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### **How Can We Sleep While the Beds are Burning? The Tumultuous Prison Culture of Attica Flourishes in American Prisons Twenty-Five Years Later**

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# HOW CAN WE SLEEP WHILE THE BEDS ARE BURNING? THE TUMULTUOUS PRISON CULTURE OF ATTICA FLOURISHES IN AMERICAN PRISONS TWENTY-FIVE YEARS LATER

Justin Brooks†

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## INTRODUCTION

"My heart was fashioned to be susceptible of love and sympathy, and when wrenched by misery to vice and hatred, it did not endure the violence of the change without torture such as you cannot even imagine."

Mary W. Shelley  
Frankenstein

On Monday, September 13, 1971, at 7:46 a.m., Russell Oswald, the Commissioner of the New York State Department of Corrections, delivered his final ultimatum to the inmates of the Attica prison.<sup>1</sup> He gave the inmates one hour to respond to the tendered settlement offer before military action would be taken to put an end to the inmate revolt.<sup>2</sup> At 9:43 a.m., Oswald kept his promise.<sup>3</sup> The prison electric supply was shut down, helicopters dropped canisters of tear gas, and state troopers sprayed the prison yard with rifle fire.<sup>4</sup> The troopers attacked and the battle was soon over; thirty-nine people were killed and eighty-eight more were wounded.<sup>5</sup> An investigatory commission later described the incident, saying that "with the exception of Indian massacres in the late 19th century, the State Police assault which ended the four day uprising was the bloodiest one-day encounter between Americans since the Civil War."<sup>6</sup>

On Easter morning, April 11, 1993, two inmates were involved in a fistfight in the L-Block of the Southern Ohio Correctional Facility at Lucasville.<sup>7</sup> When guards responded to the fight, they were overpowered by inmates who took their nightsticks.<sup>8</sup> Officials closed the crash gates to seal off the block, and in the initial violence, six inmates were killed, one guard was severely beaten, and eight other guards were taken hostage.<sup>9</sup> For nine days there was a standoff between the inmates

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1. See HERMAN BADILLO & MILTON HAYNES, *A BILL OF NO RIGHTS: ATTICA AND THE AMERICAN PRISON SYSTEM* 92 (1971).

2. *See id.*

3. *See id.* at 94.

4. *See id.*

5. *See* Larry E. SULLIVAN, *THE PRISON REFORM MOVEMENT: FORLORN HOPE* 106 (1990).

6. *See id.*

7. *See* Lou Mio, *The Riot, The Reasons; Anger, Fear, Relief Mingle in 11 Days*, *THE PLAIN DEALER*, Apr. 25, 1993, at 2C.

8. *See id.*

9. *See id.*

and corrections officials, with many failed attempts at negotiation.<sup>10</sup> On April 20, when conditions of surrender were finally negotiated with the inmates, the siege ended and the final body count was eight.<sup>11</sup>

The uprising at Attica has been described as a turning point in the history of American corrections.<sup>12</sup> Due to the tremendous media attention that the uprising received, the public learned a great deal about a small town prison in upstate New York, and the problems in prisons generally.<sup>13</sup> Less than two weeks after the Attica riot, "Governor [Nelson] Rockefeller said . . . that 'radical reforms' in [New York]'s system of criminal justice could no longer be delayed,"<sup>14</sup> and in response, 114 legislators proposed eighteen prison reforms.<sup>15</sup> In May of 1972, New York State Assemblymen approved twelve million dollars for reforms in the New York State Prison System,<sup>16</sup> and by September of 1972, twenty-four of the twenty-eight original demands of the Attica inmates had been met.<sup>17</sup>

Although some of the apparent immediate causes of the Attica uprising were addressed during the early 1970's, the optimistic notion that Attica spawned cures for the institutional problems that triggered the

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10. *See id.*

11. *See* Kevin Harter, *2 Inmates Killed at End of Siege; Pair Died Hours Before Final Surrender at Lucasville*, THE PLAIN DEALER, Apr. 30, 1993, at 3B.

12. *See, e.g.,* Stuart B. Klein, *Prisoners' Rights to Physical and Mental Health Care: A Modern Expansion of the Eighth Amendment's Cruel and Unusual Punishment Clause*, 7 FORDHAM URB. L.J. 1, 9 (1978).

13. *See* John Hanchette, *Riot at Attica Leaving its Mark on Lucasville. Both Sides Learned from Old Lesson*, CIN. ENQUIRER, Apr. 20, 1993, at A4.

14. *See* William E. Farrell, *Rockefeller Asks New Justice Code*, N.Y. TIMES, Sept. 25, 1971, at 1.

15. *See* William E. Farrell, *Group of Democratic Assemblymen Offers State Prison Reforms*, N.Y. TIMES, Nov. 11, 1971, at 55. These recommendations "included the appointment of an ombudsman to handle inmate grievances in each state prison, the phasing out of the state's maximum security prisons, the payment of state minimum wage for prison labor, and conjugal visiting rights for prisoners." *Id.*

16. *See* James F. Clarity, *\$12-Million Prison Fund is Approved by Assembly*, N.Y. TIMES, May 6, 1972, at 12. Governor Rockefeller stated that the 12 million dollars would be spent on improvement of service for inmates, operating expenses for diversification of facilities, a special maximum security facility, reorganization and strengthening of prison staff and staff improvements at correction department headquarters. *See id.*

17. *See* Paul L. Montgomery, *Attica Prisoners Have Gained Most Points Made in Rebellion*, N.Y. TIMES, Sept. 12, 1972, at 1. Improvements were made in the areas of retraining corrections officers, education and rehabilitation programs for inmates, the parole system, food, clothing, visiting privileges, mail censorship and the number of showers each inmate was allowed to take per week. *See id.* The remaining demands included a minimum wage for inmate work, a grand jury investigation into the use of profits from prison industries, an end to the administrative resentencing of parole violators, and the abolition of disciplinary segregation. *See id.*

uprising was decimated over two decades later when Americans became familiar with Lucasville, Ohio. Since the Lucasville riot, there have been prison riots in Alabama,<sup>18</sup> Connecticut,<sup>19</sup> Illinois,<sup>20</sup> Michigan,<sup>21</sup> South Carolina,<sup>22</sup> South Dakota,<sup>23</sup> and Texas.<sup>24</sup> Even at Attica, although the state legislature acted on the inmates' demands, the prison culture in which the Attica riots occurred has not fundamentally changed.<sup>25</sup> In fact, in the "tough-on-crime" 1990's, the culture of prisons across America is disturbingly similar to the culture of Attica at the time of the uprising. Barriers remain between inmates, administrators, politicians, and the general public. Prisons have become less manageable and more violent.

