last night was a riot... Tonight a war,” *Patriot News*, October 27th, 1989; Connie McNamara, “High cost predicted on revolts,” *Patriot News*, October 29th, 1989.

⁷⁰ Jennifer Cetta, “Area firefighters continue to quell flames at prison,” *Patriot News*, October 18th, 1989.

⁷¹ Jeffrey A. Beard, interview by Susan McNaughton, July 18th, 2019, Pennsylvania Department of Corrections Employee Oral History Collection Project, Pennsylvania Department of Corrections, <https://www.cor.pa.gov/About%20Us/1989-SCI-Camp-Hill-Riot/Pages/Oral-Histories.aspx>.

⁷² See, for example, Berger, *Captive Nation*; Berger and Losier, *Rethinking the American Prison Movement*; Burton, “Attica Is;” Losier, “Prison House of Nations;” Lynd, *Lucasville*; Thompson, *Blood in the Water*.

⁷³ Cedric Robinson, *Black Marxism: The Black Radical Tradition* (Chapel Hill: University of North Carolina Press, 1983), 318.

prisoners through overcrowding, deteriorating conditions, and abusive and racist treatment of a disproportionately Black prison population.

The wave of prisoner unrest immediately before and after Camp Hill underscored the enormity of the state's carceral crisis and the widespread feeling among the state's prisoners that their incapacitation was unjust and inhumane. Three days prior to Camp Hill's uprising, fifty-two prisoners in A-Block at the maximum security SCI Huntingdon prison – which, like Camp Hill was overcrowded and disproportionately Black – refused to return to their cells and “rampaged through the wing,” resulting in 48 injuries.⁷⁴ Prisoners were reportedly protesting a series of incidents in which Huntingdon guards brutally beat inmates in an isolation room normally meant for holding prisoners with death sentences.⁷⁵ In the days following Camp Hill, a series of “copycat riots” occurred at the similarly overcrowded and majority Black SCI Graterford and at two Philadelphia's city jails, Holmesburg Prison and the House of Corrections.⁷⁶ Philadelphia's prisons were then in the thick of decades long state and federal litigation against the system's severe overcrowding, so much so federal judge Norma Shapiro had recently implemented a

⁷⁴ Transcript of December 18th, 1989 Judiciary Committee of the Pennsylvania State Senate Re: Recent Prison Disturbance at the Huntingdon State Correctional Institution, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

⁷⁵ Ted Anthony, “Huntingdon Inmates Remain In Cells Following Monday Rampage,” *Patriot News*, October 26th, 1989, Folder: SCI Camp Hill Riot October 26th, 1989, Carton 1, Record Group 58, Series Number 58.2, in Camp Hill Prison Riot Press Clippings, 1989-1995 in the Department of Corrections; 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

⁷⁶ Gina Boubion, Kitty Caparella and Kathy Brennan, “Camp Hill’ Riot Spreads to City’s Jails,” *Philadelphia Daily News*, October 30th, 1989; Mark McDonald, “Inmates, Guards Brawl at Graterford,” *Philadelphia Daily News*, November 2nd, 1989; For statistics on the racial breakdown of the Pennsylvania state and Philadelphia prison population, see *Commonwealth of Pennsylvania Department of Corrections: Annual Statistical Report 1988 & 1989* (Camp Hill: Department of Corrections, 1990).

controversial cap on prisoner admissions.⁷⁷ They were also over 80% Black. Holmesburg prisoners shouted “Camp Hill! Camp Hill!” as they set fires and trashed cellblocks. Local reporting on Holmesburg noted that the uprising, which injured 160 prisoners and guards, came after weeks of “unrest” at the city jail, featuring “fistfights, knifings, lockdowns,” and “rumored escape attempts.”⁷⁸

Pennsylvania prisoners’ rebellions represented a statewide refutation of the state’s normalization of racialized criminalization and mass incapacitation, making explicit the anti-Black, death-dealing consequences and political purpose of the Commonwealth’s embrace of purportedly colorblind tough on crime politics. At a time when law and order policymaking and the War on Drugs had wreaked havoc in prison systems across the nation Camp Hill prisoners’ protest had the potential to powerfully interrupt and potentially limit the state’s punitive march towards mass imprisonment.⁷⁹ In this pliable political moment, where tough-on-crime politics had become hegemonic in theory but posed administrative challenges in practice, Pennsylvania prisoners’ uprising charted another way forward. This burst of abolitionist political expression would not be confined to the uprisings itself. Provoked by prison guards and state police’s retaliatory violence and the state’s transfers of prisoners to other prisons, prisoners and their families organized to amplify the harms inherent to the state’s penal administration.

⁷⁷ See *Harris v. City of Philadelphia*, No. CIV.A. 82-1847, 2000, (E.D. Pa. 2000).

⁷⁸ Amy S. Rosenberg, “Striking of Inmate Led to Riot: Order Restored at Holmesburg,” *Philadelphia Inquirer*; October 30, 1989.

⁷⁹ Peter Kerr, “War on Drugs straining jails,” *Chicago Tribune*, September 25th, 1987; “Get-tough policy on crime overcrowding U.S. prisons,” *Chicago Defender*, April 14th, 1988; Jack Anderson and Dale Van Atta, “Prison Overcrowding Challenges Bush,” *The Washington Post*, January 26th, 1989.

Damage to the prison's cell blocks and modular units was so extensive that prison officials scrambled to transfer nearly 1,000 prisoners to other state prisons, county jails, and federal prisons. Because so many of the state's correctional institutions were themselves overcrowded, leading to fears that sending more prisoners to other Pennsylvania institutions would lead to a breakdown of the state's correctional system, the Department of Corrections ended up transferring nearly 800 prisoners to 23 different federal prisons as far away as Georgia, Texas, and California.⁸⁰ Prison transfers are always disruptive and disorienting for imprisoned people, as they uproot them from community and very often place them far from family and attorneys, rupturing their networks of care and support. PA DOC made matters worse by not notifying family members and partners of prisoners who were transferred, causing many to panic, not knowing where their love ones were located or how to reach them.⁸¹ LaVerne Sims, mother of MOVE 9 member Charles Sims Africa, wrote to Commissioner Owens about how she had to track down her son's whereabouts on her own, finding him first at a federal prison in

⁸⁰ Robert S. Bitner to Erskind DeRamus re: Policy, February 5th, 1990, Folder: Corrections I, Carton 23, Location 8-4322, Record Group 10, Litigation Files, 1983-1990, Records of the Office of the Governor – Office of the General Counsel, PSA; Mrs. Ella M Lawrence to Gov. Robert P. Casey, November 17th, 1989; Mr. and Mrs. Jim Giangulio to Gov. Robert P. Casey, November 21st, 1989; Folder 1/23: "Camp Hill Prison Riot," Carton 1, Record Group 10, Location Number 3-1858, Governor's Personal File, 1987-1995, Governor Robert P. Casey Papers, PSA; Dennis B. Roddy and Steve Twedt, "Panel to probe how prison lost control," *Pittsburgh Press*, October 29th, 1989; Janet Williams, "Camp Hill inmates swell already crowded Western Pen," *The Pittsburgh Press*, November 5th, 1989; Tom Bowman and Connie McNamara, "19 more prisoners transferred – ACLU opposes lockdown," *Patriot News*, November 7th, 1989; Dennis B. Roddy and Steve Twedt, "Panel to probe how prison lost control," *Pittsburgh Press*, October 29th, 1989; Patrick Laforge, "Lawmaker criticizes department for keeping families in the dark," *York Daily Record*, November 5th, 1989; Cameron Texter, "Camp Hill inmates moved to prisons outside the state," *York Daily Record*, November 10th, 1989; Tom Bowman, "Some inmates transferred as far away as California," *Patriot News*, November 9th, 1989.

⁸¹ Patrick Laforge, "Lawmaker criticizes department for keeping families in the dark," *York Daily Record*, November 5th, 1989,

Pennsylvania, then in Atlanta, and then in California. She noted that he had been beaten while imprisoned in Atlanta, and that she wanted the “guards who beat my son brought up for disciplinary [sic] action.”⁸² Families’ efforts to track down their sons, brothers, and husbands created emotional distress and imposed substantial economic burdens, mainly through hefty telephone fees. Deborah Leary reported spending \$85 on telephone calls trying to get information from prison officials, noting that she was still unsure whether he was at Camp Hill or had been transferred.⁸³

Family members of those who remained at Camp Hill were also kept in the dark about their whereabouts and conditions.⁸⁴ PADOC banned visits to Camp Hill and initially, imprisoned people were not permitted to call or write. Prison officials who fielded phone calls from family members were curt with the callers. “Emotionally, I’ve about had it,” Margaret Fry told the *York Dispatch*, adding that she felt like she was the parent of a missing child.⁸⁵ A sister of a Camp Hill prisoner wrote to her congressman that she had heard conflicting information about her brother, who had lived in one of the modular units that had been burnt down, including that he was “one of the inmates that were hurt.” “With all the news articles that have been written about the riot,

⁸² LaVerne Sims to Commissioner David Owens, November 15th, 1989, Folder 1/23: “Camp Hill Prison Riot,” Carton 1, Record Group 10, Location Number 3-1858, Governor’s Personal File, 1987-1995, Governor Robert P. Casey Papers, PSA.

⁸³ Jeanette Krebs, “Inmates’ kin want visit, probe for abuse,” *Patriot News*; November 14th, 1989; Mr. and Mrs. Jim Giangulio to Gov. Robert P. Casey, November 21st, 1989; Folder 1/23: “Camp Hill Prison Riot,” Carton 1, Record Group 10, Location Number 3-1858, Governor’s Personal File, 1987-1995, Governor Robert P. Casey Papers, PSA.

⁸⁴ Jim Schoettler, “Families concerned about inmates,” *York Dispatch*, November 9th, 1989; Marie Landman to Congressman Peter H. Kostmayer, November 10th, 1989; Mrs. Doris Anderson to Gov. Robert Casey, November 6th, 1989; Folder 1/23: “Camp Hill Prison Riot,” Carton 1, Record Group 10, Location Number 3-1858, Governor’s Personal File, 1987-1995, Governor Robert P. Casey Papers, PSA.

⁸⁵ Jim Schoettler, “Families concerned about inmates,” *v*, November 9th, 1989.

our family is very distraught about not hearing anything concrete,” she wrote.⁸⁶ One hundred families contacted Philadelphia Representative David Richardson Jr. for help in finding out information regarding their imprisoned loved ones, and the Director of the Spanish Community Association in York reported that dozens of his clients have requested help in getting information about what was going on at Camp Hill.⁸⁷ The Pennsylvania Prison Society reported receiving “200 inquiries” from imprisoned people and their relatives regarding “inmate abuse, inmate location and safety, family visitation, and destruction of personal property.”⁸⁸

When family members finally did contact their loved ones, they heard harrowing details about how prison employees subjected prisoners to a litany of horrors after correctional officers and State Police regained control of the prison.⁸⁹ The Governor’s office also received a flurry of letters from imprisoned people at Camp Hill detailing their experiences after the disturbance, and later Senate testimony from imprisoned people would confirm the reign of terror at Camp Hill

⁸⁶ Marie Landman to Congressman Peter H. Kostmayer, November 10th, 1989, Folder 1/23: “Camp Hill Prison Riot,” Carton 1, Record Group 10, Location Number 3-1858, Governor’s Personal File, 1987-1995, Governor Robert P. Casey Papers, PSA.

⁸⁷ Patrick Laforge, “Lawmaker criticizes department for keeping families in the dark,” *York Daily Record*, November 5th, 1989.

⁸⁸ Testimony of Ann Schwartzman, Executive Director of the Pennsylvania Prison Society, House of Representatives Committee on Judiciary In re: House Resolution 226 – Prison Disturbances at State correctional Institution at Camp Hill, January 17th, 1990, House of Representatives Committee on the Judiciary re: House Resolution 226 – Prison Disturbances at State Correctional Institution at Camp Hill, H. Craig Lewis Papers, Unprocessed Collection, PSA.

⁸⁹ Mrs. Doris Anderson to Governor Casey, November 17th, 1989; James C. Reiter to Theresa Reiter, November 7th, 1989; Prisoner Letter -- Name Withheld Due to Request for Confidentiality, Folder 2, 1989-1990 Subject Files: Camp Hill, SCI, 3 of 5, Box 12, Judiciary Committee papers, PHRA; Tito, “Rampage at Camp Hill;” Cameron Texter, “Families finally hear from inmates,” November 5th, 1989, *York Daily Record*; Elisa Weaner to Gov. Robert Casey, November 13th, 1989; Tony to Mom, November 7th, 1989; Folder 1/23: “Camp Hill Prison Riot,” Carton 1, Record Group 10, Location Number 3-1858, Governor’s Personal File, 1987-1995, Governor Robert P. Casey Papers, PSA.

after the unrest.⁹⁰ Immediately after the uprising, the State Police forced thousands of prisoners to remain “outdoors under tight supervision.” They were handcuffed and placed in leg shackles, for multiple nights in a row; were forced to sleep on the ground in cold temperatures without blankets; and were fed only a “child’s portion” of a TV dinner twice rather than three times a day.⁹¹ According to one account, the State Police threw these dinners on the backs of prisoners who had their hands handcuffed behind them, where the sentiment was “if you can’t get it, that’s your fault.”⁹² The State Police also made a point to publicly destroy all of the personal property that imprisoned people had sought to save, including, personal letters, parole documents, pictures, radios and “every Blessed thing we owned in our cells,” as one prisoner put it.⁹³

Correctional officers and the State Police also routinely beat and brutalized Camp Hill prisoners. “I have been informed that the correctional officers are using their authority to torture and beat inmates they don’t like or if they feel the inmates were involved in the riot,” one mother wrote to Governor Casey, relaying information shared with her from her imprisoned son.⁹⁴ One

⁹⁰ David Walter to Governor Robert P. Casey, November 13th, 1989, Folder 1/23: “Camp Hill Prison Riot,” Carton 1, Record Group 10, Location Number 3-1858, Governor’s Personal File, 1987-1995, Governor Robert P. Casey Papers, PSA.

⁹¹ Charles Thompson, “More inmates moved to other cells in state,” *Patriot News*, October 19th, 1989.

⁹² Testimony of Kenneth Hill, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

⁹³ Testimony of Kenneth Hill, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

⁹⁴ Mrs. Doris Anderson to Governor Casey, November 17th, 1989, Folder 2, 1989-1990 Subject Files: Camp Hill, SCI, 3 of 5, Box 12, Judiciary Committee papers, PHRA.

prisoner, named Tony, wrote his mother that “they punished everyone knowing that we were not all guilty.”⁹⁵ Another prisoner reported that a few days after the uprising, “COs hit inmates with clubs in their sides, knees, and stuff as they brought us up to the blocks from the yard” and “twisted their hands with cuffs on.”⁹⁶ The State Police’s treatment of prisoners was especially brutal.⁹⁷ In his account of the aftermath, Tito described the State Police as appearing to be “possessed” when they screamed at prisoners to lie on their stomachs with their hands on their heads, hitting some of the prisoners with billy clubs and threatening to “kill us if we don’t obey.”⁹⁸ On top of the physical brutality, the guards also engaged in racist taunting that sought to further dehumanize Camp Hill prisoners. MOVE member Charles Sims Africa relayed to Mumia Abu-Jamal that “baton-wielders taunted black prisoners, beating those who refused” to say, “I’m a nigger,” leading him to be “beaten by guards.”⁹⁹

Reports flooded in that guards at other Pennsylvania prisons also retaliated against Camp Hill prisoners.¹⁰⁰ Dorothy Gilmore’s son stated that he was “beaten, stripped of his clothes, and

⁹⁵ Tony to Mom, November 7th, 1989; Folder 1/23: “Camp Hill Prison Riot,” Carton 1, Record Group 10, Location Number 3-1858, Governor’s Personal File, 1987-1995, Governor Robert P. Casey Papers, PSA.

⁹⁶ Prisoner Letter -- Name Withheld due to Request for Confidentiality, November 18th, 1989; Folder 2, 1989-1990 Subject Files: Camp Hill, SCI, 3 of 5, Box 12, Judiciary Committee papers, PHRA.

⁹⁷ Tito, “Rampage at Camp Hill”; Testimony of James Dietrich, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

⁹⁸ Tito, “Rampage at Camp Hill.”

⁹⁹ Mumia Abu-Jamal, “B-Block Days and Nightmares,” *The Nation*, April 23rd, 1990.

¹⁰⁰ L.A. Luebbert, “Relatives group calls for rally at Capital,” *York Daily Record*, November 5th, 1989; LaVerne Sims to Commissioner David Owens, November 15th, 1989, Folder 1/23: “Camp Hill Prison Riot,” Carton 1, Record Group 10, Location Number 3-1858, Governor’s Personal File, 1987-1995, Governor Robert P. Casey Papers, PSA.

poked and shocked by guards” after being transferred to SCI-Pittsburgh.¹⁰¹ Guards at SCI-Graterford flagrantly attacked five prisoners who had been transferred from Camp Hill in retaliation for the uprisings.¹⁰²

Outraged, parents and loved ones of those imprisoned at Camp Hill sent dozens of letters to state legislators and prisoner rights groups detailing the horrors Camp Hill prisoners faced and their challenges getting clear answers from PADOC. They also attended the court hearings where the ACLU sought a court order to remove shackles and handcuffs from prisoners, absorbing harrowing details of the likely fate of their sons, brothers, and husbands. “I didn’t know they could treat a person like this in the United States,” Katie Gilette remarked after hearing about the shackling at Camp Hill.¹⁰³ One week after the uprisings, 20 family members from Philadelphia showed up at the prison demanding to visit with their loved ones or receive explanations for their difficulties inside. Led by Lois Williamson, a self-proclaimed “political activist” and head of a prisoner advocacy group called Citizens United for the Rehabilitation of Errants, the group hit a “brick wall” at the prison, and then with an aide of the Governor, who wouldn’t answer their questions.¹⁰⁴

PA DOC eventually returned imprisoned people still at Camp Hill to their cells. But conditions were little better than when they were outside, and guards treated them with extreme cruelty. First, guards subjected prisoners to a public strip search, humiliating and violating them. The prisoners were then shoved inside 7 by 10-foot cells without mattresses, heat, hot water, or

¹⁰¹ “Inmates’ families demand answers,” *Associated Press*, November 14th, 1989.

¹⁰² Michael Bamberger, “Inmates injured at Graterford,” *Philadelphia Inquirer*, November 14th, 1989.

¹⁰³ Tom Bowman, “Conditions at burned out prison called Medieval and barbaric,” *Patriot News*, November 8th, 1989.

¹⁰⁴ “Families get no answers,” *Associated Press*, November 3rd, 1989.

toilet paper with four other people and locked in with double-chain padlocks that ensured prisoners could not safely evacuate during a fire. They were not allowed to shower or given soap for 12 days. Some prisoners were kept in hand cuffs and shackles for nearly two weeks after the uprising, which an ACLU suit contended made the prison's conditions "more reminiscent of a slave ship than a modern penitentiary."¹⁰⁵ Prison officials only removed the restraints after the ACLU sued the prison in federal court. At the hearing, Camp Hill prisoners testified that they were made to eat with their hands tied behind their back, requiring them to bend over and eat as if they were dogs. That these individuals "fought the rioters off" and protected a prison guard by placing him in a prison uniform made the guard's relentless retaliation against them all the more agonizing.¹⁰⁶

In response, they organized a mass rally at Harrisburg to demand that Governor Casey talk to them about "what's going on at Camp Hill."¹⁰⁷ The rally, co-organized by the Pennsylvania Prison Society and other prisoner rights groups, emphasized how the state's actions at Camp Hill harmed families and placed severe emotional and economic burdens on women and children with loved ones inside. Amid chants of "Camp Hill is Camp Hell," Adrienne Finley explained that her children thought their dad was "dead or hurt very bad....want to hear my husband's voice," she pleaded, "I want to see my husband's handwriting...Are they trying to let the wounds [from alleged beatings] heal?" Another rally attendee, Mshindi Shabazz of the African National Prison Organization, noted the visible racial inequity of mass incarceration in

¹⁰⁵ Tom Bowman, "19 more prisoners transferred – ACLU opposes lockdown," *Patriot News*, November 7th, 1989.

¹⁰⁶ Tom Bowman, "Conditions at burned-out prison called medieval and barbaric," November 8th, 1989, *Patriot News*.

¹⁰⁷ L.A. Luebbert, "Relatives group calls for rally at capitol," *York Daily Record*, November 5th, 1989.

the state, stating that “the prison system in the US exists as concentration camps for Black people” and questioning how the state always appeared to have money to fund new prisons but claimed none existed for addressing “homelessness and joblessness.”¹⁰⁸

Conditions at Camp Hill were dismal for months after the uprising. During a tour at the prison in December, prisoners shouted to journalists, “We’re locked in here 24 hours a day,” “They abuse us here,” and “We have no access to legal material!”¹⁰⁹ The state of affairs was so abhorrent that the ACLU threatened to sue state officials for the “medieval and barbaric” conditions inside the prison. ACLU lawyer Scott Burris contended that what was occurring at Camp Hill was “punishment without trial...punishment no one deserves.”¹¹⁰ Family members organized another, much smaller rally the following March: about 30 people showed up to the Capitol to support an earned time law and a law that would allow some prisoners sentenced to life the opportunity to receive parole. They also continued to report that their loved ones faced retaliatory violence. “They are human no matter the circumstances,” Diane Steele told the rally. “They have rights for animals; it seems they need rights for humans.”¹¹¹ But the family members’ pleas went unanswered by state and correctional officials. PA DOC spokeswoman Sherri Cadeaux contended that “officials have received only one complaint of abuse, which

¹⁰⁸ “Inmates’ families demand answers,” *Associated Press*, November 14th, 1989; John M. Baer, “Inmates’ Families Rally for Humane Treatment, Visits,” *Philadelphia Daily News*, November 14th, 1989; L.A. Luebbert, “Relatives group calls for rally at capitol,” *York Daily Record*, November 5th, 1989.

¹⁰⁹ Russell E. Eshleman Jr. “Post-riot tour of Camp Hill reveals a prison wasteland,” *The Philadelphia Inquirer*, December 8th, 1989.

¹¹⁰ Tom Bowman, “Inmate writes they’re treated ‘like animals,’” *Patriot News*, November 3rd, 1989; Tom Bowman, “Advocates seek tour of ravaged prison,” *Patriot News*, November 3rd, 1989.

¹¹¹ “Relatives rally for better inmate treatment,” *Pottsville Republican*, March 21st, 1990.

could not be proven,” asking the families to “give us something...substantial.”¹¹² One year after the uprising, the Pennsylvania Prison Society continued to “receive scattered accusations that guards are beating prisoners.” Although the Inspector General’s Office had launched an investigation, “no staff members have been accused of any offenses.”¹¹³

Openings, Closures, and Reconstitutions

As prisoners suffered from reckless transfers and retaliatory violence, Pennsylvania policymakers scrambled to respond to the crisis. The Governor’s response expressed a typical valorization of law enforcement and denigration of imprisoned people. On October 28th, 1989, he held a press conference where he expressed his “overriding concern” for “the hostages and the safety of the public” and thanked the Department of Corrections officials, prison guards, police officers, fireman, and other emergency volunteers for their “professionalism and teamwork.” He also made clear his commitment to “identify and punish” prisoners involved in the uprisings and asserted that his administration would immediately work to “replace lost cell capacity and provide additional cell space throughout our state correctional system on as fast a track as possible.”¹¹⁴ At a press conference the following week, Casey affirmed his administration’s commitment to “an unprecedented investment in new prison capacity in our state, and hundreds of new corrections officers and support personnel to the state corrections system.” In addition to replacing the capacity lost at Camp Hill and authorizing the purchase of 12 new modular units

¹¹² “Prison groups charge guards beating inmates,” *The Sentinel*, January 8th, 1990.

¹¹³ Howard Goodman, “Scars of prison riot persist,” *The Philadelphia Inquirer*, October 28th, 1990.

¹¹⁴ Governor Robert P. Casey Statement on Camp Hill State Prison – October 28th, 1989, Folder 24: Corrections/Camp Hill prison, 1989-1990, Box 1, Robert Casey Papers, EFSCL-PSU.

for state prisons, Casey sought to accelerate the construction of three new 1,000-cell prisons, one maximum security and two medium security. He did make clear that “we cannot build our way out of the prison problem by simply adding more cells, however essential that is.” And he called on the state to continue investing in drug treatment programs and to implement earned time. But Casey’s “accelerated expansion” of the state’s prison system was clearly the focus of his immediate response to Camp Hill.¹¹⁵

Casey’s expedited prison construction announcement reflected the severity of the state’s overcrowding crisis and the unsettled state of criminal punishment in Pennsylvania. While he tried to position his administration as having “already committed to an unprecedented investment in new prison capacity in our state,” the four prisons he said had been opened in the previous two and a half years were products of the Thornburgh administration’s prison expansion initiative. The truth is major prison construction had not been on Casey’s radar until after Camp Hill: his proposed 1988-1989 budget focused largely on improving treatment, education, and vocational programming for prisoners.¹¹⁶ Casey’s construction response to Camp Hill was undoubtedly a strategic attempt to fend off criticism from Republican legislators eager to portray him as having done nothing to extend prison capacity until, as Republican representative Jeffrey Piccola wrote, Camp Hill “burned to the ground.”¹¹⁷ On the same day as Casey’s second press conference, his

¹¹⁵ Governor Robert P. Casey Statement on Camp Hill State Prison – October 28th, 1989, Folder 24: Corrections/Camp Hill prison, 1989-1990, Box 1, Robert Casey Papers, EFSCCL-PSU.

¹¹⁶ Casey’s administration did propose allocations for operating the additional 1,386 cells in new prisons authorized during Thornburgh’s term, but these funds were not for new prison construction – only for covering operational costs for new prison capacity. See Robert P. Casey, *1988-1989 Budget in Brief: Commonwealth of Pennsylvania* (Harrisburg: Governor’s Office of the Commonwealth of Pennsylvania, 1988), in Folder 4: Budget and speeches/1988-89 budget in brief, Box 18, Robert Casey Papers, EFSCCL-PSU.

¹¹⁷ Jeffrey E. Piccola to Ronald W. Minard, March 7th, 1990, Folder 21 - Camp Hill Prison Riots, Box 10, Jeffrey Piccola Papers, PHRA.

Budget Director sent three bills to House of Representative Majority and Minority leaders authorizing the additional modular housing units and the construction of three new prisons.¹¹⁸

Even as the Governor aggressively embraced new prison construction, he also insisted that the state “must find an answer to the question: ‘How did [Camp Hill] happen?’”¹¹⁹ Days after the uprisings had been crushed, he announced the creation of an independent commission to investigate the disturbance.¹²⁰ He swiftly appointed three panel members to oversee the commission: Republican Arlin Adams, a former state secretary of public welfare and federal appeals court judge, residing in Philadelphia; former Democratic Governor George Leader, living in Dauphin County; and K. Leroy Irvis, a former Democratic speaker of the House and the first Black speaker in Pennsylvania’s history, from Pittsburgh. The panel, which was called the Adams Commission, had assistance from investigators with the Office of the Inspector General. Three days later, the Senate Judiciary Committee, chaired by Republican Stewart Greenleaf, held the first in a series of hearings on Camp Hill and prisoner unrest across the state. The House Judiciary Committee also voted to investigate Camp Hill and prison disturbances in the Commonwealth, but delayed its hearings until after the Adams Commission completed its investigation.¹²¹ After conducting dozens of depositions with Camp Hill administrators, correctional officers, and state police officials and reviewing hundreds of documents related to the uprisings, the Adams Commission published its final report in December 1989. The House

¹¹⁸ Michael Herschok to Honorable Robert O’Donnell, Honorable Joseph Loeper, Honorable Matthew Ryan, and Honorable Robert Mellow, November 9th, 1989, Folder 21 - Prison Overcrowding (6 of 6), Jeffrey Piccola Papers, PHRA.

¹¹⁹ Governor Robert P. Casey Statement on Camp Hill State Prison – October 28th, 1989, Folder 24: Corrections/Camp Hill prison, 1989-1990, Box 1, Robert Casey Papers, PSA.

¹²⁰ Stephen Drachler and Tim Reeves, “Special Panel to study prison riot,” *The Morning Call*, October 29th, 1989,

¹²¹ Patrick LaForge, “Public investigations,” *York Daily Record*, November 26th, 1989.

and Senate Judiciary committees issued their reports the following year, once these legislative bodies completed their own hearings with a wider range of witnesses and experts, including imprisoned people and prisoner rights activists.

The state's intensive investigation into Camp Hill opened rare space for imprisoned people and their allies to testify how the Commonwealth's system of mass imprisonment subjected criminalized Pennsylvanians to racialized violence, deprivation, and punishment while failing to reduce crime or meaningfully rehabilitate imprisoned people. None of this information was new to anyone who had been paying close attention – as Camp Hill prisoner Kenneth Ernst told the Senate Judiciary Committee, “inmates have tried to tell people what it’s like.”¹²² But In forcing the state to consult imprisoned people about the routine racialized violence and horrendously overcrowded conditions at Camp Hill, the uprisings had created an opportunity for imprisoned people to flip the regular tough-on-crime script. Instead, imprisoned people had the chance to insist upon their humanity and to account for the pain and suffering they felt at the hands of a system that could only be improved by dramatically reducing its size and by creating ways for imprisoned people to re-enter the free world as quickly as possible.

While policy changes around Family Day and sick line certainly stoked tensions, the majority of the imprisoned witnesses listed overcrowding as the “number one” problem. Kenneth Ernst, who was sentenced to life in prison, explained that “instead of eliminating the overcrowding, there seemed to be a perpetuation of the population, trying to make it grow instead of diminish it.” The “attitude is just put them into prison and stack them up,” said Ernst,

¹²² Testimony of Kenneth Ernst, pg. 9, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

so it shouldn't be shocking that Camp Hill erupted as it did.¹²³ James Dietrich similarly described the "conditions leading up to the riot and after" as "beyond human means," comparing it to a "concentration camp."¹²⁴ Overcrowding did not just result in horrendous conditions and cramped quarters. Ameen McKelvie explained how, due to overcrowding, many imprisoned people were shut out of educational, vocational and employment opportunities. "You have inmates that want treatment and want education," Kenneth Hill contended, "but all they are encouraging is to be a couch potato."¹²⁵

More troublingly, imprisoned witnesses at Camp Hill explained how overcrowding actively hindered their ability to get free. The inability to access programs, Douglas Walburn explained, often led to "parole hits" for prisoners, meaning they were denied parole for not having completed a required program. "Overcrowding didn't allow inmates to achieve their goals," Walburn explained. Kenneth Hill lambasted the Parole Board more broadly for its role in fueling overcrowding and stoking tensions among imprisoned people. He was at Camp Hill due to "one dirty urine test" he took while out on parole, that led him to receive 12 months in prison and resulted in his losing a job that allowed him to make over \$500 a week.¹²⁶ McKelvie also

¹²³ Testimony of Kenneth Ernst, pg. 55, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹²⁴ Testimony of James Dietrich, pg. 40, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹²⁵ Testimony of Kenneth Hill, pg. 154, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹²⁶ Testimony of Douglas Walburn, pg. 73 Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions,

noted a growing population of lifers who were denied access to programs because of their sentences.¹²⁷ Considered against the small number of commutations since Governor Thornburgh's administration, the situation for lifers was remarkably bleak. "I'm living in a tomb," Hill remarked, "my body is alive but I'm death, I don't know it yet." Although he added that he was not involved in the uprising, he stated, "I just think it's a little unfair to be treated like an animal and be caged like one and constantly go through the physical abuse."¹²⁸

The imprisoned witnesses all detailed harrowing accounts of administrative punitiveness and routine guard brutality, not only immediately after the uprising but more generally at Camp Hill. A number of prisoners mentioned that they feared retaliation for attending the hearing, despite promises from the Senate that they would not. Hill recounted how guards told him "we'd go to the house of pain" for testifying, which referred to a basement of D block where guards terrorized prisoners.¹²⁹ Describing a feeling of "hopelessness and frustration" at Camp Hill, Ernst shared that prisoners' "freedom was being continually restricted," noting that "simple things" were being taken away under the guise of getting tough on "drugs" and "contraband."¹³⁰ James

Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹²⁷ Testimony of Ameen McKelvie, pg. 56, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, Pennsylvania State Archives, Harrisburg, PA.

¹²⁸ Testimony of Kenneth Hill, pg. 144, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹²⁹ Testimony of Kenneth Hill, pg. 101, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹³⁰ Testimony of Kenneth Ernst, pg. 5, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions,

Dietrich described the brutality of prison guards at Camp Hill, stating that they “commit crimes under the color of law and they call it officer’s discretion.”¹³¹ “Guards [are] constantly trying to intimidate people, they are beating on guys,” McKelvie stated, noting that he was presently in solitary confinement, where “there’s been nothing but guys getting harassed, you know, beaten on.”¹³² DOC’s internal analysis verified that imprisoned people increasingly suffered at the hands of guards, finding that between January and June 1989, prisoners’ grievances for staff harassment increased by 116%.¹³³ They’re torturing us,” Hill stated.¹³⁴ Multiple witnesses mentioned that Black prisoners suffered disproportionately from guard brutality. “A lot of the anger” at Camp Hill, Ernst explained, stemmed from the “super white structure” that “only compounded [Black prisoners] problems.”¹³⁵ And although individuals at the hearing did not state this outright, , a number of Camp Hill prisoners and their allies shared

Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹³¹ Testimony of James Dietrich, pg. 32, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹³² Testimony of Ameen McKelvie, pg. 61, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹³³ *Special Investigative Committee Report* (Camp Hill: Pennsylvania Department of Corrections, 1989), Folder 2/1, Item 1: Corrections, Jack Tighes Camp Hill Files, Carton 2, Record Group 10, Location Number 3-1859, Governor’s Personal File, 1987-1995, Gov. Robert P Casey Papers, PSA.

¹³⁴ Testimony of Kenneth Hill, pg. 105, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹³⁵ Testimony of Kenneth Ernst, pg. 29, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

elsewhere, including in direct communications with state leaders, that some prison guards at Camp Hill and across Pennsylvania prisons were Klu Klux Klan members who freely used the n-word, had Nazi tattoos, and targeted Black prisoners with extreme punishment.¹³⁶ “I feel that some of these people that are on the street that are guards should be inmates,” Hill remarked. “They’re doing more wrong than the inmates are right to this day.”¹³⁷

Many of the speakers asked legislators to push for alternatives to incarceration and policies that would result in swifter releases of incarcerated people. Noting that at least 85% of the people in the prison system would eventually re-enter the free world, Ernst urged the General Assembly to push for furloughs, jobs, and early release policies, such as earned time.¹³⁸ Although some noted that earned time did not apply to lifers or parole violators, making it a flawed solution, they still insisted upon its importance, not only for reducing the prison population but also for giving people a “good incentive” to give imprisoned people something to

¹³⁶ “Camp Hill Prison Riot w/ Suave & Kevin,” *Crawlspace*, <https://player.fm/series/crawlspace-true-crime-mysteries-2475576/ep-346-camp-hill-prison-riot-w-suave-kevin>; Nathan Chapman to Representative K. Leroy Irvis, October 28th, 1989, Folder 5: Correspondence, 12/1989, Box 53, K. Leroy Irvis Papers, Series VII: Community, UPASC; Testimony of Evelyn Warner, President of the NAACP Ambler Branch, Senate Judiciary Committee Public Hearing To Receive Testimony from Individuals Regarding the State Correctional Institution at Graterford, April 26th, 1990, No Folder, H. Craig Lewis Papers, PSA.

¹³⁷ Testimony of Kenneth Hill, pg. 157, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹³⁸ Testimony of Kenneth Ernst, pg. 13, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

work towards and hope for.¹³⁹ Douglas Walburn remarked that when people hear about the possibility of good time, “there’s so much joy in the air it’s not funny.”¹⁴⁰

The hearings also provided a platform for criminal legal experts and prisoner rights advocates to warn against the expansion of mass imprisonment in the state, and to suggest that doing so was immoral and inhumane. These advocates pushed against the belief that prison overcrowding was simply the result of more crime, demonstrating instead that policymakers had an array of choices when it came to addressing the problem. M. Kay Harris, an Assistant Professor at Temple University’s Department of Criminal Justice told the Senate Judiciary Committee that the crisis of prison overcrowding was not “the result of natural forces” but the result of “policies and case decisions that have been made over a series of time.” The Camp Hill crisis could, she suggested, lead to a rethinking of Pennsylvania’s criminal punishment practices.¹⁴¹ James Thomas, the Executive Director of the Pennsylvania Commission on Crime and Delinquency, reminded the legislators that in 1985 the Prison and Jail Overcrowding Task Force had made a series of recommendations to ease overcrowding. But the state made “very little progress” on “implement[ing] the recommendations of that report,” he said.¹⁴²

¹³⁹ Testimony of Douglas Walburn, pg. 90, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁴⁰ Testimony of Douglas Walburn, pg. 29, Transcript of February 27th, 1990 Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁴¹ Testimony of M. Kay Harris, pg. 9, Transcript of April 23rd, 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁴² Testimony of James Thomas, pg. 5, Transcript of March 23rd, 1990, Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions,

More broadly, both Harris and Thomas expressed concern about the state's rapid prison population growth. Harris stated that she was "particularly troubled" by the "serious overreliance on incarceration in Pennsylvania and in many other jurisdictions." Simply being confined in a prison is, she argued, "a penalty that is so drastic, so alienating" that she would "like to see us move back towards a more parsimonious use of the sanction." She also highlighted the racial disparity of mass incarceration, a fact that she thought was "devastating for society with ideals." Thomas described the state's current practice of "piling [prisoners] up" as "warehousing," adding that it "scar[ed] him that we treat these inmates the way we are treating them," offering them no support and then expecting them to successfully reenter society. "We are not doing anything we should be proud of as far as intervening and breaking that cycle," he told the senators.¹⁴³

Thomas and Harris insisted that another future was possible. In addition to calling for the acceleration of releases, investments in alternatives to incarceration, and a rethinking of the state's sentencing practices, Harris advocated for building "limits" into the system that would "not allow overcrowding" and the "stretching of personnel" that led to the crisis at Camp Hill. "I think we need to begin to view it as...how many people can be on an airplane or how many people can be on an elevator," she told the Committee. She also urged the Committee to consider where they were "taking the money to build the new prisons and jails" from, noting that "higher

Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁴³ Testimony of James Thomas, pg. 37, 46, Transcript of March 23rd, 1990, Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions; Testimony of M. Kay Harris, pg. 13, 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

education is experiencing funding cuts” as corrections budgets across the country skyrocketed “What we need is not more of the law and order, lock everybody up, be tough on crime of the ‘70s and ‘80s approach,” she insisted, “but an economic development, a renewed commitment to working toward full employment, more efforts to support neighborhoods, families.”¹⁴⁴ Thomas similarly advocated decarceral policies, such as passing earned time, releasing more prisoners at the expiration of their minimum sentence, and finding ways to prevent parole violators from being sent back to overcrowded state prisons. According to the PCCD’s calculations, he said, pursuing these initiatives would cost millions less than the “additional 1 billion dollars to build the necessary cells and approximately 225 million to run the facilities necessary to house these offenders.”¹⁴⁵

Made possible by prisoners’ disruption of business as usual in Pennsylvania’s overcrowded prison system, the testimonies of prisoners and their allies helped to reveal the racialized state terror inherent to the state’s tough-on-crime politics. Even as their explicit political commitments remained unclear, their accounts injected an abolitionist analysis of prison overcrowding and racialized mass imprisonment into Pennsylvania’s political discourse. With first-hand understanding of the “dangers of mass incarceration” Camp Hill prisoners “reminded the public of prisoners’ humanity and their constitutional rights” and urged the state – mired in a

¹⁴⁴ Testimony of M. Kay Harris, pg. 14, 42 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁴⁵ Testimony of James Thomas, pg. 13, Transcript of March 23rd, 1990, Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

costly and administratively challenging correctional crisis of epic proportions – to choose a different path.¹⁴⁶

Yet even as investigations into Camp Hill placed a spotlight on the state’s prison overcrowding crisis and violence, they also unleashed reactionary forces that sought to reinforce the state’s carceral politics. From the start, the Adams Commission and the House and Senate investigations focused on blaming particular people for the uprising rather than interrogating the forces that sustained the state’s overcrowding disaster. Most of the hearings centered on the prison personnel who had been on the scene to determine who in the administration should be held accountable for the uprising, with a particular focus on the trust and communications breakdown that allowed Camp Hill to erupt into a second day of unrest. Public testimony from correctional officers and internal reports conducted by DOC and shared with legislators indicated that Camp Hill suffered from internal divisions among staff and between administrators and correctional officers.¹⁴⁷ Camp Hill Captain Gerald Kersetter testified that staff morale was the “lowest he had seen in 18 years prior to the riot.”¹⁴⁸ Numerous correctional officers linked the cause of the uprising to management’s misguided decision to announce changes to Family Day

¹⁴⁶ Robert T. Chase, “We Are Not Slaves, 75.

¹⁴⁷ Investigative Committee to David S. Owens – Confidential – December 7th, 1989, Folder: Camp Hill SCI — Department of Corrections Special Investigative Committee Report, Carton 25, Record Group 10, Location Number 8-3613, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel, PSA.

¹⁴⁸ Investigative Committee to David S. Owens Jr., “Confidential,” December 7th, 1989, Folder: Camp Hill SCI — Department of Corrections Special Investigative Committee Report, Carton 25, Record Group 10, Location Number 8-3613; *After Camp Hill: The Keys to Ending Crisis* (Harrisburg: Senate Judiciary Committee, 1990), Folder: Corrections (Camp Hill) I, Carton 23, Record Group 10, Location Number 8-3613, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel, PSA.

and to the sick line policy in quick succession, again suggesting the core problem was ill-advised decision-making and not the state's massive carceral ramp up.¹⁴⁹

The hearings thus helped to concretize a belief that the failures of Camp Hill and PA DOC leadership were the primary force behind the uprisings. The Senate Judiciary Committee's final report alleged, for example, that "top management staff were not making rounds in the institution, inspecting cell blocks, or observing the quality of inmate and staff interaction and communications."¹⁵⁰ In particular, state investigators helped paint a picture of Commissioner Owens as "hands-off," with special attention to his decision to leave the handling of the uprisings to Superintendent Freeman, although Owens insisted that they were in "constant communication."¹⁵¹ But he also admitted that he did not ask Freeman whether there would be a shakedown of prisoners after the first day's disturbance, since he "naturally assumed there would be."¹⁵² These and other admissions left the impression that Owens was disengaged during the uprising.

¹⁴⁹ *After Camp Hill: The Keys to Ending Crisis* (Harrisburg: Senate Judiciary Committee, 1990), Folder: Corrections (Camp Hill) I, Carton 23, Record Group 10, Location Number 8-3613, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel, PSA.

¹⁵⁰ *After Camp Hill: The Keys to Ending Crisis* (Harrisburg: Senate Judiciary Committee, 1990), Folder: Corrections (Camp Hill) I, Carton 23, Record Group 10, Location Number 8-3613, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel, PSA.

¹⁵¹ Tom Troy, "Corrections chief defends his style," *The Philadelphia Inquirer*, January 18th, 1990.

¹⁵² Deposition of David Owens, November 27th, 1989, Governor's Commission to Investigate Disturbances At Camp Hill Correctional Institution, Folder: Adams Commission Testimony, Owens, David S. Jr., Commissioner of the Department of Corrections, Carton 22, Record Group 10, Location Number 8-4319, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel, PSA.

The investigations especially blamed the second day of unrest on poor leadership. Owens, Freeman and others made a series of missteps after the first day's uprisings, investigators said, such as allowing a majority of the State Police to leave the prison and not assessing the locking mechanisms in the cells.¹⁵³ As the Senate Report stated, "Leaving the prison unsecured the first night was analogous to fireman putting out a house fire, but leaving open cans of gasoline next to smoldering embers when they depart."¹⁵⁴ Even as the final legislative reports recognized "systemic overcrowding" as an "underlying cause" for the uprisings, the hearings' outsized framing of the violence as resulting from deficient leadership deemphasized overcrowding's centrality, the guard's draconian treatment, and racist brutality in creating the conditions that sparked the uprising.¹⁵⁵

High-profile firings further pushed conversation around Camp Hill towards individual failures of correctional administrators. Owens fired Freeman in January 1990, only to be pushed out himself by Governor Casey a few months later.¹⁵⁶ Casey claimed that Owens had withheld

¹⁵³ Investigative Committee to David S. Owens – Confidential – December 7th, 1989, Folder: Camp Hill SCI — Department of Corrections Special Investigative Committee Report, Carton 25, Record Group 10, Location Number 8-3613, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel, PSA; "Camp Hill Officials Were Indecisive During Riots," *United Press International*, February 2nd, 1990.

¹⁵⁴ *After Camp Hill: The Keys to Ending Crisis* (Harrisburg: Senate Judiciary Committee, 1990), 22, Folder: Corrections (Camp Hill) I, Carton 23, Record Group 10, Location Number 8-3613, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel, PSA.

¹⁵⁵ *After Camp Hill: The Keys to Ending Crisis* (Harrisburg: Senate Judiciary Committee, 1990), 10, Folder: Corrections (Camp Hill) I, Carton 23, Record Group 10, Location Number 8-3613, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel, PSA.

¹⁵⁶ David Owens to Robert Freeman, January 26th, 1990, Folder: Corrections (Camp Hill) III, Carton 23, Record Group 10, Location Number 8-4322, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel; Davis Owens to Robert P. Casey, February 20th, 1990, Folder 2/1, Item 1: Corrections, Jack Tighes Camp Hill Files, Carton 2, Record Group 10, Location Number 3-1859, Governor's Personal File, 1987-1995, Gov. Robert

information from the Adams Commission by sending an “edited” version of an internal report on the uprising. Owens replied that he had not withheld the information “deliberately,” and upon review of the unedited report, commentators noted there it offered “no new revelations.”¹⁵⁷ Thus, many people viewed Owens’ dismissal as the product of “political pressure during an election year,” with Casey trying to stave off criticism from Republicans who might use the accusations of mishandled information as election fodder. Black legislative and civic leaders especially held this view, accusing Casey of turning Owens into a “scapegoat.” Black state representative David Richardson contended there was “strong political and even racial motivation” behind the ouster, and lamented the fact that Owens was actually interested in ensuring “a prisoner returned to society” fully “rehabilitated and prepared to be a productive part of his community.” Jewel Williams, president of the Susquehanna Neighborhood Action Council, more pointedly contended that “there are people who...don’t want David Owens proving that you can have good people leaving the prison system if you treat them like humans.”¹⁵⁸

As they blamed Camp Hill leadership, the state’s investigations elevated the voices and perspectives of rank-and-file correctional officers. Indeed, the argument that the uprising had been caused by poor management primed state legislators to view correctional officer accounts as more honest than those of the higher ups, giving prison guards a powerful platform for

P Casey Papers, PSA; Terry Mutchler, “Commission report on prison riot criticizes top officials,” *The York Dispatch*, December 22nd, 1989.

¹⁵⁷ “Casey says he didn’t force Owens’ resignation,” *Associated Press*, February 22nd, 1990; John M. Baer, “Nudged by Casey, Prisons Boss Quits,” *Philadelphia Daily News*, February 21st, 1990; Kendall Wilson, “Prison chief’s resignation sparks angry political response,” *Philadelphia Tribune*, February 23rd, 1990.

¹⁵⁸ Kendall Wilson, “Prison chief’s resignation sparks angry political response,” *Philadelphia Tribune*, February 23rd, 1990.

shaping the state's interpretation of and response to the uprising. Guards repeatedly claimed that they had been "ignored" by PA DOC and the state despite communicating about the problems at Camp Hill and positioned themselves as the uprising's unsung heroes.¹⁵⁹ They also sought to direct interpretations of Camp Hill and overcrowding away from calls to decarcerate and towards expanding the Commonwealth's correctional budget, investing in new prison construction, and hiring more correctional officers.

The officers frequently suggested that the uprising occurred because leadership was too sympathetic toward prisoners and therefore deemphasized security concerns. "They are all guilty of negligence," James Kraft, a prison guard at Camp Hill, told the Associated Press just days after the uprising.¹⁶⁰ All of the correctional officers who testified in front of the Senate lambasted DOC and Camp Hill leadership for, as Sargeant Bernard Baker put it, "security com[ing] second" at the institution.¹⁶¹ John Caffas referenced Superintendent Freeman's PhD in clinical psychology as evidence that he did not really understand "security, which has to be our first consideration."¹⁶² Freeman's refusal to give guards the okay to conduct a strip search of prisoners after the first day's unrest – which he hesitated to do because of an incident years prior where the strip search had increased tensions between prisoners and staff – appeared to validate

¹⁵⁹ Patrick Laforge, "Camp Hill employees air grievances," *York Daily Record*, November 21st, 1989.

¹⁶⁰ "Camp Hill guards hit negligence, 'coddling,'" *Associated Press*, November 7th, 1989.

¹⁶¹ Testimony of Sargeant Bernard Baker, pg. 18, 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, November 27th, 1989, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁶² Testimony of John Caffas, pg. 35, 37, 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, December 11th, 1989, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

guards' accusations that Camp Hill administrators were too lenient, given that the lack of a search gave prisoners the opportunity to hold onto tools, keys, and other weapons that would facilitate the following day's uprising. "Because the administration would not let us do our jobs," Harry Colestock told the Senate, "they...jeopardized our lives."¹⁶³ Colestock and Caffas also criticized Camp Hill's Department of Treatment for allegedly over-indulging prisoners. "They wouldn't basically let us do our jobs," he contended, arguing that the lenient treatment of "these people in charge, counselors, in charge of medical departments, et cetera" forced guards to "lose control" of prisoners. ¹⁶⁴ Caffas contended that prisoners "over-reported" guards for violations. As a result, correctional officers alleged, they felt unsafe among the prisoners and unsupported by their bosses. ¹⁶⁵ "The administration cared nothing about its officers," Caffas said. ¹⁶⁶

The officers' testimony created the impression that they – not imprisoned people – were the real victims of Camp Hill. Some guards even claimed, against mounds of evidence to the contrary, that Camp Hill prisoners did not face retaliation or hardship after DOC repressed the

¹⁶³ Testimony of Harry Colestock, pg. 114, 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, December 11th, 1989, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁶⁴ Testimony of Harry Colestock, pg. 128, 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, December 11th, 1989, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁶⁵ Testimony of John Caffas, pg. 61, 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, December 11th, 1989, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁶⁶ Testimony of John Caffas, pg. 84, 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, December 11th, 1989, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

uprising. “In spite of what the bleeding hearts say,” John Caffas told the Senate, the prisoners “didn’t really suffer” for the uprising.¹⁶⁷

Prison guards had similarly harsh words for PA DOC leadership. They often expressed a hostile and racist belief about Commissioner Owens, who they said would not support them because he was Black and thus aligned more with the Black imprisoned population than with the majority white prison guards. “I don’t think the Commissioner would back me up,” James Kraft, a Camp Hill correctional officer, told the Adams Commission, adding, “I don’t think he would back me against his own people.”¹⁶⁸ The guards union, American Federation of County, State, and Municipal Employees Local 2495, echoed its rank-and-file’s view that PA DOC leadership endangered their workers, calling for the state to dismiss numerous PA DOC leaders.¹⁶⁹

Correctional officers also intensified racist and criminalizing narratives that imprisoned people were to blame for the uprisings. In their telling, Camp Hill prisoners took over the prison only for “immediate gratification, like a two year old.” “Burn, destroy, and that’s what they did,” Caffas claimed, “and the hell with tomorrow.” Yard bird patrolman Harry Colestock alleged that after prisoners “got a taste of that blood” on the first night of the uprisings, “they liked it.” Contesting prisoners’ claims of frequent mistreatment and abuse in Camp Hill’s overcrowded cell blocks, Colestock painted prisoners as coddled and untruthful, stating that the prisoners had

¹⁶⁷ Testimony of John Caffas, pg. 46, 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, December 11th, 1989, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁶⁸ Testimony of James Kraft, pg. 97, 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, December 11th, 1989, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁶⁹ Tom Bowman, “Union asks for leadership shake-up at Camp Hill prison,” *The Patriot*, November 18th, 1989.

actually been “given so much” by the prison system and that their actions were unfounded and hysterical.¹⁷⁰ While not overtly expressing racial bias, the implication that Camp Hill’s majority Black prisoner population was feckless, violent, and insubordinate traded on anti-Black and gendered tropes dating back to enslavement. That many prisoners at Camp Hill contended a number of guards were members of KKK groups further suggests that the guards’ testimony sought to inculcate anti-Black narratives about the prisoners that would encourage the state to continue repressing Black Pennsylvanians.

Central to Camp Hill correctional officers’ racist criminalization of Camp Hill prisoners was their claim that members of the Fruit of Islam (FOI) served as ringleaders of the uprising. The Fruit of Islam was the male paramilitary arm of the Nation of Islam, a “homegrown religion” originated by Wallace D. Fard in 1930s Detroit. Positioning Asiatic and African people as a divine “Original People,” the Nation of Islam fused Islam with a distinctly global, anti-racist, and anti-colonial Black nationalism, denigrating white people as a “race of devils” and advocating for racial separation as a means of Black liberation.¹⁷¹ The state had long sought to repress and contain Nation of Islam organizing, which was commonly viewed as an anti-white, “Black racist,” and violent religious cult.¹⁷² Unsurprisingly, given the acuteness of anti-Black violence in the nation’s correctional systems, NOI membership flourished in prisons and jails during the mid-twentieth century. The NOI’s growth in the state’s prisons and jails ushered in new waves of racialized surveillance, discrimination, and carceral violence against imprisoned

¹⁷⁰ Testimony of Harry Colestock, pg. 141, 1990 Senate Judiciary Committee Public Hearings on Recent Incidents at Pennsylvania State Correctional Institutions, December 11th, 1989, Box title: Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁷¹ Felber, *Those Who Know Don’t Say*, 9.

¹⁷² Felber, *Those Who Know Don’t Say*, 19-20.

Muslims. Nation of Islam members in prison launched resistance efforts that included work strikes, occupations of solitary confinement, and prisoner litigation against religious discrimination. In response, law enforcement officials frequently collaborated with scholars and journalists to cultivate seemingly objective and authoritative knowledge about the NOI as an illegitimate religion, a “racial hate group,” and a terroristic threat deserving of state repression.¹⁷³ While some correctional administrators considered later iterations of imprisoned NOI communities to be “some of our best inmates,” PA correctional officials’ criminalization of FOI prisoners leading up to and during the Camp Hill uprising suggest that the Nation of Islam continued to represent a threat to prison security and the carceral status quo.¹⁷⁴

Witnesses disputed the actual extent of the FOI’s involvement in the uprising. Superintendent Freeman wrote to David Owens on October 30th that the main negotiators across both days of the uprising were Muslim and either members of the FOI or the American Muslim Mission, another Islamic sect in the prison.¹⁷⁵ DOC’s internal investigation also alleged that while the first night of unrest had been spontaneous, the second had been precipitated by FOI prisoners, who apparently “planned and pushed the other inmates into exiting their cells.” But Ameen McKelvie, a non-FOI Muslim prisoner at Camp Hill, downplayed the FOI’s influence during the uprising. He explained that “they’re just a handful of guys” and noted that there were

¹⁷³ Felber, *Those Who Know Don’t Say*, 44-49.

¹⁷⁴ Toussaint Losier, “... For Strictly Religious Reason[s],” *Souls* 15, no. 1–2 (January 1, 2013): 35; James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977), 65.

¹⁷⁵ Robert Freeman to David S. Owens, Jr. re: Disturbance at SCI-Camp Hill, October 25th through October 27th, 1989, October 30th, 1989, Folder: Adams Commission Testimony, Owens, David S. Jr., Commissioner of the Department of Corrections, Carton 22, Record Group 10, Location 8-4319, Litigation Files, 1983-1999, Records of the Office of the Governor - Office of the General Counsel, PSA.

multiple groups of Muslims in the institution, a substantial portion of which were not FOI.

Another prisoner suggested that, while Black and white prisoners were largely segregated and had tense relations, “the white inmates were just as hyped and against the system” as the Black prisoners and were “100 percent supportive and involved” in the uprising, further challenging the state’s presentation of the uprising as an FOI plot.¹⁷⁶

Regardless of the actual extent of the FOI’s involvement, the state’s outsized focus on investigating members of the FOI suggests its interest in linking the unrest to a small and, in the state’s view, reactionary group of Black imprisoned people hostile to a largely white-run prison administration.¹⁷⁷ The state’s investigatory committees played particular attention to a Black Imam, Qadir Sabir, the first Muslim chaplain hired by DOC, who prison guards accused of preaching “racial hatred and laying the groundwork for the bloody three-day melee.”¹⁷⁸ The state’s investigations’ uncovered extensive evidence that Camp Hill correctional officers and officials disliked Sabir, because they alleged he operated as more of an “inmate advocate” rather than a “neutral” individual.¹⁷⁹ At the time of the uprising, Sabir had been put on probation by Superintendent Freeman in large part due to Deputy Terry Henry’s claims that he did not pay

¹⁷⁶ Gibson, *Before Orange was the New Black*, 18.

¹⁷⁷ Tom Troy, “Muslim Group Is Blamed For Uprising at Camp Hill,” *United Press International*, January 17th, 1990; Don Wolf, “Muslim Chaplain investigated over role in Camp Hill Jail Riot,” *The Pittsburgh Press*, January 17th, 1990. See also Deposition of Robert Freeman – November 24th, 1989, Folder: Adams Commission Testimony, Freeman, Robert — Superintendent, SCIC (2) Folders containing (2) Transcripts + Exhibits; Folder 2 - Transcript of 11/24/89, Carton 22, Record Group 10, Location 8-4319, Litigation Files, 1983-1999, PSA.

¹⁷⁸ Don Wolf, “Muslim Chaplain investigated over role in Camp Hill Jail Riot,” *The Pittsburgh Press*, January 17th, 1990; “Prison Officials Fire Minister,” *Associated Press*, February 10th, 1990. Note here that Sabir denied the allegations and claimed that he was being scapegoated.

¹⁷⁹ Deposition of Robert Freeman – November 24th, 1989, pg. 74, Folder: Adams Commission Testimony, Freeman, Robert — Superintendent, SCIC (2) Folders containing (2) Transcripts + Exhibits; Folder 2 - Transcript of 11/24/89, Carton 22, Record Group 10, Location 8-4319, Litigation Files, 1983-1999, PSA.

“attention to security concerns.” Correctional officers echoed this claim.¹⁸⁰ More damningly, Freeman contended that one week prior to the uprisings, Sabir had met with some prisoners, held up a Qu’ran, and stated, “This is an Uzi—we are being repressed and we have to do something about it.”¹⁸¹ Correctional officers also claimed that Sabir did not assist them when the uprisings broke out.¹⁸² The fact that members of Camp Hill administration alleged Sabir was Commissioner Owens’ “close personal friend,” that Owens had had a hand in selecting him to be the institution’s Imam, and that he “quashed an internal investigation into Sabir’s activities,” fueled claims that PA DOC leadership aligned themselves with individuals sympathetic to Black prisoners.¹⁸³ Owens denied any special affiliation with Sabir, claiming he only met him when he

¹⁸⁰ Robert Freeman to Quadir Sabir, August 22nd 1989; Quadir Sabir Management Supervisory and Professional and Technical Performance Evaluation Summary Report for 2/27/98-08/26/89, July 28th, 1989; Folder: Adams Commission Testimony — Muslim Ministers, Carton 24 Record Group 10, Location Number 8-4325, Litigation Files, 1983-1999, Records of the Office of the Governor - Office of the General Counsel; Testimony of Harry Colestock, James Craft, Dan Murdoch, Sgt. Richard Gavin, John Caffas, and Sgt. George Nichols at Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institution, December 11th, 989, Unprocessed Collection, H. Craig Lewis Papers, PSA.

¹⁸¹ Steven Ochs, “Fire prison superintendent defends actions,” February 17th, 1990, *York Daily Record*; Deposition of Robert Freeman – November 24th, 1989, pg. 363-376 Folder: Adams Commission Testimony, Freeman, Robert — Superintendent, SCIC (2) Folders containing (2) Transcripts + Exhibits; Folder 2 - Transcript of 11/24/89, Carton 22, Record Group 10, Location 8-4319, Litigation Files, 1983-1999; Testimony of Commissioner Owens, pg. 72, House of Representatives Committee on the Judiciary In re: House Resolution 226 – Prison Disturbances at State correctional Institution at Camp Hill, January 17th, 1990, Unprocessed Collection, H. Craig Lewis Papers, PSA. PSA

¹⁸² Testimony of Harry Colestock, James Craft, Dan Murdoch, Sgt. Richard Gavin, John Caffas, and Sgt. George Nichols at Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institution, December 11th, 989; Unprocessed Collection, H. Craig Lewis Papers, Deposition of Robert Freeman – November 24th, 1989, pg. 363-376 Folder: Adams Commission Testimony, Freeman, Robert — Superintendent, SCIC (2) Folders containing (2) Transcripts + Exhibits; Folder 2 - Transcript of 11/24/89, Carton 22, Record Group 10, Location 8-4319, Litigation Files, 1983-1999, PSA.

¹⁸³ Deposition of Robert Freeman – November 24th, 1989, pg. 363-376 Folder: Adams Commission Testimony, Freeman, Robert — Superintendent, SCIC (2) Folders containing (2) Transcripts + Exhibits; Folder 2 - Transcript of 11/24/89, Carton 22, Record Group 10, Location

was going through the training process.¹⁸⁴ Regardless, the claim undoubtedly served as racialized mechanism for smearing Owens.

Sabir also repeatedly denied the allegations against him, stating that correctional staff “lied” about his activities and that he was being framed as a scapegoat. In his deposition, He suggested that the allegations stemmed from a broader pattern of discrimination he faced as a Black and Muslim man at an institution with a majority white and non-Muslim staff.¹⁸⁵ Given credible allegations of Camp Hill guards’ involvement with local white supremacist groups, Sabir’s accusations are not difficult to envision. His defense did not work. In February 1990, Sabir was fired for his alleged role in provoking the uprising.¹⁸⁶

By blaming Black imprisoned Muslims for the uprisings, the state shifted focus away from its accountability for the explosion at Camp Hill. What’s more, blaming the FOI reified the state’s racialized mass incapacitation by suggesting that its correctional system was keeping the public safe from what journalists, academics, and policymakers had long considered a violent “racial hate group.” Targeting the FOI also shaped the how the state should make changes to its policies. If this group of “troublemakers” were to blame for the unrest, then the state should channel its energies towards punishing these individuals and expanding the state’s capacity to control and repress them. The DOC’s internal report on the uprisings contended, for example,

8-4319, Litigation Files, 1983-1999, PSA; “Former Camp Hill staffer discusses riot,” *Public Opinion*, February 22nd, 1990.

¹⁸⁴ Deposition of David Owens, November 27th, 1989, pg. 64-65, Folder: Adams Commission Testimony, Owens, David S. Jr., Commissioner of the Department of Corrections, Carton 22, Record Group 10, Location 8-4319, Litigation Files, 1983-1999, PSA.

¹⁸⁵ Testimony of Quadir Sabir, Folder: Adams Commission Testimony, Sabir, Quadir (aka) Roscoe, Herbert — Muslim Minister, Carton 22, Record Group 10, Location 8-4319, Litigation Files, 1983-1999, PSA; “Prison officials fire minister,” February 10th, 1990, *Associated Press*.

¹⁸⁶ “Prison officials fire minister,” *Associated Press*, February 10th, 1990.

that “dangerous” FOI leaders “could have been placed in restrictive custody at an earlier date,” which might have prevented the uprising from occurring.¹⁸⁷

Along with vilifying Camp Hill prisoners and framing the uprising as a Black and Muslim plot, prison guards blamed the uprisings on the institution’s broken-down classification system and “lax” security. When DOC processed individuals into their system, they assessed their classification status, which determined which prison they would be sent to, based on their educational background, past arrests and convictions, and their mental and physical health. After DOC employees completed this assessment, they determined the individuals’ “threat to the community,” classified the individual as needing minimum, medium, or maximum security, and sent them to a prison that detained the appropriate category of individuals.¹⁸⁸ Due to extreme overcrowding, however, it became impossible for the state to keep individuals with particular classifications confined to particular institutions. Although Camp Hill was technically a medium-security institution, more and more individuals marked as the “most dangerous” had been sent there because “the maximum security institutions, the walled institutions, were filled.”¹⁸⁹

¹⁸⁷ *Special Investigative Committee Report: On the Inmate Disturbances at the State Correctional Institution at Camp Hill, October 25th 1989 and October 26th, 1989* (Camp Hill: Pennsylvania Department of Corrections, 1989), 11, Folder 2/1, Item 1: Corrections, Jack Tighes Camp Hill Files, Carton 2, Record Group 10, Location Number 3-1859, Governor’s Personal File, 1987-1995, Gov. Robert P Casey Papers, PSA.

¹⁸⁸ Testimony of David Owens, Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, October 21st, 1989, pg. 104, in box entitled Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

¹⁸⁹ Deposition of Robert Freeman – November 24th, 1989, pg. 93 Folder: Adams Commission Testimony, Freeman, Robert — Superintendent, SCIC (2) Folders containing (2) Transcripts + Exhibits; Folder 2 - Transcript of 11/24/89, Carton 22, Record Group 10, Location 8-4319, Litigation Files, 1983-1999; Testimony of David Owens, Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, October 31st, 1989, pg. 39, in box entitled Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

Correctional officers at Camp Hill testified that the institution held “every classification of prisoner” and that their organization within the institution did not “make sense.”¹⁹⁰ While Freeman stated that he wanted to transfer “aggressive, violent inmates to a more secure setting,” overcrowding made this impossible.¹⁹¹ Commissioner Owens also testified that PA DOC’s mixed classification was not “good practice” and that he would “rather not do it,” but added that with such extreme overcrowding it was impossible to uphold DOC’s classification system.¹⁹²

Calls for tighter classification after Camp Hill could have generated a demand for population reductions. Even as they repeated the claim that the state could not build its way out of the crisis, however, legislators increasingly came to see the construction of more prisons with particular classifications as necessary for removing and repressing “predators” in new super maximum-security institutions that had begun to emerge across the nation. The desire for security and riot-prevention, which stronger classification appeared to promise, trumped concerns about prison overcrowding and the plight of imprisoned people.

Finally, Camp Hill correctional officers and their union used the Camp Hill uprising to demand that legislators increase the number of prison guards working in PA DOC. Guards

¹⁹⁰ Testimony of Harry Colestock, James Craft, Dan Murdoch, Sgt. Richard Gavin, John Caffas, and Sgt. George Nichols, pg. 57, 165, 185, Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institution, December 11th, 1989, Unprocessed Collection, H. Craig Lewis Papers, PSA.

¹⁹¹ *After Camp Hill: The Keys to Ending Crisis* (Harrisburg: Senate Judiciary Committee, 1990), 14, Folder: Corrections (Camp Hill) I, Carton 23, Record Group 10, Location Number 8-3613, Litigation Files, 1983-1999, Records of the Office of the Governor – Office of the General Counsel, PSA.

¹⁹² Testimony of David Owens, Senate Judiciary Committee Public Hearing on Recent Incidents at Pennsylvania State Correctional Institutions, October 31st, 1989, pg. 105, in box entitled Archives - 1989 - Transcripts - Camp Hill Prison Riots, H. Craig Lewis Papers, Unprocessed Collection, PSA.

claimed that prisoners were only able to undo the locking mechanisms because the prison was forced to use them for maintenance work due to understaffing¹⁹³ One guard claimed that “there are few prison systems in the country that are operated as understaffed as Pennsylvania.” Overtime was rampant, as were high turnover rates. With the support of their union, Camp Hill officers immediately channeled the uprising into a call for more hiring.¹⁹⁴

The state’s investigative hearings and media coverage thus valorized the perspectives of the correctional officers. Just as the Camp Hill uprisings opened a radical space for demonstrating the brutality of racialized mass incarceration, so too did this moment of destabilization and delegitimization of the state’s correctional system unleash carceral, white supremacist ideas that sought to channel the state’s correctional crisis into an intensification of the state’s criminalization and punishment of primarily Black and brown working-class people in the prime of their lives.

Conclusion

Governor Casey’s prison expansion plan passed in the state House and Senate in July 1990.¹⁹⁵ The budget included a \$250 million appropriation to build new prisons, along with \$369.2 million for the state’s correctional system as a whole, up 11% from the year before. In addition to the high costs of prison construction, the Governor’s carceral expansion promised to

¹⁹³ Patrick Laforge, “Camp Hill employees air grievances,” *York Daily Record*, November 21st, 1989.

¹⁹⁴ Patrick Laforge, “Camp Hill employees air grievances,” *York Daily Record*, November 21st, 1989.

¹⁹⁵ “\$240 million provided for prison expansion,” *Associated Press*, July 2nd, 1990; Justin Supon, “Lawmakers Back Spending Plan for Prison Expansion,” *United Press International*, July 2nd, 1990.

intensify harms upon the state's criminalized populations.¹⁹⁶ Although nominally “colorblind,” as all criminal legal system policies are in the post-Civil Rights era, the material effect of these new prisons would be a deepening of the state's capacity to disproportionately repress, torture, and incapacitate Black Pennsylvanians.¹⁹⁷ It would also further cement and normalize the carceral idea that prisons are necessary to protect public safety, which masked mass imprisonment's effect of hastening the Black and brown Pennsylvanians' “vulnerability to premature death.”¹⁹⁸

Despite the bleak and thoroughly punitive aftermath, the history of Camp Hill's prisoner insurgency matters. Spurred by both prison overcrowding and the accumulation of racialized state terror, negligence, and abuse inherent to imprisonment, Camp Hill's prisoners launched a serious challenge to the legitimacy of Pennsylvania's carceral state. For a brief period, they spotlighted the state's willful creation of what Black radical Pennsylvania political prisoner Russell Maroon Shoatz would call a “death camp.”¹⁹⁹ In the process, they revealed mass incarceration's “basis in exploitation” that the state otherwise “disappears from view.”²⁰⁰ Even if it remained marginal at the time, Camp Hill prisoners' expression of a counter-carceral, life-

¹⁹⁶ Janet Leban, “Casey's prison plan: A wrong approach,” *The Philadelphia Inquirer*, July 18th, 1990.

¹⁹⁷ Gilmore, *Golden Gulag*; Hinton, *From the War on Poverty to the War on Crime*; Nicole Gonzalez Van Cleve and Lauren Mayes, “Criminal Justice Through ‘Colorblind’ Lenses: A Call to Examine the Mutual Constitution of Race and Criminal Justice,” *Law & Social Inquiry* 40, no. 2 (2015): 406–32; Eduardo Bonilla-Silva, *Racism without Racists: Color-Blind Racism and the Persistence of Racial Inequality in the United States* (New York: Rowman & Littlefield, 2021); Alexander, *The New Jim Crow*.

¹⁹⁸ Gilmore, *Golden Gulag*, 28.

¹⁹⁹ Russell Maroon Shoatz, “Message from a Death Camp,” in Fred Ho and Quincy Saul, eds., *Maroon the Implacable: The Collected Writings of Russell Maroon Shoatz* (Oakland: PM Press, 2013), 37.

²⁰⁰ Stuart Hall et. al, *Policing the Crisis: Mugging, the State, and Law and Order* (London: Macmillan, 1978), 216.

affirming, and abolitionist vision laid the groundwork for the development of a more robust prison abolitionist movement in the 1990s and 2000s.

Moreover, even this passage of new prison construction did not mark the total closure of opportunities for Pennsylvania to limit the growth of their carceral regime. In the years after Camp Hill, the state's own Commissioner of Corrections and criminal legal bureaucrats would translate the lessons of Camp Hill into calls to reduce the state's tough sentencing policies, invest in alternatives to imprisonment, and even modestly decarcerate. They would even demonstrate how the state might be able to avoid entirely constructing the new prisons Governor Casey had slated for completion, launching a meaningful challenge to the state's carceral path. It is to their struggle that we will now turn.

Chapter Four

Sentencing Reform in Retributive Times: The Failed Attempt to Address Prison Overcrowding and Limit Incarceration in 1990s Pennsylvania

“As we studied the taxpayers’ investment in prisons,” the 1993 Pennsylvania Commission on Corrections Planning Final Report began, “all of the members of the Commission were appalled by the skyrocketing expenditures at both state and county levels.” In fiscal year 1993-4, the report found, Pennsylvania expended over \$600 million dollars detaining over 26,000 prisoners. The public was in for even more “sticker shock,” the report warned, given that their projections indicated by the year 2000, Pennsylvania taxpayers would be spending over \$1 billion on imprisoning 33,000 prisoners.¹ The state’s enormous investment in corrections and prison expansion, however, had not eased the state’s prison overcrowding crisis: in 1990 the state was incarcerating 22,325 people into a system with the capacity for only 14,338 individuals. This administratively unstable and costly approach to crime control was not even effective in deterring criminal activity and protecting public safety. “There is no clear proof that general deterrence is achieved through a policy of long prison sentences,” the commissioners wrote.² They urged the Governor and the General Assembly to make “sweeping and controversial changes” to the state’s criminal sentencing policies that would allow the state to ease its prison

¹ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 1, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

² *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 14, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

overcrowding crisis and stem the growth of correctional expenditures, including repealing most of the state's mandatory sentencing laws, revising the sentencing guidelines to divert individuals convicted of nonviolent crimes from state imprisonment, and allowing some individuals to be released immediately at the end of their minimum sentence, rather than being adjudged by the state's Parole Board.³ "To accept the status quo," the commissioners wrote, "is irresponsible public policy... To do nothing is unacceptable."⁴

The PCCP report marked the apex of growing prison and sentencing reform movement among criminal justice bureaucrats and some legislators in the Commonwealth. The 1989 Camp Hill uprisings placed a spotlight on the political instability and costs of prison overcrowding and the politics of mass imprisonment. The chaos that followed forced correctional bureaucrats and legislators to examine closely their investment in tough on crime politics. What they found was that the state was expending exorbitant sums on correctional administration and prison construction to keep up with growing numbers of people sentenced under tough mandatory sentencing schemes. More concerning, they found that this tough, incapacitative approach did not lower crime rates and or protect public safety. As a result, Pennsylvania bureaucrats and legislators, especially Governor Casey's new Commissioner of Corrections Joseph Lehman, began to question the state's carceral politics, noting how the outsized expenditures on corrections threatened the budgets of services like education, healthcare, and social services that arguably offered more effective and less punitive forms of anti-crime prevention. Unnerved by

³ John L. Kennedy, "Sentencing issues get quick action," November 8th, 1992, *Indiana Gazette*; Julia Cass, "Panel proposes major reforms of prison system," January 7th, 1995, *The Philadelphia Inquirer*.

⁴ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 4, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

their findings, between 1990 and 1994 a group of Pennsylvania's criminal justice professionals and a handful of state legislators launched aggressive legislative campaigns for sentencing and parole reform that would reduce and divert individuals from the state's prison system, lower the state's correctional budget, and – if meaningfully pursued – even prevent the construction of some of the new prisons proposed by Casey and recently authorized by the legislature.

By 1995 the legislature had passed legislation authorizing intermediate punishment and boot camp programs as alternatives to incarceration, and the Pennsylvania Sentencing Commission implemented new Sentencing Guidelines that encouraged non-penal sanctions for “low risk” individuals convicted of non-violent crimes. But the election of a new and virulently tough-on-crime Republican Governor, Tom Ridge, along with Republicans' capture of both the state House and Senate, signaled a death knell for the sentencing reforms that had made it far in the General Assembly. By the end of Ridge's special crime session in November 1995, the state had added twenty-four new laws that drastically intensified its capacity to criminalize and punish.

This chapter discusses the fraught history of sentencing and prison reform in early 1990s Pennsylvania. It explores the brief period after the Camp Hill uprising when imprisoned people's radical action prompted state's correctional leadership, criminal policymaking elites, and some Republican state legislators to propose a different, more decarceral path for Pennsylvania. With the state's Commissioner of Corrections driving this wave of sentencing and prison reform legislation, Pennsylvania got close to reversing some of its punitive and anti-Black sentencing and confinement policies, which would have both reduced the state's prison population and possibly prevented the construction of several since completed prisons.

While the reforms developed by Lehman and other criminal legal bureaucrats in the post-Camp Hill era had the potential to limit the state's growth into the leading incarcerator in the Northeast, however, their ostensibly decarceral vision had consequential limitations that preserved and intensified the ideological architecture of racialized law and order politics in the Keystone state. The most important of those centered on their advocacy of the diversion, release or alternative punishment for only "non-violent" offenders, whom they deemed worthy of mercy and capable of rehabilitation. Individuals convicted of violent crimes remained in their eyes a threat to society who needed to be contained and punished through imprisonment. Indeed, these reformers often framed their legislative proposals as a method for *preserving* prisons for violent, incorrigible, and irredeemable individuals. Removing and diverting future non-violent offenders from prison, they reasoned, would in fact "assure that expensive prison cells are used to jail dangerous violent offenders rather than petty thieves and small-time drug dealers who can be punished by other means."⁵

In focusing on the "relatively innocent" in their campaigns, Pennsylvania's prison and sentencing reformers helped sustain and arguably intensify the expensive, ineffective, and racially violent carceral system they recognized had spun out of control.⁶ In doing so, they helped codify a "self-defeating" framework that would become dominant in contemporary prison reform circles, where mainstream prison reformers direct their energies primarily towards

⁵ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 6, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

⁶ Ruth Wilson Gilmore, "The Worrying State of the Anti-Prison Movement," *Social Justice: A Journal of Crime, Conflict, & World Order* (2015), <http://www.socialjusticejournal.org/?p=2888>; Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press, 2015).

shortening or eliminating entirely the imprisonment of “non, non, nons,” or “nonviolent, nonserious, and nonsexual offenders.”⁷ Maintaining this firm separation between the “nons” and those convicted of violent crimes has “impeded the enactment of more comprehensive changes in sentencing policies and parole policies” and institutionalized the “misleading view that offenders should be defined forever by the seriousness of the offense that initially sent them away.” As Kay Whitlock and Nancy Heitzeg “it is much more difficult to bring any nuance to discussions concerning people convicted of violent crimes when fearmongering images of ruthless monsters spring so effortlessly to mind.”⁸

Pennsylvania reformers’ policy vision suffered from other contradictions, too. This chapter will show how reformers’ successful push for non-violent prisoners to receive non-penal, but still punitive intermediate or alternative punishments resulted in “net-widening,” or the phenomena by which, individuals who might otherwise have received probation actually ended up receiving tougher and more restrictive punishments than they would have under the former system of probation, parole, and imprisonment.⁹

While not wishing to excuse or endorse these shortcomings, the history of 1990s sentencing reform in Pennsylvania demonstrates the more unsettled history of racialized mass incarceration. Individuals fully ensconced within and committed to upholding the criminal legal system challenged the state’s production of industrialized punishment and advocating for downscaling it. Echoing contemporary calls to defund police and redistribute state funds to non-

⁷ Gottschalk, *Caught*, 165.

⁸ Kay Whitlock and Nancy A. Heitzeg, *Carceral Con*, 69.

⁹ Brian D. Johnson and Stephanie M. Dipietro, “The Power of Diversion: Intermediate Sanctions and Sentencing Disparity Under Presumptive Guidelines*,” *Criminology* 50, no. 3 (2012): 811–50.

carceral and life-giving programs related to education, healthcare, and social welfare, these policymakers worried about the outsized expenditures on criminalization and corrections and detailed ways for the state to reduce its investments in punitive governance. Even in an era of “captured crime politics,” in other words, where “high crime politics” were both ubiquitous and considered a “political necessity,” there existed meaningful contestation over racialized mass imprisonment in Pennsylvania.¹⁰

Containing Pennsylvania Offenders and the Beginnings of Reform in Pennsylvania

Even as Governor Casey rushed to build new prisons, the specter of Camp Hill and the state’s overcrowding crisis haunted him, state representatives, and the state’s criminal justice policymaking elites. It was clear that prison overcrowding was a crisis of their own making. Should Pennsylvania continue its punitive path, the costs would be so enormous they would likely require cuts to other agencies. As one journalist wrote, “the bill for a decade of stiff sentencing is coming due.”¹¹ Concerned with both the escalating crisis of prison overcrowding and skyrocketing costs of corrections, Casey and members of the state House and Senate began to interrogate the state’s criminal legal and penal policies. In doing so, they opened space for policymakers to push for sentencing and penal reforms that had the potential to modestly decrease the state’s prison population and direct state capacity towards alternatives to incarceration.

¹⁰ Campbell and Schoenfeld, “The Transformation of America’s Penal Order,” 1388.

¹¹ Terry Mutchler, “Prison overcrowding becomes political issue,” *Associated Press*, June 4th, 1990.

The first critical assessment of the state's prison system after Camp Hill emerged from the Pennsylvania Commission on Crime and Delinquency, which was tasked by Governor Casey and members of the House Judiciary Committee to "offer suggestions for dealing with prison overcrowding."¹² Published in March 1990, the final report, *Containing Pennsylvania Offenders*, provided a "comprehensive package of recommendations on how to alleviate overcrowding."¹³ Notably, it identified the source of the state's overcrowding crisis as the government's approval of tougher sentencing guidelines, mandatory sentencing, and anti-drug laws that increased the number of people receiving prison time and lengthened their sentences. A decline in the rate of parole granted at the completion of a minimum sentence, a lack of programming that prisoners needed to complete for parole eligibility, and a toughening of rules regarding the amount of time an individual must go without a misconduct also worsened the crisis. An increase in the number of parole violators being sent to prison, even for mere technical violations, contributed as well, in part because those convicted of a new offense had to serve additional time on their old sentence and then begin serving an entirely new sentence for their new offense – what the report's authors referred to as "recirculation" in the prison system.¹⁴

Containing Pennsylvania Offenders also established that Pennsylvania's current strategy of mass incapacitation and carceral expansion was fiscally irresponsible. The report recognized

¹² *Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee* (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1990).

¹³ *Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee*, (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1990).

¹⁴ *Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee*, (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1990), 1-12.

that, should the state continue to incarcerate at their current rate, a massive amount of state expenditures would be necessary to “safely and humanely institutionalize all the offenders sentenced to prison and jail.” Indeed, even with Governor Casey’s recently authorized capacity expansion, the state’s prisons “will not be significantly less overcrowded than they were in 1989.” “It is just too costly,” the report said, for the state to try to build enough cells to sustain their current criminal punishment approach. Not building those cells, however, would intensify overcrowding, which “contributes to greater stress on both prisoners and correctional staff” and leads to “incidents” like Camp Hill. So, the report advocated for a “reexamination and restructuring of the use of our limited prison and jail space,” suggesting a wide range of policies the state could pursue to avoid both a prison overcrowding disaster and an out-of-control corrections budget.¹⁵

Even as the report generated doubts about the utility and administrative costs of imprisonment, its recommendations were relatively modest. In particular, the report advocated for instituting an earned time system to hasten prisoner releases, revising the sentencing guidelines to divert non-violent offenders from imprisonment, investing in parole and probation to encourage paroling prisoners at a higher rate, creating more supervision infrastructure, and establishing “boot camps” and other minimum-security facilities for “low risk offenders.”¹⁶ Yet, while representing a clear break from the Commonwealth’s mass incapacitation, the report did

¹⁵ *Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee*, (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1990), 1.

¹⁶ *Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee*, (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1990), 13-18.

not call for repealing any of the state's mandatory minimum sentences, which would have more dramatically reduced the flow of individuals into the state's prison system.

More troublingly, the report excluded violent offenders from its reforms. "Low-risk" offenders, the report alleged, were the only criminalized subjects worthy of release and leniency, while individuals convicted of violent crimes required long-term incapacitation no matter the cost. Indeed, the report took as a given that "for certain offenders, society wants that incapacitation provided and is willing to pay for it," noting that they might reject their tax dollars going towards the imprisonment of a "shoplifter" but would be "quite willing to spend the money to incapacitate a murderer."¹⁷ Even as they lamented the excesses and high costs the state's prison overcrowding crisis, then, they maintained that "violent high risk offenders"—of which there were over 13,000 imprisoned in Pennsylvania's correctional system in 1990 – should remain incapacitated and constituted a worthy state expense.¹⁸

Despite its limited and moderate approach, *Containing Pennsylvania Offenders* generated notable momentum for sentencing and parole reform. In particular, revelations about the Board of Probation and Parole's (BPP) part in fueling prison overcrowding led Republican leaders in the state House and Senate Judiciary committees to introduce legislation in late 1990 that would abolish the Board and instead allow prisoners to be automatically released at the termination of their minimum sentence unless otherwise blocked by the Department of Corrections.¹⁹

¹⁷ *Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee*, (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1990), 13.

¹⁸ *1990 Annual Statistical Report: State Correctional System* (Harrisburg: Commonwealth of Pennsylvania Department of Corrections, 1991), 13.

¹⁹ Howard Goodman, "Lawmakers seeking to replace parole board," *The Philadelphia Inquirer*, December 14th, 1990.