If we do not reform these tumultuous prison cultures, we can expect more prison riots and more prisoners leaving prison unrehabili-

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18. See Ray Long, *Inmates Riot at Four Prisons; U.S. Lockdown Ordered*, L.A. DAILY NEWS, Oct. 21, 1995, at N12; Kevin Johnson, *Rioting Inmates Locked Away; Violence Follows Cocaine-Law Vote*, USA TODAY, Oct. 23, 1995, at 2A. On October 19, federal inmates set fires and smashed windows in response to the sentencing discrepancies between those convicted of possessing crack cocaine and those convicted of possessing powder cocaine. See *id.* There were 13 injuries and one million dollars in property damages. See *id.* Rioting spread to federal prisons in Greenville, Illinois, Memphis, Tennessee and Allenwood, Pennsylvania. See *id.*

19. See Jon Lender, *WTIC Examines Struggle for Control in Prisons*, THE HARTFORD COURANT, Apr. 30, 1993, at C2.

20. See Gary Marx & Andrew Fegelman, *Overcrowding Keeps the Fuse Lit at Jail*, CHI. TRIB., Feb. 7, 1995, § 1, at 1. Sixty inmates rioted at the Cook County Jail in response to overcrowded conditions in which one in seven inmates had to sleep on the floor. See *id.*

21. See *Prison Pros Point Out Cons of Tougher Sentences*, CHRISTIAN SCI. MONITOR, Aug. 15, 1995, at 4. In Adrian, Michigan, seven guards were injured in an overnight riot. See *id.* The inmates responded in anger to being ordered back into their cells during a power outage. See *id.*

22. See Larry Copeland, *Back on the Chain Gang; Alabama brings back a Symbol of an often Brutal History*, EDMONTON J., May 20, 1995, at C2. Inmates at Broad River staged an eleven-hour siege in response to a new prison policy mandating haircuts. See *id.* Three hostages and five guards were stabbed. See *id.*

23. See *Prison Riot Ends with 2 Guards Hurt*, WASH. TIMES, May 7, 1993, at B6. The South Dakota riot took place in South Dakota State Penitentiary and involved approximately 200 inmates who wanted more religious freedom, better health care and protection from discriminatory action by guards. See *id.* The rioters burned a building and injured two guards before peacefully returning to their cells. See *id.*

24. See Jennifer Nagorka, *Texas Prison Uprising Ends Peacefully; Control Room Nearly Seized, Director Says*, DALLAS MORNING NEWS, Apr. 25, 1993, at 41A. On April 23, over 50 inmates rioted at a minimum security prison in Groesbeck, Texas. See *id.* The riot occurred when inmates were told to clean their cells. See *id.* When they refused, their television privileges were taken away and they proceeded to riot, destroying prison property. See *id.* The riot was quickly contained, primarily through the use of tear gas. See *id.*

25. See *Time Has Not Healed All of Attica's Wounds; Progress, Problems 20 Years After the Riot*, ORLANDO SENTINEL, Sept. 16, 1991, at A6.

tated, angry, and violent. As Reginald Wilkinson, Director of the Ohio Department of Rehabilitation and Correction explains:

By caging men up like animals and treating them as less than human, you create rage, and helplessness, and unless there's a death sentence, or a life sentence, they're going to come out some day, and they're going to live in the community. They will be a worse menace to all of us when they come out than when they went in.<sup>26</sup>

Research confirms Reginald Wilkinson's belief that there is a strong connection between prison violence and recidivism.<sup>27</sup> Thus, taxpayers who pay to incarcerate inmates who recidivate, and who will live among unrehabilitated ex-inmates, should be concerned about tumultuous prison cultures.

It has been twenty-five years since the Attica riots. A quarter of a century later seems like an appropriate time to reflect upon prison cultures of the past in order to better understand prison cultures of the present and future. This article focuses upon the prison cultures of the Attica and Lucasville riots in order to better understand the development and maintenance of tumultuous prison cultures in the context of twenty-five years of prison "reform." Hopefully, through reflection, we will learn from the past, or as the saying goes, "we are condemned to repeat it."

## I. WHAT IS A PRISON CULTURE? WHAT MAKES PRISON CULTURES UNIQUE?

Every institution has a culture,<sup>28</sup> whether the institution is a law school, a factory, a bank, or even a marriage. Each culture is made up of interrelating factors that define the relationship of those who live or work within the culture. There are certain expectations and roles played by each individual within the culture, and each culture has its own values, rituals, and hierarchy of power. Prison cultures have unique characteristics: they are isolated, oppressive, and heavily regulated, all of which tend to create a volatile, rather than static culture.

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26. See Christopher Davey, *Prison Solution Argued; Corrections Group Meeting in City*, CIN. ENQUIRER, Aug. 6, 1995, at B1.

27. See David P. Farrington & Christopher P. Nuttall, *Prison Size, Overcrowding, Prison Violence, and Recidivism*, 8 J. CRIM. JUST. 221 (1980).

28. Culture has been defined as "the total pattern of human behavior and its products embodied in thought, speech, action, and artifacts and dependent upon man's capacity for learning and transmitting knowledge to succeeding generations through the use of tools, language, and systems of abstract thought." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED 552 (1986).