According to *Containing Pennsylvania Offenders*, the BPP had denied parole to a greater number of prisoners over time: in 1980, 79% of prisoners who went up for parole were granted it, whereas in 1989, 65.8% were granted parole. Given this decline, Pennsylvania prisoners were on average imprisoned for longer than their minimum sentence required, generally serving 125% of their sentences.²⁰ This drop in parole stemmed from a combination factors, including the Board of Probation and Parole instituting more hurdles for imprisoned people to clear to become eligible for parole, a lack of programming in prisons necessary to make parole (made worse by overcrowding), and a shifting beliefs within the BPP that imprisoned people posed “more serious parole risks” than those in prior decades.²¹ This “inequitable and inefficient” system, lawmakers said, needed to be reformed.²²

The reformers hoped that by eliminating the BPP they would cut the state’s prison population by over 5,000 people in ten years, which the Pennsylvania Commission on Sentencing estimated would be the likely impact of that change.²³ They tied that reduction to the escalating price of mass incarceration. “The Legislature must reconcile the cost” of getting tough with the “projected [state] budget deficit of \$1 billion,” supporters of the legislation urged.²⁴ The

²⁰ *Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee*, (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1990), 8; Frank Reeves, “Bulging prisons studied,” *Pittsburgh Post Gazette*, February 5th, 1991.

²¹ *Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee*, (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1990) 8-9.

²² *Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee*, (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1990), 16.

²³ Howard Goodman, “Lawmakers seeking to replace parole board,” *Philadelphia Inquirer*, December 14th, 1990.

²⁴ Frank Reeves, “Bulging prisons studied,” *Pittsburgh Post Gazette*, February 5th, 1991.

state's new Commissioner of Corrections Joseph T. Lehman pleaded with the public to understand mass imprisonment was "just too costly" and that sentencing reform was desperately needed.²⁵

Called the Sentencing Reform Act, Pennsylvania Republicans' proposals had the potential to modestly reduce the number of people in the system. To avoid accusations of being soft on crime, the reformers tied parole abolition to a proposal to change the state's sentencing guidelines to allow trial judges to set higher minimum sentences for violent offenders. At the time, Pennsylvania's criminal code mandated that judges set minimum sentences at no more than one-half the maximum sentence. If the Sentencing Reform Act passed judges would have the authority to set higher minimum sentences based on their assessment of the severity of the crime. For the "more typical, non-violent offender" minimum sentences would "remain close to the current sentencing levels," while for "very violent offenders," the courts would "considerably increase the length of incarceration."²⁶

While a largely Republican initiative, Democratic Governor Casey's newly appointed Commissioner of Corrections immediately joined the reformers. Considered a "progressive" choice, prisoner rights advocates welcomed Lehman's appointment and considered him a "professional."²⁷ Early on, he made clear that he believed in the capacity of imprisoned people to change and that he planned to provide meaningful opportunities for release. "I'm not interested

²⁵ Howard Goodman, "Lawmakers seeking to replace parole board," *Philadelphia Inquirer*, December 14th, 1990.

²⁶ "Proposed Parole Decision Making Process, November 1990" in Folder 30: Corrections/Parole Reform, 1990, Box 1, MG 47, Robert Casey Papers, EFSCL-PSU.

²⁷ Terry Mutchler, "Corrections starts '90s in turmoil," *Associated Press*, December 30th, 1990; Janet Leban, "Casey's prison plan: A wrong approach," *The Philadelphia Inquirer*, July 18th, 1990; Terry Mutchler, "Corrections starts '90s in turmoil," *Associated Press*, December 30th, 1990.

in operating a prison system that doesn't provide some hope," he told *The Philadelphia Inquirer*.²⁸ Unafraid to express iconoclastic opinions about crime and corrections – he even went so far as to suggest that the state did not, in fact, need to expand its prison system – Lehman's reformist zeal and political activism as Commissioner played a major role in elevating sentencing and prison reform in the state after Camp Hill.²⁹

From the start, Lehman refused to mince words about the state's overcrowding crisis, which by then was one of the worst in the country.³⁰ Pennsylvania had a "critical problem" when it came to prison capacity, he told the press, and admitted that his department "did not know how the department would handle the overflow of prisoners because the system is already 58% overcrowded."³¹ He quickly sought short-term solutions, such as extending the state's lease with the Federal Bureau of Prisons to continue incarcerating 800 state prisoners sent to federal prisons after the Camp Hill uprising.³² In July 1990 he announced that the department planned to transform counseling and recreation rooms at various prisons into space for 1,179 more beds as a desperate measure.³³ When the move prompted imprisoned people, represented by the ACLU, to file a class action lawsuit against Lehman and the PA DOC – they contended that overcrowding, constituted cruel and unusual punishment – Lehman expressed frustration with the suit, but also

²⁸ Howard Goodman, "New Commissioner says Pa. prisons must offer hope," *The Philadelphia Inquirer*, October 1st, 1990.

²⁹ See, for example, Frank Reeves, "Bulging prisons studied," *Pittsburgh Post-Gazette*, February 5th, 1991; Joseph D. Lehman, "Pass law to make PA prisons more economical and effective," *Citizens' Voice*, May 17th, 1991; Mitch Morrison, "Get inmates out faster, Pa. prison boss urges," *The Times Leader*, May 10th, 1991.

³⁰ Brad Bumsted, "Lehman: State tackles prison crisis," *Gannett News Service*, December 11th, 1990.

³¹ Terry Mutchler, "Prison chief says state to run out of room," *Citizen's Voice*, June 1st, 1990.

³² Virginia Kirk, "State's Inmates to Remain in Federal Prison System," *United Press International*, June 4th, 1990.

³³ "State squeezing 1,179 more beds into prisons," *Associated Press*, July 6th, 1990.

validated prisoners' and their allies' alarm over overcrowding.³⁴ Moreover, he insisted that the state could not "build its way out of the space shortage," telling the legislature that they needed to "deal with policy issues."³⁵ Department of Corrections spokespeople echoed Lehman's assertions that building more prisons was unwise, given the state was poised to be "even further behind than it is now" even with new prison construction, according to PADOA's Bureau of Statistics director Phil Renninger.³⁶ Regarding the state's "policy issues," Lehman contended that mandatory sentences were largely to blame for the state's overcrowding crisis and called them a "mistake." He also criticized the state's life without parole law, which had led to a spike in the state's population of individuals sentenced to life in prison.³⁷ He expressed support for legislative proposals to allow prisoners to earn good time, participate in work release, receive house arrest and electronic monitoring, and utilize other alternatives to imprisonment, albeit only for individuals convicted of nonviolent crimes.³⁸

Lehman's efforts to reduce the state's use of imprisonment and moderate the state's expenditures on corrections marked a striking contrast to correctional officials and corrections

³⁴ Howard Goodman, "New Commissioner says Pa. prisons must offer hope," *The Philadelphia Inquirer*, October 1st, 1990; Sue Morgan, "Panel: Super-Maximum Prison, Reforms Needed," *United Press International*, November 30th, 1990; Brad Bumsted, "Lehman: State tackles prison crisis," *Gannett News Service*, December 11th, 1990; Wendi Taylor, "State Takes Steps to Reduce its Jail population," *The Times-Tribune*, December 3rd, 1990; "ACLU sues state prisons for overcrowding," *Associated Press*, November 28th, 1990; *Austin v. Pennsylvania Dep't of Corr.*, No. CIV. A. 90-7497, 1992 WL 277511 (E.D. Pa. Sept. 29, 1992).

³⁵ Howard Goodman, "New Commissioner says Pa. prisons must offer hope," *The Philadelphia Inquirer*, October 1st, 1990; Sue Morgan, "Panel: Super-Maximum Prison, Reforms Needed," *United Press International*, November 30th, 1990; Brad Bumsted, "Lehman: State tackles prison crisis," *Gannett News Service*, December 11th, 1990.

³⁶ David J. Ralis, "Prison Chief fights inherited problems," *Press Enterprise*, October 3rd, 1990.

³⁷ Howard Goodman, "New Commissioner says Pa. prisons must offer hope," *The Philadelphia Inquirer*, October 1st, 1990.

³⁸ Howard Goodman, "New Commissioner says Pa. prisons must offer hope," *The Philadelphia Inquirer*, October 1st, 1990.

officers unions in other states who translated correctional crises into pleas to expand their budgets, toughen sentencing regimes, and enlarge their political authority.³⁹ That Pennsylvania had a Commissioner of Corrections actively engaged in and supportive of prison and sentencing reform made the Keystone state well-poised to substantially limit and even decrease the state's escalating prison population.

Soon after its introduction, Lehman became the primary booster of the Sentencing Reform Act, making it the "centerpiece" of his "reform efforts."⁴⁰ He worked closely with the Republican Representatives who drafted the bill, Lois Hagerty and Jeffrey Piccola, preparing a document expressing his department's support for the legislation for the Governor.⁴¹ He also helped advance the bill through the state's General Assembly and boost public support.⁴² In May 1991, he wrote an op-ed that was picked up in local newspapers across the state that urged the General Assembly to pass the legislation, which he argued would "bring greater clarity and accountability to how we determine who we send to prison, for how long and under what terms they are released." Framing the bill as a "response to the critical problem of prison overcrowding," Lehman identified the "public's outcry for a 'get-tough-on-crime' posture" as the primary force behind the disaster. While he maintained that "vigorously enforcing the law

³⁹ See Michael C. Campbell and Heather Schoenfeld, "The Transformation of America's Penal Order: A Historicized Political Sociology of Punishment," *American Journal of Sociology* 118, no. 5 (March 1, 2013): 1375–1423.; Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*, American Crossroads ; 21 (Berkeley: University of California Press, 2007); Joshua Page, *The Toughest Beat: Politics Punishment and Prison Officers Union in California*, (Oxford: Oxford University Press, 2011).

⁴⁰ Howard Goodman, "PA. Bills would end parole to ease jail crowding," *The Philadelphia Inquirer*, June 4th, 1991.

⁴¹ Letter from Patrick Beatty to Robert P. Casey, Friday December 7th, 1990; Proposed Parole Decision Making Process, November 1990 in Folder 30: Corrections/Parole Reform, 1990, Box 1, MG 47, Robert Casey Papers, Penn State Archives.

⁴² Mitch Morrison, "Get inmates out faster, Pa. prison boss urges," *The Times Leader*, May 1991.

and prosecuting criminals is important,” he also insisted that “doing so...carries significant costs to the taxpayers at both the state and local level.” Perhaps due to concerns about coming off as soft on crime, Lehman was careful not to over-emphasize that the bill would result in swifter and more numerous discharges of individuals from prison, even as it clearly sought to ease a state prison overcrowding problem through prisoner releases. Rather, he stated that the Sentencing Reform Act would “ensure that offenders who serve their time without serious misconduct while in prison will be presumed appropriate for release at their expiration of their minimum sentence,” emphasizing that anyone who “act out violently while in prison” could still be denied their release at their end of their minimum sentence.⁴³

Although a reform aimed at reducing the number of people caged in the state’s prison system, the ideology underpinning Lehman and state policymakers’ support for parole abolition and sentencing reform in many ways aligned with the punitive shift.⁴⁴ As sociologist David Garland has argued, the 1990s featured a “retreat from positive social purpose” of sentencing and incarceration and towards a “new meaning” that interpreted them as “modalities of punishment and incapacitative control” and not “transformative measures.”⁴⁵ This era also gave rise to an increasing emphasis on the limitations of the criminal justice state, leading to a “pessimistic mood” among practitioners who channeled this belief that “nothing works” into calls to reduce correctional expenditures, ease sentencing policies, and implement more rational policies.⁴⁶

⁴³ Joseph Lehman, “Proposal would reduce prison overcrowding,” *Pottsville Republican*, May 11th, 1991.

⁴⁴ David Garland, *The Culture of Control*, 107-108, 119-120.

⁴⁵ David Garland, *The Culture of Control*, 120.

⁴⁶ David Garland, *The Culture of Control*, 109.

Both trends figured prominently in Pennsylvania policymakers' support for sentencing and parole reform. At the core of their support was a growing belief that criminal legal experts could not, in fact, determine whether imprisoned individuals had been rehabilitated or were fit for release, because the science of doing so was imprecise and because "rehabilitation [in prison] doesn't really occur on any real rational basis." "Trying to decide who's going to behave and who's not going to behave – that's a whole fallacy," Republican minority chairman of the House Judiciary Committee Jeffrey Piccola explained.⁴⁷ The executive Director of the state's Sentencing Commission John Kramer similarly described predicting future criminal behavior as "at best a crapshoot," contending that a "definite sentence" determined by a judge based on the "severity and frequency of past convictions" was a more sound policy than relying on the parole board, which made a subjective judgment regarding an imprisoned person's fitness for rehabilitation and release. Lehman followed a similar argument by emphasizing that sentencing reform more accurately reflected the "purpose of incarceration," which he saw as "two-fold: to carry out 'just desserts' punishment, and to separate the offender from the community" – and not to rehabilitate.⁴⁸ While parole boards "cloak[ed] themselves in scientific objectivity," Lehman said, the Sentencing Act's "truth in sentencing" legislation reflected "sound correctional theory and sound correctional research" that indicated determining an offender's rehabilitative potential or propensity to commit new crimes was "inaccurate and somewhat arbitrary."⁴⁹

⁴⁷ Howard Goodman, "Lawmakers seeking to replace parole board," *Philadelphia Inquirer*, December 14th, 1990.

⁴⁸ Joseph Lehman, "Proposal would reduce prison overcrowding," *Pottsville Republican*, May 11th, 1991.

⁴⁹ Howard Goodman, "Lawmakers seeking to replace parole board," *The Philadelphia Inquirer*, December 14th, 1990; Howard Goodman, "Pa. bills would end parole to ease jail overcrowding,"

Proponents of sentencing reform thus correctly identified the failures of the rehabilitative framework that for decades justified the use of imprisonment in the United States, with its documented use of discretionary coercion, social control, and punishment to reform criminalized people actually suffering from complex traumas, drug addictions, and/or the structural violence of racial capitalism.⁵⁰ Rather than concluding that imprisonment itself was inhumane, however, they channeled arguments about the failure of rehabilitation to argue that imprisoned people's length of confinement should be based purely on the severity of their crime and/or their past criminal behavior, not their purported success in rehabilitating themselves. Once freed of any responsibility for determining an individual's rehabilitation, which Lehman and his supporters deemed a junk science, states could implement more streamlined and certain mechanisms for the confinement and release of some prisoners, which was now based purely on meting out "just desserts" punishment.⁵¹ In other words, despite the modestly decarceral implications of the Sentencing Reform Act, its supporters sought only to correct what they perceived to be an outdated and illogical approach to penal administration, not to upend normative ideas about criminality and correctional control.

Even as they aligned themselves with tough-on-crime politics, the reformers' attempt to eliminate parole from the state's criminal justice system and effectively dismantle the Board of Probation and Parole proved controversial.⁵² The Chairman of the Board of Probation and

The Philadelphia Inquirer, June 4th, 1991; in "Proposed Parole Decision-Making Process, November 1990" Folder 30: Corrections/Parole Reform, 1990, Box 1, MG 47, Robert Casey Papers, EFSCL-PSU.

⁵⁰ Julilly Kohler-Hausmann, *Getting Tough*, 20.

⁵¹ David Garland, *The Culture of Control*, 108.

⁵² Howard Goodman, "Pa. bills would end parole to ease jail overcrowding," *The Philadelphia Inquirer*, June 4th, 1991.

Parole, Fred Jacobs, vigorously opposed the legislation, which threatened his authority by proposing to transfer post-release supervision to the state's Department of Corrections and to absorb the agency's 230 parole agents into the state's correctional bureaucracy. In a Special Report to the Governor, Jacobs defended the BPP's efforts to "screen offenders for risk of recidivism and violence," which he contended was "designed to protect the public." Abolishing parole, he warned, would allow "high risk offenders" to "be released early to once again prey on society." To prove his point, he detailed several cases in Pennsylvania where the board had refused parole, with clear emphasis on how it prevented these individuals, who were convicted of violent and morally offensive crimes, from being released back into the community. He also peppered in statistics clearly meant to provoke alarm about who might be released as the result of parole abolition, such as the fact that "approximately 12% of the Department of Corrections population consists of identified sex offenders convicted of sexually-assaultive offenses against adults and children...Any policy or practice of release without discretion," he insisted, "is likely to release these, and persons like them, without regard for the community safety factors."⁵³

In contrast to the defenders of the Sentencing Reform Act, Jacobs's position reflected a belief that prisons should still serve a rehabilitative function, which meant that the BPP could assess an imprisoned person's capacity for rehabilitation and "risk" to the community. He also argued that maintaining parole served the legislature's growing interest in victims' rights, given that recent state laws required the Board to take the "continuing effect on the victim or the victim's family if the victim is deceased" into account during parole consideration. "The

⁵³ Fred Jacobs, "Special Report for Governor Robert P. Casey: Parole Reform Issues Revisited," Pennsylvania Board of Probation and Parole, November 6th, 1990, Folder: Folder 30: Corrections/Parole Reform, 1990, Box 1, MG 47, Robert Casey Papers, EFSCCL-PSU.

continuing effect of the crime on the victim could not be considered with a mandatory release policy,” he wrote, adding his belief that judges and jury trials often shirk “victims’ concerns” through plea bargaining, making parole a vital site for victims’ input.⁵⁴

Other criminal justice practitioners came out against the legislation as well, echoing Jacobs’s concerns that it would result in “more potentially dangerous people” being “released from prison earlier than ever before.”⁵⁵ Moreover, because the bill had been drafted and championed by the Republican ranking member of the House Judiciary Committee, it faced an uphill battle in the Democratically-controlled House.⁵⁶ Democratic lawmakers “savaged the plan,” contending that abolishing parole would create a “grave threat to public safety” and represented an “insult to crime victims.” Democratic representative Kevin Blaum pointedly accused the Department of Corrections of wanting to control releases so that they could manage overcrowding at the cost of protecting the public. Despite reformers’ attempts to revise the bills in response to the blowback, Blaum confirmed that “no amount of amendments can save the bill,” adding that it was “not going to pass the legislature.”⁵⁷

⁵⁴ Fred W. Jacobs, “Special Report for Governor Robert P. Casey: Parole Reform Issues Revisited,” November 6th, 1990, in Folder 30: Corrections/Parole Reform, 1990, Box 1, MG 47, Robert Casey Papers, EFSCS-PSU.

⁵⁵ Cynthia McCormick (former population control manager for the Allegheny County Jail, 1984-1988) Letter to the Editor, *The Pittsburgh Press*, January 20th, 1991; Richard W. Lindsey (former chairman of the Pennsylvania Board of Probation and Parole, “Letter to Editor, *Pittsburgh Post-Gazette*, March 18th, 1991.

⁵⁶ Frank Reeves, “Earlier release to be proposed for many in state prison system,” *Pittsburgh Post-Gazette*, March 1st, 1993.

⁵⁷ Howard Goodman, “Pa. bills would end parole to ease jail overcrowding,” *The Philadelphia Inquirer*, June 4th, 1991.

As the bill stalled, Lehman and criminal justice experts supporting sentencing reform continued to push for releasing nonviolent offenders and limiting the state's prison capacity.⁵⁸ Lehman in particular continued to call for eliminating the "bureaucracy" surrounding the release of nonviolent prisoners and for rolling back mandatory sentencing laws, openly stating that Pennsylvania was "putting too many people in jail" and pushing back against tough-on-crime narratives that claimed imprisonment reduced crime.⁵⁹ He told *USA Today* that the expansions to the state's prison system "should not be needed" and pointed to "politicians playing on the fear of crime, not crime itself" for the spike in prisoner populations and prison construction.⁶⁰ "Locking up more and more people isn't going to solve our crime problem," he told the *Philadelphia Inquirer*, adding "there is no relationship between incarceration rates and crime rates."⁶¹ By identifying "politics, not crime" as the source of the state's massive growth in prison spending and capacity, he offered a direct challenge to law-and-order law makers, such as then-Attorney General William Barr, who claimed that passing tough sentencing laws and expanding corrections budgets were necessary responses to increases in crime rates.⁶² "It is our policies that we have enacted in response to crime that drives the system, and not the

⁵⁸ "Criminal Justice Legislation Pending in Pennsylvania General Assembly and U.S. Congress," *Correctional Forum* (A publication of the Pennsylvania Prison Society), September 1991, 7, in Pennsylvania Prison Society, unpublished papers, obtained with permission from PPS Executive Director Claire Shubik-Richards.

⁵⁹ "Sentencing Reform is Urged," *Associated Press*, February 27th, 1992,

⁶⁰ Dennis Cauchon, "Lock 'em up' policy under attack," *USA Today*, September 1st, 1992; Thomas Di-Stasio, "Corrections chief is Pleased by conditions at Waymart Prison," *Times Tribune*, November 27th, 1991.

⁶¹ Howard Goodman, "Pa. prisons chief cites jail jam," *Philadelphia Inquirer*, May 9th, 1992.

⁶² Howard Goodman, "Beyond bricks and bars," *Philadelphia Inquirer*, June 14th, 1992.

phenomenon of crime itself,” Lehman argued, contending that “corrections is a political construct, and it is in that arena that we must make change.”⁶³

Even more strikingly, Lehman began arguing that the state’s massive expenditures on corrections threatened to overwhelm funds needed for education, healthcare, and other social services that could better fix complex problems of addiction, mental health, and economic deprivation.⁶⁴ Insisting that the “cost of incarceration will eventually bankrupt the commonwealth,” he urged the state to get correctional spending under control through sentencing reform, use of intermediate punishments, and other policies that would help preserve funds for “other human services programs...that are, in the final analysis, far more important in terms of realistically dealing with the crime problem.”⁶⁵

Lehman soon emerged as a critic of mass imprisonment and prison growth on the national level. Along with correctional leaders in twenty other states, he organized a coalition called Campaign for an Effective Crime Policy that sought “bipartisan support” for a “rational debate on crime and punishment” rather than the traditional “promises to get tough and lock-‘em-up.”⁶⁶ In 1992, the campaign urged policymakers to reject the “demagoguery on crime and punishment” that surrounded election seasons. “Appeals to base human instincts...will ultimately make the problem worse,” the call stated, instead advocating for “Informed debate about effective responses to the problem and to avoid advocating simple and quick-fix solutions.” The call specifically blamed “laws and prison release policies” that “needlessly hold

⁶³ Howard Goodman, “Beyond bricks and bars,” *Philadelphia Inquirer*, June 14th, 1992.

⁶⁴ Howard Goodman, “Pa. prisons chief cites jail jam,” *Philadelphia Inquirer*, May 9th, 1992.

⁶⁵ David Hilliard, “Prisons don’t rehabilitate, they punish, commissioner says,” *The Daily Item*, July 19th, 1992.

⁶⁶ Howard Goodman, “Beyond bricks and bars,” *Philadelphia Inquirer*, June 14th, 1992; Dennis Cauchon, “Lock ‘em up’ policy under attack,” *USA Today*, September 1st, 1992.

offenders in prison, sometimes for long terms, when community-based alternatives would safely serve society's interest in punishment." More directly, the call argued that continuing to "invest in expanding our prison systems" was no longer "productive." Given the Bush administration's endorsement of the opposite approach, with Attorney General Barr's insistence that "states have to invest more in their corrections systems" so that "chronic offenders" were not "released much too early," the CECP's efforts were notable. The Call received hundreds of signatures from public officials and made Lehman a leader in prison reform.⁶⁷

Yet his reformist activism had a clear limit when it came to "the most dangerous, violent, and persistent offender." For Lehman, imprisonment and retributive punishment had a purpose when it came to individuals classified as high-risk and violent, but it was being wastefully over-utilized by state governments who relied on politicizing crime to win elections and establish their legitimacy. Non-violent individuals, Lehman believed, were both receptive to and deserving of non-penal forms of punishment or intervention.⁶⁸ His proposed reforms would have undoubtedly resulted in reductions in the state's prison population, providing relief for those released and those still imprisoned. But so long as Lehman and other reformers excluded individuals convicted of violent crimes, their vision always had serious limits. In 1990, individuals convicted of violent crimes like murder, manslaughter, rape, robbery, and arson comprised 69% of Pennsylvania's prison population, yet Lehman's proposed reforms would not be available to them.⁶⁹ Moreover, Pennsylvania is one of the few states that mandated life without parole for

⁶⁷ "Officials Seek to End Politicization of Crime Debate," *Prison Legal News*, December 15th, 1992.

⁶⁸ David Hilliard, "Prisons don't rehabilitate, they punish, commissioner says," *The Daily Item*, July 19th, 1992.

⁶⁹ *1990 Annual Statistical Report – Commonwealth of Pennsylvania Department of Corrections* (Camp Hill: Commonwealth of Pennsylvania Department of Corrections, 1991), 22-23.

first- and second-degree murder convictions, meaning the only form of release available to them is through commutations by the Governor. In 1992, there were 2,467 lifers in Pennsylvania's prisons, making up nearly 10% of the population.⁷⁰ Refusing to view individuals convicted of violent crimes as worthy of change and release preserved the foundational architecture of racialized imprisonment and entrenched a reactionary but purportedly scientific belief in these individuals' inherent threat to public safety. Moreover, given that individuals convicted of violent crimes and those sentenced to life in prison in Pennsylvania were disproportionately non-white, their blanket exclusion from any sentencing reforms promised to sustain the state's racially unequal regime of criminal punishment, even as their efforts ostensibly focused on reducing the state's prison population.⁷¹

Although the Sentencing Reform Act had stalled in the General Assembly, its defeat did not mark the end of penal reform in the state. As policymakers faced an uphill battle trying to change the state's sentencing and release policies, the Sentencing Commission had the power to reduce the prison population by altering the state's sentencing guidelines to incentivize the imposition of non-penal sanctions for certain crimes. It is to this effort that this chapter will now turn.

Sentencing Guidelines

⁷⁰ *1992 Annual Statistical Report – Commonwealth of Pennsylvania Department of Corrections* (Camp Hill: Commonwealth of Pennsylvania Department of Corrections, 1993), 11.

⁷¹ "Data Presentation to Pennsylvania House of Representatives' Crime and Corrections Subcommittee – Race and the Criminal Justice System," December 9th, 1993, Folder 15, Box 8, Judiciary Committee, 1993-1994, PHRA.

Like Lehman, John Kramer viewed the state's prison overcrowding crisis as the product of misguided political decision making. He wanted to remedy the problem by devising new sentencing guidelines that would encourage judges to sentence nonviolent offenders to non-penal sanctions. The Commission had received a mandate to revise the sentencing guidelines along those lines as part of the post-Camp Hill intermediate punishment legislation passed by the Legislature in 1990.⁷² But given the hostility he and fellow reformers faced when they attempted to pass the Sentencing Reform Act, Kramer wanted to substantiate his perspective with compelling and hopefully convincing data. He therefore commissioned a study with Penn State criminologist and sentencing expert Darrell Steffensmeir that not only assessed the state's sentencing guidelines but provided a broader critical analysis of the state's criminal punishment system.

Entitled *Incarceration and Crime: Facing Fiscal Realities in Pennsylvania*, the report offered empirical backing to Lehman and Kramer's claims that tough sentencing policies had caused the overcrowding crisis without having any meaningful impact on the state's crime rates. "Longer sentences, or the 'piling on of punishment,'" the report found, "apparently have very little, if any, deterrent effect on levels of violent crime and, at best, only a small short-term incapacitate effect." The ineffectiveness of tough punishment was even more troubling given the state's ballooning expenditures on corrections, which the report found was "consuming a larger and larger share of the state's tax dollars at a time of declining revenue growth and growing demand for other public services." With the state's commitment to add 10,000 additional prison

⁷² Status Report on the Implementation of Act 193: Intermediate Punishment Act, March 2nd, 1993 in Folder 8, Meetings, Tours and Public Hearings, Public Hearing, Alternative Sentencing, March 2, 1993, Box 1, Judiciary Committee, 1993-1994, PHRA.

cells by 1995, the state was poised to spend 1.3 billion dollars of taxpayer's funds on prison construction and operation. Adding in design and construction costs, debt service, and operational costs over a twenty-year period, the report found, made "each one of these units... cost more than \$800 million." Moreover, the report showed that the state's "incarceration strategy" had disproportionately affected "minority citizens and women, particularly for drug offenses." While only 11% of the Pennsylvania's 1990 population was non-white, 58% of its prison population was non-white. "What are the benefits and costs of incarceration," the report asked, "including the social cost of imprisoning minorities at a disproportionate rate?"⁷³

The report gave Kramer the justification he needed to propose a revised set of sentencing guidelines that would decrease the severity of sentences for non-violent offenders and establish a "broad range of intermediate penalties." Kramer contended that these penalties were "more efficient and just as effective, and perhaps more effective, than incarceration."⁷⁴ Specifically, the Commission recommended that most non-violent offenders, the majority of whom were convicted of drug and theft offenses, receive county jail sentences over state prison sentences and intermediate punishments over any form of incarceration at all.⁷⁵

⁷³ Darrell Steffensmeier, *Incarceration and Crime: Facing Fiscal Realities in Pennsylvania* (State College: Center for the Study of Law and Society, Pennsylvania State University, 1992), in Folder 29, Meetings, Tours and Public Hearings, Tour, Public Hearing, PCCD, August 23rd, 1993, Box 2, Judiciary Committee 1993-1994, PHRA.

⁷⁴ John Kramer, Jeffrey T. Ulmer, Mindy Wilson, Christine Van Asten, "Impact of the 1994 and 1997 Pennsylvania Guideline Changes," December 4th, 2002, 13-17, in Box 2, Annual Reports, Newsletters, and Publications, Pennsylvania Commission on Sentencing, House of Representatives and Senate, General Assembly, Record Group 7, Location 0405554, PSA.

⁷⁵ *Containing Pennsylvania Offenders: The Final Report of the Pennsylvania Commission on Crime and Delinquency Overcrowding Committee*, (Harrisburg: Pennsylvania Commission on Crime and Delinquency, 1990), 22.

To understand how the new sentencing guidelines would have reduced the state's prison population, some additional context is warranted. In response to the crisis at Camp Hill and ensuing concerns about prison overcrowding, the Legislature passed two bills that allowed judges to sentence low risk and/or nonviolent offenders to county-run, non-penal sanctions such as house arrest, intensive supervision, electronic monitoring, community service, drug testing, drug and alcohol treatment, and/or restitution and fines. Part of a broader trend in criminal sanctioning underway across the country, intermediate punishments offered legislators a sanctioning option that was "somewhere between probation and incarceration with respect to sentencing severity," thereby allowing them to divert individuals from bloated prisons while deflecting claims of leniency or public safety endangerment.⁷⁶ While many of the programs featured in the bills had long been possible alternatives to incarceration, legislators crafted the label of "intermediate punishment" to rebrand purportedly "soft on crime" initiatives into a "strong, 'punitive'-sounding" punishment. Indeed, Senator Stewart Greenleaf initially titled the bill that would become Act 193 a "Community Corrections bill" but changed the name to "intermediate punishment" in order to "draw political acceptance."⁷⁷ Similarly, in an attempt to make such sanctions more politically palatable, the legislation critically "removed" such programs "from probation designation," which suggested they were "lenient."⁷⁸

The biggest sticking point was the question of funding. The laws barred judges from sentencing an individual to an intermediate sanction unless the county had an intermediate

⁷⁶ "Changes made to the sentencing guidelines," *Monitor: The Pennsylvania Commission on Sentencing* 7, no. 1 (1991): 3.

⁷⁷ John H. Kramer and Jeffrey T. Ulmer, *Sentencing Guidelines: Lessons from Pennsylvania, Sentencing Guidelines* (Lynne Rienner Publishers, 2022), 47.

⁷⁸ John H. Kramer and Jeffrey T. Ulmer, *Sentencing Guidelines*, 48.

punishment program in place, but the legislature allocated no state funds for counties to develop these programs. To fill the gap, the Pennsylvania Commission on Crime and Delinquency (PCCD) allocated federal Drug Control and System Improvement (DCSI) funds be used for county intermediate punishment programs, which county officials could access once they developed and submitted a plan to the PCCD.⁷⁹ By incentivizing counties to develop intermediate punishment programs, the Legislature and the PCCD hoped that they would begin to utilize them over penal confinement.

Using intermediate punishment to reduce the state's prison population was more complicated and indirect, given that the legislation did not authorize the development of state-run intermediate punishment programs. But if the state then changed its sentencing guidelines to encourage the diversion of certain individuals from the state confinement to the counties – now newly equipped with intermediate punishment programs -- then Pennsylvania could reduce the number of people in its prison system without adding to county jail populations. This is what the new 1993 proposed sentencing guidelines sought to accomplish.⁸⁰ Analysts predicted that the guidelines would remove 1,000 prisoners from the state's prison system and 2,500 prisoners from county jails.⁸¹

⁷⁹ Status Report on the Implementation of Act 193: Intermediate Punishment Act, March 2nd, 1993 in Folder 8, Meetings, Tours and Public Hearings, Public Hearing, Alternative Sentencing, March 2, 1993, Box 1, Judiciary Committee, 1993-1994, PHRA.

⁸⁰ It should be noted that immediately after the passage of these intermediate punishment laws, the Commission on Sentencing made initial revisions to the Sentencing Guidelines in 1991 that identified “eligible offenders” for intermediate punishment programs. While these changes signaled to judges that they should begin to utilize these programs for particular categories of convicted individuals, the changes did not revise sentencing recommendations for particular offenses, which would occur with the 1993 revisions. See “Changes made to the sentencing guidelines,” *Monitor: The Pennsylvania Commission on Sentencing* 7, no. 1 (1991): 3.

⁸¹ “Small counties wary of new sentencing guidelines,” *Associated Press*, July 25th, 1994.

Specifically, the new guidelines established “presumptive nonconfinement” recommendations for low-level offenses such as minor theft, simple assault, possession of small amounts of drugs, and less serious forms of burglary. The new guidelines also reduced or revised sentencing ranges for these crimes to privilege intermediate punishments. For example, the guidelines recommended that an individual convicted of possessing less than one pound of marijuana with no prior charges be sentenced to, at minimum, a restorative sanction, such as community service, probation, or outpatient treatment, and at maximum a restrictive intermediate punishment, such as drug and alcohol treatment or house arrest with electronic monitoring. By contrast, prior guidelines recommended sentencing such an individual from zero to six months of confinement.⁸² The new guidelines also organized various groupings of crimes into “levels” that more easily allowed judges to “identify candidates eligible for RIP [restrictive intermediate punishments].”⁸³ Levels 1 and 2, which covered low level crimes and minor drug charges, recommended intermediate punishments unless an individual was a repeat offender. For Level 3 offenses, which included crimes such as aggravated assault, arson, or robbery, the Commission recommended county imprisonment or short terms of state confinement, representing a shift from outright recommendations of state imprisonment. The new guidelines also indicated a series of mid-level crimes that “may” be given intermediate punishments, depending on their severity and an individual’s prior criminal record.⁸⁴

⁸² A “restorative sanction” represented the “less severe category of intermediate punishment,” referring to options that were the “least restrictive in terms of constraint of the offenders’ liberty,” did not involve “housing the offender,” and that were focused on “restoring the victim to pre-offense status.” See

⁸³ John H. Kramer and Jeffrey T. Ulmer, *Sentencing Guidelines*, 54.

⁸⁴ *Commonwealth of Pennsylvania Commission on Sentencing -- Sentencing Guidelines Implementation Manual, Fourth Edition* (Harrisburg: Pennsylvania Commission on Sentencing, 1994).

As with the Sentencing Reform Act, the new sentencing guidelines would only allow for leniency and decarceration for nonviolent offenders, while they would actually toughen the severity of sentencing for “violent and repeat offenders,” or crimes such as voluntary manslaughter, aggravated assault that involves seriously bodily injury, rape, and robbery involving seriously bodily injury.⁸⁵ Once again, policymakers refused to challenge normative claims about violence, criminality, American racism, and public safety.

Despite their expansion of sentences for individuals who committed violent crimes, the new guidelines provoked vocal outrage from many rural district attorneys across the state. Calling the new sentencing guidelines an “outrageous package,” they showed up *en masse* to a Pennsylvania Commission on Sentencing meeting at Luzerne County’s Courthouse to make their objections known. Their principal critique was that any earlier release of convicted individuals, no matter the nature of their crime, posed a threat to public safety. The guidelines “provide for lighter prison sentences thereby resulting in convicted criminals getting out of prison and back on the street at a much earlier time,” Luzerne County District Attorney Paul Olszewski contended. Another DA, Mark Zimmer of Lackawanna County, alleged the guidelines were the “most lenient of the most heinous offenders.” Sentencing Commission associate director Cynthia Kempinen attempted to explain to the DAs that the new guidelines sustained a law-and-order approach to criminal justice while preserving state resources by making sure “prison space is reserve for those who are a real threat.”⁸⁶ But the DAs were not moved. While he “empathized[ed]” with corrections officials grappling with the day-to-day challenges of

⁸⁵ Pennsylvania Commission on Sentencing: Testimony Before the Joint Session of the House Appropriations and Judiciary Committee, March 2nd, 1993; Folder 8: Judiciary Committee 1993-1994, Box 1, Judiciary Committee 1993-1994, PHRA.

⁸⁶ “Small counties wary of new sentencing guidelines,” *Associated Press*, July 25th, 1994.

overcrowding, Olzsewski contended that “shorter prison stays do nothing but erode any deterrent effects our statutory sentences may have,” adding that “allowing convicted criminals to return to the streets sooner” sent the “wrong message” to both the “law abiding public and to potential criminal defendants.” Calling the new guidelines a “direct slap in the face to many crime victims throughout the commonwealth,” he insisted that they would enable a “large scale exodus from our correctional institutions.” Some DAs raised more pointed critiques regarding the lack of treatment for individuals experiencing addiction to drugs or alcohol, arguing that releasing these individuals without a plan for treatment was irresponsible. They also raised concerns about the state shifting to the counties the burden of managing criminal defendants who “heretofore have been judged to be worthy of state sentences” even though counties had less funding than the state.⁸⁷ At the core of their opposition, however, was their belief that “criminals’ behavior” would not change “unless they get to see the inside of a jail cell.”⁸⁸

The rural DAs’ resistance did not block the guidelines, which took effect the following year.⁸⁹ But many prosecutors indicated their continued opposition, especially those in small counties who contended that they lacked the resources to fund alternative sentencing programs “from scratch.” Representatives from Perry County declared that they would “ignore the guidelines” by sending nonviolent offenders to jail because they “don’t have the personnel to really have an intensive probation program in addition to the regular caseload... We don’t have the money for that.”⁹⁰ DAs in more metropolitan counties, however, generally welcomed the new

⁸⁷ “DA’s oppose revision to sentencing guidelines,” *Citizens’ Voice*, September 30th, 1993.

⁸⁸ “States new sentencing guidelines spark debate on effective punishment,” *The Times Leader*, July 25th, 1994.

⁸⁹ “Budget includes \$700 million for prisons” *Associated Press*, June 30th, 1994.

⁹⁰ “Small counties wary of new sentencing guidelines,” *Associated Press*, July 25th, 1994.

guidelines. Some had already implemented intermediate punishment programs to remedy county prison overcrowding.⁹¹

Despite their narrowness, the revised 1994 Sentencing Guidelines did help divert some individuals from state incarceration. One study found a ten percent reduction in the number of offenders convicted of delivery of less than 2.5 grams of heroin, cocaine, methamphetamine, or PCP sentenced to state imprisonment between 1994 and 1995. While there was a slight increase in the number of such individuals sentenced to county jail, from 50 to 53%, more of these individuals were sentenced to intermediate punishment programs (from 2% to 6%) and probation (from 14% to 17%) compared to 1994. Overall, the guideline revisions led to over 2,000 fewer people sentenced to prison during 1995-1996.⁹²

While encouraging, reducing the number of people from state prisons and into county systems did not always translate to less imprisonment. For example, the share of individuals sentenced to state prison for delivering large quantities of drugs fell from 72% in 1994 to 54% in 1996 – a seemingly dramatic shift. But these individuals were more likely to be sentenced to county jail terms, with “little change” in the numbers of individuals sentenced to probation and intermediate punishment.⁹³ A later study of Pennsylvania’s sentencing guidelines suggest that the inclusion of intermediate sanctions produced “substantial net widening.”⁹⁴ Although intermediate sanctions were meant to divert people from prison and help ease the state’s overcrowding crisis,

⁹¹ “Small counties wary of new sentencing guidelines,” *Associate Press*, July 25th, 1994.

⁹² Henry Sontheimer, “Assessing the Impact of Changes to Pennsylvania’s Sentencing Guidelines,” February 1998, 5,

⁹³ Henry Sontheimer, “Assessing the Impact of Changes to Pennsylvania’s Sentencing Guidelines,” February 1998, 5.

⁹⁴ Michael H. Tonry and Mary Lynch, “Intermediate Sanctions,” in ed. Michael H. Tonry, *Crime and Justice: A Review of Research* (Chicago, IL: University of Chicago Press, 1996), 20.

this study found that Pennsylvania judges actually applied them to low-level offenses that would otherwise have received probation. The study also revealed that “racial and ethnic minorities are substantially less likely to receive intermediate punishments relative to both prison and jail,” showing that the guidelines reproduced racial inequalities already present in the state’s criminal punishment system.⁹⁵

While the shortcomings of the sentencing commission’s attempt to create intermediate, non-penal punishment options are clear, that the commission made these revisions at all demonstrates that the overcrowding crisis prompted criminal legal policymakers to try to reverse some of the damage that tough-on-crime wrought. It exposed the enormous fiscal costs, administrative challenges, and the excessive racialized state violence that law and order politics, , required of state governments. Although stopping far short of making a radical or abolitionist critique of the state’s criminal punishment system, state policy experts produced knowledge and made policy changes that sought to limit and reduce the state’s carceral growth, at a time when many politicians continued to revel in a politics of vengeance and incapacitation.

Sentencing Reform, Round II

The new sentencing guidelines attempted to address overcrowding by assisting judges in easing the sanctions and diverting from prison individuals accused of low-level crimes. But this did not address the problem of parole, which continued to wield power over the pace and number of prisoner releases. Having learned that calling for the abolition of parole stoked considerable opposition, Lehman and Piccola launched another attempt at sentencing reform that sought to

⁹⁵ Johnson and Dipietro, “The Power of Diversion,” 831, 841.

preserve the autonomy of the Probation and Parole board. “This year we decided to deal with the policy issues [of when prisoners should be released] separate from the turf issues,” Lehman said. In their latest approach he and Piccola partnered with Democratic state Senator and chairman of the Judiciary Committee Craig Lewis, further enhancing the bill’s chances of succeeding. Governor Casey backed the proposed legislation as well. It had many similarities to the previous set of reforms, calling for individuals convicted of nonviolent crimes and/or considered “low-risk” to be “released upon completion” of their minimum sentences, while individuals classified as “high risk and dangerous” would be required to gain approval from the Board of Probation and Parole.⁹⁶ The legislation also included a provision that allow victims to “have input into the release decision made by the Parole Board,” thus responding to the pressure from victims’ rights groups.⁹⁷ If passed and paired with the Sentencing Guideline changes, the reforms were expected to reduce the state’s prison population by around 3,000 prisoners within a five to ten year period, resulting in an 11% decrease in its projected prison population growth.⁹⁸

Lehman’s belief in the need for sentencing reform and a much-reduced correctional capacity in the state even led him to transform his budget testimony before the House Appropriations and Judiciary Committee into a call for legislators to “control the cost of prisons”

⁹⁶ Frank Reeves, “Earlier release to be proposed for many in state prison system,” *Pittsburgh Post-Gazette*, March 1st, 1993.