Unlike most institutional cultures, the majority of the members of a prison culture spend all of their time within the culture. Prisons are considered "total institutions,"<sup>29</sup> because they encompass the entire lives of the majority of their inhabitants. As in most institutions, prison employees go home at night. But in prisons, the employees are the minority of the population of the culture. The majority of the correctional community never leaves the institution, and thus, are isolated from interaction with any other community. The isolation of the prison community has been an intentional and integral part of the development of prison culture as society has accepted isolation as a form of punishment.<sup>30</sup>

The isolation of prisoners from outside communities forces prisoners to socialize in the prison culture. This process of socialization is referred to by correctional scholars as prisonization.<sup>31</sup> Inmates adapt to the culture which is shaped by the individual characteristics of the inmates,<sup>32</sup> the guards' treatment of the inmates,<sup>33</sup> and the management philosophy of the administration.<sup>34</sup> Even within a particular prison, there may be several subcultures based upon the treatment and philosophy of the various participants within the prison culture.<sup>35</sup>

A 1992 correctional study categorized five types of relationships between staff and inmates within correctional facilities based upon the actions and attitudes of the staff members: The Punitive Type; The Custodial Type; The Patronage Type; The Therapist Type; and The Integrative Type.<sup>36</sup> The Punitive Type is a staff member who avoids communication with inmates, demands submission and obedience, and

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29. Prisons were first described as "total institutions" by Erving Goffman in *ASYLUMS: ESSAYS ON THE SOCIAL SITUATION OF MENTAL PATIENTS AND OTHER INMATES* (1962).

30. See MICHEL FOUCAULT, *THE BIRTH OF THE PRISON* 9 (1979).

31. The term "prisonization" was first used by Donald Clemmer in his ground-breaking research *THE PRISON COMMUNITY* (1940).

32. See Barry C. Feld, *A Comparative Analysis of Organizational Structure and Inmate Subcultures in Institutions for Juvenile Offenders*, 27 *CRIME & DELINQ.* 336, 338 (1981).

33. See Lucien X. Lombardo, *Group Dynamics and the Prison Guard Subculture; Is the Subculture an Impediment to Helping Inmates?*, 29 *INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY* 79 (1985).

34. See Francis T. Cullen et al., *The Correctional Orientation of Prison Wardens: Is the Rehabilitative Ideal Supported?*, 31 *CRIMINOLOGY* 69 (1993).

35. See CHARLES STASTNY & GABRIELLE TYRNAUER, *WHO RULES THE JOINT?* 138 (1982).

36. Sarah Ben-David, *Staff-to-Inmate Relations in a Total Institution: A Model of Five Modes of Association*, 36(3) *INT'L J. OF OFFENDER THERAPY & COMP. CRIMINOLOGY* 213-15 (1992).

punishes even slight misbehavior.<sup>37</sup> The Custodial Type is not interested in punishment, wants to run a tight ship, and expects inmates to obey.<sup>38</sup> The Patronage Type forms a protective relationship with the inmates that he or she manages, and values close communications.<sup>39</sup> The Therapist Type perceives inmates as patients needing treatment.<sup>40</sup> The Integrative Type sees each inmate as an individual almost in equal standing to the staff member and has relationships with inmates fitting into the four prior categories based on the staff member's perception of the individual inmate.<sup>41</sup> The significance of these relationships in defining correctional cultures cannot be overstated. The type of relationships between staff and inmates was at the heart of both the Attica and the Lucasville riots. These relationships defined the culture of both prisons.

The isolation of prisons as "total institutions," the variety of inmate-staff relationships, the oppressive environment of prisons as a place to work and live, and the incessant regulation of activity within prisons, make them particularly volatile cultures. The mere fact that inmates significantly outnumber staff members makes correctional management a difficult task.<sup>42</sup> When the management style is one of power, punishment, and control a violent inmate culture emerges.<sup>43</sup> Under these conditions covert inmate subcultures flourish, ultimately leading to conflict.<sup>44</sup>

## II. THE CULTURES OF ATTICA AND LUCASVILLE

### A. Attica: The Punitive Culture

There was a punitive relationship between staff and inmates in Attica prison at the time of the riots. The relationship was defined by poor communication, power, and punishment. After the riots, an in-

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37. See *id.* at 213.

38. See *id.* at 214.

39. See *id.*

40. See *id.*

41. See Ben-David, *supra* note 37, at 215.

42. See Feld, *supra* note 33, at 342.

43. See *id.* Feld reported in his study that when staff sought obedience and conformity by using physical control, inmates became alienated and the "inmates' isolation hindered them from cooperating with one another in the institutional adjustment or in resisting exploitation, while predatory violence reinforced inmates' negative views of one another." *Id.* at 361.

44. See *id.* See also STASTNY & TYRNAUER, *supra* note 36, at 135.



mate wrote "ATTICA FELL 9-9-71—FUCK YOU PIG!" on one of the prison walls, and a state police officer responded on the same wall, writing "RETAKEN 9-13-71—31 DEAD NIGGERS."<sup>45</sup> Malcolm Bell, a prosecutor who attempted to prosecute the state police officers involved in brutalities during their attack on Attica,<sup>46</sup> wrote in his book *The Turkey Shoot*, that the "graffiti epitomized the spirits at war during the riot."<sup>47</sup>

The "spirit" of Attica was not unlike other prison cultures of the late 1960's and early 1970's. Like other disenfranchised groups, prisoners were challenging authority and demanding civil rights.<sup>48</sup> The civil rights movement was not kept at bay by the prison walls, and leaders of the prisoners' civil rights movement advocated unity of the races among the inmates against what they perceived as a common oppressor: those that ran and operated the correctional facilities. For example, a San Quentin underground newspaper called for unity among the prisoners for a common purpose:

We're obsessed with the nearsighted disputes based on race, ideology, group identity, and so on. We expend our energies despising and distrusting each other. Don't be so critical of the other races. All of this is helping the California Department of Corrections. We permit them to keep us at each others' throats. But a handful of us are calling for unity. This is for a purpose. We want to crush this empire that has been built upon our suffering.<sup>49</sup>

While demands were being made at Attica, there was no response by the staff. Commentators suggested that the only significant step toward reform at Attica was changing the sign at the institution from

45. See STASTNY & TYRNAUER, *supra* note 36, at 95.

46. Some of the incidents of brutality on the part of the state police after they stormed the Attica facility included: having the inmates strip naked; having the inmates lie on the ground and then kicking them; forcing one inmate to lie naked on a recreation table and balance a football on his chest for hours after being told he would be killed if he dropped the ball; burning inmates with cigarettes; striking inmates in the head with nightsticks; and forcing inmates to run across broken glass in bare feet. See MALCOMB BELL, *THE TURKEY SHOOT* 28-34 (1985). Throughout the brutalities the inmates were taunted with racial epithets being called either "niggers" or "white niggers." See *id.*

47. *Id.* at 34.

48. See SULLIVAN, *supra* note 6, at 98-100; see also LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 312-14 (1993); WILLIAM L. SELKE, *PRISONS IN CRISIS* 28-36 (1993).

49. See JESSICA MITFORD, *KIND AND UNUSUAL PUNISHMENT: THE PRISON BUSINESS* 233 (1973) (quoting the San Quentin newspaper "The Outlaw"); see also SULLIVAN, *supra* note 6, at 95.

“prison” to “correctional facility.”<sup>50</sup> Nine months before the uprising at Attica, after there had been riots in the New York City jails, the New York Committee on Crime and Corrections warned that Attica was a volatile facility primed for a riot situation.<sup>51</sup> There was tension between the inmates and the guards, and although the guards claimed that they never beat any of the inmates, many of them openly referred to their nightsticks as “nigger sticks.”<sup>52</sup> Attica was a prison controlled by power.

Samuel Melville, one of the leaders of the Attica uprising, wrote in a letter to his lawyers that the prison enforced “barbaric regulations,” and that he had been disciplined for violations including walking with his hands in his pockets and refusing to line up according to height.<sup>53</sup> The inmates organized in opposition to these regulations. In a letter to a former inmate, Melville wrote:

I can't tell [yo]u what a change has come over t[he] brothers in Attica. So much more awareness & growing consciousness of themselves as potential revolutionaries. Reading, questioning, rapping all t[he] time. Still bigotry & racism, black, white & brown, but [yo]u can feel it beginning to crumble in t[he] knowledge so many are gaining that we must build solidarity against our common oppressor—t[he] system of exploitation of each other & alienation from each other.<sup>54</sup>

In May of 1971, an interracial group of inmates created the Attica Liberation Faction and tendered a “manifesto” of demands to Commissioner Oswald.<sup>55</sup> The manifesto stated that the demands were not linked to any strike, but the language of the manifesto—referring to the Governor of New York, the Department of Corrections, the New York Legislature, the New York courts, the United States courts, and the New York Parole Board as “vile and vicious slavemasters”—left no doubt as to the profound anger and frustration of the inmate group.<sup>56</sup> The inmates’ manifesto stated that “the administration and prison employees no longer consider or respect us as human beings, but rather as domesticated animals selected to do their bidding in slave labor and furnished as a personal whipping dog for their sadistic, psychopathic

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50. See BADILLO & HAYNES, *supra* note 2, at 7.

51. See *id.* at 25.

52. See *id.* at 26.

53. See SAMUEL MELVILLE, LETTERS FROM ATTICA 166 (1972).

54. *Id.* at 168-69.

55. See BADILLO & HAYNES, *supra* note 2, at 27.

56. See MELVILLE, *supra* note 54, at 176.

hate.”<sup>57</sup>

On August 21, George Jackson, a high-ranking officer of the Black Panther Party, was slain at San Quentin Prison.<sup>58</sup> The slaying caused tension in the Attica facility which erupted on September 8, when a fight broke out between a black inmate and a white inmate in the prison yard.<sup>59</sup> When a corrections officer attempted to separate the two inmates, the black inmate punched him in the chest.<sup>60</sup> The two inmates were taken away, and rumors later spread throughout the prison that they had been beaten.<sup>61</sup> Outraged inmates later were heard yelling from their cells “[g]et a good night’s sleep, whitey. Sleep tight, because tomorrow’s the day.”<sup>62</sup>

On Thursday, September 9, approximately 1200 of the 2500 Attica inmates took control of a large portion of the prison and took thirty-eight guards and civilian employees hostage.<sup>63</sup> The inmates demanded to negotiate with Commissioner Oswald personally.<sup>64</sup> Offers were made and negotiations attempted, but the battle lines at Attica were too entrenched, and true negotiation and settlement would not happen.<sup>65</sup> During the attempted negotiation process an inmate named L.D. Barde offered a statement that read: “We are men, we are not beasts and we

57. *See id.* The inmates demanded: legal representation at parole hearings; improved medical treatment; adequate visiting conditions; the end of segregation units; the right to choose not to work; the end of racial and political persecution; the right to subscribe to political or other educational publications; more and improved prison industry; minimum wage for inmate labor; the prosecution of correctional officers for any acts of cruel and unusual punishment; the end of brutality against inmates; legal assistance in preparing post-conviction petitions and in negotiating with the prison administrators; inmate workers’ insurance; vocational training leading to union membership; an accounting of inmate recreation funds and a voice in deciding how the money should be spent; an elected, as opposed to appointed, parole board; a full-time salaried board of prison monitors; an end to racial agitation and discrimination by the prison administration; the right of inmates to be present during their own cell and/or property searches; an end to parole denial based solely upon a prior criminal record; an end to unsanitary prison conditions; better quality and bigger servings of food; and a uniform set of prison regulations for the state. *See id.* at 177-84.

58. *See* BADILLO & HAYNES, *supra* note 2, at 30.

59. *See id.* at 35.

60. *See id.*

61. *See id.* at 36.

62. *See* BADILLO & HAYNES, *supra* note 2, at 36. While this was going on, inmate Herbert X. Blyden sent an urgent appeal to State Senator John R. Dunne, Chairman of the State Senate Committee on Crime and Corrections. *See id.* The letter read: “The situation at present is rather fluid indeed. All we received were promises of change.” *See id.* The letter was not received until after the riot. *See id.*

63. *See id.* at 40.

64. *See* BADILLO & HAYNES, *supra* note 2, at 41.

65. *See id.* at 42.

will not be beaten or driven as such. What has happened here is but the sound before the fury of those who are oppressed."<sup>66</sup> When negotiations failed, however, the police still retained the power and the massacre occurred.

### B. Lucasville: The Custodial Culture

There was a custodial relationship between staff and inmates in the Lucasville prison at the time of the riot. The staff were not primarily motivated by punishment, but inmates were expected to obey. After a 1990 investigation into the murder of a prison schoolteacher, Warden Arthur Tate, Jr. was assigned to the facility.<sup>67</sup> Tate instituted "Operation Shakedown," tightening up security and control over inmates.<sup>68</sup> Among other things, "Operation Shakedown" included frequent, random cell searches and inmate drug testing.<sup>69</sup>

Similar to Attica, racial tension was part of the culture at Lucasville. At the time of the Lucasville uprising, approximately fifty-seven percent of the Lucasville inmates were black,<sup>70</sup> and most of the 500 guards were white.<sup>71</sup> The lack of diversity among the guards led to racial tension between inmates and guards, and one of the demands made by the rioting inmates was the hiring of more black guards.<sup>72</sup>

There was also racial tension among the inmates at Lucasville. Another reason Warden Tate had been assigned to the facility was to deal with a white supremacist group; the Aryan Brotherhood Nation.<sup>73</sup> This group controlled hundreds of inmates, and participated in drug dealing, prostitution, and gambling within the prison. The group was also linked to the stabbing of four black inmates.<sup>74</sup> The administration responded to the racial tension with custodial control.