⁹⁷ Remarks – Corrections Commissioner Joseph D. Lehman – House Appropriations and Judiciary Committees, March 2nd, 1993, Folder 8: Meetings, Tours, and Public Hearings – Public Hearing, Alternative Sentencing March 2nd, 1993 in Box 1, Judiciary Committee 1993-1994, PHRA.

⁹⁸ Bob Wittman, “Packed PA prisons force new review of sentencing laws,” *The Morning Call*, March 21st, 1993; Doug Hoffman to Joseph Lehman, Allen Castor Jr., John H. Kramer, Michael Herschok, James Thomas, re: Impact of Sentencing Reform & Sentencing Guidelines Revisions on State Correctional Population,” July 13th, 1993, Folder 25, Meetings, Tours and Public Hearings, Tour, Public Hearing Commission on Corrections, June 9th, 1994, Box 5, Judiciary Committee 1993-1994, PHRA.

through sentencing policy. To be sure, Lehman was not calling for the defunding of state corrections – he made a request for a whopping additional \$123 million for DOC’s budget, a 24.7% increase that he contended was necessary to open and staff the five new prisons authorized by the General Assembly. Yet he also expressed ambivalence about the request, noting that the state’s total revenue increase was “less than 5%” and warning that “there is no ‘extra’ money laying around.” Notably, he repeated earlier statements about how the spike in corrections funding threatened funding “for children and family services, health, education, and infrastructure” programs that he argued “in the long run are going to have more of an impact on reducing the level of crime in the Commonwealth than the prison system is.” He repeated his view that the growth of the state’s prison population and corrections spending was not the product of “the phenomenon of crime itself” but “the policies that we have enacted in response to crime,” making clear that policymakers could make different choices that would reduce the state’s prison population. “The simple truth is that it is your policies that are driving the cost of prisons up and up,” he contended, adding that “changing that situation means re-examining those policies, including mandatory sentences.”⁹⁹ While maintaining that prisons had “value” for incapacitating “violent, dangerous and persistent offenders in the interest of public safety,” he argued that legislators “expect[ed] too much of prisons,” which are in fact “not very good at rehabilitating” prisoners or deterring crime. This “reactive response of the criminal justice

⁹⁹ Remarks – Corrections Commissioner Joseph D. Lehman – House Appropriations and Judiciary Committees, March 2nd, 1993, Folder 8: Meetings, Tours, and Public Hearings – Public Hearing, Alternative Sentencing March 2nd, 1993 in Box 1, Judiciary Committee 1993-1994, PHRA.

system,” he contended, “is not capable of dealing with the causes of crime” but has become “addictive” as a means of communicating to the public that politicians can “do something.”¹⁰⁰

To remedy the prison overcrowding crisis and the spiraling costs of corrections, Lehman urged legislators to implement sentencing and release policies that better reflect “what prisons can and cannot do relative to influencing future behavior of offenders” and that interrupt the state’s disproportionate use of state funds for correctional control. He even alluded to his belief that the state should take even more aggressive action on sentencing and reducing their prison population by repealing some mandatory sentences.¹⁰¹

Two reports released in early 1993 provided critical empirical backing for his campaign.¹⁰² Commissioned by Lehman’s office, completed by the Public Agenda Foundation and the Pennsylvania Economy League, and privately funded by the Edna McConnell Clark Foundation, the reports, entitled *Reconsidering Prisons: The Case for New Corrections Policy In Pennsylvania* and *Punishing Criminals* provided Lehman with two critical points of argumentation that sentencing reform was both necessary and possible.¹⁰³

The first of those reports, *Punishing Criminals*, investigated Pennsylvania public opinion with a focus on discovering the public’s perceptions of sentencing policy, public safety, and the

¹⁰⁰ Remarks – Corrections Commissioner Joseph D. Lehman – House Appropriations and Judiciary Committees, March 2nd, 1993, Folder 8: Meetings, Tours, and Public Hearings – Public Hearing, Alternative Sentencing March 2nd, 1993 in Box 1, Judiciary Committee 1993-1994, PHRA.

¹⁰¹ Remarks – Corrections Commissioner Joseph D. Lehman – House Appropriations and Judiciary Committees, March 2nd, 1993, Folder 8: Meetings, Tours, and Public Hearings – Public Hearing, Alternative Sentencing March 2nd, 1993 in Box 1, Judiciary Committee 1993-1994, PHRA.

¹⁰² “Corrections chief urges sentencing alternatives,” *Associated Ppress*, March 28th, 1993.

¹⁰³ Bob Wittman, “Packed PA prisons force new review of sentencing laws,” *The Morning Call*, March 21st, 1993.

state's use of punitive and carceral sanctions.¹⁰⁴ Asserting that there was a “critical juncture” regarding how the state addressed “criminal behavior,” the report's authors contended that even as legislators and correctional officials knew that prison overcrowding and the ballooning of prisons across the nation was unsustainable, “crime is such an emotional and personal issue” that taking decisive action without public support proved risky. So, the study sought to examine how Pennsylvanians really felt about imprisonment, sentencing, and alternatives to incarceration, with a clear interest in determining Pennsylvanians' support for the sentencing reforms making their way through the legislature. The report was thus limited, but it illuminated how, once properly educated about the issue, a majority of the Pennsylvanians surveyed supported non-prison sanctions and sentencing reforms for non-violent offenders.¹⁰⁵

Using a “citizens' review panel” approach, the study chose 401 people with varied racial and gender identifications, and ages. The researchers then surveyed these individuals at six sites around the state in groups of 30 to 50. First, participants filled out a questionnaire that assessed their “attitudes towards crime and punishment” and asked them to sentence “24 hypothetical offenders to either prison or probation.” Then participants watched a “20-minute video on prison overcrowding and alternative sentences,” covering options such as strict probation, strict probation with restitution or community service, house arrest, and boot camp, providing “pros and cons” for each alternative. After the video, the researchers convened discussion groups with

¹⁰⁴ *Punishing Criminals: Pennsylvanians Consider the Options – A Report of the Public Agenda Foundation*, (New York: Public Agenda Foundation, 1993), 3-4, Folder 29: Meetings, Tours and Public Hearings, Tour, Public Hearing, PCCD, August 23rd, 1993, Judiciary Committee 1993-1994, Box 2, PHRA.

¹⁰⁵ *Punishing Criminals: Pennsylvanians Consider the Options – A Report of the Public Agenda Foundation*, (New York: Public Agenda Foundation, 1993), Folder 29: Meetings, Tours and Public Hearings, Tour, Public Hearing, PCCD, August 23rd, 1993, Judiciary Committee 1993-1994, Box 2, PHRA.

fifteen people to “air their feelings about crime and discuss the video,” after which they completed a post-test questionnaire to assess whether participants’ attitudes towards punishment and sentencing had changed.¹⁰⁶

The results suggested that, once Pennsylvanians were given a full picture of the costs of incarceration, they were extremely open to sentencing reform, use of alternative sentences, and a reduction in the state’s use of incapacitation as crime control. For example, in a question where a hypothetical woman named Alice, aged 24 and with a prior history of theft, stole a \$150 dress, the first test indicated that 71% of respondents believed she should go to prison and only 17% believed she should get regular probation, with 12% selecting “unsure.” After learning more about prison overcrowding and alternative sentencing, however, only 22% believed she should go to prison, with 35% supporting strict probation plus restitution, 11% supporting strict probation plus community service, 10% supporting boot camp, 6% supporting strict probation, and 3% supporting regular probation. In the final survey, 92 percent of the respondents favored intermediate sanctions for nonviolent prisoners like Alice.¹⁰⁷

That the expansion of alternative sentencing options led to a reduction in support of regular probation – the least restrictive form of sanction – reflected the ways that intermediate punishments can actually expand punishment by making alternatives to imprisonment *more*

¹⁰⁶ *Punishing Criminals: Pennsylvanians Consider the Options – A Report of the Public Agenda Foundation*, (New York: Public Agenda Foundation, 1993), 7-8, Folder 29: Meetings, Tours and Public Hearings, Tour, Public Hearing, PCCD, August 23rd, 1993, Judiciary Committee 1993-1994, Box 2, PHRA.

¹⁰⁷ *Punishing Criminals: Pennsylvanians Consider the Options – A Report of the Public Agenda Foundation*, (New York: Public Agenda Foundation, 1993), 34, Folder 29: Meetings, Tours and Public Hearings, Tour, Public Hearing, PCCD, August 23rd, 1993, Judiciary Committee 1993-1994, Box 2, PHRA.

restrictive and punitive than they had been.¹⁰⁸ At the same time, that support for imprisonment dropped so dramatically once people were provided with more information about alternative sentences suggests that the public was not averse to halting the flow of people to the state's prison system. Moreover, the pre-test only asked participants to select three options – prison, probation, or not sure – while the post-test offered a wider array of alternative sentences. This fact begs the question of whether, if offered the same three options from the pre-test in the post-test, participants' support for regular probation would have increased *without* the insertion of the more restrictive sanctions.

Still, the fact remained that even as participants expressed support for non-penal sanctions, a majority continued to favor punishment for criminal activity and placed the onus on individuals rather than structural inequality for criminal behavior. Few participants ranked racial discrimination and poverty as the causes of crime, instead choosing "immediate circumstances" related to "illegal drug use," "gang warfare," and "availability of handguns" as the primary sources. Participants' support for intermediate sanctions reflected their belief that they offered a "common sense, economically feasible alternative to the problem of prison overcrowding." Critically, their capacity for leniency only extended to "nonviolent offenders" and was often premised on imprisoned people's performance of rehabilitation. Sixty-eight percent of

¹⁰⁸ See Johnson and Dipietro, "The Power of Diversion," 831, 841; Tonry and Lynch, "Intermediate Sanctions;" Thomas Blomberg, William Bales, and Karen Reed, "Intermediate punishment: Redistributing or extending social control?" *Crime, Law, and Social Change* 19 no. 2 (1993): 187-201; Joel Gross, "The Effects of Net-Widening on Minority and Indigent Drug Offenders: A Critique of Drug Courts," *U.Md. L.J.* 10, no. 1 (2010).

respondents, for example, indicated a preference for reducing the sentences of prisoners who took part in “rehabilitative programs or who demonstrate good behavior.”¹⁰⁹

Even with these important caveats, the results of *Punishing Criminals* suggested that legislators’ common rationale for law-and-order policies – that the public wanted tough punishment, and thus they could not support sentencing or other non-carceral reforms – were inaccurate. The report even found that crime victims were “just as likely to support alternatives as nonvictims.” This insight was particularly important given that the first iteration of sentencing reform had collapsed beneath claims that it was soft on crime and harmful to crime victims.¹¹⁰

The report also indicated that, while respondents did not display much empathy towards imprisoned people, with 60% believing that overcrowding did not constitute cruel and unusual punishment, they *did* object to their tax dollars being used for more prisons. There was almost “no public support for building more prisons or increasing corrections budget,” especially if doing so meant raising their taxes or “cutting back in other areas such as health or education to raise the money.” As one participant reflected, “For \$30,000 I could send my daughter to college! All they’re learning in prison is to become worse criminals.” Even as participants expressed a desire for continued forms of punitive sanctions, they also felt that prisons “were not doing their job” and were “increase[ing] the likelihood of criminal behavior upon release” rather than offering “hope of rehabilitation.”¹¹¹ Put simply, the study suggested that the public was

¹⁰⁹ *Punishing Criminals: Pennsylvanians Consider the Options – A Report of the Public Agenda Foundation*, (New York: Public Agenda Foundation, 1993), 10-11, Folder 29: Meetings, Tours and Public Hearings, Tour, Public Hearing, PCCD, August 23rd, 1993, Judiciary Committee 1993-1994, Box 2, PHRA.

¹¹⁰ Frank Reeves, “Earlier release to be proposed for many in state prison system,” *Pittsburgh Post-Gazette*, March 1st, 1993.

¹¹¹ *Punishing Criminals: Pennsylvanians Consider the Options – A Report of the Public Agenda Foundation*, (New York: Public Agenda Foundation, 1993), 11, 15-16, Folder 29: Meetings,

“ready for sentencing reform.”¹¹² *Punishing Criminals* thus gave Lehman a powerful way to show legislators that publicly supporting sentencing reform and intermediate punishments would not tank their careers.

The second major report published in 1993, *The Cost of Corrections*, quantified the enormous costs of correctional expansion in Pennsylvania and made a case for the significant “cost savings” of intermediate punishments. Funded by the Edna McConnell Clark Foundation and completed by the Pennsylvania Economy League, the report showed that “new prisons provide no guaranteed solution to the overcrowding problem” and thus made for unwise investments. Instead, the report argued, policymakers could alter state sentencing policy and implement intermediate punishment programs that would not only save the state money but might also be a more effective means of reducing community harm. Altering course from mass incapacitation, the report suggested, could “provide a better opportunity to rehabilitate offenders” and allow the state to “spend more funds in other program areas such as education, public health, and economic development,” which had the potential to “reduce the incidence of criminal behavior”¹¹³ Echoing Lehman’s view that the growth in prisoner populations was the product of “government policies” passed “in response to public fear of a perceived growth in criminal activity” rather than the actual “amount of criminal activity,” the report argued that carceral policies produced an overcrowding crisis that the state and counties responded to by “adding new prison space.” By 1995, Pennsylvania will have added fifteen new state prisons in

Tours and Public Hearings, Tour, Public Hearing, PCCD, August 23rd, 1993, Judiciary Committee 1993-1994, Box 2, PHRA.

¹¹² “Studies show support for alternatives to prison,” *Associated Press*, March 26th, 1993.

¹¹³ *Cost of Corrections in Pennsylvania* (New York: Edna McConnell Clark Foundation, 1993), 23.

just eleven years.¹¹⁴ Yet, by year 2000, the report predicted, the state prison system would still be over capacity by 8,200 prisoners.

Making matters worse, should the state continue its current strategy of prison expansion and mass incapacitation, the costs to taxpayers would skyrocket. Explaining that “building a new prison represents a substantial and long-term commitment” with costs to the state far beyond the “initial cost of construction,” the report showed how the debt service required to fund prison construction could last for decades. Once that expense was factored in, the actual cost of prison construction was triple what most people understood it to be. Moreover, building new prisons added substantially to the Department of Corrections budget, requiring “annual operating costs such as salaries and benefits, utilities, routine maintenance, and food,” that would “far exceed the cost of construction, including debt service costs.” In total, the report found that after 20 years, “estimated cumulative operating costs for five prisons will total \$2.4 billion in constant dollars” raising the total cost for the new prisons “to over \$3 billion in constant dollars.”¹¹⁵

Cost of Corrections suggested an “alternative scenario” where the state “reduce[ed] the inmate population so that new prison construction will not be necessary.” The report argued that this future could be possible by reducing the time served by prisoners, diverting individuals who might have gone to state prison to “some other form of sanction,” or by combining these policies. The report focused most directly on efforts to revise the sentencing guidelines for non-violent crimes. The results would be twofold. Some prisoners would be paroled earlier. Others would avoid imprisonment in state prisons entirely, instead being confined in county jails. While that a shift could lead to an influx of prisoners to county jails, the Sentencing Commission estimated

¹¹⁴ *Cost of Corrections in Pennsylvania*, 10

¹¹⁵ *Cost of Corrections in Pennsylvania*, 11

that the guideline changes would produce a “net reduction” in their population because of the implementation of county-administered intermediate punishment programs.” While this would add both fiscal and administrative burdens to county probation and parole services, the “cost” would be “partially offset” by reducing the number of people in county jails.¹¹⁶

While the report recognized that the state’s intermediate punishments strategy was still in development, they found that switching course from total incapacitation towards intermediate punishments would save the Commonwealth a substantial amount of money. According to the report’s accounting, the total costs of incarcerating just one prisoner per year was a striking \$20,262 dollars.¹¹⁷ Investing in intermediate sanctions alone might not result in a reduction in costs, especially if the state pursued “high cost” programs and stopped relying solely on counties to fund them. But if the state invested in alternative sanctions while also reducing the prison population such that they could *avoid building additional prisons and/or close down existing facilities*, the savings would be quite substantial. Even if the state pursued the most expensive intermediate punishments, the cost of using those punishments for the 8,244 individuals projected to exceed the state’s prison capacity in the year 2000 would be \$36 million in constant dollars. By contrast, should the state choose to build more prisons to account for the expected surge in prisoner populations, the costs would be over \$172 million in constant dollars. Working to reduce the state’s prison population in order to avoid building new prisons and investing in intermediate punishments would save the state over \$136 million in constant dollars.¹¹⁸

¹¹⁶ *Cost of Corrections in Pennsylvania*, 13.

¹¹⁷ *Cost of Corrections in Pennsylvania*, 16.

¹¹⁸ *Cost of Corrections in Pennsylvania*, 19

Most provocatively, the report found that, should the state move away from mass incapacitation and towards a program of reduced sentences and intermediate punishments, it could avoid building two prisons slated for construction, SCI Clearfield and SCI Chester. To be sure, the report conceded that the proposed sentencing guidelines alone could not produce the population reductions sufficiently to avoid new prison construction. In coordination with “other measures,” however, such as creating a state-run intermediate punishments program for state prisoners that could divert state prisoners to community-based programs, the state could produce a “large enough reduction in the prison population” to justify scrapping plans to build SCI Clearfield and/or Chester along with future prisons beyond the two already planned.¹¹⁹

Finally, the report also implied that decarceration and alternative sanctions might be more effective means of interrupting violence. The framing of this section echoed neoliberal narratives about individual responsibility that continued to portray those convicted of crimes as deserving of discipline, surveillance, and sanctions. Allowing individuals to “live in community,” for example, would enable them to “take responsibility for their lives and their crimes” through various forms of exploitative and punitive, albeit non-penal, arrangements, such as forcing people to work and pay and to pay restitution to victims. But the report also noted that placing individuals in the community would give them access job training and educational opportunities and drug/alcohol treatment, and to be with and help to support their families and community.¹²⁰

Moreover, preventing the construction of new prisons and jails would allow the state to “spend more funds in other program areas such as education, public health, and economic development,” which the report noted “may reduce the incidence of criminal behavior.” The

¹¹⁹ *Cost of Corrections in Pennsylvania*, 21.

¹²⁰ *Cost of Corrections in Pennsylvania*, 22-23.

funds saved from prison construction, for instance, could increase the average educational supplement per school district by over \$1 million. The funds could also be used to support higher education in the state. Students at state colleges and universities could receive a \$540 tuition reduction, while students at community colleges could receive a \$216 reduction. The funding could also be applied to the state's healthcare programs, adding an additional \$42 million per year to cover 60,000 children not covered by Pennsylvania's Children's Health Insurance programs, which then only covered 30,000 of the 90,000 children in need.¹²¹

Armed with these studies, Lehman ramped up his lobbying efforts for sentencing reform.¹²² In May 1993, the Senate Judiciary committee approved the two bills that made up the revised Sentencing Reform Act, which would establish presumptive parole for non-violent prisoners at the termination of their minimum sentence while maintaining the autonomy of the Parole Board.¹²³ The Senate passed the sentencing reform package soon after.¹²⁴ That July, the state's Correctional Population Project Committee published a memo showing that the passage of the sentencing reform bills and the new sentencing guidelines, along with ample and retroactive application of earned time, would decrease the Department of Corrections' predicted population by over 3,600 people in 2000, providing reformers with additional compelling data to share with legislators.¹²⁵ The House approved the bills that December, after a successful effort by Republican legislators and the Pennsylvania District Attorneys Association to remove a good

¹²¹ *Cost of Corrections in Pennsylvania*, 22-26.

¹²² "Corrections chief urges sentencing alternatives," *Associated Press*, March 28th, 1994.

¹²³ "Sentencing Reform Act introduced in Senate," *Indiana Gazette*, May 9th, 1993.

¹²⁴ "A rush to adjourn," *Associated Press*, June 24th, 1993.

¹²⁵ Doug Hoffman to Joseph Lehman, Allen Castor, Dr. John H. Kramer, Michael E. Hershock, and James Thomas re: Impact of Sentencing Reform and Sentencing Guideline Revisions on State Correctional Population, July 13th, 1993, Location 4-3999, Carton 4, Record Group 58, PSA.

time provision that would have allowed prisoners to earn up to five days per month through participation in educational, vocational, treatment or work programs.¹²⁶

Despite its rejection of earned time, the General Assembly's swift movement on sentencing reform appeared promising, and momentum for reducing the state's prison population reached its apex.¹²⁷ Even more advantageous to Lehman's cause was the publication of the Commission on Corrections Planning's Final Report. Published in December 1993, the report was the product of a bi-partisan, twelve-member Commission on Corrections Planning established by Governor Casey in 1992. Meant to bring together individuals with a "variety of interests and expertise" to "examine fiscal and resource issues related to the delivery of corrections' services and to recommend changes in our policy and management which are consistent with the protection of the public safety," the report urged bold, "controversial" changes to reduce both the prisoner population and the costs of corrections in the Commonwealth.¹²⁸ The Commissioners were especially scandalized by the enormous costs of mass incapacitation in the state.¹²⁹ They expressed their "sticker shock" at the "over \$600 million of taxpayers money" spent on imprisoning over 26,000 prisoners, especially when compared

¹²⁶ David Hilliard, "Sacavage opposes shorter prison terms," *The Daily Item*, December 15th, 1993; Nick Jesdanun, "Sentencing reforms approved by House," *The Danville News*, December 16th, 1993; Russell E. Eshleman Jr., "House votes down 'earned time,'" *The Philadelphia Inquirer*, December 17th, 1993.

¹²⁷ Russell E. Eshleman Jr., "House votes down 'earned time,'" *The Philadelphia Inquirer*, December 17th, 1993.

¹²⁸ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA; Julia Cass, "Panel proposes major reforms of prison system," *The Philadelphia Inquirer*, January 7th, 1994.

¹²⁹ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 16, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

with the \$30 million spent to incarcerate just over 5,000 prisoners in 1971.¹³⁰ The state adopted “get tough” policies with “little regard to either the cost or effectiveness of incarceration,” the report said, despite the fact that there was “no clear proof that general deterrence is achieved through long prison sentences.”¹³¹ As prior reports found, continuing to use exorbitant amounts of taxpayer funds to build more prisons and sustain the state’s growing correctional system did little to address the crisis of prison overcrowding. “We find this situation unacceptable,” the commissioners stated.¹³²

“To accept the status quo,” they wrote, “is irresponsible public policy.” “To do nothing is unacceptable... The fiscal priorities of this state cannot favor prisons over schools or healthcare.”¹³³ They recommended that the state pass the Sentencing Reform Act, implement revised sentencing guidelines, establish earned time, and expand the state’s intermediate punishment programs, which they urged the legislature to properly fund.¹³⁴ The report also expressed concern with the “reaction to crisis” method of decision-making that “usually results in more prisons,” advocating instead for “long-term capital facilities planning” that might lead to

¹³⁰ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 1, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA

¹³¹ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), 13, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

¹³² *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 19, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

¹³³ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 4, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA

¹³⁴ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 19, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

more investment in “community-based facilities and alternatives punishment programs.”¹³⁵

Although they contended that the Pennsylvania Economy League’s finding of \$36 million annually for alternative punishments was too low – they believed it would cost closer to \$50 million a year – this cost was still “less than constructing and operating five new prisons,” making it a sound policy for the state to pursue.¹³⁶

The Commissioners recommended an even bolder policy reversal as well: eliminating mandatory minimums for all crimes except murder. They argued that mandatory sentences significantly contributed to prison overcrowding but “fail[ed]” to deter crime, according to studies. Moreover, the report pointed out that while white people were sentenced to 58% of all prison sentences, Black people made up 53% of those sentenced to mandatory terms. Those sentences also produced an increase in the number of women locked up in the state, which had dire consequences for the state’s children and placed additional burdens on its welfare and foster care systems.¹³⁷

The PCCP included a number of other novel recommendations for the state that they believed would help ease overcrowding and, in the long run, save the state from spending exorbitant amounts on correctional administration. Concerned for the “negative impact of unfunded ‘mandates,’” the commissioners argued that “any constructive solution to the present

¹³⁵ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 37, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

¹³⁶ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 39, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

¹³⁷ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 26, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA

state corrections debacle” required the General Assembly to meaningfully invest resources in non-penal solutions. Noting that a number of counties had “intermediate punishment “success stories,” the report advocated for the state to properly fund these programs to encourage the diversion of non-violent prisoners away from state prisons and into non-penal, community-based programs.¹³⁸ The report also argued for increasing the budget and capacity of the Board of Probation and Parole, which could help speed up releases if it had proper funding to provide “appropriate custody and control options,” such as intensive supervision, electronic monitoring, and the creation of parole day reporting programs that could provide “reintegration services” for parolees. Investing in “special intensive supervision” administered by the BPP alone, they argued, would “divert 1,428 prisoners annually” and save the state \$6.9 million.¹³⁹ Finally, the report recommended “responsible use” of commutations and pardons, expanding prisoner work programs to “offset taxpayer expenditures,” and the privatization of some aspects of correctional construction and service provision.¹⁴⁰

Although they recognized that “our recommendations may not be popular with everyone,” the Commissioners insisted that they would not “jeopardize the public’s safety” while “preserv[ing] limited taxpayer dollars for other social service initiatives which are more likely to address the root causes of crime.” If aggressively applied, the Commission’s strategy would

¹³⁸ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 30, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA

¹³⁹ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 33-34, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA

¹⁴⁰ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 34-36, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

reduce the state's prison population by 6,600 prisoners by 2000 and eliminate the need to spend \$4 billion on five new prisons.¹⁴¹

Like the previous legislative campaigns and reports, the Commission on Corrections Planning's Final Report largely framed lightened sentences and alternative punishments as appropriate only for "low risk" or "nonviolent" prisoners" and advocated for tougher sentencing for individuals who committed multiple violent crimes.¹⁴² Still, a majority of the commissioners remained steadfast in their believe that mandatory minimums should be repealed for all crimes except murder, including mandatories for technically violent crimes. The report also embraced a structural critique of criminal behavior that recognized its roots in "disadvantages imposed by society" that make it so that "many" lack "hope or vision for the future." Moreover, the commissioners understood that imprisonment was not a viable solution for responding to these structural disadvantages, and indeed often only compounded the problems of poverty, racism, and trauma that led people to commit criminal acts and/or become targets of police aggression. "These are people with broken lives spending unproductive time in a system that eventually dumps them back into society," the report concluded, adding that they are "often worse for the experience and prepared only to commit more crime."¹⁴³

¹⁴¹ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 19, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

¹⁴² *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 19, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

¹⁴³ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 41, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

The PCCP report thus made clear that Pennsylvania could not only reverse its prison overcrowding crisis but could transform its crime control approach entirely and make a dramatic – if still not only partial – shift away from a politics of mass incapacitation. The commissioners genuinely believed that, with an aggressive but feasible redirection of crime and penal policymaking, the state could ensure that the “prison crisis’ of the next decade can be averted.”¹⁴⁴

The report offered uncharacteristically bold warnings about the costs of corrections, failures of tough sentencing, dire crisis of prison overcrowding, and the necessity of repealing mandatory sentencing laws. Unsurprisingly, its more radical proposals, such as rolling back a large number of the state’s mandatory sentencing laws, received a cool reception from the Governor, other legislators, and even some of the PCCP commission members.¹⁴⁵ But Lehman’s Sentencing Reform Act had gained substantial political support, and the PCCP report’s recommendation that the General Assembly and Governor pass it offered a further boost to Lehman’s campaign. In January 1994, Governor Casey expressed his continued support for the legislation in an article otherwise focused on how most other state governors sought to get tough on crime.¹⁴⁶

The Demise of Sentencing Reform and the Resurgence of Law and Order

¹⁴⁴ *Commission on Corrections Planning – Final Report* (Harrisburg: Commission on Corrections Planning, 1993), pg. 41, in Carton 4, Record Group 58, Location 4-3999, Department of Corrections Papers, PSA.

¹⁴⁵ Julia Cass, “Panel proposes major reforms of prison system,” *The Philadelphia Inquirer*, January 7th, 1993; Frank Reeves, “States’ no. 1 issue is crime,” *Pittsburgh Post-Gazette*, January 30th, 1994.

¹⁴⁶ Frank Reeves, “States’ no. 1 issue is crime,” *Pittsburgh Post-Gazette*, January 30th, 1994.

Whatever optimism surrounded sentencing reform in early 1994 gradually faded as the legislature became “locked in a prison of its own construction.”¹⁴⁷ At a Senate hearing on the bill in February Lehman faced pushback from Joseph F. Mascari, co-chairman of an organization called Victims of Irreparable Crime Experience (VOICE) and husband of a woman who had been stabbed to death by a teenaged neighbor. He worried that the Sentencing Reform Act would allow his wife’s murderer to go free, because he had been held past his minimum sentence. Lehman assured Mascari that the bill had provisions in place to prevent the release of “high-risk, dangerous offenders.” But Mascari remained steadfast in his opposition. In large part due to his opposition, the Senate tabled the bill.¹⁴⁸

Making matters worse, in January 1994 Democratic state representative Ruth Judy introduced an ultra-tough three strikes mandatory sentencing bill. Lehman attempted to head it off: at a hearing on the bill in the Senate Appropriations Committee, he “expressed concerns” that it would “cause spiraling prison costs to escalate further” and “turn our state prisons into geriatric wards at great cost to taxpayers.” Because “criminals” tend to “outgrow their deviant behavior” by middle age, he explained, mandating lifetime imprisonment for three-time offenders represented an excessive and costly sanction. “Slowly but surely, we are reaching a billion-dollar budget,” he warned. But the “senators had little reaction to Lehman’s comments.” One simply responded that “he felt very strongly about the three-strikes proposal” and that he “didn’t want to cut criminals a break.”¹⁴⁹

¹⁴⁷ “Prison alternatives should take priority,” *Press Enterprise*, August 26th, 1994.

¹⁴⁸ Megan O’Matz, “Allentown man fears loophole would free violent offenders,” *The Morning Call*, February 8th, 1994.

¹⁴⁹ “Prison chief cautious about 3 strikes plan,” *The Daily American*, March 9th, 1994.

As the bill made its way through the legislature, Lehman used every opportunity he could to counsel the state against passing more tough laws and building new prisons. At the dedication for a new county jail in Susquehanna County, he said that the state's "five new prisons since 1990 and two more presently under construction" were "mind-boggling" and would still fail to solve the state's capacity problems. In 2000, he told the crowd, the state was poised to be over 8,000 prisoners "over and above capacity," placing it at the "same level of overcrowding that existed at the time we initiated the building program." He also said that spending funds for correctional expansion "will not be available to children's services, to education, and to dealing with the infrastructure of communities, all of which have a much more substantial [chance] of affecting crime than simply waiting and responding to it after the fact."¹⁵⁰

But legislators ignored his warnings during an election year where crime was the "second most important issue" for Pennsylvania voters.¹⁵¹ State Republican and Democratic candidates raced to prove their toughness. In October, Democratic state house candidate Daniel G. Dougherty of Lehigh County went on record against the Sentencing Reform Act, stating that "the automatic release of a convicted felon after serving the minimum time is unacceptable to the victims and society." He particularly pointed to the bills' promised release of 1,700 people "four to six months early" and its mandated "automatic parole" for non-violent offenders. "When the suffering and financial cost of crime victims is considered," *The Morning Call* paraphrased Dougherty as saying, "there is no better government investment than prisons, prosecutors, and judges," or what Dougherty called "the infrastructure of order."¹⁵²

¹⁵⁰ P. Jay Amadio, "Building Jails Fast Enough Problem In State," *The Times Tribune*, August 23rd, 1994.

¹⁵¹ "The Pennsylvania Poll," *Pittsburgh Post-Gazette*, October 9th, 1994.

¹⁵² Dan Fricker, "Dougherty Talks tough on crime," *The Morning Call*, October 13th, 1994.

The biggest blow to sentencing reform came with the election of Republican Tom Ridge as Governor in November 1994. Crime had been a central campaign issue for both Ridge and his Democratic opponent, Lieutenant governor Mark Singel. As *Morning Call* journalist wrote, the candidates “accuse[ed] each other of having spines of sponge when it comes to criminals,” but in reality, they both promoted policies that would continue filling the state’s prison system.¹⁵³ Both candidates, for example, supported expanding victims’ rights, trying youth who commit violent crimes as adults, imposing the death penalty in certain cases, eliminating parole for violent offenders, forcing prisoners to work, and passing the pending three-strikes legislation. Indeed, Singel called for the three-strikes law to impose a tougher sanction of life behind bars, whereas Ridge only advocated for 30 years to life.¹⁵⁴

Three weeks before the election, news broke that an individual named Reginald McFadden, who had been released from a Pennsylvania prison four months earlier, had sexually assaulted and murdered an elderly woman in New York. As Lieutenant Governor, Singel served chairman of the Board of Pardons, the agency that made the 4-1 vote to recommend McFadden’s sentence be commuted, with Singel in the majority.¹⁵⁵ Dubbed by the press as “Singel’s Willie Horton,” Ridge immediately flooded the airwaves with TV ads linking Singel to McFadden’s

¹⁵³ Megan O’Matz, “Candidates only give sound bites on crime,” *The Morning Call*, October 23rd, 1994.

¹⁵⁴ “Crime: Get-Tough Tactics,” *Philadelphia Daily News*, October 19th, 1994; Mitch Morrison, “Tough talk mutes true stance on crime,” *The Times Leader*, October 26th, 1994.

¹⁵⁵ Mario Cattabiani and Megan O’Matz, “MFadden could become Singel’s Willie Horton,” *The Morning Call*, October 16th, 1994.

crime and smearing him for his “bleeding heart stupidity.”¹⁵⁶ His exploitation of the scandal swung enough voters into Ridge’s camp to win him the governorship.¹⁵⁷

Ridge’s election, along with Republicans securing a majority in both the state House and Senate, rendered Lehman’s Sentencing Reform Act dead on arrival. Lehman lost his position as well, as Ridge replaced him as Commissioner of Corrections with Martin Horn. Hailing from New York, where he served as the executive director of the New York State Division of Parole, Horn brought a “tough reputation” to the state’s correctional agency.¹⁵⁸ He immediately used his authority to toughen the agency’s repression of imprisoned people while giving short shrift to the state’s escalating overcrowding crisis. For example, he chose to make his priority fighting “drug use in prison.”¹⁵⁹ In October 1995, he executed a drug raid at SCI-Graterford, a maximum-security men’s prison outside Philadelphia. While the raid also targeted guards accused of facilitating the drug trade, it represented Horn’s broader commitment to toughening surveillance, security, and punishment at the state’s prisons rather than confronting the state’s overcrowding crisis.¹⁶⁰ Horn did reference the “challenges of overcrowding,” which made headlines in March 1995 after 10 prisoners overdosed on drugs, seven committed suicide, and 113 assaulted staff members, he used the crisis to push for more corrections funding rather than advocating for the

¹⁵⁶ Mario Cattabiani and Megan O’Matz, “MFadden could become Singel’s Willie Horton,” *The Morning Call*, October 16th, 1994; Tim Reeves, “Campaign ’94 Ad Watch,” *Pittsburgh Post-Gazette*.

¹⁵⁷ John M. Baer, “Ridge wins gov’s race,” *Philadelphia Daily News*, November 9th, 1994.

¹⁵⁸ Scott Heimer and Ron Goldwyn, “Corrections chief brings tough reputation,” *Philadelphia Daily News*, October 25th, 1995.

¹⁵⁹ Hunter T. George II, “Corrections Chief has top priority,” *Pottsville Republican*, April 11th, 1995.

¹⁶⁰ Michael Raphael, “Prison raid nets drugs, weapons, jobs,” *The Morning Call*, October 25th, 1995; Robert B. Swift, “Security heightened in riot’s wake,” *The Daily Item*, October 1st, 1995.

state to soften its sentencing and parole policies.¹⁶¹ This is not to say Horn never recognized the state's role in producing the prison overcrowding crisis. In fact, he continued Lehman's campaign to ease the state's tough sentencing policies and parole structure, though in a more muted way.

There was nothing muted about his boss' get-tough policies. Shortly after his inauguration, Governor Ridge convened a joint session on crime that sought to fast-track the passage of his law-and-order policy agenda.¹⁶² By the end of 1995, the special session had passed over thirty anti-crime bills. Many, such as the three-strikes law, had been developed by Republicans before the election but had been fast-tracked after the party won control of all the state government. The legislature also restored capital punishment, toughened sentences for attempted and third-degree murder and voluntary manslaughter, and made it easier for juveniles to be tried and sentenced as adults.¹⁶³ Even as Democratic legislators attempted to distinguish themselves from their Republican counterparts by writing bills focused on "preventing crime" through putting "more police on the streets" and investing in youth employment and treatment programs, they generally supported the Republicans' "get tough" proposals and welcomed their more stringent sanctions.¹⁶⁴

The flood of punitive anticrime laws was just one pressure point on the state's prison system. The high-profile nature of the McFadden case, along with a similar situation with a

¹⁶¹ Hunter T. George, "Corrections Chief Wants more Money," *Associated Press*, March 30th, 1995.

¹⁶² Jim Strader, "Ridge to lawmakers: Put the focus on crime," *The Associated Press*, January 24th, 1995.

¹⁶³ John M. Baer, "Different strokes on fighting crime," *Philadelphia Daily News*, November 1st, 1995; "New Anti-Crime Laws a Success, Says Clymer," *News Herald*, November 8th, 1995; Joe Sylvester, "Laws put juvenile crime in spotlight," *The Daily Item*, September 24th, 1995.

¹⁶⁴ "It's a crime," *The Morning Call*, June 18th, 1995.

Pennsylvania parolee named Robert Simon or “Mudman” who killed a New Jersey police officer in May 1995, led Ridge to order a severe retrenchment in parole.¹⁶⁵ The move not only intensified the state’s prison overcrowding crisis – the state now imprisoned a staggering 32,410 people, a 293% increase from 1980 – but it also devastated Pennsylvania prisoners who, as a volunteer at Graterford remarked, were “punished again—and for something they didn’t do.”¹⁶⁶ Commissioner Horn announced he would “rent space” for prisoners in county prisons and “start putting beds in dayrooms and recreation areas” in some prisons. While he referenced the state’s inability to “guarantee no risk,” he rejected parole as a means of reducing the population pressure, arguing that “public safety should come first.”¹⁶⁷

Governor Ridge and the General Assembly also toughened the state’s parole and pardons process.¹⁶⁸ In 1997, voters approved a constitutional amendment that required the Board of Pardons to have a unanimous vote (rather than simply a majority) to recommend the commutation of an individual sentenced to life in prison. The amendment also required a crime victim to serve on the Board, making it even less likely that it would reach a unanimous decision. The changes were akin to a death sentence for Pennsylvania’s 3,254 individuals serving life sentences, the largest population of lifers in the nation.¹⁶⁹ As lifer Diane Hamill Metzger wrote to

¹⁶⁵ Julia Cass, “Parole slowdown in Pennsylvania helps pack prisons,” *The Philadelphia Inquirer*, December 18th, 1995.

¹⁶⁶ James M. O’Neill, “Pa. and N.J. respond differently to the Simon parole debacle,” *The Philadelphia Inquirer*, October 9th, 1996; Julia Cass, “Parole slowdown in Pennsylvania helps pack prisons,” *The Philadelphia Inquirer*, December 18th, 1995; *Pennsylvania Department of Corrections 1995 Annual Statistical Report* (Camp Hill: Pennsylvania Department of Corrections, 1996).

¹⁶⁷ Julia Cass, “Parole slowdown in Pennsylvania helps pack prisons,” *The Philadelphia Inquirer*, December 18th, 1995.

¹⁶⁸ Amy Wallauer, “Life means life,” *Public Opinion*, November 1st, 1997.

¹⁶⁹ Amy Wallauer, “Life means life,” *Public Opinion*, November 1st, 1997.

Scranton's *The Tribune*, "The vast majority of lifers do their time and try to do their best and hope that somewhere down the line they'll be given another chance...and now, it looks as though our chance will never come. Our life sentences have truly become sentences of death."¹⁷⁰ During the entirety of his term, Governor Ridge refused to grant clemency to *any* of the fifteen Pennsylvania prisoners who applied.¹⁷¹

With Pennsylvania's prisons more crowded than ever, state legislators made some moves to recognize the enormity of the crisis. In 1996, the Senate Judiciary Committee, led by Republican state Senator Stewart Greenleaf, conducted a series of hearings on prison reform. He recognized that building new prisons was "only a partial solution because of the expense involved" and because "almost as soon as we open a new institution, it becomes filled."¹⁷² The hearings themselves gave voice to several experts and activist groups, including the Pennsylvania Prison Society, the ACLU of Pennsylvania, and free world supporters of Graterfriends, a prisoner publication written by prisoners at SCI-Graterford. They pointed out the innumerable harms of tough sentencing and parole policies, criticized the state's tactic of building more prisons, railed against pervasive racism in the system, and advocated for the state to hasten the release of imprisoned people. The Executive Director of Graterfriends, Joan Gauker, accused the General Assembly of passing "overcrowding-prone legislation and policies" that have "escalated racial imbalance in the State's prisons." And she urged legislators to "make pardons attainable and

¹⁷⁰ Diane Hamill Metzger to Editor, "Lifer Bemoans Approval of Constitutional Change," *The Tribune*, November 25th, 1997.

¹⁷¹ "The Demise of Clemency for Lifers in Pennsylvania," State Historical Clemency Project, [https://www.law.nyu.edu/sites/default/files/CACL%20Clemency-PA_Final%20\(1\).pdf](https://www.law.nyu.edu/sites/default/files/CACL%20Clemency-PA_Final%20(1).pdf).

¹⁷² "Crowded prison solutions sought," *The Daily American*, January 25th, 1996; *Chairman's Report: Senate of Pennsylvania Judiciary Committee Prison Overcrowding and Alternative Sentencing*, July 1996, Carton 4, RG 58, 4-3999, PSA.

establish compassionate release policies.” Larry Frankel of the ACLU of Pennsylvania called for the General Assembly to repeal mandatory sentencing legislation, pass earned time legislation, and invest in substance abuse treatment rather than simply locking people up for drug crimes.