The custodial control culture at Lucasville was also the result of overcrowded conditions. At the time of the uprising, the Ohio prison

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66. See *id.*

67. See Mark Tatge, *Lucasville Warden Runs a Tight Ship*, THE PLAIN DEALER, Apr. 14, 1993, at 8A.

68. See Mary Beth Lane et al., *Riot Sets Back Strides at Prison; Government Scrutiny Brought Improvements*, THE PLAIN DEALER, Apr. 18, 1993, at A16.

69. See *id.*

70. See John Mangels & Mark Tatge, *Tough, Tense, Overcrowded*, THE PLAIN DEALER, Apr. 13, 1993, at 1A.

71. See Nick Charles & John Mangels, *Racism, Crowding Sparked Crisis, Ex-Convicts Say*, THE PLAIN DEALER, Apr. 14, 1993, at 1A.

72. See *id.*

73. See Tatge, *supra* note 68, at 8A.

74. See Mangels & Tatge, *supra* note 71, at 1A.

system was operating at 175% of rated capacity.<sup>75</sup> Ohio had the fifth largest prison population in the United States, and the third most crowded prisons.<sup>76</sup> As a result, twenty-five to thirty percent of the inmates at Lucasville were double-celled.<sup>77</sup> Under these extreme conditions, the staff responded to the overcrowding by emphasizing custodial control.

Ultimately, the spark that ignited the Lucasville uprising was the refusal by a group of Black Muslim inmates to submit to a tuberculosis test for religious reasons.<sup>78</sup> In response to the refusal, prison officials scheduled a "lockdown" for Monday, April 12, to administer the tuberculosis tests, whether the inmates wanted the tests or not.<sup>79</sup> Prison officials argued that tuberculosis was rampant among prison populations and that approximately eight percent of Ohio's prisoners were thought to carry the bacteria which causes tuberculosis.<sup>80</sup> Inmate representative Abdul Samad Mulin, however, claimed that the test was an injection which violated Islamic law, and that the Muslims were only willing to take a saliva test or an X-ray.<sup>81</sup> The inmates refused the test and the riot ensued.

In stark contrast to the Lucasville approach of locking inmates down and forcing them to submit to tuberculosis tests, was the procedure followed in the Mansfield Correctional Institution in Ohio to deal with Muslim inmates refusing such tests.<sup>82</sup> Muslim clergymen were brought into the Mansfield facility to explain to the inmates that tuberculosis tests did not violate their faith, and the tests were conducted without incident.<sup>83</sup> Unfortunately, Lucasville was not a prison culture

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75. See John S. Long & Scott Stephens, *Tough Sentencing, Tough Conditions; Many Say Mandatory Terms to Blame for Overcrowding and Tensions Among Inmates*, THE PLAIN DEALER, Apr. 25, 1993, at 9C.

76. See *id.*

77. See Keith Epstein, *Akin to a Dungeon More and More Prisons Favoring Concrete Quarters, Machine-Monitored Security*, THE PLAIN DEALER, Apr. 25, 1993, at 10C.

78. See Kevin Harter & Michael K. McIntyre, *Lucasville Riot Came Day Before Testing for TB*, THE PLAIN DEALER, Apr. 21, 1993, at 7A.

79. See Bill Sloat, *South African Imam Sparked Prison Riots*, THE PLAIN DEALER, May 4, 1993, at 1A.

80. See Harter & McIntyre, *supra* note 79, at 7A.

81. See *id.* Fawaz Damra, Imam of the Islamic Center of Cleveland, said that Islam has no stricture against such tests. See *id.*

82. See Sloat, *supra* note 80, at 1A.

83. See *id.* In fact, several days before the uprising at Lucasville, the Warden had in his possession two letters written by Ohio Muslim leaders stating that having the tuberculosis test did not violate Muslim law. Mark Tatge & James G. Darr, *Letters from Muslims May Have Averted Riot*, THE PLAIN DEALER, June 17, 1993, at 1A. These letters were used in the

defined by such staff-inmate communication. It was a prison managed by custodial control.

### III. REFORMING PRISON CULTURES OVER THE LAST TWENTY-FIVE YEARS

Why in the last twenty-five years of prison litigation and reform have the cultural causes of the Attica riot not been addressed? The riot at Lucasville, and subsequent riots, have proven that the tumultuous prison culture of Attica has not gone away.<sup>84</sup> Due to shortcomings in prison litigation, political agendas, and new cultural issues that have emerged over the past twenty-five years, the legacy of Attica survives.

#### A. Shortcomings of Reforming Prison Cultures through Litigation

There is no doubt that there have been remarkable achievements in terms of reforming prison through litigation over the past twenty-five years. The United States Supreme Court decided that overcrowding may rise to the level of an Eighth Amendment violation.<sup>85</sup> The Court also held that prisoners retain due process rights and may not be deprived of life, liberty or property without a hearing.<sup>86</sup> Among other things, the Court has upheld inmates right to marry,<sup>87</sup> to receive subscription publications,<sup>88</sup> to receive mail,<sup>89</sup> and to have their serious medical needs attended to.<sup>90</sup>

Nonetheless, there are many problems with reforming prison culture through litigation. First of all, in recent years the courts have been unwilling to enforce consent decrees entered into as the result of prison litigation. In *Rufo*, the Supreme Court lowered the standard necessary

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Mansfield Correctional Institution to peacefully persuade the Muslim inmates to take the test. *See id.* The Warden at Lucasville never shared these letters with the Muslim inmates in his facility and instead ordered that the tuberculosis tests be administered by force. *See id.*

84. Remarkably, although the lack of diversity among guards was one of the causes of the Attica riots, and Robert Gangi, head of the Correctional Association of New York admitted in 1991 that lack of diversity among guards "breeds tension and fosters racism," there is still not much diversity even at Attica. *See* Crim. Just. Inst., Inc., *THE CORRECTIONS* Y.B.; *ADULT CORRECTIONS* 3, 70 (1995). As of January 1, 1995, 50.1% of New York inmates were black, yet only 14.1% of the wardens and other custodial staff were "non-white." *See id.*

85. *See* *Hutto v. Finney*, 437 U.S. 678, 685-88 (1978).