The hearings also featured testimonies from Commissioner Horn, the Pennsylvania Board of Probation and Parole, the Pennsylvania Sentencing Commission, the Commission on Crime and Delinquency, and individuals running alternative sentencing programs, all of whom supported alternatives to incarceration for non-violent offenders. In 1996, 67% percent of the state’s prisoners were in the category, most of them for drug offenses. In his final assessment, Chairman Greenleaf agreed that confinement for such offenders was unnecessary and that “expensive cell space should be reserved for those offenders who have committed a violent crime or who present an escape risk or danger to the community.”¹⁷³ “Is the law having the intended result of netting big time drug dealers or is it crowding the state cells with people who could benefit from treatment combined with other types of punishment?” he asked.¹⁷⁴

Little came of Greenleaf’s hearings, since, as Joan Gauker wrote in *Graterfriends*, the legislators were “probably already determined to build more prisons, no matter what anyone says.”¹⁷⁵ Gauker’s assessment was all too accurate. In his 1997 budget proposal, Ridge proposed adding 1,200 correctional jobs and allocating \$80 million for new prison cells¹⁷⁶ Because the

¹⁷³ *Chairman’s Report: Senate of Pennsylvania Judiciary Committee Prison Overcrowding and Alternative Sentencing*, July 1996, Carton 4, RG 58, 4-3999, PSA.

¹⁷⁴ “Report suggests solution to prison overcrowding,” *Associated Press*, July 30th, 1996.

¹⁷⁵ Joan Gauker, “PA Senators Uninterested in Testimony,” *Graterfriends* 14, no. 4 (March 1996) in Folder 4 - Prison Task Force Hearing, Philadelphia, August 14th, 1997, Legislative Work – 1997-1998, Papers of Don Walko, 1995-2010, PHRA.

¹⁷⁶ Megan O’Matz, “Ridge’s Budget likely to change,” *The Morning Call*, February 4th, 1996.

state did not expect revenues to grow and Ridge “was unlikely to embrace a tax increase,” the expanded funding for corrections was expected to come primarily from cuts to other government programs.¹⁷⁷ When his proposals provoked alarm from Democratic lawmakers, Ridge “dismissed” their concerns, arguing that “most Pennsylvanians” agreed with his efforts to “put away” individuals who “murder, assault, and rape our neighbors.”¹⁷⁸ By 1998, Pennsylvania’s prison system was at 156% capacity, making the Keystone state third in the nation for prison overcrowding, outpaced only by California and New Jersey. While Ridge’s administration “acknowledge[d] that the crowding...has been exacerbated by tougher mandatory sentences for violent drug and repeat offenders that lawmakers have enacted in recent years,” the *Lebanon Daily News* described him as “less concerned about overcrowding than protecting Pennsylvanians from criminals, even those who commit minor offenses.” Indeed, Ridge rejected even modest proposals to create alternatives for non-violent drug offenders. “The governor is not proposing, nor is he interested in, opening the jail doors, for everyone in there on a drug conviction,” his press secretary Tim Reeves stated. “The Pennsylvanians whose communities have been terrorized by drug dealers and other criminals aren’t talking about the overcrowding problem. They’re talking about getting these criminals out of their communities and behind bars.”¹⁷⁹

Conclusion

¹⁷⁷ Megan O’Matz, “Ridge’s Budget likely to change,” *The Morning Call*, February 4th, 1996.

¹⁷⁸ Robert Moran, “As PA’s prison population booms, costs are rising with it,” *The Philadelphia Inquirer*, February 25th, 1996.

¹⁷⁹ “Overcrowding drives prison spending over \$1B,” *The Daily News*, February 16th, 1998.

With the Camp Hill insurrection, imprisoned people forced the state to confront its carceral crisis and the racialized get-tough policies that produced it. Their protest threw a wrench into the state's, carceral regime, casting doubt on the sustainability, wisdom, and morality of mass criminalization and imprisonment. While Pennsylvania's policymakers still held onto punitive frameworks, especially for individuals who committed violent crimes, the crisis of prison overcrowding momentarily prompted some to question the state's draconian sentencing laws and unmitigated carceral growth. These policymakers attempted to problematize the high fiscal and political costs of mass imprisonment, pointing to the lack of evidence that tough sentencing and imprisonment reduced crime rates, the devastating strain that expanding corrections placed on other vital social services, and even mass incarceration's contribution to racial injustice in the Commonwealth. In doing so, they launched a meaningful challenge to Pennsylvania's racialized carceral state and proposed possibilities that would have modestly decarcerated the state, remedied prison overcrowding, and helped demonstrate the viability of non-carceral policies to a public otherwise steeped in law-and-order politics.

At the same time, these reformers' refusal to consider the possibility of leniency or release for individuals convicted of violent felonies limited their vision of decarceration and helped to codify a framework that would restrain prisoner reformers and the public's imagination into the twenty-first century. Recent efforts to reduce jail and prison populations often focus on freeing individuals' conviction of nonviolent, non-serious offenses.¹⁸⁰ Even Michelle Alexander's pathbreaking *The New Jim Crow* focused on nonviolent drug offenses, leaving the question of violent crimes largely untouched despite the fact that individuals convicted of violent

¹⁸⁰ See Gottschalk, *Caught*; Whitlock and Heitzeitg, *Carceral Con.*

crimes make up a sizable population of the nation's prison population.¹⁸¹ Undoing mass incarceration will require confronting and altering how we respond to violence. Yet many reformers remain fearful of advocating on behalf of individuals convicted of serious violent crimes, whether out of a belief in the incorrigibility of individuals convicted of those crimes or out of a fear the public would not support leniency for violent offenders. As Marie Gottschalk writes, "drawing a firm line between the non, non, nons and other offenders has contributed to the further demonization of people convicted of sex offenses or violent crimes in the public imagination and in policy debates."¹⁸² The history of attempted sentencing reform in Pennsylvania suggests that the roots of this limited approach developed out of the crisis of state prison overcrowding. Even as this context helps historicize and make sense of this development of a nonviolent vs. violent offender dichotomy, it also reveals its clear political constraints and deficit of vision that, while perhaps understandable given the get-tough mood of the times, cannot reliably produce the decarceral restructuring necessary to eliminate imprisonment in the U.S.

In the end, Pennsylvania's prison reformers' limited policy visions failed. Crushed by the weight of bipartisan tough-on-crime politics, the brief opening provided by the Camp Hill uprisings was closed with the election of Tom Ridge. During Ridge's tenure, Pennsylvania became the largest incarcerator in the Northeast. The state's hyper-carceral reality translated into unfathomable racialized state violence and terror against the state's disproportionately Black

¹⁸¹ Alexander, *The New Jim Crow*. For critiques of Alexander's blindspots on violent crime, see John Pfaff, *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform* (New York: Basic Books, 2017) James Foreman, "Racial Critiques of Mass Incarceration: Beyond the New Jim Crow," *NYU Law Review* 243 (2012): 101-146.

¹⁸² Gottschalk, *Caught*, 165.

imprisoned people. In 2000, the state ranked sixth highest in the entire nation for the racial disproportionality of its prison population, with an incarceration ratio of 18.4 African American prisoner for every white prisoner per 100,000 population.¹⁸³ Meanwhile, the state's expenditures on corrections skyrocketed, reaching \$1.2 billion in 2001. As Pennsylvania political prisoner and Black radical Russell Maroon Shoatz remarked, "Taxpayers are living in a fool's paradise" where "millions" are "taken from the budget for education, public transportation, the fixing of bridges and roads, and the scores of other pressing problems... That's how the racket works, billions of tax dollars go to warehouse people in a revolving-door con game."¹⁸⁴ Despite some promising prison reform and abolitionist campaigns, this unsavory state of affairs continues into the present day.

But revisiting history of 1990s sentencing reform in Pennsylvania recovers a time when the prison nation was not a settled future, at least in Pennsylvania. It demonstrates that many people – even those without radical or fringe politics – tried to push back against the growing tide of punitive politics, showing that mass incarceration could, and should be challenged and exposed as the fascistic, costly, and racist institution that it is.

¹⁸³ *Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System* (Harrisburg: Supreme Court Committee on Racial and Gender Bias in the Justice System, 2000), 126.

¹⁸⁴ Russell Maroon Shoatz, "Taxpayers and Prison: A Fool's Paradise," in eds. Ho and Saul, *Maroon the Implacable*, 49.

Chapter Five

***Harris v. Philadelphia* and the Dilemma of Mass Imprisonment in Law-and-Order Philadelphia**

Breathing the “fresh air of unexpected freedom,” those released from Philadelphia’s prisons on June 8th, 1988, were jubilant. Due to persistent prison overcrowding, a federal court had just ordered the city to release 250 individuals being held on low bails. More dramatically, the court had instituted a moratorium on prison admissions until the city met its court-mandated prison population cap.¹ “It feels like having a newborn baby,” one newly freed individual told the *Philadelphia Daily News*, adding “anytime you get out from under these conditions, it’s like a hundred pounds off of you.”² “It’s crap in there,” 28-year-old Ali Shabaz told the *Daily News*, “People sleep on the floor. They got mice holes, rat holes, and big roaches two inches long.” By a stroke of luck, seven people who would have been sent to prison before the moratorium went into effect that day benefitted from the tardy arrival of the sheriff’s van, leading prison officials to turn them away at the door. Forced to redo their paperwork, the Bail Commissioner freed the once prison-bound individuals without requiring them to pay anything at all.³

¹ *Harris v. Parnley*, 654 F. Supp. 1042 (E.D. Pa. 1987); L. Stuart Ditzen, “Settlement in jail suit confirmed,” *The Philadelphia Inquirer*, November 27th, 1986; John Woestendiek, “City agrees to cut jail levels 10%,” *The Philadelphia Inquirer*, January 1st, 1987; “A New Delay on Jail population Cuts,” *The Philadelphia Daily News*, June 12th, 1987; Scott Flander, “Bar the Doors,” *The Philadelphia Daily News*, September 26th, 1987; John Woestendiek, “City warned anew on jail moratorium,” *The Philadelphia Inquirer*, November 6th, 1987; Mark McDonald, “Vignola: Will Help Fund Bail Plan,” *The Philadelphia Daily News*, November 27th, 1987.

² Paul Baker, “Bad Guys Not Bad Enough,” *The Philadelphia Daily News*, June 9th, 1988.

³ “Lucky ‘Sevens’ Beat the Clock,” *The Philadelphia Daily News*, June 9th, 1988.

The court-mandated prison releases and admissions moratorium stemmed from a consent decree brokered between Philadelphia prisoner plaintiffs and the city defendants in *Harris v. Philadelphia*, a prisoner-initiated suit that sought relief from the overcrowded and inhumane conditions in Philadelphia's prison system.⁴ If city officials could not get their prison population to the court-ordered 3,750 people on their own, the consent decree allowed the federal court to institute population controls that would force them to decarcerate.



Figure 1: Robert J. Gurecki, "Former inmate identified as William Barnes leaves after being release from jail in Northeast," *Philadelphia Daily News*.

This chapter explores the history of *Harris v. Philadelphia*, an eighteen-year long suit concerning Philadelphia's overcrowded prison system.⁵ Focusing on the prison population

⁴ David Richman, interview by Andrew Kelley, March 17th, 2005, transcript, obtained with permission from David Richman's personal files.

⁵ Although called the Philadelphia Prison System, the series of correctional institutions that make up the PPS primarily detain individuals awaiting trial and constitute what most jurisdictions call jails.

controls included in the *Harris* consent decree, I argue that these mechanisms represented a formidable check on the city's carceral expansion. In directing the judiciary's power to regulate prison conditions towards reducing the number of people imprisoned pre-trial, the *Harris* court provided a decarceral vision that the state should not be allowed to imprison people with impunity. This history demonstrates that even as powerful bipartisan and racialized law and order politics permeated late-1980s and 1990s political culture, the crisis of state and local prison overcrowding and imprisoned people's legal challenges against the horrendous conditions of their incarceration threatened neoliberal regimes of racialized mass punishment. To become the world's leader in incarceration, state and local policymakers had to solve massive crises of prison incapacity and confront challenges from prisoners and their allies.⁶

In recovering this moment when mass incarceration was not a settled future – when local leaders had the opportunity to chart a different, decarceral path – this chapter builds on scholarship that demonstrates the contingency of the racialized carceral state's development, especially under a federal system where crime control and penal management is primarily driven by state and local decision-making. The localized analysis of the carceral state matters because it shows, as Heather Schoenfeld has argued, that “key actors could have made different choices” – and still could today.⁷

This chapter also seeks to complicate the literature on prison conditions litigation, which normally presents prisoner suits and the court interventions that followed as a net negative force in the history of the U.S. carceral state. Largely focused on the “paradox of prison conditions

⁶ Robert Chase, *We are Not Slaves*; Heather Schoenfeld, *Building the Prison State*; Heather Schoenfeld, “A Research Agenda on Reform;” Schoenfeld and Campbell, “The Transformation of America's Penal Order;” Lynch, *Sunbelt Justice*.

⁷ Heather Schoenfeld, *Building the Prison State*, 221.

litigation,” scholars emphasize how litigation intended to reduce incarceration fueled the construction of new prisons by giving corrections administrators and carceral legislators the justification they needed to expand correctional budgets.⁸ While not wishing to debunk this important research, I argue that the *Harris* case demonstrates the *decarceral* potential of late-twentieth century prisoner-initiated civil rights suits. I do not deny that state and local policymakers often translated court orders meant to remedy overcrowding into new prison construction, as would be the case in *Harris v. Philadelphia*. It is also true that many correctional administrators viewed prison conditions litigation favorably because it “furnishe[d] a basis for obtaining greater resources from the legislature.”⁹ But focusing exclusively on the translation of prison conditions litigation into carceral solutions misses the radical challenge they posed to the state’s power to criminalize and punish. At a moment when popular support for imprisoned people was fading and law-and-order politics was becoming ubiquitous, prisoners’ legal activism posed a meaningful threat to the growth of the prison nation. Indeed, prisoners’ challenge with prison conditions litigation was so menacing to the state and local leaders that they lobbied for the passage in the U.S. Congress of the 1996 Prison Litigation Reform Act (PLRA), a law that hamstrung prisoners’ ability to file civil rights suits and constrained the courts’ power to intervene into overcrowded and unconstitutional prisons and jails using population orders. The law severely narrowed a key terrain of struggle for imprisoned people fighting not only for relief from abusive treatment and inhumane conditions, but also against the expansion of an

⁸ Heather Schoenfeld, “Mass Incarceration and the Paradox of Prison Conditions Litigation;” Guetzkow and Schoon, “If You Build It, They Will Fill It;” Feeley and Rubin, *Judicial Policymaking and the Modern State*; Feeley and Swearingen, “The Prison Conditions Cases and the Bureaucratization of American Corrections;” Sturm, “The Legacy and Future of Corrections Litigation;” Schlanger, “Beyond the Hero Judge.

⁹ Jeff Bleich, “The Politics of Prison Crowding,” 1155.

intensifying regime of racialized mass imprisonment.¹⁰ The PLRA's passage, which involved a bipartisan coalition of national legislators and local law enforcement leaders who deemed prisoner litigation and federal court intervention threats to the state's power to criminalize and punish, suggests that prison conditions litigation was more than a tool for carceral boosters to deepen their law and order agenda and materially expand the carceral regime.

As this chapter will show, *Harris v. Philadelphia* and Philadelphia lawmakers' hostility towards its population orders served as the primary impetus for the PLRA's creation and passage. Prison overcrowding and the *Harris* court's decarceral intervention into the city's prison system created a legitimacy crisis for Philadelphia's tough-on-crime policymakers and constituencies, demonstrating the unnecessary and racialized cruelty of mass pre-trial imprisonment. In response, an anti-*Harris* coalition led principally by the city's District Attorney's office and Mayor Ed Rendell's administration worked to reassert and fortify carceral politics as the city's normative mode of governance by tarnishing *Harris*'s court-ordered prison population controls as a threat to public safety. Utilizing racialized "get tough" messaging and dubious statistics that presented those released by *Harris* court orders as immutably violent and

¹⁰ Margo Schlanger and Giovanna Shay, "Preserving the Rule of Law in America's Jails and Prisons: The Case for Amending the Prison Litigation Reform Act Symposium: Cruel and Unusual Punishment: Litigating under the Eighth Amendment," *University of Pennsylvania Journal of Constitutional Law* 11, no. 1 (2009 2008): 139–54; Margo Schlanger, "Civil Rights Injunctions Over Time; Margo Schlanger, "Inmate Litigation;" Margo Schlanger, "Trends in Prisoner Litigation, as the PLRA Enters Adulthood Symposium Issue: Prisoners' Access to Justice: Exploring Legal, Medical, and Educational Rights," *UC Irvine Law Review* 5, no. 1 (2015): 153–78; Emma Kaufman and Justin Driver, "The Incoherence of Prison Law," *Harvard Law Review* 135, no. 2 (2021): 515-584.

deserving of state repression, this anti-*Harris* coalition severely weakened the prisoner release mechanisms and crushed the court's resolve in enforcing the consent decree.

But Philadelphia's law enforcement leaders did not stop there. Feeling that the Violent Crime Control and Law Enforcement Act of 1994 had not gone far enough, District Attorney Lynne Abraham wrote federal legislation limiting the federal courts from intervening into state prisons and local jails. Through Abraham's relentless lobbying of Republican legislators sympathetic to her assault on federal court intervention, these provisions were included in and passed as part of the PLRA. They would severely constrain the power of the federal courts to rule prison overcrowding unconstitutional and to regulate prison overcrowding through decarceral means, not only in Philadelphia but across the nation. The history of the *Harris* case and the intense and swift state backlash it received thus reveals the radical potential of prison overcrowding and conditions litigation to challenge the racialized law and order common sense of the late-twentieth century American state and meaningfully limit the growth of the carceral regime.

Going Federal

Harris v. Philadelphia's origins trace back to 1982, when Martin Harris, a prisoner at Philadelphia's Holmesburg prison, filed a handwritten civil complaint in federal court alleging Holmesburg's conditions violated the Eighth Amendment's prohibition against cruel and unusual punishment.¹¹ At the time of the suit's filing, the city's prisons detained 3,573 people in a system

¹¹ In 1982, Philadelphia's prison system was 81% "non-white." See John H. Mease and Nancy L. Bleyer, *Pennsylvania County Prisons and Jails – 1882 Annual Statistical Report* (Camp Hill: Pennsylvania Bureau of Corrections, 1983), 15.

with a capacity of 2,889.¹² That Philadelphia's prisons were overcrowded and inhumane was far from a new revelation. As discussed in Chapter 1, a three-judge panel in the Philadelphia Court of Common Pleas had, a decade prior, ruled the prison system unconstitutional in another class-action, prisoner-initiated case, *Jackson v. Hendrick* (1972).¹³ Although the judges ruled the prison system unconstitutional, ordered a host of reforms, and even attempted to impose hefty fines for the city's failure to reduce population, their efforts were thwarted by the State Supreme Court, who blocked the fines and enabled the city to continue considering the court orders mere "honor codes" to be ignored at will."¹⁴ Little changed for the city's imprisoned people in the years that followed. By 1982, overcrowding was so dire that 300 prisoners were forced to triple-bunk in Holmesburg's extremely small one-person cells.¹⁵ Harris knew of the *Jackson* court's ruling and had a front row seat to the city's non-compliance. A known jailhouse lawyer, he decided to file a complaint in federal court. "They were violating the court order," he stated, "I went federal and showed them this was a new class of plaintiffs...The conditions were unconstitutional."¹⁶

¹² *Prison and Jail Overcrowding in Pennsylvania: A Report to the Prison and Jail Overcrowding Task Force*, (Harrisburg: Pennsylvania Commission on Crime and Delinquency, August 1984).

¹³ See Opinion and Decree Nisi," *Jackson v. Hendrick*, no. 71-2347, Folder 2: PRC Civil Actions - Court Cases + Decisions - Legal Suits (Gerald Jackson vs. Edward J. Hendrick) 1979, Box 15, Prisoner Rights Council Papers, Accession 570, TUSC.

¹⁴ David Rudovsky to Judge Shapiro re: *Harris v. Pernsley*, November 4th, 1987, Folder 2: Correspondence – re: Admissions Moratorium, 1983-1989, Box 3, BLL.008, Judge Norma L. Shapiro Papers, University of Pennsylvania: Biddle Law Library: Manuscripts Collection (UPBLL), Philadelphia, PA.

¹⁵ Leon Taylor, "Jammed City Jails Are getting Worse," *Philadelphia Daily News*, May 21st, 1982. Cells at Holmesburg were 12 feet deep, 8.5 to 9 feet wide, and have arched ceilings about 10 or 12 feet high at the arch's center. They had toilets and a cold-water spigot but no sink.

¹⁶ Ron Goldwyn, "Legal Eagle Inmate Calls City Jails Unsuitable," *Philadelphia Daily News*, June 13th, 1988.

The case, which named members of the city's prison administration and Mayor Wilson Goode as defendants, landed on District Judge Norma Shapiro's docket. A "no-nonsense judge" considered to be "tough but even-handed," Shapiro initially dismissed the case because the previous case was still in force.¹⁷ But the appeals court reversed her decision.¹⁸ Once back in the trial court, the plaintiffs, now assigned private attorney David Richman, amended their complaint to cover an expanded class of "past, present, and future inmates of all Philadelphia prisons."¹⁹

In the *Jackson* case, Mayor Goode had vehemently opposed the courts' attempts to limit the city's prison population through a population cap, going as far as to indicate he would willfully violate the court's orders by refusing to release prisoners.²⁰ Harris' filing in federal court, however, had the potential to generate a ruling of unconstitutionality that would trigger a

¹⁷ *Harris v. Pernsley*, 755 F.2d 338 (3d Cir. 1985); Henry Goldman, "Keeper of The Cap," *Philadelphia Inquirer*, December 25th, 1994; Norma Shapiro, interview by Roberta D. Liebenberg, February 5th, 2008, transcript, American Bar Association Senior Lawyers Division Women Trailblazers in the Law, https://stacks.stanford.edu/file/druid:bf208wy0631/bf208wy0631_ShapiroN_Transcript.pdf.

¹⁸ Shapiro initially dismissed the case precisely because of an already-existing state court case, *Jackson v. Hendrick* (1972), where a three-judge panel of the Common Pleas Court had ruled the city's overcrowded prison unconstitutional and ordered reforms. Because the *Jackson* case provided the "possibility of relief" for plaintiffs, Shapiro worried that taking this new case would constitute a "breach of federal-state relations." The appeals court reversed based on the fact that the *Harris* filing asked for injunctive relief *and* damages, while the *Jackson* case only attended to injunctive relief, and because the plaintiff class in the *Harris* filing were not imprisoned in 1971 and thus do not share an "identity" with the plaintiffs in the Common Pleas Court action. Petitions for rehearings were denied, and the US Supreme court denied a writ of certiorari for the case. See *Harris v. Pernsley*, 755 F.2d 338 (3d Cir. 1985); *Harris v. Pernsley*, 758 F.2d 83 (3d Cir. 1985); *Pernsley v. Harris*, 474 U.S. 965, 106 S. Ct. 331, 88 L. Ed. 2d 314 (1985); Norma Shapiro, interview by Roberta D. Liebenberg, February 5th, 2008.

¹⁹ *Harris v. Pernsley*, 654 F. Supp. 1042 (E.D. Pa. 1987); Norma Shapiro, interview by Roberta D. Liebenberg, February 5th, 2008.

²⁰ John Woestendiek, "City faces fines Monday for jail crowding," *Philadelphia Inquirer*, September 29th, 1984.

costly and protracted federal court intervention into the city's prison system. With the prisons undeniably overcrowded and unlivable, Goode's administration decided to settle.²¹ According to David Richman, Goode "weighed the potential benefits and risk of a trial on the constitutionality of current conditions in light of the current state of Eighth Amendment law," and "faced with the harsh reality" that the city's prisons had for a decade now "been housing three inmates in cells designed for one; use[ed] recreational areas and day rooms as dormitories; and [found] itself unable to provide safe or sanitary conditions in jails that were too deteriorated to physically maintain...decided that further resistance to the litigation was not in the public interest." Through settling rather than fighting the case, Goode realized he could use the courts to "improve" the city's prisons and the "criminal justice system whose notorious inefficiencies were a source of severe overcrowding."²²

Beginning in 1985, prisoner plaintiffs and city defendants conducted negotiations over the terms of the settlement. Seeking to find a way to reduce and limit the pretrial prison population rather than simply building more prisons, the prisoner plaintiffs lawyers studied population reduction mechanisms.²³ The city would not agree to an outright cap on population, which had been implemented in other jurisdictions.²⁴ But Philadelphia's representatives and the imprisoned plaintiffs agreed to "something close to it": they set a "maximum allowable

²¹ Federic N. Tulskey, "Prison suit reported settled," *Philadelphia Inquirer*, November 26th, 1986.

²² *Prison Reform: Enhancing The Effectiveness of Incarceration, Hearing Before the Committee on the Judiciary in the United States Senate*, 104th Cong. 209-213 (1995) (Testimony of David Richman).

²³ David Richman later recalled that his "real hope" was that the city "wouldn't build additional facilities." See John Woestendiek, "City Agrees to Cut Jail levels 10%," *The Philadelphia Inquirer*, January 1st, 1987; Ann W. O'Neill, "Court Backlog's Downright Criminal," *The Philadelphia Daily News*, November 25th, 1986; David Richman, interview by Andrew Kelley, March 17th, 2005.

²⁴ Susan Sturm, "The Legacy and Future of Corrections Litigation," 676.

population” (MAP) for the city’s prison system, which would require prison authorities to refuse to incarcerate individuals accused of certain nonviolent crimes should the system exceed the MAP or to release someone to make room for the new admission.²⁵ The parties agreed to a maximum allowable population of 3,750 and gave the city until July 1987 to meet the mandate. Far from a “figure grabbed out of mid-air,” as critics hostile to the *Harris* reforms would later claimed, the number came from city prison administrators themselves, who suggested the number when probed by the plaintiffs’ attorneys regarding what prison population could be “responsibly...managed.”²⁶ The agreement also prohibited the city from triple celling prisoners and barred them from housing people in the “gymnasium, corridor, or bench area, or any area not set up for permanent housing.” Reducing the city’s population to 3,750 would not have prevented some prisoners from having to double-cell – a concession made by the plaintiffs – but it would drastically reduce the number of prisoners having to squeeze into a cell meant for one person.²⁷ Should the city fail to meet the MAP, the court would place a “bar on additional inmates” over the maximum allowable population, requiring the city to release individuals pretrial even if they could not make bail.²⁸

In a city where imprisoned people had been fighting for over a decade to win meaningful prison reforms, the *Harris* consent decree was monumental. It had the potential to finally force the city to protect the constitutional rights of the city’s imprisoned people – rights that had been

²⁵ William G. Babcock, “Litigating Prison Conditions in Philadelphia: Part II,” *The Prison Journal* 70, no. 2 (1990): 76.

²⁶ Ron Goldwyn and Gar Joseph, “A Riot at Holmesburg Changed the Prison System Forever,” June 10th, 1988, *Philadelphia Daily News*; David Richman, interview by Andrew Kelley.

²⁷ John Woestendiek, “City agrees to cut jail levels 10%,” *The Philadelphia Inquirer*, January 1st, 1987; Ron Goldwyn and Gar Joseph, “It Began with Holmesburg, 18 Years Ago,” June 10th, 1988, *Philadelphia Daily News*.

²⁸ *Harris v. Pernesley*, Order, Civ. A. No. 82-1847, (December 30th, 1986).

recognized by the *Jackson* decision but that the city had successfully resisted upholding – and implement mechanisms that could meaningfully reduce the prison population. As the lawyer for the *Jackson* prisoner plaintiffs, David Rudovsky, wrote, “A moratorium on admissions is the only remedy that will serve to vindicate the plaintiffs’ rights and to serve notice to the City and the state courts that unconstitutional conditions will not be tolerated by a federal court.”²⁹

The consent decree did include requirements that they city build new prisons, one of which was already underway and that would provide 1,090 new cells.³⁰ But the decree’s focus was on inducing the city to reduce its prisoner population.³¹ In states and localities across the nation, constructing more prisons and jail beds proved a costly and a contested process. Philadelphia was no exception. In 1985, its city council approved an \$165 million dollar bond authorization for a criminal justice center that would include 440 cells and 72 court rooms, even as the city’s ability to pay for the project without levying taxes was “not clear.”³² Preservationists objected to the project’s proposed demolition of the historic Bulletin building, causing further headaches for the city. Then, bids for the project far exceeded the city’s proposed budget.³³ After demolishing the Bulletin building and clearing the site for the center’s construction to the tune of more than \$30 million dollars, Mayor Goode canceled the project due to high costs.³⁴

²⁹ David Rudovsky to Judge Shapiro re: *Harris v. Perno*, November 4th, 1987, Folder 2: Correspondence – re: Admissions Moratorium, 1983-1989, Box 3, BLL.008, Shapiro Papers, UPBLL.

³⁰ *Harris v. Perno*, Order, Civ. A. No. 82-1847, (December 30th, 1986).

³¹ William Babcock, “Litigating Prison Conditions in Philadelphia: Part II,” 82.

³² Vernon Loeb and Roger Cohn, “City seeking \$165 million for justice center,” June 6th, 1985, *The Philadelphia Inquirer*.

³³ Vernon Loeb and Roger Cohn, “City seeking \$165 million for justice center,” *The Philadelphia Inquirer*, June 6th, 1985; Thomas Turcol, “Bids on justice center surpass city’s estimate,” *the Philadelphia Inquirer*, October 22nd, 1988.

³⁴ “Philadelphia Alters Its Plan to Ease Jail Crowding,” *The New York Times*, February 26th, 1989.

Along with the material challenges of new prison construction, numerous corrections experts warned against addressing overcrowding through new prison and jail construction. That approach, they advised, would strain state finances, impose unpopular tax burdens and most importantly, fail to alleviate the crisis of prison overcrowding.³⁵ As Special Master in the *Harris* suit Bill Babcock wrote to criminologist John S. Goldkamp in 1990, “overcrowding cannot be resolved solely by building more prisons,” a fact with which the “court concur[red].”³⁶ How exactly policymakers and federal courts should respond to the crisis of prison overcrowding was far from a settled matter, with a dramatic expansion in the city’s carceral capacity hardly the only pathway available.³⁷

The *Harris* controls were not a silver bullet. Any individual accused or convicted of violent crimes could be imprisoned in the city’s prison system even if the system exceeded the maximum allowable population. This blanket exclusion affirmed the reformers’ naturalization of crime as an individual act extracted from political economy and historical power dynamics and ignored how the designation of a crime as violent or serious was “part of a racial apparatus for determining ‘dangerousness.’”³⁸ The court also did not view the admissions moratorium and release mechanisms as “long-term solutions,” suggesting the limitations of relying on court

³⁵ Alfred Blumstein, “Prison Populations: A System Out of Control?” *Crime & Justice* 10, (1988): 231-266; Dan Feldman, “Longer Sentences Do Not Deter Crime,” October 3rd, 1987, *The New York Times*; Bill Moushey, “The Basic Problem: Crowded Prisons,” December 18th, 1989, *Pittsburgh Post-Gazette*.

³⁶ Bill Babcock to John S. Goldkamp, April 18th, 1990, Folder 5: Correspondence — Bill Babcock, 1989-90 Box 3, BLL.008, Shapiro Papers, UPBLL.

³⁷ John Hurst, “Change in Sentencing Law Could Ease Prison Problem,” *Los Angeles Times*; December 27th, 1983; “Strict Probation Praised in Georgia,” *The New York Times*, May 6th, 1984; Elizabeth Anderson, “State Using Electronic Device to Monitor Prisoners at Home,” *The New York Times*, May 13th, 1990.

³⁸ Ruth Wilson Gilmore, “The Worrying State of the Anti-Prison Movement.”

orders to achieve decarceral ends.³⁹ Moreover, forcing the city to release people from the city's prisons and limiting those who entered did not alter the punitive and racist policing, prosecutorial, bail, and parole practices that sent so many Black and brown people to the city's prisons in the first place, making the admissions moratorium a back-end solution to a broader problem of racialized hyper-criminalization and punishment. In a system where, as one Common Pleas judge put it, "no court...could very well order the police to stop arresting criminals," reducing the city's overcrowded population only through limiting pretrial prison admissions would always carry constraints.⁴⁰

Still, the *Harris* prison population controls had the potential to limit the city's otherwise unchecked carceral growth. Amid a political culture steeped in racialized "get tough" politics, these controls made cracks in a normative carceral common sense, providing glimpses of an alternative, decarceral vision.⁴¹ Moreover, by showing that authorities could, in fact, simply release or refuse to imprison people without charging bail, the controls raised questions about the actual function and purpose of the city's bail system. If arrestees could be released while awaiting trial, offered social services, provided with support in attending their trials, and eventually be acquitted of all charges, as was often the case, what was the purpose of pre-trial imprisonment, if not to indiscriminately punish – indeed, to effectively kidnap and torture – the city's working-class Black and brown communities?

³⁹ Babcock, "Litigating Prison Conditions in Philadelphia: Part II," 83.

⁴⁰ Thomas Watkins, "The courtroom conveyor belt is out of control," *The Philadelphia Inquirer*, March 22nd, 1988.

⁴¹ Julilly Kohler-Hausmann, *Getting Tough: Welfare and Imprisonment in 1970s America* (Princeton: Princeton University Press, 2017).

Initially, the Goode administration made an honest effort to comply with the consent decree. It created a city-funded but privately managed bail fund, called BailCARE, that assisted low-income arrestees with bails of \$5,000 or less and helped reduced the flow of individuals into prison pretrial.⁴² Under the program, city tax dollars paid 10% of the bail amount set by arraigning judges or bail commissioners. A family member or friend agreed to pay the rest of the 90% if the individual failed to appear. BailCARE monitored those released to ensure they made court appearances and when appropriate, placed people in drug and alcohol or job training programs.⁴³ The city also began to divert from prison individuals with less serious and nonviolent offenses who had “minimal criminal histories” by allowing them to sign a “*Harris v. Pemsley* signature bond (HVP/SOB),” which effectively allowed them to be released pretrial without paying any bail.⁴⁴

As a result, the city came close to meeting court-mandated population reductions. By the end of 1987, it had shed 349 prisoners, mostly through liberal use of BailCARE, which reduced the prison population to 3,920.⁴⁵ BailCARE proved to be enormously successful, with more defendants showing up for their hearings than had under the city’s existing pretrial services

⁴² “Municipal Defendants’ Schedule for Planning the Implementation of the Qualified Admissions Moratorium,” Folder 2: Correspondence – re: Admissions Moratorium, 1983-1989, Box 3, BLL.008, Shapiro Papers, UPBLL.

⁴³ Howard Goodman, “The forces behind the plan to free more inmates from Phila. prisons,” *The Philadelphia Inquirer*, January 4th, 1991.

⁴⁴ Andrew L. Sonner, D. Alan Henry, George Gish, and Samuel C. Gardner, “A Review of the Philadelphia Criminal Justice System and Jail Capacity Management Practices,” February 1989, Folder 4: Memorandums + orders, *Harris v Reeves* 1991, Box 9, BLL.008, Shapiro Papers, UPBLL; Henry Goldman, “Keeper of the Cap,” *The Philadelphia Inquirer*, December 25th, 1994.

⁴⁵ John Woestendiek, “Judge is encouraged by drop in prison population,” *The Philadelphia Inquirer*, December 19th, 1987; John Woestendiek, “City lawyer says jail cap within reach,” *The Philadelphia Inquirer*, January 15th, 1988; William G. Babcock, “Litigating Prison Conditions in Philadelphia: Part II,” 78.

system. Seventy-four percent of those released were ultimately found innocent of all charges.⁴⁶ But the city couldn't quite reach the 3,750-population mark, despite extensions from Judge Shapiro.⁴⁷ "What goes up should come down," Shapiro lamented, but "the problem here is, it goes up, up, up, and just doesn't come down."⁴⁸

By June 1988, her patience with the city had worn thin. She moved to enforce the more substantive prison population controls outlined in the 1986 consent decree. To that end, she authorized the one-time release of 256 prisoners held on bails of less than \$2,500 and called for ongoing releases prepared by a court-enacted Prison Population Management Unit (PPMU) that was tasked with searching for people to release who had been detained after their initial hearing.⁴⁹ These mechanisms came on top of the city's use of HVP/SOB signature bonds, BailCARE, the city's own conditional release program, and a mechanism related to the *Jackson v. Hendrick* case that considered individuals for release on a monthly basis.⁵⁰

⁴⁶ Bob Warner, "Good Numbers of Bail Plan," *The Philadelphia Daily News*, June 10th, 1988.

⁴⁷ John Woestendiek, "Judge finds jail levels disturbing," *The Philadelphia Inquirer*, March 5th, 1988.

⁴⁸ John Woestendiek, "Judge finds jail levels disturbing," *The Philadelphia Inquirer*, March 5th, 1988.

⁴⁹ Castille immediately requested a stay on the moratorium, which the Third US Circuit Court of Appeals initially granted but then reversed, ensuring the moratorium remained in place. See John Woestendiek, "Jail-admission moratorium blocked," *The Philadelphia Inquirer*, June 7th, 1988; John Woestendiek, "City jail moratorium reinstated," *The Philadelphia Inquirer*, June 8th, 1988; John Woestendiek, "City Jails turn Away Suspects," *The Philadelphia Inquirer*, June 9th, 1988; John Woestendiek, "Moratorium keeps jail doors open," *The Philadelphia Inquirer*, June 10th, 1988; Howard Goodman, "The forces behind the plan to free more inmates from Phila prison," *The Philadelphia Inquirer*, January 4th, 1991. Regarding PPMU, Susan Caba, "Advocate loses key to open prison doors," *The Philadelphia Inquirer*, November 20th, 1992; Andrew L. Sonner, D. Alan Henry, George Gish, and Samuel C. Gardner, "A Review of the Philadelphia Criminal Justice System and Jail Capacity Management Practices," February 1989, Folder 4: Memorandums + orders, *Harris v Reeves* 1991, Box 9, BLL.008, . Shapiro Papers. Henry Goldman, "Keeper of the Cap," *The Philadelphia Inquirer*, December 25th, 1994.

⁵⁰ Andrew L. Sonner, D. Alan Henry, George Gish, and Samuel C. Gardner, "A Review of the Philadelphia Criminal Justice System and Jail Capacity Management Practices," February 1989,

The first three months after Shapiro implemented the population controls demonstrated their promise for reducing the city's prison populations. Between June 7th and September 1988, the prison system's population hovered close to the 1986 Consent Decree's maximum allowable population of 3,750.⁵¹ That November, Shapiro ordered the release of an additional 160 prisoners.⁵² As reformer Allen Hornblum reported at the Pennsylvania Prison Society's June 1988 board meeting, the moratorium prompted "significant improvement in the overcrowding conditions of the Philadelphia Prisons," taking a "heavy load off the prison authorities, especially during the summer months when operating a prison is...difficult."⁵³ Thousands of Philadelphians who would have otherwise been sent to the city's prisons because they could not afford bail were instead freed and provided social services. Between December 1st, 1987, and November 28th, 1988, BailCARE reported releasing 4,910 individuals and placing 1,094 in drug and alcohol treatment, mental health, job training, or GED programs. These releases and program placements accounted for only 25% of the 19,431 total cases reviewed – but considering these thousands of individuals would otherwise have been sent to the city's overcrowded prisons, the impact was consequential.⁵⁴

Folder 4: Memorandums + orders, Harris v Reeves 1991, Box 9, BLL.008, Shapiro Papers, UPBLL; Henry Goldman, "Keeper of the Cap," *The Philadelphia Inquirer*, December 25th, 1994.

⁵¹ David Richman, Philip H. Lebowitz, Neill C. Kling, "Plaintiffs Memorandum in Opposition to Defendants' Motion to Modify Consent Decrees," in Harris v. Levine, Civil Action No. 82-1847, January 29th, 1992; "The Pennsylvania Prison Society Board of Directors Minutes, June 23rd, 1988," Pennsylvania Prison Society, unpublished papers.

⁵² Gina Boubion, "Judge Orders Release of 160 inmates to ease overcrowding," *The Philadelphia Daily News*, November 11th, 1988.

⁵³ The Pennsylvania Prison Society Board of Directors Minutes, June 23rd, 1988," Pennsylvania Prison Society, unpublished papers.

⁵⁴ BailCARE Activity Report: December 1st, 1987-November 28th, 1988, Folder 14: Correspondence — Philadelphia People's Bail fund, 1987-1990, Box 6, BLL.008, Shapiro Papers, UPBLL.

After over a decade of legal battles over the city's prison conditions, the *Harris* consent decree finally appeared poised to coerce the city to reduce its prison population, providing imprisoned people with some relief and preventing thousands from entering the city's prisons in the first place. Catalyzed by Martin Harris's *pro se* complaint written behind bars at Holmesburg, the *Harris* settlement struck a powerful blow against the city's otherwise unchecked racialized carceral growth. It had the potential meaningfully reduce the city's prison population, limit the flow of primarily Black working-class Philadelphians into violent and abusive pretrial prisons, and challenge the veracity of the city's punitive "common sense."

Prosecutors Preserve Punishment

That prospect threatened the authority of Philadelphia's law enforcement agencies. Releasing people accused of crimes exposed the irrelevancy and cruelty of pretrial imprisonment and the city's bail system, highlighting its function as racist and classist punishment levied against poor communities of color.⁵⁵ When released, accused individuals had better access to lawyers and resources and often won acquittals, further revealing the racially targeted and unjust practices of the city's police. Under those conditions, Philadelphians might ask more questions about why the prison system consumed such large portions of the city's budget, and what other agencies or programs might be better equipped to respond to the very real problems of concentrated poverty and violence in the city's segregated Black and brown working-class communities. Prison overcrowding and the *Harris* case, in other words, had the potential to create a legitimacy crisis for the city's law enforcement leaders. Law enforcement

⁵⁵ Melanie Newport, *This is My Jail*.

representatives, anticrime organizers, and the media thus labored to undermine the *Harris* controls and reassert the legitimacy of the city's criminal punishment system.

District Attorney Ronald Castille was especially aggressive in attacking *Harris*. A Republican prosecutor elected in 1985 on the strength of strong returns in the city's segregated white neighborhoods in the Northeast and South, the decorated Vietnam veteran and Fraternal Order of Police-backed Castille made himself a vigorously punitive figure in Philadelphia politics.⁵⁶ Under his direction, the D.A.'s office resisted the use of plea bargaining, pushing more defendants to go to trial and face tougher charges. He also established a special unit for prosecuting "dangerous drug offenders," successfully lobbied for the passage of mandatory sentencing laws for drug dealers, and expanded the authority of his office and the police to confiscate drug-related assets like cars, cash, and other property.⁵⁷ Finally, Castille declined to charge Mayor Goode or any of the Philadelphia Police officers involved in the 1985 MOVE bombing, which resulted in the deaths of 11 people, including five children.⁵⁸ As a rare check on his tough-on-crime agenda, Judge Shapiro's approval of the *Harris* consent decree incensed Castille. He contended that limiting the number of people imprisoned pretrial posed a "a risk to the safety of the citizens of Philadelphia" and would "free dangerous criminals."⁵⁹

⁵⁶ "Steve Lopez and Lucinda Fleeson, "Profiles in Contrast: Exultation and Defeat Just City Blocks Apart," *The Philadelphia Inquirer*, November 6th, 1985; "Republicans Got A Hero in Castille," *Philadelphia Daily News*, November 1st, 1985; John F. Morrison, "Castille Day: Underdog Takes DA Race," *The Philadelphia Daily News*, November 6th, 1985; Steven A. Marquez, "Why the Voters Elected to Defeat Williams," *The Philadelphia Daily News*, November 6th, 1985.

⁵⁷ Bob Warner, "The Trials of Castille," *Philadelphia Daily News*, September 25th, 1989.

⁵⁸ Joseph r. Daughen, "They Are All Over DA's Case," *Philadelphia Daily News*, May 4th, 1988.

⁵⁹ Frederic Tulskey, "Prison suit reported settled," *The Philadelphia Inquirer*, November 26th, 1986.

Castille's attack on the *Harris* case carried political benefits. He faced a tough reelection campaign in 1989 in a city dominated by the local Democratic Party machine, especially if pitted against a "good black candidate," in Special Master William Babcock's words. He had also received "bad publicity" on both the MOVE grand jury proceedings and on the prosecution of Philadelphia's notorious mafia boss, Nicodemo Scarfo, then on trial for murder. As Babcock wrote to Judge Shapiro shortly after she moved to enforce the consent decree's population controls, "*Harris* is probably [Castille's] last best opportunity to get good press, and he is going after it as hard as he can."⁶⁰

"Lock your door, lock up your car, stay home and guard your possessions," he warned, adding "somebody's going to end up dead from this. It's sheer lunacy, is what it is."⁶¹

Philadelphia police officers and community organizations echoed the DA's concerns. "They're making us second class citizens," one undercover narcotics cop complained, "This is Philadelphia's Vietnam. We're fighting a war we can't win."⁶² Judge Shapiro also heard complaints from local anticrime, victims' rights, and anti-domestic abuse organizations who contended that the controls undermined their efforts to fight crime in their neighborhoods, placed women suffering from sexual violence at greater risk, and increased the likelihood that the

⁶⁰ William Babcock to Judge Norma L. Shapiro, June 16th, 1988, Folder 4: Correspondence, — Bill Babcock, 1982-1988, Box 3, BLL.008, Shapiro Papers, UPBLL.

⁶⁰ *Harris v. Pernsley*, 820 F.2d 592 (3rd Cir. 1987).

⁶¹ John F. Morrison, "City Jails Losing Battle to Meet Inmate Cap," *Philadelphia Daily News*, June 9th, 1988. See also, Gloria Campisi and Dan Lovely, "DA: Mayor's Being Conned into Freeing Criminals," *The Philadelphia Daily News*, November 12th, 1987; Ronald Castille, "Prison cap frees dangerous criminals..." *The Philadelphia Inquirer*, January 20th, 1987; Michael E. Ruane, "Castille vows to monitor any city jail releases," *The Philadelphia Inquirer*, October 2nd, 1987; John F. Morrison, "City Jails Losing Battle to Meet Inmate Cap," *The Philadelphia Daily News*, June 9th, 1988.

⁶² Jack McGuire, "Prison Moratorium is 'Philadelphia's Vietnam,' Cop Says," *Philadelphia Daily News*, June 9th, 1988.

accused would not appear for hearings, exacerbating crime victims' distress.⁶³ "With an increase in the amount of prisoners running loose, we don't have a fighting chance to protect our community," the president of the Wissinoming Civic Association claimed in a letter to Judge Shapiro.⁶⁴ The prison population controls purported threat to women facing domestic violence triggered a good deal of panic around the *Harris* consent decree. Edythe Rogers, the Executive Director of Women Against Abuse, told DA Castille and Judge Shapiro that "losing the flexibility to set a high bail" in cases of domestic violence "puts battered women at risk."⁶⁵ Philadelphia Police began telling women reporting domestic violence that they "no longer have the power to arrest their assailant because of the prison moratorium," a statement that was not rooted in fact.⁶⁶

Amid this torrent of criticism, Judge Shapiro began allowing exceptions to the prison admissions moratorium that undermined its ability to aggressively reduce the city's prison

⁶³ Remarks from Edythe Rogers, Executive Director of Women Against Abuse, undated; Edythe M. Rogers to Ronald Castille, June 15th, 1988; Edythe M. Rogers to Mayor Wilson Goode, June 15th, 1988; Edythe M. Rogers to Police Commissioner Willie Williams, June 15th, 1988, Folder 2, Box 3; Jeff Rush to Judge Shapiro, August 31st, 1988, Folder 4, Box 4; Jalaine Chisholm, Remarks on behalf of Northwest Victim Services, July 18th, 1989, Catherine Bachrach, Director of Northwest Victim Services to Judge Shapiro, July 12th, 1988, Philadelphia Coalition for Victim Advocacy June 16th, 1988 statement, Nancy E. Cunningham, Project Coordinator for the Philadelphia Coalition on Domestic Violence to Judge Shapiro, June 21st, 1988, Paul DiLorenzo and Max Kohn, Co-Chairs of the Philadelphia Coalition for Victim Advocacy to Judge Shapiro, February 22nd, 1989, Folder 9, Box 8; William J. Shea, President of the Grays Ferry Community Council, to Judge Shapiro, September 9th, 1988; Folder 8, Box 5; Letter from Glenn W. Devitt, President of the Wissinoming Civic Association, Inc. to Hon. Norma Shapiro, February 15th, 1988, in Folder 4, Box 6, in Shapiro Papers, UPBLL.

⁶⁴ Letter from Glenn W. Devitt, President of the Wissinoming Civic Association, Inc. to Hon. Norma Shapiro, February 15th, 1988, in Folder 4, Box 6, Shapiro Papers, UPBLL.

⁶⁵ Edythe M. Rogers to Ronald Castille, June 15th, 1988, Folder 2, Box 3 in Shapiro Papers, UPBLL.

⁶⁶ Gloria Campisi, "Jail Moratorium Leaves Battered Women Fearful," *Philadelphia Daily News*, June 16th, 1988.

population. First she ordered that accused domestic abusers be exempt from the moratorium.⁶⁷ The DA's office then complained that the moratorium led to "difficulties in prosecuting certain charges" and urged her to further reduce the number of people freed, because those she had released by the *Harris* controls failed to appear at hearings.⁶⁸ In response, Shapiro ordered a "two bench-warrant exception" in September 1988 that allowed accused individuals with two or more open bench warrants to be admitted to prison despite the moratorium.⁶⁹ Next, and most consequentially, the DA's office requested the city be allowed to imprison individuals charged with possessing or selling small quantities of illegal substances. Accusing Judge Shapiro of making Philadelphia "an attractive place to be in the drug trade," Castille's Chief Litigation Advisor Sarah Vandenbraak claimed that charged individuals were "using the admissions moratorium as a license for crime sprees" and contended that they "continue to victimize the public without any consequence other than the minor inconvenience of a few hours of police processing with each new arrest."⁷⁰ Given that a large number of arrestees were charged with drug offenses, prisoner plaintiffs vigorously opposed these proposed amendments, calling them "overbroad" and accusing the DA of trying to "weaken the moratorium."⁷¹ But a flurry of sensationalized pieces on individuals who committed new crimes after their release by *Harris*

⁶⁷ Sarah Vandenbraak to Judge Shapiro, September 20th, 1988, Folder 1: Correspondence - DA's office, 1988, Box 6, Archives of the Honorable Norma L. Shapiro, BLL.008, Biddle Law Library Archives and Special Collections, University of Pennsylvania, Philadelphia, PA.

⁶⁸ *Harris v. Reeves*, 761 F.Supp. 382 (E.D. PA, 1991).

⁶⁹ *Harris v. Reeves*, 761 F.Supp. 382 (E.D. PA, 1991).

⁷⁰ Vernon Loeb, "Exception is set in jail-cap order," *The Philadelphia Inquirer*, August 27th, 1988; Gar Joseph, "Speed, Crack, & Pot Limits Lowered," *The Philadelphia Daily News*, September 8th, 1988.

⁷¹ Sarah Vandenbraak to Judge Norma Shapiro, June 29th, 1988, Folder 1: Correspondence - DA's office, 1988, Box 6; Philip H. Lebowitz to Judge Shapiro, July 17th, 1988 re: *Harris v. Pemsley*, C.A. 82-1847; Folder 2: Correspondence - re admissions moratorium, 1983-1989, Box 3, Shapiro Papers, UPBLL.

controls emboldened the DA's office to escalate its attack on the controls, calling them a danger to the community.⁷² While the DA's office did not offer clear proof for their claims, the barrage of bad press prompted Shapiro to lower the amount of drugs for which a defendant could be detained over the admissions moratorium.⁷³

Judge Shapiro's exceptions and her contention that the DA "be heard on all matters concerning the release and non-admission of Philadelphia prisoners" drastically reduced the effectiveness of the court-ordered controls.⁷⁴ As David Richman put it, while the "MAPs were supposed to operate as fairly tight screens on admissions," they "in fact came to resemble pretty much of a sieve."⁷⁵ Once the exceptions were in place, the prison population rose precipitously. According to an analysis conducted by the Prison Population Management Unit (PPMU) for admissions between November 9th through November 28th, 1988, the Judge's exceptions were directly responsible for the admittance of 536 of the 1,119 individuals imprisoned in the period.⁷⁶ While the DA's push for exceptions was not itself racial, the racialized patterns of arrest and prosecution in the city meant that the new admissions increased the number of Black and brown individuals detained pretrial. One report of the racial breakdown of the city's prison population

⁷² Vernon Loeb, "Alleged cocaine dealer misses court hearings," *The Philadelphia Inquirer*, August 19th, 1988; Vernon Loeb, "Prison crowding sets cocaine suspect free," *The Philadelphia Inquirer*, August 24th, 1988; Doreen Carvajal and Vernon Loeb, "N. Phila. man held on drug charges," *The Philadelphia Inquirer*, August 26th, 1988.

⁷³ Vernon Loeb, "Exception is set in jail-cap order," *The Philadelphia Inquirer*, August 27th, 1988; David Richman, interview by Andrew Kelley, March 17th, 2005.

⁷⁴ *Harris v. Reeves*, No. CIV. A. 82-1847, 1990 WL 238417 (E.D. Pa. 1990), aff'd, 946 F.2d 214 (3d Cir. 1991).

⁷⁵ David Richman, interview by Andrew Kelley, March 17th, 2005.

⁷⁶ Prison Population Management Unit Releases November 9th through November 28th, 1988, Folder 14: Correspondence — Philadelphia People's Bail fund, 1987-1990, Box 6, Shapiro Papers, UPBLL.

from February 5th, 1990, indicated that of the 4,905 people incarcerated that day, 77% were Black, 13% were Hispanic, and only 9% were white.⁷⁷

In addition to pushing for exceptions, Castille's office routinely failed to submit its objections to proposed releases in a timely manner, adding an undue administrative burden on the Prison Population Management Unit and causing headaches for the plaintiffs.⁷⁸ When the head of the PPMU, Jeanne Bonney, tried to secure a bail reduction or entry into a supervised program for individuals charged with violent crimes who had been detained in the city's prisons for long periods of time, the DA blocked her. Bonney noted bitterly how "more defendants have been admitted to the Prisons on the basis of the District Attorney's request for an exception" than those who had been released due to request for exceptions by the federal court. More broadly, she lamented that because of the DA's interference, "far fewer are released than are eligible under the literal terms of the release program."⁷⁹

Mayor Goode's administration did not join Castille and other law enforcement agencies in smearing the prison population controls. While not exactly enthusiastic about releasing prisoners, the administration generally cooperated with the Court. Richard Gold, Goode's First Deputy City Solicitor, kept in close touch with Judge Shapiro, the plaintiffs, and state judges

⁷⁷ Philadelphia Prisons – Jailtrac – Management Report Package, Daily Legal Status Census, February 5th, 1990, Folder 5: Correspondence - PPMU - 1990-1994, Box 8, Shapiro Papers, UPBLL.

⁷⁸ Philip H. Lebowitz to Judge Shapiro, re: Harris v. Reeves, C.A. 82-1847, October 27th, 1989, Folder 12: Correspondence — Pepper, Hamilton, + Scheetz, 1990, Box 6, Shapiro Papers, UPBLL.

⁷⁹ Jeanne Bonney to Richard Gold, re: Response to District Attorney's Objections in the Nature of a Motion for Reconsideration with Respect to Certain Release Orders Filed on May 25th, 1990, May 11th, 1990, Folder 5: Correspondence – PPMU – 1990-1994, Box 8, Shapiro Papers, UPBLL.

regarding the city's efforts and current population counts.⁸⁰ He even let Judge Shapiro know about continued problems, telling her in January 1989 that "inmates in the intake housing areas" were "sleeping on the floor" and that "sick call is not available to two-thirds of all inmates on a daily basis as a result of the increase in demand."⁸¹ Gold also begged Assistant District Attorney Sarah Vandenbraak to help move along the cases of individuals who had been in pre-trial detention for more than two years.⁸² For his part, Mayor Goode wrote to President Judge of the Court of Common Pleas Edward J. Bradley, President Judge of the Municipal Court Judge Joseph R. Glancey, and Court Administrator for the Court of the Common Pleas Judge Harry Takiff to request that they commit their "full cooperation and the cooperation of the State Courts in insuring that persons who are detained in the Philadelphia Prisons have their criminal cases tried and disposed of in an expedited manner" and offered potential policy changes for them to consider.⁸³

The city also refrained from joining the DA and other law enforcement groups in demanding exceptions to the prison population controls; Goode's administration even declined to object when the imprisoned plaintiffs' lawyers requested the judge remove the exceptions due to

⁸⁰ Richard Gold to David Richman, November 1st, 1988; Richard Gold to David Richman, January 9th, 1989; Richard Gold to David Richman, January 17th, 1989; Richard Gold to David Richman, February 1st, 1989; Richard Gold to Judge Norma Shapiro, January 24th, 1989; Richard Gold to The Honorable Judges, November 16th, 1988, Folder 4: Correspondence - general re: prison overcrowding 1989-1994, Box 6, Shapiro Papers, UPBLL.

⁸¹ Richard J. Gold to Judge Norma Shapiro, January 24th, 1989, Folder 12: Correspondence - City of Philadelphia, 1983-1988, Box 3, Shapiro Papers, UPBLL.

⁸² Richard J. Gold to Sarah Vandenbraak, re: Prison Overcrowding November 9th, 1987, , Folder 4: Correspondence - general re: prison overcrowding 1989-1994, Box 6, Shapiro Papers, UPBLL.

⁸³ W. Wilson Goode to Judges Bradley, Glancey and Takiff, April 11th, 1986, Folder 4: Correspondence - general re: prison overcrowding 1989-1994, Box 6, Shapiro Papers, UPBLL.

their adverse effect on the prison population.⁸⁴ In later motions, the city went so far as to request that the federal judge “release more untried and some convicted inmates from overcrowded city prisons” and investigate whether “police and prosecutors are inflating drug charges against certain defendants they wanted jailed” in an effort to “evade” the admissions moratorium. Administration officials told the *Philadelphia Daily News* that the consent decree offered the “best chance to truly resolve prison overcrowding in Philadelphia.”⁸⁵ Even as their efforts to become compliant came up short, Goode’s administration pursued meaningful plans for reducing the city’s overcrowded prison population.⁸⁶

With exceptions to the *Harris* prison admissions moratorium mounting, the city’s prisons became so overcrowded that in 1990 Prison Commissioner J. Patrick Gallagher declared a state of emergency. “We’re running out of supplies and of mattresses,” Gallagher told the *Philadelphia Inquirer*, “there’s just no room at the Inn.”⁸⁷ With its population swelling, “the commissioner has even acknowledged he can’t run his jail anymore,” David Richman said. “I didn’t think he could 1,000 inmates ago, but 1,000 inmates later, even he’s persuaded.”⁸⁸ John Moscony, who was detained at the Detention Center, wrote to Judge Shapiro about the horrendous state of the institution, describing “50 inmates in one room” and “150 inmates housed in the gym” in violation of the consent decree. He also described “below freezing”

⁸⁴ William Babcock to Judge Shapiro, December 22nd, 1988, Folder 4: Correspondence — Bill Babcock, 1982-1988, Box 3, Shapiro Papers, UPBLL.

⁸⁵ Jim Smith, “Free More from Jails, City Asks,” *Philadelphia Daily News*, March 10th, 1990.

⁸⁶ Municipal Defendant’s Schedule for Planning the Implementation of the Qualified Admissions Moratorium, Folder 2: Correspondence - re admissions moratorium, 1983-1989, Box 3, Shapiro Papers, UPBLL.

⁸⁷ Howard Goodman, “Prison overload hist record,” *The Philadelphia Inquirer*, August 30th, 1990.

⁸⁸ “Philadelphia prisons declare emergency in overcrowding,” *Associated Press*, September 1st, 1990.

temperatures and constant coughing from fellow prisoners, who were “very upset with the conditions.”⁸⁹

The severity of the crisis prompted Judge Shapiro to toughen her enforcement. First, she allowed the release of those pretrial detainees who had bail amounts that made them ineligible for BailCARE but who would otherwise qualify to be released. She also ordered that individuals who would qualify for BailCARE except for having two or more failures to appear could be released into a House Arrest/Electronic Monitoring program.⁹⁰ In 1990, she pared back her exception on drug limits, ordering a “five-fold increase” in the amount of drugs an accused individual could have on them before being imprisoned. She also ordered the fast-tracking of releases for convicted prisoners with less than 60 days left on their sentences.⁹¹

Though the changes were helpful, they did not go far enough to produce swift reductions in the prison population. So, the plaintiffs and the city pushed for more. Their lawyers drew up a new decree that would move control of releases from Judge Shapiro to Special Master William Babcock, who was considered by the plaintiffs to be more sympathetic to their cause. When Shapiro failed to acknowledge the new draft, David Richman filed a motion to terminate the existing decree and move forward with a trial, an act he knew would push her to respond to the previous order.⁹²

⁸⁹ John Moscony to Judge Shapiro, December 4th, 1989, Folder 9: Correspondence from court / Shapiro, 1990-92, 1995, Box 5, Shapiro Papers, UPBLL.

⁹⁰ *Harris v. Pernsley*, No. CIV.A. 82-1847, 1989 WL 16269 (E.D. Pa. 1989).

⁹¹ Leon Taylor, “75 inmates freed from crowded jails” *The Philadelphia Daily News*, September 15th, 1990; Jim Smith, “Judge Ups Drug Limits for Jailing,” *The Philadelphia Daily News*, September 22nd, 1990.

⁹² See David Richman, interview by Andrew Kelley, March 17th, 2005; David Richman to Judge Shapiro, re: *Harris, et. al. v. Reeves, et. al* Civil Action No. 82-1847, February 14th, 1990, Folder 12: Correspondence — Pepper, Hamilton, + Scheetz, 1990, Box 6, Shapiro Papers, UPBLL.

On March 11th, 1991, Shapiro approved the new “sweeping” consent decree. It required the city to increase the number of names it submitted for early release via the PPMU from 100 to 175 per week.⁹³ A prisoner’s nomination would not automatically result in their release, since the DA’s office had the opportunity to object.⁹⁴ Still, by increasing the number of eligible individuals and placing control of these releases in the hands of Special Master Babcock, the new consent decree would undoubtedly boost the court-ordered release program.⁹⁵ The agreement also imposed hefty fines should the city fail to comply with the new agreement. Jeanne Bonney contended that the “stepped up pace of releases could cut the present population” – then at 4,800 – to the 3,750 cap “in about three months if it were put into effect with full efficiency.”⁹⁶ “It’s a landmark in the case,” Babcock told the *Inquirer*, adding it “really changes the responsibilities of the city. They are really going to have to solve overcrowding.”⁹⁷

⁹³ Harris v. Reeves, “Stipulation and Agreement,” Civ. A. No. 82-1847, (March 11th, 1991); Howard Goodman, “The forces behind the plan to free more inmates from Phila. prisons,” *The Philadelphia Inquirer*, January 4th, 1991; Howard Goodman, “Plan to let inmates go is assault,” *The Philadelphia Inquirer*, January 14th, 1991; Howard Goodman, “Federal Judge approves agreement to reduce Phila. jail overcrowding,” *The Philadelphia Inquirer*, March 12th, 1991.

⁹⁴ As Jeanne Bonney, the head of the Prison Population Management Unit who handled the court-enforced prison releases, noted, since 1989 7,000 prisoners had been nominated for release but only 2,870 had been granted release. The new consent decree required that for every individual blocked for release the DA had to offer a “compensatory” individual to be released in their place, but prior attempts to implement such a requirement had been unsuccessful. Howard Goodman, “Federal Judge approves agreement to reduce Phila. jail overcrowding,” *The Philadelphia Inquirer*, March 12th, 1991; *Harris v. Pernsley*, No. CIV.A. 82-1847, 1989 WL 16269 (E.D. Pa. 1989).

⁹⁵ Howard Goodman, “Plan to let inmates go is assailed,” *The Philadelphia Inquirer*, January 14th, 1991; David Richman, interview by Andrew Kelley, March 17th, 2005.

⁹⁶ Howard Goodman, “The forces behind the plan to free more inmates from Phila. prisons,” *The Philadelphia Inquirer*, January 4th, 1991.

⁹⁷ Howard Goodman, “Federal Judge approves agreement to reduce Phila. jail overcrowding,” *The Philadelphia Inquirer*, March 12th, 1991.

The new agreement included a mandate for the city to complete a new facility capable of detaining 1,000 people. But it also required the city to engage in a planning process prior to building more prisons and left room for the city to invest in alternatives to imprisonment should it so choose, creating a critical opening for policymakers to respond to the crisis with decarceration and the redistribution of resources towards social programs and employment. Richman strongly preferred this latter path, recalling in a later account that his “real hope” was that the city “wouldn’t build additional facilities.”⁹⁸

Philadelphia’s imprisoned representatives were more dubious.⁹⁹ Frustrated by the first consent decree’s shortcomings, class representative Jesse Kithcart sent Judge Shapiro a petition with nearly 3,000 prisoners’ signatures opposing the new agreement.¹⁰⁰ They cited the District Attorney’s relentless objections to *Harris* releases and the city’s slow crawl towards compliance as evidence that only a contempt order and a formal trial would break law enforcement opposition and force the city to comply.¹⁰¹

Kithcart’s attempts to reject the new consent decree must be contextualized against his experiences leading up to the new proposed agreement. As president of Holmesburg’s prisoner-run Block Representatives Association, he had served as an imprisoned mediator and liaison with

⁹⁸ David Richman, interview by Andrew Kelley, March 17th, 2005.

⁹⁹ Howard Goodman, “New plan on prisons endorsed,” *The Philadelphia Inquirer*, January 3rd, 1991.

¹⁰⁰ The full list of signatures can be found in Folder 12: Stipulations + Agreements *Harris v. Reeves* — Objections by inmates, 1991, BLL.008, Shapiro Papers, UPBLL. See also “The Pennsylvania Prison Society Board of Directors Minutes, January 24th, 1991,” Pennsylvania Prison Society, unpublished papers; Howard Goodman, “New plan on prisons endorsed,” *The Philadelphia Inquirer*, January 3rd, 1991.

¹⁰¹ Johnathan A. Lewis, Objection to Stipulation and Agreement; Jesse Kithcart Objection to Stipulation and Agreement, Folder 12: Stipulations + Agreements *Harris v. Reeves* — Objections by inmates, 1991, Box 10, Shapiro Papers, UPBLL; Howard Goodman, “New plan on prisons endorsed,” *The Philadelphia Inquirer*, January 3rd, 1991.

the media during multiple prisoner protests, including a two-day prisoner hunger strike, through which prisoners protested guard attacks, overcrowded conditions, and a cook's attempt to serve Jello after he had removed a "dead mouse" from it.¹⁰² "You have to be in here, you have to see what's happening in the jail – the lack of activity and movement, the leaky cells, the bad food," he told the *Inquirer* in August 1989. "Everything's getting worse, and they're constantly packing more people in here. It's gonna explode."¹⁰³ Given the conditions they faced, Kithcart and Philadelphia prisoners' cynicism towards the consent decree is understandable.

After further consultation with their lawyers, the class representatives agreed to drop their protest and back the new decree. In a letter to the *Inquirer*, he described the current agreement as providing the "most hope for dealing with the current prison overcrowding and solving some of the 20-year-old problems that the Philadelphia prisoners have *never* solved."¹⁰⁴ But the prisoners' frustration would prove prescient. When faced with sluggish city leaders, a hostile DA, and a vacillating judge, channeling the *Harris* consent decree towards meaningful decarceral ends would be an uphill battle.

At the same time, the new agreement's more aggressive approach to prisoner releases further inflamed the city's tough-on-crime constituencies. Twenty-five "citizens groups" showed up at a January 14th, 1991, court hearing on the new decree as "concerned observers." Catherine Bachrach of the Northwest Victim Services alleged that the *Harris* court's mechanisms had

¹⁰² Kitty Caparella, "Inmates Air Gripes as Hunger Strike Ends," *Philadelphia Daily News*, February 21st, 1989; Robin Clark and David M. Giles, "Inmate tensions incite food fight at Holmesburg," *The Philadelphia Inquirer*, May 24th, 1989.

¹⁰³ John Woestendiek, "Violence festers at Holmesburg," *The Philadelphia Inquirer*, August 27th, 1989.

¹⁰⁴ Jesse L. Kithcart, "Inside view on prison crowding," *The Philadelphia Inquirer*, March 4th, 1991

made victims and witnesses of crimes “increasingly reluctant to report crimes ...because suspects are frequently declared ineligible for prison or quickly let go to meet the population cap.”¹⁰⁵ Herman Wrice, the founder of the grassroots neighborhood anti-crime group Mantua Against Drugs, similarly claimed that the release order was “undercutting the effectiveness of citizen anti-drug groups....People say: ‘Why should we work at putting these characters in jail, because every time we look, they’re coming back out?’”¹⁰⁶ Craig Snyder, a lawyer and staff director of the city’s Criminal Justice Task Force, wrote an op-ed denouncing the new agreement and attacking the entire premise of a prison admissions moratorium, arguing that it would “effectively legalize drug and property crime in Philadelphia” and citing a specific case where an individual who had been released through *Harris* had committed two murders. “The madness must end,” he wrote.¹⁰⁷

After Shapiro approved the new order that March, civic and neighborhood groups intensified their campaign. They announced they were joining the DA’s office in appealing her order and secured a full page spread in the *Daily News* to express their grievances. Like the DA’s office, neighborhood representatives alleged that admissions moratorium and release orders fueled crime in their neighborhoods by freeing low-level drug dealers who turned their neighborhoods into “hellholes for residents.” “Locking the bad guys up at the ‘street level’ before trial is what...keeps neighborhoods peaceful,” president of Olney’s Campus Boulevard Corp William P. Miller contended. “We’re being laughed at and basically made a joke of,”

¹⁰⁵ Howard Goodman, “Plan to let inmates go is assailed,” *The Philadelphia Inquirer*, January 14th, 1991.

¹⁰⁶ Howard Goodman, “Plan to let inmates go is assailed,” *The Philadelphia Inquirer*, January 14th, 1991.

¹⁰⁷ Craig Snyder, “Criminal rights over citizen rights,” *The Philadelphia Inquirer*, February 14th, 1991.

Herman Wrice said “It hurts. We’ve got tears in our eyes and pain.” “They are not detained in any way,” the former president of West Mount Airy Neighbors, Marilyn Shane complained, “and they are not punished in anyway...they still live on the block.”¹⁰⁸

One article in the *Daily News*’s feature, entitled “Here’s what goes wrong,” offered a particularly lucid example of how local law enforcement, community groups, and local media cemented a degraded image of individuals freed by the prison population controls. The feature described George Parker who committed additional crimes in West Mount Airy Neighbors’ community after his release. Publishing his full name, police mugshot, and timeline of his arrests, the piece painted a damning picture of the prison cap as allowing “criminals” to commit more and more serious crimes, suggesting that their removal from the community through pretrial imprisonment was the only solution to the problem of community harm. Michael Woods of the West Mount Airy Neighbors recounted attending a sentencing hearing for Parker, who had burglarized two homes in his neighborhood. After Parker failed to appear for his hearing, he was issued bench warrants, but was not placed in jail until he was arrested for armed robbery. “If he had been in jail where he belonged, there wouldn’t have been any armed robberies,” Wood argued. “Every experience they had have since then [sentencing] has told them that the laws no teeth,” Marilyn Shane added.¹⁰⁹ The feature did include one short rebuttal from David Richman, who questioned the unsubstantiated claim that “prison population reduction measures” have anything to “do with the incidence of crime.”¹¹⁰ The overall impression from the feature, however, was that the prison cap and the court-ordered prison releases worsened crime in the

¹⁰⁸ Kathy Sheehan, “Prison cap: A system fails,” April 1st, 1991, *Philadelphia Daily News*.

¹⁰⁹ “Here’s what goes wrong,” April 1st, 1991, *Philadelphia Daily News*.

¹¹⁰ Kathy Sheehan, “Prison cap: A system fails,” April 1st, 1991, *Philadelphia Daily News*.

city, and that the new consent decree posed a threat to Philadelphians – a framing that would only intensify in years to come.

Here's what goes wrong

How many burglaries can you commit in your neighborhood before you're detained in jail and tried on your first heist?

If you're George Parker, four. Community activists and city prosecutors blame it on the city's prison cap, the two-year-old federal ruling that mandates release of most accused prisoners because the city jails are overflowing.

And they say criminals like Parker, who eventually pleaded guilty to four burglaries committed over seven months in 1989, not only hurt Philadelphia neighborhoods but sometimes hurt themselves.

By the time they get a taste of prison — at sentencing — it's too late for rehabilitation programs that might put them on a better path.

That's because those programs are offered to first- and second-time offenders *in jail awaiting trial*.

And under the prison cap, all but the most violent defendants are prohibited from even getting near the jail to await their trial.

Here's what usually happens, according to prosecutors and neighborhood crime watchers:

For the first offense, defendants are released under the prison cap if they have not already been offered low bail.

They commit another crime while awaiting a hearing on the first charge and are released again.

Meanwhile, they skip the hearing on the first charge. They dodge the hearing on the second charge. And they continue to duck hearings while committing more crimes until they're thrown in jail with three or more bench warrants for at least three different crimes.

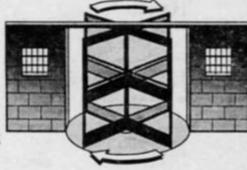
At that point, they are no longer eligible for pre-trial intervention programs and drug rehabilitation.

In other cases, the defendants may be offered some kind of pre-trial or conditional release if they

See WRONG Page 18

Here is how George Parker, who lived in the Mount Airy area before being sentenced to prison, stayed out of jail for so long.

- ▼ **Jan. 15, 1989:** In Case #1, arrested for burglary and related crimes against Church of the Atonement, Greene Street and Walnut Lane, Germantown. Bail set at \$2,000. Not jailed because of city prison cap mandated by federal judge. Released on own signature.
- ▼ **Jan. 22, 1989:** In Case #2, arrested on four counts of burglarizing the Green Tree School on Wayne Avenue. Bail set at \$12,000. Under prison cap, again released on own signature.
- ▼ **Jan. 24, 1989:** Fails to appear for preliminary hearing on Case #1. Bench warrant issued.
- ▼ **Jan. 31, 1989:** Arrested on bench warrant for Case #1. Released same day under prison cap.
- ▼ **Feb. 3, 1989:** Again fails to appear for hearing on Case #1. Another bench warrant issued.
- ▼ **Feb. 4, 1989:** In Case #3, arrested for burglary and related crimes against the St. Madeleine Sophie Church on Greene Street. Bail set at \$2,000. Sent to jail.
- ▼ **May 24, 1989:** Released under new prison cap order.
- ▼ **June 20, 1989:** Fails to appear for hearing on Case #1.
- ▼ **July 18, 1989:** Fails to appear on Case #2.
- ▼ **July 22, 1989:** Arrested on bench warrant for Case #1. Released same day under prison cap.
- ▼ **Aug. 25, 1989:** Fails to appear for hearing on Case #1.
- ▼ **Aug. 26, 1989:** In Case #4, arrested for burglary and related crimes against Pennsylvania School for the Deaf, School House Lane, Germantown. Released on own signature under prison cap. Bench warrant also lodged on Case #2. Given subpoena for hearing.
- ▼ **Sept. 5, 1989:** Fails to appear for hearing on Case #4.
- ▼ **Sept. 12, 1989:** Arrested on three bench warrants and sent back to prison.
- ▼ **Sept. 13, 1989:** Bail set at \$20,500. Not released.
- ▼ **Oct. 19, 1989:** Pleads guilty to all four burglaries.



PETER KOHAMA / DAILY NEWS

Figure 2: “Here’s What Goes Wrong” feature on George Parker and related timeline, Philadelphia Daily News

The DA’s office was just as furious with the new consent decree. Sarah Vandebraak, the DA’s Chief Counsel, called it “astounding,” as it would require the city to “literally...release every drug defendant and fugitive.”¹¹¹ In reality, the order called for the release of individuals imprisoned for the longest amount of time, on the lowest bails, who were charged with the least serious crimes, a fact that was reported but that did not have the same rhetorical impact as the

¹¹¹ Howard Goodman, “Judge raps D.A. over jail plan,” *The Philadelphia Inquirer*, February 27th, 1991.

DA's law-and-order hysteria.¹¹² Castille was so upset by the agreement, which he said he would "oppose...until the day I die," that his final act as the city's District Attorney was to appeal it.¹¹³ He said that he would "not pick out one inmate to be released" and dared Judge Shapiro to "hold me in contempt."¹¹⁴ His office also filed documents that purported to show increases in outstanding bench warrants, failure to appear rates, and rearrests after the *Harris* population controls went into place.¹¹⁵

But the DA's data ignored a *decline* in the city's major crimes rate and a *decrease* in bench warrants after the *Harris* controls were put into place. Moreover, his claims that the controls hindered the administration of justice crumbled against evidence of its heightened efficiency. "Far from being paralyzed by the orders of this court," Judge Shapiro wrote, the Court of Common Pleas reduced its backlog of cases by an "impressive 29%," which, by moving cases through the criminal legal system swiftly, contributed to rather than diminished public safety.¹¹⁶ Moreover, the DA repeatedly obscured the fact that, as plaintiffs' lawyer Philip Lebowitz said, many accused individuals "would get out anyway if they had the money to make bail."¹¹⁷

¹¹² Howard Goodman, "Judge raps D.A. over jail plan," *The Philadelphia Inquirer*, February 27th, 1991.

¹¹³ "Castille's last act as DA," *Philadelphia Daily News*, March 13th, 1991; Howard Goodman, "Federal judge approves agreement to reduce Phila. jail overcrowding," *The Philadelphia Inquirer*, March 12th, 1991.

¹¹⁴ Kitty Caparella, "DA Balks at Jail Release Order," *Philadelphia Daily News*, January 3rd, 1991.

¹¹⁵ *Harris v. Reeves*, 761 F. Supp. 382 (E.D. Pa. 1991); Howard Goodman, "Plan to let inmates go is assailed," *The Philadelphia Inquirer*, January 14th, 1991.

¹¹⁶ *Harris v. Reeves*, 761 F. Supp. 382 (E.D. Pa. 1991).

¹¹⁷ *Harris v. Reeves*, 761 F. Supp. 382 (E.D. Pa. 1991).

Harris' opponents also misrepresented the damning cases of those who committed crimes after their release. Take the case of the individual who committed two murders after being freed. As Jesse Kithcart pointed out, the person in question had been released pretrial because he had been arrested on a minor drug charge and did not have a documented history of violence, meaning that he was eligible for release. (If he had had a violent criminal history, he would have been ineligible.) "There was no way to predict his subsequent violent behavior," Kithcart wrote, adding that "if he had been able to post his own bail, he would have been awaiting trial on the street anyway."¹¹⁸ Thus, the argument that the *Harris* releases were endangering Philadelphians was clearly incorrect.

What's more, the DA and other anti-*Harris* opponents failed to mention the high number of *Harris* releases eventually cleared of their charges. BailCARE found that between 1987 and 1991, 54% of cases resulted in no conviction.¹¹⁹ In one instance, of the twenty-six defendants who the DA objected to releasing based on the violent nature of their crimes, only four (or 15%) were convicted, and none of these four defendants had been released by *Harris* controls. Another twelve had their cases disposed or were convicted of lesser offenses, while the other ten cases were still pending. According to Jeanne Bonney, the DA's office regularly claimed that a defendant had "been convicted of charges" when in fact they had not."¹²⁰

¹¹⁸ Jesse L. Kithcart, "Inside view on prison crowding," *The Philadelphia Inquirer*, March 4th, 1991.

¹¹⁹ *Harris v. Reeves*, 761 F. Supp. 382 (E.D. Pa. 1991), FN 18.

¹²⁰ Jeanne Bonney to Richard Gold, re: Response to District Attorney's Objections in the Nature of a Motion for Reconsideration with Respect to Certain Release Orders Filed on May 25th, 1990, May 11th, 1990, Folder 5: Correspondence - PPMU - 1990-1994, Box 8, Shapiro Papers, UPBLL.

Even individuals freed by *Harris* measures who were eventually convicted of criminal charges often avoided excessive captivity in the city's prisons. Anthony Fuller, for example, was accused of robbery of an individual at knife-point. His family was unable to pay his \$1500 bail but wanted to free him. He received a bail reduction from BailCARE because he had been in custody for over twenty-seven days (he was detained sixty-one days in total), had no prior convictions, and has no failures to appear on his record. Under BailCARE's supervision, he attended all court appearances and while he was convicted of robbery, theft, receiving stolen property, and criminal conspiracy, he was sentenced to time served. If not for the *Harris* bail reduction, he would have been in custody for 162 days, far exceeding what his conviction would have required.¹²¹ In another case, Thomas Xnos received a bail reduction after being imprisoned pre-trial for nearly three months on aggravated assault and robbery charges. He received supervision from BailCARE while awaiting trial, attended all court appearances and was convicted of misdemeanor assault after prosecutors dropped the robbery, aggravated assault, and attempted theft charges. Like Fuller, he was sentenced to time served. Had he not received reduced bail through *Harris*, he would have been confined in prison while awaiting trial for 115 additional days.¹²²

Most fundamentally, *Harris* slowed the number of people flooding the city's prisons and prevented over-policed, predominantly Black and brown working-class Philadelphians from enduring additional and potentially life-altering racialized state violence behind bars. Between 1987 and 1991 alone, nearly 3,300 people were released via BailCARE, along with thousands

¹²¹ Footnote 2, Case #10 Anthony Fuller, Folder 6: Correspondence - PPMU – 1990, Box 8, Shapiro Papers, UPBLL.

¹²² Footnote 2, Case #Thomas Xnos (Knox), Folder 6: Correspondence - PPMU – 1990, Box 8, Shapiro Papers, UPBLL.

others through other release mechanisms.¹²³ Despite the DA’s contentions, there was no firm evidence that, in the words of Goode’s solicitor Charisse Lillie, “the limited number of persons who in fact have been released...had a negative effect on the safety of the streets and homes of Philadelphia.”¹²⁴ The 1991 consent decree, if aggressively enforced, had the potential to increase those numbers, bringing the city into compliance with the court-ordered population limits and further normalizing a politics of decarceration in the city of Brotherly Love.

The Politics of Prisoner Release and the Rise of the Municipal Carceral State

The new consent decree was barely in place when the city experienced political changes that gave the anti-*Harris* movement momentum. The election of Mayor Ed Rendell and the appointment of District Attorney Lynne Abraham—two exceedingly tough-on-crime prosecutors who viewed Mayor Goode’s cooperation with the *Harris* population controls a grave mistake—placed the city and the DA’s office in alignment against *Harris*, thereby elevating efforts to malign the reputation of the prison population controls. With the eager collaboration of local media, Rendell and Abraham escalated damaging tough-on-crime portrayals of the prison population controls. As a result, pressure on Judge Shapiro to eliminate them increased precipitously.

Abraham became District Attorney in April 1991 after Ronald Castille resigned to run for mayor. Selected by the Common Pleas Court’s Board of Judges to fill the interim role, she was the first woman to serve as the city’s DA. Known for being a “tough cookie,” “anti-criminal,”

¹²³ Howard Goodman, “The forces behind the plan to free more inmates from Phila. prisons,” *The Philadelphia Inquirer*, January 4th, 1991.

¹²⁴ Paul Nussbaum, “Crime and Punishment,” *The Philadelphia Inquirer*, May 5th, 1991.

and “prosecution oriented,” Abraham had a long career in the Philadelphia criminal legal system. She became an assistant district attorney in 1967 and served in the homicide division until 1972 when Mayor Frank Rizzo named her – at just 31 years old -- as head of the Redevelopment Authority. After 15 months, she was fired for “refusing...to play the mayor’s patronage game.” In 1975, she became the first woman in the city to win election as a Municipal Court Judge. In 1979, she won election to the Common Pleas Court, where she handled some of the city’s most high-profile and politically controversial criminal cases.¹²⁵ Her reputation as a thoroughly tough-on-crime, anti-defense figure was widely known. “Trying a case in her courtroom is like going against two district attorneys,” noted Chief Defender Benjamin Lerner in 1983.¹²⁶ As DA, her reputation as a no-nonsense, law and order hawk grew. In 1995, she was named the nation’s “deadliest DA” for the frequency with which her office pursued death penalty sentences.¹²⁷

Rendell’s election provided further traction for the anti-*Harris* movement. Like Abraham, Rendell came into office with an extensive background in the Philadelphia criminal legal system and in local Democratic Party machine politics. As discussed in Chapter 1, Rendell worked tirelessly as DA to undermine court orders related to the *Jackson v. Hendrick* settlement. He was responsible for lobbying the Pennsylvania Supreme court to stay the Common Pleas Court’s attempt to order prison releases as part of the *Jackson* court and for pushing the state legislature

¹²⁵ Don Russell, “A no-nonsense jurist who ‘could not be bought,’ April 25th, 1991, *Philadelphia Daily News*; Joseph R. Daughen, “Judges’ verdict: Abraham new DA,” April 25th, 1991, *Philadelphia Daily News*; Susan Caba, “Abraham wins close DA vote,” April 25th, 1991, *The Philadelphia Inquirer*; Henry Goldman, “New DA’s no-nonsense reputation,” April 25th, 1991, *The Philadelphia Inquirer*.