86. *See* *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974).

87. *See* *Turner v. Safley*, 482 U.S. 78, 79 (1987).

88. *See* *Thornburgh v. Abbott*, 490 U.S. 401, 402 (1989).

89. *See* *Procunier v. Martinez*, 416 U.S. 396, 408-09 (1974).

90. *See* *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

for the modification of consent decrees, signaling the Court's lack of commitment to enforcing limits on prison overcrowding.<sup>91</sup> The Court justified this decision based upon the perceived necessity to allow prison administrators to run their facilities as they see fit.<sup>92</sup> The hesitancy to enforce consent decrees involving prison overcrowding has also been present in cases involving inadequate living conditions.<sup>93</sup>

Reforming prison cultures through litigation is also a difficult process because running prisons is an executive function.<sup>94</sup> Judges have an aversion to writing orders that are difficult to enforce against government agencies and, in the years since Attica, a judicial philosophy of "hands off" has emerged in terms of reforming the corrections system from the bench, even when dealing with the constitutional rights of inmates.<sup>95</sup> The courts pointedly declare that prison officials know

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91. *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992). The Court supplanted the "grievous wrong" standard with a more relaxed standard which allows modification of a consent decree if the moving party can show "that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance." *Id.* at 393.

92. *See id.*

93. *See* Jeff Potts, *American Penal Institutions and Two Alternative Proposals for Punishment*, 34 S. TEX. L. REV. 443, 481 (1993).

94. *See* Barty Friedman, *Right and Remedy*, 43 VAND. L. REV. 593 (1990) (reviewing LARRY W. YACKLE, *REFORM AND REGRET: THE STORY OF FEDERAL JUDICIAL INVOLVEMENT IN THE ALABAMA PRISON SYSTEM* (1989)).

95. *See, e.g.*, *Washington v. Harper*, 494 U.S. 210, 223-24 (1990) (upholding decision to administer antipsychotic drugs to prisoner without his consent, if the prisoner is dangerous and treatment is in his best interest); *Thornburgh v. Abbott*, 490 U.S. 401, 407-08, 418 (1989) (holding that regulations governing inmates' receipt of subscription publications must be reasonably related to legitimate penological interests); *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987) (deciding that how to best accommodate individual inmates' religious needs is a difficult and sensitive matter with which officials best know how to deal); *Turner v. Safely* 482 U.S. 78, 91 (1987) (ruling that officials may regulate correspondence between inmates, but that the rule forbidding inmates from marrying serves no legitimate penological interest); *Block v. Rutherford*, 468 U.S. 576, 589 (1984) (deciding that officials may deny contact visits to pretrial detainees because courts play a very limited role in this type of administrative decision); *Rhodes v. Chapman*, 452 U.S. 337, 349 n.14 (1981) (holding that double-celling does not constitute cruel and unusual punishment and that prison officials can determine how to deal with their inner security needs); *Bell v. Wolfish*, 441 U.S. 520, 540-41 (1979) (upholding regulations involving pretrial detainees as meeting penological interests); *Houchins v. KQED, Inc.*, 438 U.S. 1, 8 (1978) (holding that denying media access to inmates is acceptable policy); *Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 119, 132-33 (1977) (holding that prison is not a public forum and regulation forbidding inmate union from soliciting new members is rationally related to reasonable objectives); *Pell v. Procunier*, 417 U.S. 817, 827 (1974) (holding that denying media an interview with inmate violated neither freedom of speech or press); *Procunier v. Martinez*, 416 U.S. 396, 405-06 (1974) (holding mail censorship acceptable if it furthers government interests of order and security).

what they are doing and that the courts should defer to their expertise and superior judgment.<sup>96</sup>

An extreme example of the problem the judiciary faces in reforming correctional institutions is illustrated by the litigation that has surrounded the Puerto Rican correctional system for the past two decades. The Puerto Rican correctional system is notorious for being the most oppressive system operating under the U.S. flag.<sup>97</sup> On September 5, 1980, in the case of *Carlos Morales Feliciano v. Carlos Romero Barcelo*,<sup>98</sup> Judge Perez-Gimenez, of the United States District Court of Puerto Rico, declared the conditions of confinement in Puerto Rico so "barbaric and shocking" that they constituted an emergency from which "irreparable harm will occur if immediate relief is not granted."<sup>99</sup> The court did not, however, order the institutions closed, and instead entered an emergency order for "temporary and provisional relief . . ." because all of the conditions could not be "corrected overnight."<sup>100</sup>

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96. See *Pell*, 417 U.S. at 827. "Such considerations [whether to limit an inmate's visitation rights] are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in these matters." *Id.*

97. See Michael Wright, *Puerto Rican Prisons Ready to Explode Despite Reform Effort*, N.Y. TIMES, Nov. 19, 1982, at A18.

98. 497 F. Supp. 14 (D.P.R. 1979).

99. *Id.* at 32. In deciding *Feliciano*, the district court reported at length on the conditions within eight facilities revealing that: (1) the facility for young offenders was so overcrowded that they could only exercise once a week; (2) that there were insufficient beds, and many inmates were forced to sleep on the floor; (3) that mentally ill inmates (as determined by penal guards) were housed in "calabozos" (isolation cells—basically "cages with bars on the top" which allowed inmates to commit suicide by hanging themselves); (4) that many of the toilets in the prisons were not even hooked up to the plumbing and there was a stench that was "omnipresent;" and (5) that the institutions had completely inadequate medical facilities and were completely unsanitary, exemplified by an open sewer in a prison kitchen and urinals which emptied into the showers. See *id.* Judge Perez-Gimenez described one particular Puerto Rican facility, the Bayamon Regional Institution, as the "crowning disgrace of the entire penal system of Puerto Rico." See *id.* It had a rated capacity of 640 inmates and yet the population ranged from 1256 to more than 1400. See *id.* The "calabozos" all faced a central corridor, which was frequently covered with raw sewage, and the kitchen facilities had an open sewer and thus "literally tons of food . . . (had) . . . to be destroyed because of contamination from rats, vermin, worms, and spoilage." *Id.* The plumbing system was totally inadequate and was described as a "public health hazard." *Feliciano*, 497 F. Supp. at 32. One area of the Bayamon facility was named the "Maxima de Locos" (Maximum Security for the Crazy) and held anywhere from 14-18 inmates naked in cells without beds, mattresses, toilets, drinking water, or personal belongings. See *id.* At the time of the investigation the area was covered in feces, a psychiatrist had not come to the area for more than a year, and none of the inmates had seen a doctor. See *id.*

100. *Id.* at 38.