¹²⁶ Henry Goldman, “New DA’s no-nonsense reputation,” April 25th, 1991, *The Philadelphia Inquirer*.

¹²⁷ Tina Rosenberg, “The Deadliest DA,” July 16th, 1995, *The New York Times*.

to remove a state law that required the single-celling of prisoners. As the *Harris* case began to heat up towards the end of his tenure as District Attorney, Rendell testified in support of city prosecutor Sarah Vandenbraak's motion for the District Attorney's office to intervene in the case.¹²⁸

Rendell made his opposition to the *Harris* consent decree a central feature of his mayoral campaign. He regularly featured prison overcrowding and his opposition to the consent decree in his campaign advertisements, running TV ads that featured "headlines and images about prison overcrowding" and voice overs of Rendell "denounc[ing] the court settlement that caps the city's prison population."¹²⁹ That June, he teamed up with Abraham at a joint press conference to urge Mayor Goode to "disavow the city's consent to a prisoner release program" due to a recent Supreme Court ruling, *Wilson v. Seiter*, that they believed gave him the power to do so.¹³⁰ They claimed that the "prison population cap and prisoner release program" were responsible for "devastating neighborhoods already damaged by drug crime and eviscerating our criminal justice system." Stating that the city "should never have agreed to the prison cap of 3,750 in the first

¹²⁸ Ross Sandler and David Schoenbrod, *Democracy by Decree: What Happens When Courts Run Government* (New Haven: Yale University Press, 2003), 187.

¹²⁹ Cynthia Burton, "It's the mayor's race ad nauseam," April 22nd, 1991, *Philadelphia Daily News*; Dave Davies, "34-point Rendell lead is no big thing, Egan says," September 11th, 1991, *Philadelphia Daily News*.

¹³⁰ *Wilson v. Seiter* constricted prisoners' rights by making it more difficult for prisoners to procure favorable rulings and remedial action against overcrowded and abusive prison conditions by raising the standards for proving the unconstitutionality of prisons. It did so by ruling that prisoners who sought to challenge the constitutionality of prison conditions had to show that conditions were so harmful that they violated the 8th amendment, *and* that these conditions had resulted from "deliberate indifference" of prison authorities. Because there had never been a ruling of unconstitutionality in *Harris v. Philadelphia*, and because of the now more rigorous standard against which the city's overcrowded prison system had to be judged by the courts, Rendell and Abraham believed that this new Supreme Court decision gave the city leverage to disavow the consent decree.

place,” Rendell declared “there is no good basis in law for saying that multi-celling of prisoners is, by itself unconstitutional.” Railing against the doubling of “outstanding bench warrants” Rendell claimed that the prison admissions moratorium allowed for “suspects arrested for drug dealing” to go “back on the streets almost immediately, since there is simply no space for them in jail under these constraints. “We simply must not permit the releases to continue, much less to expand,” Rendell said. “They paralyze the criminal justice system and present a clear danger to the safety of all Philadelphians.”¹³¹

As he was sworn in, Rendell railed against the “prison cap,” which he called “a disaster.” “All it’s done is put drug dealers and dangerous criminals back on the streets,” he said. “The criminal justice system has collapsed because of it.” On his first day in office, he sent a petition to Judge Shapiro requesting the “cap on the city’s inmate population” be dropped, “charging that it has loosed dangerous criminals upon the city.”¹³²

Shapiro declined to hold a hearing on the matter. But Rendell and Abrahams’ campaign was only beginning. First, Rendell reached out to President George Bush’s Attorney General, William P. Barr, about intervening in the case. That was a strategic move given that Barr was particularly eager to crush prisoner rights and to relieve jurisdictions from the “undue constraints of protracted prison litigation,” an approach he described in detail in a DOJ report entitled “The

¹³¹ “Rendell and Abraham Call on Goode to Disavow City’s Consent to Prisoner Releases in Light of Recent Supreme Court Ruling,” Rendell for Mayor Press Release, June 27th, 1991, Folder 3, Box 156, Series 1.a.1 Court of Common Pleas – Personal and professional development, Nelson Diaz Papers, The Historical Society of Pennsylvania (HSP); Doreen Carvajal, “Is Rendell getting an endorsement from the DA?,” June 28th, 1991, *The Philadelphia Inquirer*.

¹³² Paul Maryniak and Jim Smith, “First things first – he petitions judge to doff the prisons’ cap,” January 8th, 1992; Marc Duvoisin and Howard Goodman “Rendell wads in, files to end prisoner limits,” January 8th, 1992, *Philadelphia Inquirer*.

Case for More Incarceration.”¹³³ Barr had also recently announced that the DOJ would reverse its policy of assisting with lawsuits that challenged states’ overcrowded prisons and instead offer support to state and local efforts to end federal court oversight of those prisons.¹³⁴

That April, Barr joined Abraham and Rendell to announce the DOJ’s filing of a court brief attacking the prison admissions moratorium. At the dedication of a new victims’ assistance center in the Northeast, Barr declared that the moratorium “wreak[ed] havoc with the public safety and victimize[ed] innocent Philadelphians,” stating “it should be moved immediately.” “How can you stand here and listen to the statistics...and not say: What’s going on?” Rendell said, in a dig at Shapiro, “Is this Alice in Wonderland? Is the Mad Hatter in charge?” “This is a kind of vicious use of statistics,” David Richman told the *Inquirer* in reply, “because it implies there is a relationship between this release mechanism and incidence of crime in Philadelphia, and there is absolutely no such relationship.”¹³⁵ In the end, Barr’s court brief did not have much bearing on the case. But his efforts to back Rendell and Abraham added political heft to their efforts to denigrate the *Harris* releases.¹³⁶

¹³³ Paul Maryniak, “Feds may help Ed fight cap on number in jails,” January 17th, 1992, *Philadelphia Daily News*. As US Attorney General, William Barr frequently railed against court orders that restricted prison populations due to overcrowding and vigorously defended mass incarceration. In one Justice Department report entitled “The Case for More Incarceration,” Barr contended that the nation was “not over-incarcerating” and that the problem of prison overcrowding should be remedied through a massive expansion of prison capacity, not decarceration. See William Barr, *The Case for More Incarceration* (Washington, DC: US Department of Justice, 1992); William Barr, *Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice* (Washington, DC: US Department of Justice, 1992).

¹³⁴ James Rowley, “Attorney General says US will help states fight limits on inmates,” January 15th, 1992, *Associated Press*; “US Will Change Policy on Court curbs for Prisons,” January 15th, 1992, *Wall Street Journal*.

¹³⁵ Howard Goodman, “US Sides with city on jail cap,” April 24th, 1992, *The Philadelphia Inquirer*.

¹³⁶ Howard Goodman, “US Sides with city on jail cap,” April 24th, 1992, *The Philadelphia Inquirer*.

More consequentially, Rendell began to systematically weaken the Prison Population Management Unit and BailCARE, both of which had been managed by the People's Bail Fund through a city contract with the church-based organization. Under the direction of PBF's Executive Director Jeanne Bonney, the PPMU and BailCARE had been extremely effective at "finding and arranging the freedom of prisoners," so much so that the city's District Attorney's office derisively referred to her as "Let 'em go Bonney."¹³⁷ Under the new decree Bonney and her staff had helped reduce the prison population from 5,294 in October 1991 to 4,478 by June 1992 – still nowhere near the 3,750 limit, but lower than the city's prison population had been in years. "I simply made the rules work for the inmates, as well as for the city," Bonney reflected. "I tried to ensure there was equal access to justice within the system."¹³⁸ But in 1992, Rendell reduced PBF's contracts. The executive board of the PBF then removed Bonney as the executive director and reassigned her to "special projects." Bonney and others who chose to remain anonymous believed that the move stemmed from the "city's determination under Mayor Rendell to absorb the functions of the People's Bail Fund – responsibilities that had been ceded under the Goode administration." Indeed, the PBF board had paired the announcement about Bonney's reassignment with news that they would not renew its contract with the city after it expired at the end of 1992, paving the way for the city to take over PPMU and BailCARE.¹³⁹

¹³⁷ Susan Caba, "Advocate loses key to open prison doors," *The Philadelphia Inquirer*, November 20th, 1992.

¹³⁸ Susan Caba, "Phila. prisoners lose an advocate in transfer at People's Bail Fund," *The Philadelphia Inquirer*, November 7th, 1992.

¹³⁹ Susan Caba, "Advocate loses key to open prison doors," *The Philadelphia Inquirer*, November 20th, 1992.

Rendell moved quickly to replace Bonney and the PBF with one of his own. Dianne Granlund had worked in the DA's office for thirteen years, including under Rendell. As the city's new director of criminal justice population management, Granlund took over Bonney's responsibilities of monitoring the city's prison population in accordance with the federal consent decree.¹⁴⁰ Her placement in this position represented a clear attempt by to gain more control over the city's pre-trial release practices.

Rendell also directed his administration to engage in a calculated campaign of non- or slow compliance with *Harris'* court orders. Throughout 1993, Judge Shapiro fined the city hundreds of thousands of dollars for its refusals to send eligible pretrial detainees to drug and alcohol treatment facilities, its delay in submitting a court-ordered audit of its prison system, and for unilaterally making changes that required court approval, such as altering the way pre-trial prisoners were "designated for release on bail."¹⁴¹ Rendell flatly rejected the court's fines, stating that he'd "go to jail rather than let the federal judge...force the city to spend more on its jails than taxpayers can afford."¹⁴² He claimed that the city was "doing all we can to have more space," but that there were "just too many people committing too many serious crimes."¹⁴³ The city's violation of Judge Shapiro's orders was also strategic.¹⁴⁴ Rendell hoped that the federal court's fines would "give the city a chance to ask a higher court to toss out the cap."¹⁴⁵

¹⁴⁰ Linda Loyd, "City names jail system coordinator," *The Philadelphia Inquirer*, April 3rd, 1993.

¹⁴¹ Jim Smith, "City is fined 125G in prison-crowding," *Philadelphia Daily News*, June 17th, 1993; Paul Mayrniak, "I'll let them put me in jail," *Philadelphia Daily News*, October 8th, 1993.

¹⁴² Paul Mayrniak, "I'll let them put me in jail," *Philadelphia Daily News*, October 8th, 1993.

¹⁴³ Paul Mayrniak, "I'll let them put me in jail," *Philadelphia Daily News*, October 8th, 1993.

¹⁴⁴ Paul Mayrniak, "I'll let them put me in jail," *Philadelphia Daily News*, October 8th, 1993.

¹⁴⁵ Paul Maryniak, "Court's rebuff welcomed," *Philadelphia Daily News*, October 30th, 1993.

At the same time, Rendell steered the *Harris* decree towards new prison construction. The agreement had always contained orders to build new prison capacity. But its original vision focused on reducing the city's pretrial imprisonment. Mayor Goode had not been philosophically committed to avoiding new prison construction, but he had thrown a wrench into plans to build a new prison, in part because of the high costs of construction and his desire for the courts and other criminal justice agencies to "reform" themselves first.¹⁴⁶ In 1991, Goode finally committed to building a 1,000-bed prison by 1994 in order to remain in compliance with the *Harris* consent decree.¹⁴⁷ Rendell stated that his administration was "committed not only to meet, but to exceed the Court-ordered requirements with respect to construction of the new facilities," even as it challenged "the artificial population cap, the prison admissions moratorium, and the release mechanism." In the city's court-ordered ten-year plan for their prison system, Rendell's administration committed to replacing the House of Correction with a 1,250-bed minimum security prison, substantially expanding the Detention Center, and replacing Holmesburg with a 2,016-bed prison.¹⁴⁸

Meanwhile, a barrage of negative press about the population controls saturated local and national news outlets. Since the beginning of the *Harris* litigation, Philadelphia media had assisted in generating panic about prisoner releases. After the 1991 consent decree, its coverage

¹⁴⁶ Thomas Turcol, "Justice center on hold," *The Philadelphia Inquirer*, January 15th, 1989; Joseph Grace and Dan Lovely, "\$30M in hole, Justice site dies," *Philadelphia Daily News*, February 23rd, 1989; Thomas Turcol, "City seeks to put off new prison," *The Philadelphia Inquirer*, September 19th, 1989; Mark McDonald, "City Mulls building a prison," *Philadelphia Daily News*, February 14th, 1990; Joseph Daughen and Anthony Twyman, "Goode Tells Audience: 'Not One Dime on New Jail Cells,'" *Philadelphia Daily News*, March 7th, 1990;

¹⁴⁷ Paul Maryniak, "City Sets Dates for Prison, Justice Center," *Philadelphia Daily News*, January 3rd, 1991; Thomas Turcol, "Council panel backs Goode on prison and court house," *The Philadelphia Inquirer*, June 19th, 1991.

¹⁴⁸ "Phila. releases plan for prisons," *The Philadelphia Inquirer*, January 18th, 1994.

of the prison population controls became more prevalent, targeted, and hostile. Journalists frequently gave the DA's office, antagonistic judges, and other law enforcement officials a platform to frame the controls as dangerous to the public. One lengthy profile of the effect of the *Harris* controls described a "justice system full of no-shows and frustration" that had "virtually decriminalized burglary, theft, assault, and other offenses." Opening with a scene at the Philadelphia Police Department's District 9 station courtroom, journalist Paul Nussbaum described a judge faced with multiple defendants who failed to show up for their hearings and who were "likely to [be] release[d] without bail and asked to report to court later." Another judge claimed that it was primarily individuals released "under the terms of the moratorium" who did not show up for their hearings. He made a point of expressing his disapproval while on the bench, stating "this is yet another case in which the defendant was released without bail by a federal judge down at Sixth and Market because of jail overcrowding." Nussbaum reported "neighborhood horror stories of crime and no punishment," discussing particular individuals who had been arrested and released multiple times and quoting police officers who claimed that suspects "laughed" as they were "arrested," adding that "the defendants know what's going on." A prosecutor with the city's District Attorney's Dangerous Drug Offender Unit told Nussbaum that "it is debilitating to law enforcement personnel and the community in general to see that previously arrested defendants are almost immediately back on the street dealing drugs, having faced the inconvenience of but a short time in custody." "This is where justice takes a walk," Nussbaum contended.¹⁴⁹

¹⁴⁹ Paul Nussbaum, "Crime and Punishment," *The Philadelphia Inquirer*, May 5th, 1991. See also, David Zucchio, "As city jails overflow, drug problems fester," *The Philadelphia Inquirer*, April 10th, 1992; Howard Goodman, "Prison cap boosts court no-shows, study says," *The Philadelphia Inquirer*, April 25th, 1992.

At a time when popular concern over drugs and crime were ascendant, a dominant media narrative emerged that the prison cap “essentially force[d] bail commissioners to release drug dealers,” who then evaded prosecution by refusing to show up for court hearings.¹⁵⁰ One *Philadelphia Daily News* report opened with a profile of Calvin White, who did not appear in court after being arrested and charged with possession and sale of crack cocaine. Finding that he had skipped eleven court dates after four arrests, the report presented White as the embodiment of a “deeply flawed drug-fighting strategy, exacerbated by a prison cap that all but assures a defendant’s release soon after arrest.” The cap’s “biggest victims,” the report claimed, were “society’s most innocent members – the children who must live amid rampant drug dealing and the violence and neglect it spawns.” Quoting DA Abraham, the report suggested that the prison population controls were “the worst thing that has ever happened to the city.” Another prosecutor with the DA’s office repeated the claim that “dealers know they can avoid jail” if they carry certain amounts of drugs, which allegedly made Philadelphia “a port of choice for drug smugglers.” They also included statistics provided by the District Attorney’s Office that suggested high numbers of *Harris* releases failed to appear in court and were frequently rearrested for new crimes after their release. With multiple mugshots of individuals released by *Harris* – the majority of whom were Black – the article helped recriminalize accused individuals.¹⁵¹ Whereas the *Harris* case suggested that pre-trial detainees were subjected to overcrowded and inhumane prison conditions – and were thus deserving of public sympathy and state assistance – the *Daily News* and other articles covering the consent decree sought to

¹⁵⁰ Edward Moran and Barbara Laker, “Aching Kids, Helpless Grownups,” *Philadelphia Daily News*, September 7th, 1994.

¹⁵¹ Edward Moran and Barbara Laker, “Street Legal: What Keeps Drug Suspects on the Loose,” *Philadelphia Daily News*, September 9th, 1994.

reestablish these individuals as inherently threatening, undeserving of constitutional protections, and unworthy of non-carceral forms of state intervention or support.¹⁵²

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The city's prison cap has had the net effect of decriminalizing street-level drug dealing

Street Legal

WHAT KEEPS DRUG SUSPECTS *on the LOOSE*

by Edward Moran and Barbara Laker
Daily News Staff Writers

Calvin White knows what to do when his day in court arrives. He doesn't show up. It's an easy choice. If he does come to court, he stands a chance of being tried, convicted and jailed on charges of possession and sale of crack cocaine. Even if he were arrested again for drug dealing — or car theft, a weaponless robbery or gun possession — White would likely be released within hours because of the city's prison cap. As long as he stays out of court, he could remain free for years. Since 1991 White, who also goes by the name Calvin Gatewood, has been arrested four times and released three. The 24-year-old has skipped 11 court dates.

In his fourth arrest Jan. 6 on drug-dealing charges, he was held at the Detention Center and finally dragged into a courtroom. There, the three previous cases were dismissed because the witnesses didn't show up. Then the Philadelphia criminal justice system released White and ordered him to reappear Feb. 7.

He hasn't been seen since.

The case of one street-level drug suspect who eludes justice normally wouldn't be alarming in a city where thousands of dealers are arrested every year. But in Philadelphia, police, prosecutors and families living in drug-plagued neighborhoods are deeply concerned, because White's case is not unusual. White and other suspected dealers —

whose numbers swell with each passing year — are the product of a deeply flawed drug-fighting strategy, exacerbated by a prison cap that all but assures a defendant's release soon after arrest.

The 8-year-old consent decree, agreed to by the city and inmate plaintiffs to keep prisons from bursting at the seams, has had the net effect of decriminalizing street-level dealing.

Of 9,131 narcotics arrests made by the Police Department last year, bail was posted in only 220 cases, 3,382, or 37 percent of the suspects had drug cases pending.

Today, the average dealer collared by Philadelphia police knows he can be back on the streets within hours if he keeps the amount of drugs he carries within the generous limits established under the cap.

And he can dodge jail indefinitely using a tactical defense perfected by savvy defendants: Fail to appear in court for a follow-up hearing, and chances are the hearing will be canceled and witnesses sent home. Then surrender later that day or the next — you're re-arrested and released again. Police and the district attorney's of-



OUT AND ABOUT: Calvin White, a/k/a Gatewood, is 11-time court no-show

Children & Violence THE REIGN OF PHOENIX
Staff writers Edward Moran and Barbara Laker spent nearly a month accompanying narcotics officers on raids, principally in North and West Philadelphia. Their conclusion: The drug war as it's being fought appears doomed to fail. Ultimately, thousands of unwitting children — generations, in fact — could end up the most tragic victims.

DAY 2: LOSING BATTLE
The third round of charges and users, along with deep flaws in the system, thwart the front-line fighters.

Figure 3: Edward Moran and Barbara Laker, “Street Legal,” September 9th, 1994, *Philadelphia Daily News*.

Perhaps the most damning press regarding the *Harris* population controls dealt with individuals who had been allegedly freed by *Harris* controls who then committed murders. In the case of a paratransit driver who, while driving under the influence, got in a four-vehicle crash that resulted in a charge of vehicular homicide Special Master Babcock claimed his prior release

¹⁵² See, for example, Dan Geringer, “The Walking Rap Sheet,” April 2nd, 1990, *Philadelphia Daily News*; Jim Smith, “Jones won’t pass ‘go’ this time,” *Philadelphia Daily News*, February 1st, 1992; Suzette Parmley, “Prison cap opened a revolving door for repeat suspect,” *The Philadelphia Inquirer*, August 29th, 1994; Edward Moran and Barbara Laker, “Jail’s revolving door,” *Philadelphia Daily News*, April 29th, 1994; Edward Moran and Barbara Laker, “Sergeant St. drug suspects released,” *Philadelphia Daily News*, May 4th, 1994; Jack McGuire, “Justice goes out the other door,” *Philadelphia Daily News*, August 9th, 1994; Jack McGuire, “Homeless man held in thefts,” *Philadelphia Daily News*, August 29th, 1994; Dave Racher, “Freed under prison cap, he shot 2 cops last year,” *Philadelphia Daily News*, September 17th, 1994; Dave Racher, “Man gets 20 years for shooting 2 cops,” *Philadelphia Daily News*, December 3rd, 1994.

on drunk driving charges was a “bookkeeping mistake.”¹⁵³ But the DA’s office aggressively pushed the claim that, had it not been for the “cap,” the driver “would have been in jail.”¹⁵⁴ In an even more sensational case, a Common Pleas Judge Francis Biunno claimed that Edward Bracy, convicted of killing Philadelphia Police Officer Danny Boyle, had been recently freed by *Harris* controls. Initially, no one made a connection between Bracy and the admissions moratorium. But at Bracy’s sentencing hearing, Common Pleas Judge Francis A. Biunno alleged that he had been released by the *Harris* mechanism after he’d been arrested on a car theft charge. “Then he failed to appear,” Biunno continued, explaining that he was again arrested and allowed to sign his own bail in September 1990. When Boyle was killed, “a bench warrant was outstanding.” “I just want you to appreciate the problems and tragedies that take place because of the alleged overcrowding in the prisons,” Biunno added, noting that he “just had to get that off my chest.”¹⁵⁵ Judge Shapiro denied having signed Bracy’s release order.¹⁵⁶ But with the apparent connection between the prison admissions moratorium and Bracy’s killing of Danny Boyle –presented in the news as

¹⁵³ Frank Dougherty, “Snafu freed ‘a live one,” *Philadelphia Daily News*, August 11th, 1994; Paul Maryniak, “Jail cap may not have affected accused killer,” *Philadelphia Daily News*, August 12th, 1994.

¹⁵⁴ Frank Dougherty, “Snafu freed ‘a live one,” *Philadelphia Daily News*, August 11th, 1994; Edward Moran and Barbara Laker, “Street Legal: What Keeps Drug Suspects on the Loose,” *Philadelphia Daily News*, September 9th, 1994; Frank Dougherty, “Cap freed DUI suspect,” *Philadelphia Daily News*, August 10th, 1994.

¹⁵⁵ Dave Racher, “Cop-killer sentenced to death,” March 5th, 1992, *Philadelphia Daily News*; Vanessa Williams, “In tearful session, policeman’s killer is sentenced to die,” March 5th, 1992, *The Philadelphia Inquirer*.

¹⁵⁶ See Norma Shapiro, interview by Roberta D. Liebenberg, February 5th, 2008, transcript, American Bar Association Senior Lawyers Division Women Trailblazers in the Law. David Richman also stated that he issued a discovery request asking Abraham to back up their charges that Bracy had been released by the *Harris* court order release mechanism, but notes that he never heard a response. He added that he did not believe he ever found out one way or another, but that he was “reasonably confident that [Bracy] would have been out of the street regardless of *Harris*” by making bail. See David Richman, interview by Charlotte Rosen, October 22nd, 2021.

irrefutable fact – the stage had been set for Boyle’s death to become a rallying cry for anti-*Harris* proponents.

The paratransit driver case caught the attention of city councilwoman Joan Krajewski, who, demanded that Judge Shapiro testify at city council, threatening to subpoena her if she refused to attend.¹⁵⁷ A month later, Krajewski held a high-profile hearing on the prison cap that featured seventeen witnesses, ten of them crime victims. Rendell dramatically gave away his spot as first witness to Danny Boyle’s father, Patrick Boyle, a Philadelphia police detective who gave a tearful testimony about the “pain and frustration caused by the prison cap.” “Yes, the prison cap works,” he told the council. “It works for the criminals who know the system better than those who administer the system.”¹⁵⁸ Bail Commissioner Timothy O’Brien also testified that the controls enabled criminals who he was forced to release. Assistant District Attorney Sarah Vandenbraak dramatically “flashed a fresh release order” of a man she characterized as a “professional drug dealer” who’d she said had been given a “back door ticket” to the streets.” Krajewski called Judge Shapiro “an idiot.”¹⁵⁹ Notably, “neither lawyers in the federal overcrowding case nor inmates were invited to speak,” and Judge Shapiro declined to attend.¹⁶⁰

The most vicious media campaign against the *Harris* consent decree, however, occurred in *Philadelphia Daily News* editor Zachary Stahlberg’s “Editor’s Notes” and a series he ran called “Back on the Street.” Stahlberg first mentioned “Judge Shapiro’s insane prison cap” in his March 7th, 1994, Editor’s Note about an apparent uptick in street violence against delivery

¹⁵⁷ Paul Maryniak, “Krajewski rips ‘cap,” *Philadelphia Daily News*, August 11th, 1994.

¹⁵⁸ Paul Maryniak, “Prison cap’s victims give voice to anger,” *Philadelphia Daily News*, September 29th, 1994.

¹⁵⁹ Paul Maryniak, “Prison cap a dunce cap?” *Philadelphia Daily News*, September 29th, 1994.

¹⁶⁰ Paul Maryniak, “Cap on the line,” *Philadelphia Daily News*, September 28th, 1994.

people and drivers. “Good police work has already bagged two of the three punks who allegedly ambushed John Paul Jones,” Stahlberg wrote, referring to the individuals who “jumped” a *Daily News* delivery driver, “but you know there’s little chance they will get the ass-kicking they deserve.”¹⁶¹ In the following months, Stahlberg devoted ten more Editor’s Notes to denigrating the prison population controls.¹⁶² He began his June 1994 note, for example, by repeating the District Attorney’s office claim that “8,000 criminal suspects were put back on the streets of Philadelphia because of the prison cap,” which resulted in “77 more murders, 851 burglaries, 1,102 robberies, and 1,993 drug offenses.” Stahlberg’s folksy prose and “everyman” anger pushed the conversation around prison population controls beyond the purview of law enforcement, the courts, and lawyers and transformed the *Harris* prison overcrowding case into a pressing issue relevant to the safety of all law-abiding Philadelphians. He frequently referenced the Danny Boyle case, which he blamed on a “drugged-up car thief who shouldn’t have been loose.”¹⁶³ “Norma Shapiro is the creative director of the Philadelphia Theater of the Absurd,” Stahlberg wrote. In another Note, he called her “Public Enemy Number 1.”¹⁶⁴

That September, Stahlberg inaugurated a new series for the paper, which further escalated the public hysteria and racialized crime panic about the *Harris* releases. He got the idea for the column from a police officer who gave him a picture of Raynard Graves who, the officer and Stahlberg claimed, had been erroneously released by the *Harris* controls. Stahlberg printed

¹⁶¹ Zachary Stahlberg, “Editor’s Note,” March 7th, 1994, *Philadelphia Daily News*.

¹⁶² Zachary Stahlberg, “Editor’s Note,” March 7th, 1994; “Editor’s Note,” June 20th, 1994; “Editor’s Note,” July 11th, 1994; “Editor’s Note,” August 22nd, 1994; “Editor’s Note,” September 6th, 1994; “Editor’s Note,” September 19th, 1994; “Editor’s Note,” October 3rd, 1994; “Editor’s Note,” November 17th, 1994; “Editor’s Note,” February 6th, 1995; “Editor’s Note,” July 31st, 1995, *Philadelphia Daily News*

¹⁶³ Zachary Stahlberg, “Editor’s Note,” July 11th, 1994, *Philadelphia Daily News*.

¹⁶⁴ Zachary Stahlberg, “Editor’s Note,” June 20th, 1994, *Philadelphia Daily News*.

Graves' mugshot and wrote a profile about him in one of his Editor's Notes, portraying him as a dangerous "career" criminal, despite conceding at the end that "nobody can be exactly sure how much the prison cap had to do with his ability to stay on the street."¹⁶⁵ The following week, Stahlberg began publishing the mugshots and profiles of individuals released by the *Harris* controls, calling the feature "Back on the Street." With fifty-three entries between 1994 and 1995, "Back on the Streets" not only included the subject's name, address, mugshot, prior arrests, failures to appear, and prior releases by *Harris* release mechanisms, but also reported the number of suspects released under the cap during the previous week. Reflecting both the systemic racism that placed so many Black people in Philadelphia prisons and the anti-Black undertones of city's tough-on-crime campaign against *Harris*, Black releasees made up 59 % of the series' subjects despite African Americans constituting 39% of the city's population. White people (both men and women) were featured in 22% of the series profiles – just 12 out of 53 features – despite making up 54% of the city's population.¹⁶⁶

¹⁶⁵ Zachary Stahlberg, "Editor's note," *Philadelphia Daily News*, September 19th, 1994.

¹⁶⁶ "Back on the Street," September 28th, 1994; October 3rd, 1994; October 17th, 1994; November 8th, 1994; November 14th, 1994; November 21st, 1994; November 28th, 1994; December 5th, 1994; December 12th, 1994; December 19th, 1994; December 27th, 1994; January 3rd, 1995; January 10th, 1995; January 16th, 1995; January 23rd, 1995; January 30th, 1995; February 4th, 1995; February 13th, 1995; February 20th, 1995; February 27th, 1995; March 6th, 1995; March 13th, 1995; March 20th, 1995; March 27th, 1995; April 3rd, 1995; April 10th, 1995; April 17th, 1995; April 24th, 1995; May 1st, 1995; May 8th, 1995; May 15th, 1995; May 22nd, 1995; May 30th, 1995; June 5th, 1995; June 12th, 1995; June 19th, 1995; June 27th, 1995; July 3rd, 1995; July 11th, 1995; July 16th, 1995; July 24th, 1995; July 31st, 1995; August 7th, 1995; August 14th, 1995; August 21st, 1995; August 28th, 1995; September 5th, 1995; September 11th, 1995; September 18th, 1995; September 25th, 1995; October 2nd, 1995; October 16th, 1995; October 24th, 1995, *Philadelphia Daily News*. Because the Back on the Street series did not allow those featured in the series to indicate their race, the analysis outlined above is limited to the researcher's best guess of the racial identification of those included. To discern the race of those featured, I analyzed both the mugshot picture and the name of the individual to discern their likely racial identification. There were three men and one women who appear to be Afro-Latinx individuals. For the purposes of understanding the racial disparity of the Back on the Street feature, I have

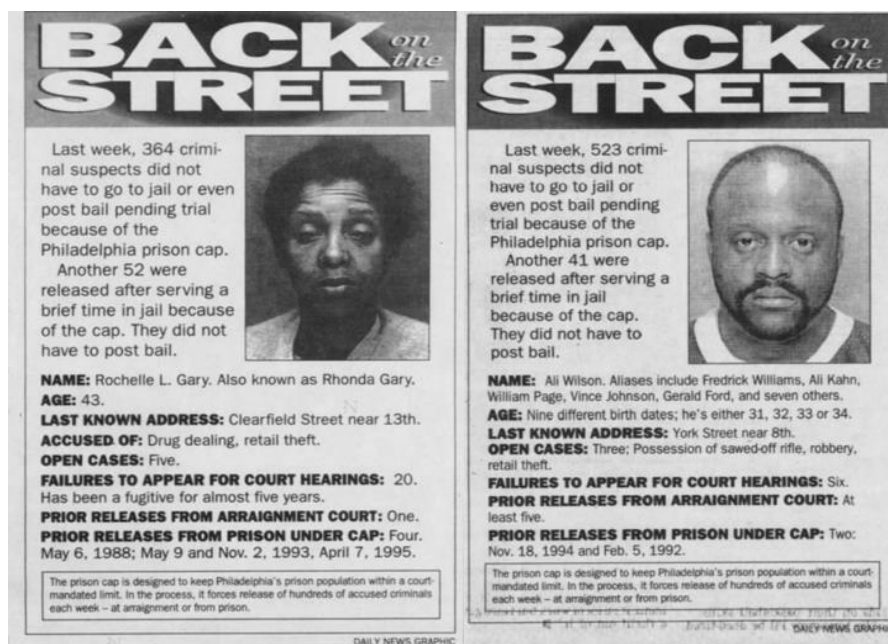


Figure 4: Back on the Street, May 8th, 1995, August 14th, 1995, *Philadelphia Daily News*

It is undeniable that some individuals released by the *Harris* controls committed new crimes, and some of these crimes were indeed violent and tragic. Further, a study conducted by the Crime and Justice Research Institute, a local research organization contracted with the city to recommend alternatives to incarceration, found that after the 1991 consent decree went into effect, the city experienced an increase in failure-to-appear rates.¹⁶⁷ But the claims made by anti-*Harris* forces that the *Harris* mechanisms were singularly to blame crumble upon closer scrutiny. For one, the rise in bench warrants might have had something to do with the city's dissolution of their contract with the People's Bail Fund, whose management of the release mechanisms resulted in very low failure-to-appear rates and often connected accused individuals with services and support. Special Master Babcock implicitly made this point when he told the *Philadelphia*

included these individuals in my calculations of the Black men and Black women featured in the series. Individuals included in the Non-Black Latinx categories had names and surnames that suggested Latinx heritages, but who, based on their mugshot photos, appeared to be non-Black.¹⁶⁷ Howard Goodman, "Prison cap boosts court no-shows, study says," *The Philadelphia Inquirer*, April 25th, 1992.

Daily News that the city could actually ta “make it easier for the court to keep track” of released pre-trial detainees, which suggested that failure to appear rates were the product of the state’s failure to shepherd accused individuals through the criminal legal process.¹⁶⁸ Moreover, as pro-*Harris* proponents had long argued, the contention that the prison cap alone determined the intensity of crime in the city was illogical. “The fact is that if the prison cap...were lifted today, crime would not be significantly reduced,” wrote Black columnist Claude Lewis. “Almost nothing serious is being done to dissuade criminal behavior” in the city.¹⁶⁹

The anti-*Harris* hysteria also obscured the fact that the city could elect to address problems of crime and drug use through the departments that Mayor Rendell was defunding or privatizing.¹⁷⁰ Rendell laid off thousands of government workers, crushed their unions, and prioritized Center City development and partnerships with business and nonprofit development corporations while imposing an austerity regime on the rest of the city government.¹⁷¹ As the editorial board of Philadelphia’s largest Black newspaper *The Philadelphia Tribune* wrote, the District Attorney and *The Daily News* attacks on the consent decree offered a “convenient out” for political leaders who appeared to always “find funds for Center City development” but not

¹⁶⁸ Paul Maryniak, “A jail dilemma, bar none,” *Philadelphia Daily News*, August 16th, 1994.

¹⁶⁹ Claude Lewis, “The pols are playing games in criticizing prison caps,” *The Philadelphia Inquirer*, October 3rd, 1994.

¹⁷⁰ For overviews of Rendell’s extensive assault on municipal unions, dismantling of the city’s welfare programs, and privatization efforts see Timothy Weaver, *Blazing the Neoliberal Trail: Urban Political Development in the United States and the United Kingdom* (Philadelphia: University of Pennsylvania, 2016); Jason Hackworth, *The Neoliberal City: Governance, Ideology, and Development in American Urbanism* (Ithaca: Cornell University Press, 2007); Michael deCourcy Hinds, “Philadelphia Climbs Out of Fiscal Depths and Builds by Sharing Sacrifices,” *New York Times*, 6 April 1993; Carolyn T. Adams, *From the Outside In: Suburban Elites, Third-Sector Organizations, and the Reshaping of Philadelphia* (Ithaca: Cornell UP, 2014).

¹⁷¹ Zane Anthony Curtis-Olsen, “Reclaiming the ‘City of Homes’: Squatting and Housing Protest in Philadelphia, 1964-1996” (Ph.D Dissertation, Yale University, 2015), 281.

“employment, educational, and recreational opportunities” that “do more to prevent crime before it is committed than a big new prison wing.”¹⁷² In other words, the city and the local media’s translation of bench warrants and rearrests as clearcut metrics of criminality that required a punitive government response obscured the more complex forces that led people to commit harm, masked how local law enforcement’s criminalized and terrorized Black working class communities, and undermined the possibility of non-carceral, redistributive interventions.

In fact, the decision of Black criminalized people to skip their court hearings was a logical, human response to an unjust criminal punishment system that had a track record for racial discrimination and targeted criminalization of Black Philadelphians. As Philadelphia’s chief public defender Ellen Greenlee noted, “suspects have every reason to be leery of showing up in court...Getting justice is not an easy feat in this system. Most defendants know a case will often hinge on their word against a police officer’s,” and “9 1/2 times out of 10, you know who the judge will believe.” Further, the state’s passage of new mandatory prison sentences for offenses that use to carry probation encouraged accused individuals to evade capture for as long as possible, given that their conviction could result in lengthy terms behind bars.¹⁷³

It may be true that the *Harris* controls created more opportunities for the accused to evade state apprehension. But rather than viewing this as a sign of their failure or their threat to public safety, this development was a telling commentary on – indeed, a mode of resistance against – the city’s organized abandonment and perpetuation of state violence against Black Philadelphians. For the city’s District Attorney’s office, a “fugitive warrant” represented a threat to the public, a mockery of justice, and an enabling of criminality. But to the Black and brown

¹⁷² “Judge Shapiro Does Not Deserve All the Blame,” *Philadelphia Tribune*, August 16th, 1994.

¹⁷³ Paul Nussbaum, “Crime and Punishment,” *The Philadelphia Inquirer*, May 5th, 1991

individuals targeted by police and charged with crimes, fugitivity represented liberation from a system set up to criminalize and harm them, whether they committed the crime or not, regardless of the conditions that lead to their decision to commit a crime, and in spite of the violent practices of a city, state, and federal government that exploited their labor and terrorized their communities. Through their refusal to comply with the city's criminal punishment system, these individuals embraced fugitivity as a means of defiance against a white supremacist and elitist system they knew to be politically and morally bankrupt. More than simply a symbol, this defiance translated to real, material relief from an otherwise life-altering (and life-limiting), sometimes fatal, always violent circumstance of being sentenced with and imprisoned for a crime.

The Long Shadow of *Harris*

The media onslaught against the *Harris* release mechanisms weakened Judge Shapiro's resolve. As she recounted years later, the "very, very bad press" she received for releasing people "was very painful."¹⁷⁴ But the beginning of the end for *Harris* was Mayor Rendell and DA Abraham's turn to the federal government. While "working the phones" and doing speaking stints alongside President Bill Clinton to secure Republican support for the 1994 Crime Bill, Rendell lobbied Clinton to include a provision in the bill that would impose a "virtual ban on prison caps."¹⁷⁵ "The people of Philadelphia hate this cap more than anything," he told the president, recounting for him a story about an alleged drug dealer who had been released

¹⁷⁴ Norma Shapiro, interview by Roberta D. Liebenberg, February 5th, 2008, transcript, American Bar Association Senior Lawyers Division Women Trailblazers in the Law.

¹⁷⁵ Paul Maryniak, "A jail dilemma, bar no one," August 16th, 1994, *Philadelphia Daily News*. David Hess, "61-38 Senate vote ends the battle," August 26th, 1994, *Philadelphia Daily News*.

“because the charges against the dealer aren’t serious enough to warrant pre-trial incarceration.”¹⁷⁶ Rendell proposed a provision that prohibited a population limit from being imposed on a federal, state, or local detention facility unless a court had ruled that overcrowding violated the eighth amendment. The law also made it more difficult to prove the unconstitutionality standard by requiring that an “individual plaintiff inmate” must “prove that the crowding causes the infliction of cruel and unusual punishment of that inmate.”¹⁷⁷ Because there had not been a ruling of unconstitutionality in the *Harris* case, Rendell’s provision threatened to undermine Judge Shapiro’s authority to enforce the consent decree.

Getting the prison cap provision included in the Crime Bill became a bipartisan, multi-jurisdictional affair. Assistant District Attorney Sarah Vandenbraak worked to apply “Philadelphia pressure on Congress to make sure the cap wasn’t lost in the shuffle of backroom vote trading,” while staffers from Republican Senator Arlen Specter and Democratic Congressman Robert Borski’s offices tracked and advocated for the measure.¹⁷⁸ Specter personally helped convince skeptical Senate Republicans who worried about the constitutionality of the law.¹⁷⁹ Representatives Charles Canady (R-FL) and Peter Geren (D-TX) authored an

¹⁷⁶ Mark McDonald, “Mayor ready to raise jail populations,” August 27th, 1994, *Philadelphia Daily News*.

¹⁷⁷ The language of the amendment was as follows: “a federal court shall not place a ceiling on the inmate population of any federal, state, or local detention facility as an equitable remedial measure for conditions that violate the eighth amendment unless crowding is inflicting cruel and unusual punishment on particular identified prisoners.” See Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C, Sec. 20409, § 3626. See also “Rendell tips his cap for Bill,” *Philadelphia Daily news*, August 13th, 1994; “Rendell Helps sway GOP,” *Philadelphia Daily News*, August 26th, 1994.

¹⁷⁸ Paul Maryniak, “Credit goes to many on prison-cap victory,” September 14th, 1994, *Philadelphia Daily News*.

¹⁷⁹ Paul Maryniak, “Credit goes to many on prison-cap victory,” September 14th, 1994, *Philadelphia Daily News*

amendment that inserted the anti-cap provision in the House version of the bill. At an April 1994 hearing on the legislation Congressman Borski cited Philadelphia's experience with the admissions moratorium in *Harris v. Philadelphia* and dramatically read out a letter from Danny Boyle's father to express his "strong support" for the addition.¹⁸⁰ Arch-conservative US Senator Jesse Helms (R-NC), with the support of fellow Senators Connie Mack (R-FL) and Phil Gramm (R-TX), placed the measure into the Senate version of the bill.¹⁸¹ Although Helms and other Republicans ultimately voted against the bill on partisan grounds, they made clear their support for the anti-prison cap provision. Congressman Bill Archer (R-TX) likewise noted that despite his opposition to the crime bill, he strongly supported the amendment, which he believed would allow prisons in his home state, then dealing with a massive federal prison conditions case, to "regain control over prison policy."¹⁸²

Once the anti-cap provision was included in the bill, Rendell announced he would go to court "the very next day" after Clinton signed it into law to urge Judge Shapiro to lift the cap.¹⁸³ He kept his promise: the day after the bill's signing ceremony, Rendell filed a 33-page motion asking Judge Shapiro to "heed the new crime law" and "lift the cap." The petition included a selective listing of the "horror stories behind the numbers" of prison releases, including the

¹⁸⁰ 140 Cong Rec H 2518 (April 20th, 1994) (Statement of Congressman Robert A. Borski).

¹⁸¹ Paul Maryniak, "Credit goes to many on prison-cap victory," September 14th, 1994, *Philadelphia Daily News*. See also 140 Cong Rec S 12250 (August 22nd, 1994) (Statement of Sen. Arlen Specter); 140 Cong Rec H 2518 (April 20th, 1994) (Statement of Congressman Robert A. Borski); 139 Cong Rec S 15958 (November 17th, 1993) (Statement of Senator Connie Mack)

¹⁸² 140 Cong Rec S 21335 (August 11th, 1994) (Statement of Congressmen Bill Archer).

¹⁸³ Paul Maryniak, "Setting the city free?," August 24th, 1994; Vernon Loeb, "Rendell ties city prison cap to crime bill," August 23rd, 1994, *The Philadelphia Inquirer*; Mark McDonald, "Mayor ready to raise jail populations," August 27th, 1994, *Philadelphia Daily News*; Paul Maryniak, "City set to take on cap," September 13th, 1994, *Philadelphia Daily News*; Paul Maryniak, "Rendell to move to doff the prison cap," September 14th, 1994, *Philadelphia Daily News*.

Boyle killing. It concluded that the population limit was “tearing apart the fabric of society in Philadelphia” and causing “a demonstrable financial loss” due to “property crimes” against Philadelphia businesses by “professional thieves and burglars” who “plunder Philadelphia businesses with impunity.” At the press conference announcing the move, Rendell played up the image of the moratorium as a “horror” for the city, stating, “We file this petition in the name of the men and women of the Philadelphia Police Department who...are frustrated and demoralized by seeing the person they arrest at 8 PM for selling narcotics back on the street doing it again at 1 the next morning....Enough is enough. It’s time for the cap to go. The city has...suffered enough.”¹⁸⁴ Although filing a motion did not guarantee Judge Shapiro’s immediate response, Rendell dramatically declared “the cap is over.”¹⁸⁵ Behind the scenes, his lawyers began to claim in communications to Special Master Babcock that “under the crime bill, neither this consent decree, nor any related orders, could impose...population ceilings on the city.”¹⁸⁶

The plaintiffs’ lawyers in both *Harris* and the *Jackson v. Hendrick* overcrowding cases were more dubious about the alleged threat the Act posed to *Harris*. They noted that nothing in the law required the dissolution of already existing consent decrees and emphasized the anti-cap provision’s susceptibility to constitutional challenge.¹⁸⁷ They also continued to raise the alarm about conditions in the city’s prisons. “You are sitting on a powder keg in terms of

¹⁸⁴ Paul Maryniak, “Rendell goes to court,” September 15th, 1994, *Philadelphia Daily News*.

¹⁸⁵ Paul Maryniak, “Rendell goes to court,” September 15th, 1994, *Philadelphia Daily News*.

¹⁸⁶ Mark A. Aronchik to William G. Babcock, November 23rd, 1994, re: *Harris et. al. v. City of Philadelphia et al.* Civil Action No. 82-1847, obtained with permission from David Richman’s personal files.

¹⁸⁷ Wanda Motley, “Mayor, advocates debate crime bill’s effect on the prison cap,” August 26th, 1994, *The Philadelphia Inquirer*; Paul Maryniak, “Setting the city free?,” August 24th, 1994; Paul Maryniak, “Rendell to move to doff the prison cap,” September 14th, 1994, *Philadelphia Daily News*; Julia Cass, “Prison cap, or too much crime: what’s really hurting system?” September 4th, 1990, *The Philadelphia Inquirer*.

environmental conditions,” David Rudovsky told the three-judge panel in the *Jackson* court, adding that the city was overseeing “ongoing, continuing, pervasive violation” of court orders to improve the conditions in the city’s prisons.¹⁸⁸

Rendell’s announced assault on the population controls prompted Philadelphia’s imprisoned people to organize a “peaceful labor strike” to “demonstrate their support for the cap on inmate populations.” “They’re trying to make the prison cap look as if it failed society,” Raymond Tillman, who was imprisoned at House of Correction and was the lead organizer of the action, told the *Philadelphia Inquirer*. He spread the word about the protest while in the “bubble,” the area at City Hall where individuals awaited hearings and trials. While Tillman noted that he was worried people would lose their jobs over the strike, he also stated that “we don’t want to sit back and not say anything.” Prisoners and their allies also organized a petition that garnered 500 signatures from prisoners expressing their support for the population controls.¹⁸⁹

The passage of the Crime Act and the accompanying media pressure, which was going as far as to suggest Judge Shapiro had blood on her hands for “innocent people killed as a result of the prison cap,” finally pushed Shapiro to conduct hearings on “whether the...court-enforced limit on the city’s jail population should be modified.”¹⁹⁰ While she “recoiled” at the city’s arguments that the crime law “compel[ed]” her to honor the city’s request to remove the cap, it’s clear that the pressure led her to consider handing control of the city’s pre-trial population back

¹⁸⁸ “3 reports: city jails pathetic,” October 19th, 1993, *Philadelphia Daily News*; Paul Maryniak,

¹⁸⁹ Julia Cass, “Philadelphia inmates plan strike in support of population cap,” *The Philadelphia Inquirer*, September 23rd, 1994.

¹⁹⁰ Zachary Stahlberg, “Editor’s Note,” *Philadelphia Daily News*, November 7th, 1994; Henry Goldman, “Judge open to prison-cap hearing, but says crime bill is crowding her,” *The Philadelphia Inquirer*, November 1st, 1994.

to the city.¹⁹¹ The prisoner plaintiffs' lawyers vigorously opposed the city's efforts, contending that it "has not demonstrated...that conditions in Philadelphia's prisons have improved, nor can it."¹⁹² But at the end of 1994, Judge Shapiro indicated her willingness to lift the cap once the city opened the first half of its 2,000-bed Curran Fromhold Correctional Facility the following July.¹⁹³ While she was determined to "maintain much of her control over the prison system to prevent overcrowding" and threatened to reimpose the population control if the city failed to fix its overcrowding, she made clear that "city officials deserved a chance to control population levels on their own."¹⁹⁴ She lifted the cap in November 1995, after the city promised to close Holmesburg and oversee its own pretrial release guidelines.¹⁹⁵ Though her action was technically a "temporary" move, the city would maintain control over bail and pretrial release until Shapiro closed the case in 2000.¹⁹⁶

The shift to local control crushed whatever remaining potential the *Harris* controls had to reduce the city's pretrial prison population. The city's new bail and pretrial release guidelines, approved by both the Common Pleas Court and Judge Shapiro, toughened the criteria determining whether an accused individual could be released pre-trial. One estimate suggested that the share of accused individuals who would have to post bail would increase from 6% to 25% once the new guidelines went into place. Moreover, the guidelines "emergency-release"

¹⁹¹ Henry Goldman, "Judge open to prison-cap hearing, but says crime bill is crowding her," *The Philadelphia Inquirer*, November 1st, 1994.

¹⁹² Paul Maryniak, "Inmates prep for cap fight," *Philadelphia Daily News*, October 21st, 1994.

¹⁹³ Paul Maryniak, "City gets a tip of the cap," *Philadelphia Daily News*, December 17th, 1994; Paul Maryniak, "Cap questions," *Philadelphia Daily News*, December 19th, 1994.

¹⁹⁴ Paul Maryniak, "City gets a tip of the cap," *Philadelphia Daily News*, December 17th, 1994; Dave Davies, "Officials confused on cap," *Philadelphia Daily News*, December 20th, 1994.

¹⁹⁵ Paul Maryniak, "City free from prison cap," *The Philadelphia Daily News*, November 24th, 1995.

¹⁹⁶ Julia Cass, "City to try a new bail system," *The Philadelphia Inquirer*, November 23rd, 1995.

provision only took effect if the population exceeded 5,600, a much higher limit than the consent decree's 3,750.¹⁹⁷

The DA's office gleefully took credit for killing the *Harris* controls. In a glowing profile of Sarah Vandenbraak, who spent 16 years fighting against the consent decree, Lynne Abraham contended that "she has singlehandedly...led the charge against the prison cap and represented the people's interest in blunting the effect of wholesale release of hundreds and hundreds of defendants each week."¹⁹⁸ Abraham also recognized the local media for pressuring Judge Shapiro to relinquish control over. She especially credited Stahlberg and the *Daily News* with the "victory." "The end is in sight," Abraham told Stahlberg after Judge Shapiro's announcement, "and your paper was a very big part of it."¹⁹⁹

Just under a year after Shapiro's decision, the city's prison population had shot up to nearly 6,000 prisoners.²⁰⁰ Internal reports showed that in early 1996 admissions were 12.8% higher than they had been in 1994 and 1995, even as the "number of reported arrests" for all crimes had "moderately declined over the last six years."²⁰¹ In response to the population bulge, Dianne Granlund agreed to release a mere seventeen prisoners, and while she claimed "more will

¹⁹⁷ Julia Cass, "City to try a new bail system," *The Philadelphia Inquirer*, November 23rd, 1995; John S. Goldkamp and M. Kay Harris, "Draft Operational Manual: Pretrial Release Guidelines – Volume III," September 1994, Folder 15: pre trial release guidelines, 1995, Box 6, Shapiro Papers, UPBLL.

¹⁹⁸ Paul Maryniak, "She doffs her (prison) cap," *Philadelphia Daily News*, August 11th, 1995.

¹⁹⁹ Zachary Stahlberg, "Editor's Note," *Philadelphia Daily News*, July 31st, 1995.

²⁰⁰ Mark McDonald, "As inmate numbers rise, city sets 17 free," *Philadelphia Daily news*, September 13th, 1996; Michael A. Jones and Wendy P. Naro, "City of Philadelphia First Quarter 1996 Inmate Population Projections," May 10th, 1996, obtained with permission from David Richman's personal files.

²⁰¹ Michael A. Jones and Wendy P. Naro, "City of Philadelphia First Quarter 1996 Inmate Population Projections," May 10th, 1996, obtained with permission from David Richman's personal files.

follow” she added that “they won’t be in the hundreds.”²⁰² Richman retorted that he did not find Granlund’s assurances “terribly comforting,” stating that the city in fact needed to “reduce the population by the hundreds.”²⁰³ When the city opened its new prison in August 1995, it soon became overwhelmed, and prison administrators resorted to cramming 190 prisoners into holding cells designed for “half that number, sleeping without mattresses and often not getting medical attention.”²⁰⁴ The city’s other prisons remained in disarray as well. One observer wrote to Bill Babcock that at the Philadelphia Industrial Correctional Center, “9 women were laying on the ground side-by-side in a narrow room” in one of the prison’s libraries, adding that “they were so tightly backed in this room there was no space available for them to stand.” One of the women, he reported, “looked feverish.”²⁰⁵

The prisoner plaintiffs and their lawyers tried to fight back. But Judge Shapiro’s desire to “bring the case to a conclusion” made her hesitant to reinstate court control. In a 1996 memo to the Judge, Babcock explained how the prison plaintiffs vigorously objected to the city defendants “ability to unilaterally establish 5,600 as the new MAP.” They wanted to “show that 5,600 is not the capacity of the System,” which Babcock said was likely a correct assessment given his own recent reports on the state of the city’s prisons. He noted that he was “very uncomfortable with the status of the Prison System and its ability to manage the current population... Things are not going well when inmates are being shipped to other jurisdictions and others are sleeping in a law

²⁰² Mark McDonald, “As inmate numbers rise, city sets 17 free,” *Philadelphia Daily news*, September 13th, 1996.

²⁰³ Julia Cass, “Stopgap efforts reduce city prison,” *The Philadelphia Inquirer*, September 17th, 1996

²⁰⁴ Mark McDonald, “Quick fix for prison crowding,” *Philadelphia Daily News*, September 14th, 1996; Mark McDonald, “Bursting at the Seams,” *Philadelphia Daily News*, March 6th, 1997.

²⁰⁵ Peter Devlin to Bill Babcock, September 12th, 1996, re: Recent Visits to CFCF and PICC, Folder 7: Correspondence — Bill Babcock, 1996-7, Box 3, Shapiro Papers, UPBLL.

library.” But he recognized “the court’s strong feelings” about concluding the case and said that he would “support whatever decision is rendered.”²⁰⁶

In 1996, another piece of federal legislation severely undermined the prisoner plaintiffs’ efforts to challenge the city’s flagrant non-compliance with *Harris*. While the 1994 Crime Bill had launched a major challenge to prison population controls, supporters felt it had been “watered down” by the Democratically controlled Congress.²⁰⁷ So Lynne Abraham’s office wrote and lobbied for new legislation that would toughen Congress’s limitation on the federal court’s power to rule prison systems unconstitutional and to order population orders as remedies. Abraham remained extremely proud of her personal role in lobbying for and passing the legislation which she believed rightfully prevented an “ill-advised intrusion into local authority over prison management” and “created more crime problems than it helped to solve.”²⁰⁸

Signed into law by President Clinton in 1996, the Prison Litigation Reform Act (PLRA) represented a crushing blow not only to the federal courts’ power to adjudicate and remedy prison conditions cases, but to imprisoned people’s ability to file civil rights suits more broadly. The bill combined two efforts related to prison conditions litigation. First, based on spurious claims by state Attorney Generals and congresspeople that imprisoned people flooded court dockets with “meritless” and expensive lawsuits, the PLRA suppressed imprisoned people’s access to the courts. It did so most directly by erecting innumerable obstacles for prisoners who

²⁰⁶ Bill Babcock to Norma Shapiro re: Plaintiffs’ Discovery Request, May 30th, 1996, Folder 7: Correspondence — Bill Babcock, 1996-7, Box 3, BLL.008, Shapiro Papers, UPBLL.

²⁰⁷ Anick Jesdanun, “GOP renews push to limit prison caps,” *Philadelphia Daily News*, October 9th, 1995.

²⁰⁸ Testimony of Lynn M. Abraham, “Helping Find Innovating and Cost Effective Solutions to Overburdened Courts,” Senate Judiciary Committee, Subcommittee on Crime and Drugs, May 3rd, 2010.

sought to bring forward lawsuits regarding their civil rights and/or the conditions of their confinement. One key provision placed the burden on prisoners to prove that they experienced “physical injury,” discounting nonphysical forms of harm. An imprisoned person placed in long-term solitary confinement who only experienced extensive emotional and psychological distress, for example, could be deemed not entitled to monetary damages. The PLRA’s new “exhaustion” requirement also forced the small class of people who *could* seek damages—those who had been physically harmed—to prove that they had tried all administrative remedies within their correctional institution before filing a federal suit. If they made one mistake navigating their institution’s convoluted prison grievance system, their case was dismissed. If they had three cases dismissed due to being “frivolous, malicious, or fail[ing] to state a claim upon which relief can be granted,” they were required to pay the \$350 filing fee up front, an enormous sum for most incarcerated people. For the few who made it over these hurdles, the PLRA then made it difficult to find a lawyer by decreasing the fees that attorneys could earn from prisoner-rights cases. And if they still managed to find a lawyer, they had only made it to court; there was no guarantee they would win.²⁰⁹

The effect was predictable. Between 1995 and 2012, filings by imprisoned people dropped 59 percent even as the number of imprisoned people in the nation increased by 135 percent.²¹⁰ As legal scholars Margo Schlanger and Giovanna Shay write, “The PLRA’s obstacles

²⁰⁹ See John Pfaff, “The 1994 Crime law Hogs the Legal Reform Spotlight. But a Lesser-Known Law Deserves More Attention,” *The Appeal*, October 2nd, 2019; Easha Anand, Emily Clark, and Daniel Greenfield, “How the Prison Litigation Reform Act Has Failed for 25 Years,” *The Appeal*, April 26th, 2021; Schlanger and Shay, “Preserving the Rule of Law in America’s Jails and Prison; Schlanger, “Trends in Prisoner Litigation, as the PLRA Enters Adulthood Symposium Issue; Schlanger, “Inmate Litigation;” Schlanger, “Civil Rights Injunctions Over Time; Kaufman and Driver, “The Incoherence of Prison Law.

²¹⁰ Schlanger, “Inmate Litigation.”

to meritorious lawsuits are undermining the rule of law in our prisons and jails, granting the government near-impunity to violate the rights of prisoners without fear of consequences.”²¹¹

While the PLRA is known for its assault on prisoners’ access to the courts, the section written by the Philadelphia DA’s office in response to the *Harris* litigation was equally if more quietly destructive. Originally entitled the “Stop Turning Out Prisoners Act” (STOP) and introduced by Abraham’s allies Charles Canady (R-FL) and Pete Geren (D-TX), the bill limited the federal courts’ power to require aggressive remedies to prison conditions violations by requiring judges to impose “the least intrusive means to remedy the violation” and to “give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.” More directly, the act barred courts from granting relief that had the “purpose or effect...to reduce or limit the prison population” unless the plaintiff met a very difficult standard of proving that crowding was the “primary cause of the deprivation” and that “no other relief” would “remedy” the problem. The act also empowered state and city defendants to “be entitled to the immediate termination of any prospective relief” if the relief had been granted “in absence of a finding by the court that prison conditions violated a federal right,” as was the case in *Harris v. Philadelphia*. And the act ensured that if there was a “pending motion” for termination of relief, the relief would be “automatically stayed” for 30 days after the motion was filed, so even as they awaited the court’s ruling on their motion, states and cities would be exempt from having to provide any remedy.²¹²

²¹¹ Margo Schlanger and Giovanna Shay, “Preserving the Rule of Law in America’s Jails and Prisons,” 140.

²¹² *Violent Criminal Incarceration Act of 1995*, Report together with Dissenting Views to Accompany H.R. 667, Cong. 104, 1st Session, February 6th, 1995, 5-6.

Abraham pulled out all the stops in her lobbying efforts. When appearing in front of the House of Representatives Subcommittee on Crime, she spoke about the “damage” caused by the prison admissions moratorium in Philadelphia, suggesting that it harmed “ordinary, working people, and the poor people whom we all serve.” She also brought along Patrick Boyle, whose emotional remarks directly linked the moratorium to his son’s death. “Can anyone explain to the families of over 100 murder victims that this prison cap works in Philadelphia,” Boyle asked. Can anyone explain to the victims of...approximately 6,000 victims of robbery, burglary, rape that this thing works? Can anyone explain to me...why Danny is dead?”²¹³

Soon after Abraham and Boyle’s testimony, STOP was added to the Violent Criminal Incarceration Act, which the House passed in February 1995. *The Philadelphia Inquirer* noted that Abraham, “a Democrat, has played a key role in helping the conservative, Republican-dominated Congress design STOP,” noting that the legislation was “particularly tailored to Philadelphia” for this reason. “The D.A. in Philadelphia provided essential assistance in drafting the legislation,” Rep. Canady stated. “They deserve a major portion of the credit for the passage of the legislation.” David Richman, David Rudovsky, and Alvin Bronstein, the director of the National Prison Project of the ACLU, spoke out against the legislation, which Bronstein said, “effectively cripples the courts’ dealing with overcrowding or prison conditions.” They all also suggested that the legislation ran afoul of constitutional requirements for the separation of powers. Other Democratic Philadelphia representatives similarly balked at Abraham’s leadership in devising and lobbying for the legislation. Tony Green, staffer for Philadelphia-based House

²¹³ *Taking Back Our Streets Act of 1995 before the Subcommittee on Crime* 104 Cong. 246-267 (1995) (statement of Lynne Abraham and Patrick Boyle).

Rep. Thomas Foglietta, noted that “some of the Democrats on our side were saying, ‘What the hell is your Democrat D.A. doing?’”²¹⁴

Abraham intensified her advocacy for STOP at a July 1995 Senate hearing on prison reform, which proved to be a sounding board for the bills that would eventually be combined into the PLRA. In her testimony, she painted a picture of the *Harris* court that suggested the prison population controls ran afoul of the Constitution and allowed criminals to run rampant in the city. In addition to citing internal DA statistics about the alleged connection between *Harris* releases and higher rates of violent crime and bench warrants, she told Congress that “drug dealers who carry loaded Uzis on a street corner cannot and will not be sent to prison under our present prison cap because carrying a loaded Uzi by a drug dealer is not considered a violent offense.” In an anecdote about a visit to a “shooting gallery and crack house in a drug-infested, crime ridden neighborhood,” Abraham remarked that “if any or all of the people that we saw in that house were arrested” they would “join the prison suit complaining about the inhumane conditions” and “would be released right back to that house to live that night because they would be part of the prison cap problem.” Abraham had also presented to the Committee a letter in support of STOP from the President of the National District Attorney’s Association, Michael Barnes, who wrote that “the almost continual intervention and interference by federal courts in prison litigation has had an adverse effect on our ability to protect our communities” by “release[ing]...dangerous criminals back to our city streets.” As a bipartisan organization made

²¹⁴ Julia Cass, “End to cap on prisons a step closer,” February 11th, 1995, *The Philadelphia Inquirer*.

up of prosecutors across the country, the NDAA's endorsement helped substantiate Abraham's claims that Congress needed to crush the courts' ability to intervene in prison conditions cases.²¹⁵

David Richman tried to counter Abraham's offensive, claiming that the DA's statistics were "misleading in the extreme" as were the "anecdotes that accompany the data." "If the bill were to be enacted into law," he explained, it would "stop...dead in its track" *Harris's* efforts to "assure minimally decent jails and to provide a range of alternatives to incarceration...Theoretically, all of these goals could be accomplished in the absence of the *Harris* decrees, but history teaches the naivete of any such expectation."²¹⁶

His defense made no difference. President Clinton signed the bill into law on April 26th, 1996. Judge Shapiro later called it "one of the worst bits of legislation ever passed by Congress."²¹⁷ Ironically, despite "Philadelphia and its troubled overcrowded prison system" serving as the bill's "Exhibit A," by the time the PLRA had overcome constitutional challenges, Judge Shapiro had eliminated the prison population controls, negating any "need" for the city to use the new law.²¹⁸ But the PLRA did have a chilling effect. In 1999, prisoners filed a motion to hold the city in contempt and impose fines because of ongoing overcrowded and inhumane prison conditions. But Richman also "worried" about the shape of a contempt order, which, if "too severe," might prompt the city to simply "terminate the case under a provision of the federal

²¹⁵ *Prison Reform: Enhancing the Effectiveness of Incarceration, Before the Senate Committee on the Judiciary*, 104 Cong. 2 (1995) (statement of Lynne Abraham).

²¹⁶ *Prison Reform: Enhancing the Effectiveness of Incarceration, Before the Senate Committee on the Judiciary*, 104 Cong. 2 (1995) (statement of David Richman).

²¹⁷ Norma Shapiro, interview by Roberta D. Liebenberg, February 5th, 2008, transcript, American Bar Association Senior Lawyers Division Women Trailblazers in the Law.

²¹⁸ Joseph Slobodzian, "Phila. officials won't challenge prison consent agreement," *The Philadelphia Inquirer*, April 30th, 1998.

Prison Litigation Reform Act.”²¹⁹ Judge Shapiro herself pointed to the PLRA as the reason she settled the case in 2000 “with some concern,” citing the “nearly doubled” prison population and new facilities that became “immediately filled beyond capacity.” The PLRA’s “limitation on the court’s ability to enforce the 1986 and 1991 Consent Decrees makes the decrees possibly unenforceable if challenged,” she lamented.²²⁰ “There is no doubt in my mind that this case ended, and the threat of the future prison cap ended,” she said, “because Congress took strong action.”²²¹

The PLRA’s effect on prison conditions consent decrees reverberated far beyond Philadelphia, as the law’s termination provisions enabled state defendants that were hostile to prison and jail reform to move to terminate consent decrees across the nation.²²² *Harris*’ role in inspiring the PLRA’s passage demonstrates the meaningful threat that prisoner litigation and prison conditions suits posed to late-twentieth century tough-on-crime politics. If prisoners could involve federal courts in the management of state and local criminal punishment systems, and devise court-enforced mechanisms for limiting prison populations and mandating decarceration, then the carceral project would remain contested. Only by shielding state and local governments from legal liability for maintaining racist, violent, and overcrowded penal systems could the project of mass imprisonment proceed apace.

²¹⁹ Joseph Slobodzian, “Motion on prison crowding goes to judge,” *The Philadelphia Inquirer*, November 20th, 1999.

²²⁰ *Harris v. City of Philadelphia*, Civil Action No. 82-1847, (E.D. Pa. Aug. 30, 2000).

²²¹ *Subcommittee on Crime of the Committee on the Judiciary House of Representatives*, 116th Cong. 2 (2000) (Statement of Lynne Abraham).

²²² Anne K. Heidel, “Comments: Due Process Rights and the Termination of Consent Decrees Under the Prison Litigation Reform Act,” *Journal of Constitutional Law* 4, no. 3 (2002): 561–85.

Conclusion

Some might assess *Harris* as a failure. Even during the seven years where the controls in place, Philadelphia's prison population continued to rise, although it spiked after Judge Shapiro eliminated controls in 1995. When she finalized the settlement in 2000, the city's prison system caged 6,945 people, which put it 20% over capacity.²²³ Moreover, as other scholars of prison conditions litigation have noted, even as the *Harris* litigation resulted in the closure of the notorious Holmesburg prison, the consent decree expanded the city's carceral capacity by encouraging city leaders to construct new prisons as form of compliance, thus intensifying authorities' power to criminalize and imprison Black and brown Philadelphians.²²⁴

Yet, even as the city failed to meet the court-ordered population limit, *Harris* played a crucial role in slowing the growth of the city's bloated prison population.²²⁵ Although there is no comprehensive data on the releases, available reports offer a window into their impact. Jeanne Bonney estimated that between 1989 and 1992, the PPMU and BailCARE helped free 16,000 people.²²⁶ In 1992, *Harris* releases were the "dominant form of release" in the city.²²⁷ Internal

²²³ *Harris v. City of Philadelphia*, Civil Action No. 82-1847 (E.D. Pa. 2000); Joseph Slobodzian, "Agreement ends Judge's oversight of city prisons," *The Philadelphia Inquirer*, July 28th, 2000.

²²⁴ As per the 1991 consent decree, the court oversaw the construction of a new prison, Curran Fromhold Correctional Facility, a new Women's Detention Facility, a new Alternative and Special Detention Central Unit minimum security facility, and a new criminal courthouse. See *Harris v. City of Philadelphia*, Civil Action No. 82-1847 (E.D. Pa. 2000). For literature on how prison conditions litigation paradoxically hastened the construction of new correctional facilities and the expansion of correctional budgets, see Robert Chase, *We are Not Slaves*; Heather Schoenfeld, *Building the Prison State*; Mona Lynch, *Sunbelt Justice*; Joshua Guetzkow and Eric Schoon, "If You Build It, They Will Fill It."

²²⁵ David Richman, interview with Charlotte Rosen, October 15th, 2021.

²²⁶ Susan Caba, "Advocate loses key to open prison doors," *The Philadelphia Inquirer*, November 20th, 1992.

²²⁷ Patricia L. Haryman, James Austin, Richard Prestine, *Philadelphia 1992 Prison System Population Trends and Revised Prison Population Projections* (San Francisco: National Council

reports on Philadelphia's prison population trends during this period suggested that the *Harris* mechanisms "stabilized the inmate population," which at least prevented the city's prison population from becoming even more perilously overcrowded.²²⁸

As the *Harris* litigation ended in 2000, Edwin Rivera, a prisoner at the city's Detention Center, pleaded that "somebody needs to force them to remember. Everybody forgets about inmates, but we are somebody's son, somebody's father, somebody's husband or brother."²²⁹ The history of *Harris v. Philadelphia* recovers a time when, prompted by imprisoned people's legal action, the courts attempted to force city authorities to remember imprisoned people's plight and redress their deplorable conditions of confinement. Produced by policymakers' thirst for tough punishment that sent large numbers of Black and brown people to prisons and jails, state and local prison overcrowding crises created openings for imprisoned people and their allies to challenge an emerging regime of racialized mass imprisonment. Prisoners' defiance of the cruel logics of tough governance so threatened this racialized carceral status quo that it prompted policymakers to double down on mass criminalization and imprisonment, leading them to deploy deeply dishonest but politically effective anti-Black scripts to do so. In the end the threat proved so significant that Philadelphia law enforcement lobbied the federal government to crush the federal courts' power to regulate prison conditions through decarceral reforms.

on Crime and Delinquency, 1993), obtained with permission from David Richman's personal files.

²²⁸ Patricia L. Haryman, James Austin, Richard Prestine, *Philadelphia 1992 Prison System Population Trends and Revised Prison Population Projections* (San Francisco: National Council on Crime and Delinquency, 1993); Harry F. Langhorne, *Philadelphia FY 1994 Prison System Population Trends and Revised Prison Population Projections* (Philadelphia: Criminal Justice Coordinating Office, 1995), obtained with permission from David Richman's personal files.

²²⁹ Joseph Slobodzian, "Agreement ends Judge's oversight of city prisons," *The Philadelphia Inquirer*, July 28th, 2000.

The US prison nation thus did not develop smoothly once the bipartisan “common sense” of tough-on-crime and carceral solutions became hegemonic in the 1970s and 1980s. Rather, the rush to imprison created a crisis of state capacity that allowed imprisoned people to place meaningful limits on the political project of law and order. That racist and carceral policymakers ultimately quashed these limits should not prevent us from examining these efforts to disrupt its growth. Attending to this story not only provides a more accurate history of the carceral state’s development, but also destabilizes claims that the unfettered growth of prisons and imprisoned populations is a necessary or natural development in response to an apparently rising crime rate.

Conclusion

We know how the story develops. Racialized mass criminalization and imprisonment – or what Ruth Wilson Gilmore and Craig Gilmore call “racial capitalism’s contemporary class war” – triumphed, not only in Pennsylvania but across the nation.¹ Scholarly explanations as to why this is so abound, and carceral state historians’ especially help elucidate the foundations of the contemporary carceral regime in what Elizabeth Hinton and DeAnza Cook call the “antiblack punitive tradition” that runs through slavery, Jim Crow, convict leasing, Progressive-era reform, U.S. imperialism, and both liberal and conservative – indeed, distinctly bipartisan – political ideologies and criminal punishment practices in the postwar era.² Historical analyses of U.S. penal expansion also specify the particular structural conditions and political shifts that prompted states to incarcerate when they did. They detail how cracking down on crime developed as a form of post-1968 state counterinsurgency against radical Black Power and left-wing movements that flourished as the result of the late-twentieth century crisis of military Keynesianism. That crisis created surpluses in capital, populations, land, and state capacity that the growth of punishment and prisons helped to “fix.”³ This perfect storm of a “race problem” that was criminalized” and the colossal destabilization of the New Deal-era economic order paved the way for what Mike Davis aptly termed the “prison industrial complex,” which has normalized the criminalization, surveillance, and incapacitation of disproportionately Black, minoritized, and

¹ Ruth Wilson Gilmore and Craig Gilmore, “Beyond Bratton” in Ruth Wilson Gilmore, *Abolition Geography: Essays Towards Liberation* (London: Verso, 2022), 304.

² Elizabeth Hinton and DeAnza Cook, “The Mass Criminalization of Black Americans: A Historical Overview,” *The Annual Review of Criminology*, 4, no. 2.1-2.26 (2020).

³ Ruth Wilson Gilmore, *Golden Gulag*; Ruth Wilson Gilmore “Globalization and U.S. Prison Growth in Ruth Wilson Gilmore, *Abolition Geography: Essays Towards Liberation* (London: Verso, 2022).

poor individuals.⁴ What is the use, one might ask, in analyzing those who sought to resist, halt, or question this tidal wave of racialized state violence authorized under the guise of fighting crime, when they so clearly fell short?

As Mariame Kaba reminds us, however, “organizing is mostly about defeats.”⁵ Narratives that focus only on what came to be rather than those who raised hell or at least asked questions along the way lures us into a paralyzing and false sense of immovable consensus. In part, this view of mass imprisonment’s inexorable ascent stems from a focus on national narratives – whether they be centered around slavery and the Thirteenth amendment or headline-grabbing events like the Willie Horton scandal – which, while undeniably important parts of the story, mask a more unsettled story over the future of crime and punishment at the state and local level.⁶ As I hope this dissertation makes clear, the crisis of state prison overcrowding was at the center of these consequential struggles over the future of criminal punishment and incarceration in the late-twentieth century U.S. Imprisoned people and their allies, as well as agents of the state such as judges and state corrections commissioners, understood overcrowding as cruel, inhumane, costly, and the product not of empirically higher rates of criminal activity but excessively punitive policymaking. Prisoners in particular contested Pennsylvania and Philadelphia lawmakers’ power to punish with impunity. Even some centrist and conservative lawmakers and bureaucrats, however, saw clearly that mass imprisonment was both an expensive and illogical

⁴ Mike Davis, “Hell Factories in the Field,” *The Nation*, February 20th, 1995.

⁵ Mariame Kaba, “A Love Letter to the #NoCopAcademy Organizers from Those of Us on the Freedom Side,” in Mariame Kaba, *We Do This ‘Til We Free Us: Abolitionist Organizing and Transforming Justice* (Chicago: Haymarket Books, 2021), 127.

⁶ Michael C. Campbell and Heather Schoenfeld, “The Transformation of America’s Penal Order; Robert T. Chase, “We Are Not Slaves;” Mona Lynch, *Sunbelt Justice*; Lydia Pelot-Hobbs, “The Contested Terrain of the Louisiana Carceral State; Heather Schoenfeld, *Building the Prison State*.

policy prescription, a product of manufactured and reactionary crime panics and victims' rights movements that undermined the state's ability to provide vital social services. That this ideologically diverse wave of opposition against the state's carceral build up failed should not lead us to dismiss their efforts, even as the forces against them used their resistance as fodder to deepen their repression against those inside. On the contrary, these confrontations with the growing punitive order – ranging from radical to more moderate – carried kernels of counter-carceral, sometimes even proto-abolitionist politics that have recently become more mainstream. Knowledge of their struggle reminds us that there are “a hundred different things that we could do,” especially at the local level, where so many decisions about who gets policed, charged, sentenced, and incarcerated get made.⁷

More broadly, this history demonstrates that the late-twentieth century was not, as Dan Berger and Emily Hobson write, “overdetermined by reaction,” so that it “offers little in the way of a usable radical past.”⁸ This is not to deny the powerful forces of anti-Black punitiveness and state abandonment that coursed through American political culture in the late twentieth century. Racialized mass criminalization and imprisonment became a dominant mode of governance during this period, resulting in astronomical increases in the numbers of people under some form of correctional control. It is also true, as Berger and Toussaint Losier write, that the rise of “warehouse prisons” equipped with intensified technologies of punishment made prisoner

⁷ Ruth Wilson Gilmore, “Prisons and Class Warfare: An Interview with Clément Petitjean/Période,” in Ruth Wilson Gilmore, *Abolition Geography*, 343.

⁸ Dan Berger and Emily K. Hobson, “Introduction: Usable Pasts and the Persistence of Radicalism,” in Dan Berger and Emily Hobson, eds., *Remaking Radicalism: A Grassroots Documentary Reader of the United States, 1973-2001* (Athens: University of Georgia Press, 2020), 2.

organizing and resistance far riskier and challenging.⁹ But as the history of Pennsylvania prisoner resistance shows, the crisis of state and local prison overcrowding created meaningful opportunities for Black imprisoned people to radically resist the conditions of their confinement. This history shows that late-twentieth century prisoner struggles – whether through litigating the constitutionality of prisons or launching uprisings that sought to physically destroy the prison – had the potential to powerfully limit and reverse the trajectory of Pennsylvania’s carceral regime.

The history of state prison overcrowding and resistance in Pennsylvania also yields critical insights into ongoing conversations about reform, decarceration, and abolition. On a basic level, this study echoes other state-level analyses that emphasize both the need and the possibility for “drastically reduc[ing] the state’s capacity to arrest, process, and punish.”¹⁰ Other studies have rightfully emphasized the pitfalls of reformism that, as André Gorz says, “subordinates its objectives to the criteria of rationality and practicability of a given system.”¹¹ Reforms can “shift capacity to other forms of punishment,” “transfer it to private entities,” and widen the state’s capacity to criminalize and punish.¹² In the case of prison conditions litigation, judges, correctional administrators, state lawmakers, and lawyers often translated orders to reduce overcrowding into new prison construction or other moves that further legitimized the carceral state. Usually only marginally (if at all) less crowded and still brutal in nature, these newly “lawful prisons” – or correctional systems that seemingly complied with court orders through prison construction or heightened investment in prison services and are thus deemed

⁹ Dan Berger and Toussaint Losier, *Rethinking the American Prison Movement*, 8, 143-144.

¹⁰ Schoenfeld, *Building the Prison State*. 228.

¹¹ André Gorz, *Strategy for Labor: A Radical Proposal* (Boston: Beacon Press, 1968).

¹² Schoenfeld, *Building the Prison State*, 228-230. See also Gilmore, *Abolition Geography: Essays Towards Liberation* (London: Verso, 2022); Kaba *We Do This ‘Til We Free Us*; Schenwar and Law, *Prison by Any Other Name*; Whitlock and Heitzeg, *Carceral Con.*

constitutional – preserved and expanded the racialized punishment system’s place in the political economy.¹³

The dangers of reform are certainly present across the history of late-twentieth century penal policymaking in Pennsylvania, as these chapters have made clear. At the same time, I hope that the history of Philadelphia prisoners’ struggle against overcrowding in the courts, and the decarceral remedies they momentarily produced, demonstrate the necessity of and opportunity for mass prisoner release in our lifetime. The PLRA has made pressuring the courts more difficult. But there is nothing stopping us from demanding that our state leaders use their discretionary power to decarcerate people now. State and local policymakers can elect to cease the use of monetary bail and pretrial detention, refrain from charging people upon arrest, roll back mandatory and other tough sentencing laws, refuse to build new prisons (including, as is ludicrously underway in New York City, the construction of “community jails” to replace the city’s deadly Rikers jail), and aggressively release those behind bars today.¹⁴ In a stunning turn of events, the city that once fought the federal court tooth and nail to prevent prisoner releases due to prison overcrowding currently has a twice-elected progressive District Attorney, Larry Krasner, who has experimented with requesting pre-trial freedom for certain individuals and has even refused to prosecute individuals arrested for certain crimes. His decarceral (if still, as many abolitionists would rightly raise, insufficient) actions have so incensed state Republicans that

¹³ Schlanger, “Beyond the Hero Judge: Institutional Reform Litigation as Litigation,” *Michigan Law Review* 97, no. 6 (1999): 1998, FN 19. See also Robert T. Chase, *We Are Not Slaves*; Schoenfeld, *Building the Prison State*; Mona Lynch, *Sunbelt Justice*; Guetzkow and Schoon, “If You Build It, They Will Fill It; Feeley and Rubin, *Judicial Policy Making and the Modern State*.

¹⁴ On New York City’s efforts to replace Rikers with “feminist” community jails and abolitionist pushback to these proposals, see Abby Cunniff, “NYC Activists Push Back Against Proposed ‘Feminist’ Women’s Jail in Harlem,” *Truthout*, July 2nd, 2022.

they have attempted to impeach him – a sobering reminder of the persistence of retributive penal politics in our time.¹⁵ The point, though, is that abolition – at least the pursuit of reforms significant enough to reduce the number of people being placed in cages and dollars funneled towards the U.S. punishment machine – need not be a far off vision. Imprisoned people in 1990s Philadelphia pushed the courts to place limits on the city’s prison population and release numerous others, preventing thousands of Philadelphians from spending harrowing and at times deadly time behind bars. And this occurred during one of the most reactionary eras of tough-on-crime politics, when politicians freely referred to Black youth as “super-predators” and repeatedly handed down death penalty sentences. What is stopping us from demanding this, and more, today?

Finally, this history intervenes into ongoing discussions about the character of United States federalism. Carceral state scholars have long examined how the United States’ diffuse governing structure influenced the rise of mass imprisonment, with several suggesting that the real “power to punish” lies at the state and local level, even as national politics remain influential.¹⁶ The history of state prison overcrowding teases out this insight, demonstrating how national-level crime politics cannot capture the fraught material realities of the states’ capacity to punish and imprison. Studies of policing suggest that federalism enshrined local police forces’ power to resist more progressive national-level civil rights reforms and “sanctioned passivity”

¹⁵ Samantha Michaels, “Blaming Larry Krasner for Gun Violence Does Not Make Statistical Sense,” *Mother Jones*, October 31st, 2022.

¹⁶ Mona Lynch, “Mass Incarceration, Legal Change, and Locale.” See also Gottschalk, *The Prison and the Gallows*; Elizabeth Hinton, *From the War on Poverty to the War on Crime*; Lisa Lynn Miller, *The Perils of Federalism*; Sara Mayeux and Karen Tani, “Federalism Anew,” *American Journal of Legal History* 56, no. 1 (2016): 128–38; Schoenfeld, *Building the Prison State*; Stuart Schrader, *Badges without Borders*.

towards white supremacist violence, the history of federalism and mass imprisonment suggests that the fractured nature of crime control created state crises that threatened to upend the punitive turn.¹⁷ In part, this is because the federal government did not meaningfully invest in state and local prison construction in the same way that they invested in local policing, leaving states and localities to figure out how to mass incarcerate largely on their own.¹⁸ This history suggests the need for more scholarship on how state governments resolved the crisis of carceral incapacity such that they did, transform into carceral states, especially when they were faced with considerable resistance from imprisoned people, civil rights lawyers, and state and federal court judges who declared their efforts unconstitutional.

That the U.S. incarcerates the most people in the world is a harrowing and shameful fact. As Angela Davis writes, the “prison is considered so ‘natural’ that it is extremely hard to imagine life without it.”¹⁹ But we need not root our dreams of a world without prisons in a future tense. The crisis of state prison overcrowding generated a little-known wave of critique and resistance against an emerging racialized carceral regime, advancing arguments that building more prisons and caging more people was inhumane, unjust, costly, and unnecessary. The struggle against racialized criminalization and imprisonment has been here all along, in prison yards, legal petitions, and even in the halls of the state. The erasure of this recent history of decarceral organizing at a time when prison overcrowding made the carceral state far more

¹⁷ Schrader, *Badges Without Borders*, 119. See also Elizabeth Hinton, *From the War on Poverty to the War on Crime*; Naomi Murakawa, *The First Civil Right*.

¹⁸ Charlotte E. Rosen, “The Armed Career Criminal Act and the Puzzle of Federal Crime Control in the Reagan Era: ‘It’s at the State and Local Levels That Problems Exist,’” *Journal of Policy History* 35, no. 2 (April 2023): 161–94.

¹⁹ Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2001), 10.

fragile and unsettled than it is today should trouble us. We must refuse to sustain its absence in our history and in our struggle.

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