Many nights later, on March 21, 1986, Judge Perez-Giminez once again addressed the *Morales Feliciano* case in a memorandum opinion in which the Court found widespread noncompliance with the September 5, 1980 emergency injunction.<sup>101</sup> The court found that the defendants had wasted vast sums of money, without bringing about any substantial change within the Puerto Rican penal system,<sup>102</sup> and that the defendant's attorneys had acted improperly and "frequently beyond the limits of responsible litigation."<sup>103</sup> The court ruled again that the prison system was overcrowded and "constitutionally unacceptable."<sup>104</sup> Evidence showed that rapes, homicides, firearms, explosives, suicides and assaults by guards were commonplace within the correctional system.<sup>105</sup> Gangs had so much control over individual institutions, that non-members could not be safely incarcerated within those institutions.<sup>106</sup> Guards were ineffective as a result of low morale coupled with low pay, improper training, and poor working conditions.<sup>107</sup> Disciplinary procedures,<sup>108</sup> classification,<sup>109</sup> programming,<sup>110</sup> and the parole system were all found to be totally inadequate.

Still, even after these fact-findings, the court did not order the Puerto Rican correctional facilities shut down because the only options would be to let the inmates out on the street or ship them to facilities in the continental United States at the taxpayers' expense. The court also

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101. *Feliciano v. Barcelo*, 672 F. Supp. 591, 621 (D.P.R. 1986).

102. *Id.* at 594.

103. *Id.* at 595.

104. *Id.* at 597.

105. *Id.* at 603.

106. *See Feliciano*, 672 F.Supp. at 603. Judge Perez-Giminez found the lack of control over the inmate population to be so profound as to write that "the moral degradation of a law enforcement agency which yields its authority over persons in its custody to gangs of convicts can only work to the deterioration of inmates and force them to accept extra-legal structures of life and government." *Id.*

107. *See id.*

108. *See id.* Although disciplinary procedures were valid on paper, in application they were applied in an arbitrary and capricious manner. *See id.* at 604.

109. *See Feliciano*, 672 F. Supp. at 604. The Court found the classification system to be totally inadequate, resulting in pre-trial detainees being confined with convicted prisoners, first offenders being housed with recidivists, dangerous inmates being housed with passive inmates, misdemeanants housed with felons, young adults housed with older inmates, minimum custody inmates housed with medium and maximum custody inmates, addicts housed with non-addicts, and mentally ill, sick, and contagiously ill inmates housed with healthy inmates. *See id.* at 604-05.

110. *See id.* In terms of rehabilitation programming, the court found that institutional programs throughout the Puerto Rican system were either inadequate or did not exist. *See id.* at 606.

did not order that the facilities go into receivership because the Puerto Rican Department of Corrections would ultimately need to run the facilities. Instead, the court ordered that a Special Master oversee the implementation of the ordered changes within the system and that fines be paid, per day, per inmate above the rated capacity.<sup>111</sup>

Since the court order in 1986, there have been hundreds of reports issued by the Special Master in Puerto Rico, and the Puerto Rican Department of Corrections has paid millions of dollars in fines.<sup>112</sup> Still, the system has not come into compliance and the judiciary has been largely powerless to force a change.<sup>113</sup> Unlike fining a corporation, when one branch of the government fines another branch of the government, there is not the same personal stake in the pecuniary loss.

Finally, although litigation has improved the culture of prisons by improving conditions and improving services, litigation cannot address the cultural problems that caused the Attica and Lucasville riots because they are not quantifiable. Even if the district court is successful in bringing Puerto Rican facilities into compliance with constitutional standards, it will be difficult for the court to enforce rulings regarding management style and communication between inmates and staff. In fact, there has been research that has shown that as a result of litigation granting inmates more rights and better conditions, guards have retaliated by becoming more authoritative.<sup>114</sup> In other words, when litigious relationships form between the inmates and the guards, and between the inmates and the administration, the culture becomes even less cooperative and more volatile.<sup>115</sup>

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111. See *id.* at 622.

112. See *Prison Conditions in Puerto Rico*, America's Watch Report (1991); see also *Cortes-Quinones v. Jimenez-Nettleship*, 842 F.2d 556 (1st Cir. 1988); *Valdivieso Ortiz v. Burgos*, 807 F.2d 6 (1st Cir. 1986); *Pinto v. Nettleship*, 737 F.2d 130 (1st Cir. 1984); *Martinez Rodriguez v. Jimenez*, 409 F. Supp. 582 (D.P.R. 1976).

113. In 1989, the Puerto Rican correctional system came under the scrutiny of the United States Court of Appeals. In *Cortes-Quinones*, the court found the officials of the Arecibo District Jail to have acted with deliberate indifference when a mentally disturbed prisoner was found in his jail cell dead and dismembered. 842 F.2d at 560. The jail afforded 15.5 square feet of space per prisoner, significantly less than the 35 square feet requirement imposed by the court order in *Morales-Feliciano*. See *id.* at 558-59. The inmate's medical records, indicating his schizophrenia, did not arrive until after he died, and he was left alone for several months with two groups of rival gang members. See *id.* at 559-60. The prison officials conceded the presence of "squalor, maltreatment, gang warfare, killings, lack of proper medical care, failure to segregate mentally disturbed prisoners, guards unable to control entire cell blocks and other horrors" in their institution. *Id.* at 558.

114. See Hepburn & Crepin, *Relationship Strategies in a Coercive Institution: A Study of Dependence Among Prison Guards*, 1 J. SOC. & PERS. RELATIONSHIPS 143 (1984).

115. See *id.*

*B. Reforming Prison Cultures Has Been Contrary to Political Agendas*

While it has been difficult to reform prison culture in the courts over the past twenty-five years, it has been nearly impossible to accomplish reform through the executive or legislative branches of government. "Tough-on-crime" political agendas have overwhelmed calls for positive reform and politicians have seized upon the fear and anger of citizens toward criminals to gain support for policies that have little or no merit or statistical support.<sup>116</sup> These policies are focused on taking away "benefits" from inmates and making their incarceration more unpleasant.

Politicians are not even listening to those who are running prisons before formulating these policies. Says Mike Quinlan, former Director of the Federal Bureau of Prisons, "if inmates aren't kept busy when you take away all those activities, they will find something to do with their time, and it probably will not be in the best interest of staff trying to monitor their activities."<sup>117</sup> Warden Thomas McKinney of the Alfred Hughes State Prison Unit in Gatesville, Texas, says that banning televisions and recreation takes away "one of our best management tools."<sup>118</sup> Not surprisingly, a 1995 survey conducted by Senator Paul Simon revealed that "85 percent of the 157 prison wardens questioned felt that elected officials were not 'offering effective solutions to America's crime problem.'"<sup>119</sup>

Nonetheless, the "tough-on-crime" policies continue. In 1994, in a prison "reform" bill, Congress took away inmate Pell Grants for college courses and weight lifting equipment for inmates.<sup>120</sup> In Mississippi,

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116. For example, well-publicized crimes have launched public support for, and led to the legislative enactment of, such "get-tough" measures as longer sentencing, mandatory minimums, abolishment of parole, "three strikes laws" and lengthier sentences. See Michael G. Turner et al., "Three Strikes and You're Out" *Legislation: A National Assessment*, 59 FED. PROBATION 16 (1995).

117. See Adam Nossiter, *Life in Prison Turning into a Real Hard Cell; TV, Weight Rooms, Sports Among the Amenities Being Legislated Away*, PITT. POST-GAZETTE, Sept. 18, 1994, at A1.

118. See Richard Lacayo, *The Real Hard Cell: Lawmakers Are Stripping Inmates of Their Perks*, TIME, Sept. 4, 1995, at 31.

119. See Lawrence Hall, *The Doing-Time Bomb Harsh Measures, Crowding Could Trigger Explosion in Prisons*, NEWARK STAR-LEDGER, Aug. 16, 1995, at 14. Senator Simon reported that, "[b]y large margins, the wardens warned that our overwhelming emphasis on building prisons in response to crime isn't working . . . . The wardens urged a more balanced approach, one that mixes punishment, prevention and treatment." *Id.*

120. See H.R. 474, 103d Cong. (1994). The bill amends the Higher Education Act of 1965 (20 U.S.C. § 1070a(b)(8)) to read: "(8) No basic grant shall be awarded under this

private televisions, record players, computers, and stereos have been banned from prisons.<sup>121</sup> The Mississippi legislature has also decided it was worth taxpayers' expense to refit its state's inmates with old fashioned striped uniforms.<sup>122</sup> Representative Mack Mckinnis argued in support of the legislation, saying, "when you see one of these boogers a loose, you'll say, 'I didn't know we had zebras in Mississippi.'"<sup>123</sup> Alvin Bronstein, the former head of the American Civil Liberties Union's National Prison Project, said that "making [Mississippi's] prisons so harsh, . . . will ensure another Attica."<sup>124</sup>

The state of Alabama has led the way in "get-tough" prison reform by reinstating chain gangs.<sup>125</sup> This program, started in June 1995, has received national notoriety. Prisoners are shackled together to chop down trees or break rocks.<sup>126</sup> Ironically, the Alabama legislature jumped on the national bandwagon and banned weight lifting equipment in their prisons because of concerns that inmates "bulk up" from lifting weights. Apparently, the legislature does not recognize that a prisoner can also "bulk up" by swinging a heavy axe or sledgehammer. Ron Jones, Alabama Corrections Commissioner, has also suggested caning as a disciplinary measure for Alabama inmates, particularly for juveniles.<sup>127</sup>

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subpart to any individual who is incarcerated in any Federal or State penal institution." *Id.* See Carolyn Skorneck, *Crime Bill Gets Nod in House*, SAN DIEGO UNION TRIB., Apr. 21, 1994, at A1; see also Jon M. Taylor, *Deny Pell Grants to Prisoners? That Would Be a Crime*, 9 CRIM. JUST. 19, 25 (1994). "Excluding prisoners from Pell Grant support does not curb crime nor further justice. Instead, it perpetuates the bleak conditions and limited options that so often lead to criminal behavior and re-incarceration, with all of the associated personal, economic, and social trauma." *Id.*

121. See Nossiter, *supra* note 118, at A1; see also Lacayo, *supra* note 119, at 31.

122. See Bartholomew Sullivan, *New Laws on Crime by Miss., Ark Say: 'Fed Up,' COM. APPEAL* (Memphis, TN), Aug. 29, 1994, at A1.

123. See Nossiter, *supra* note 118, at A1. Don Carbana, the former warden of Parchman penitentiary in Mississippi said that Mississippi's new legislation was a "step back about 60 years," and that "idleness at the penitentiary is just the warden's worst nightmare." *See id.*

124. *See id.*

125. See Mike Littwin, *Crime Won't Pay, Now That We've Got the Chain of Fools*, BALT. SUN, May 5, 1995, at 1D.

126. *See Alabama Brings Back Rock-Breaking Gangs*, WASH. POST, Aug. 21, 1995, at A9.

127. *See Rhonda Cook, Around the South Back to Hard Labor; Alabama's Belief in Punishment Means Return to Chain Gangs, Breaking Rocks; Getting Tough: Harsh Punishments Are Designed to Instill Fear of Prison, but Some Officials Say Too Much Meanness Can Make Inmates Worse*, ATLANTA J. & CONST., Aug. 20, 1995, at D4. A Michigan prosecutor has also suggested caning as a viable option: "If done professionally by a trained martial arts expert, and not by a sadist, it will be perceived as a proper part of punishment. And it will provide a stigma which has been lost. Nobody will want to be caned . . . and [sic] it will be affordable because you'll be able to cane and reduce time." Richard S.

In Arizona, Joe Arpaio, the Sheriff of Maricopa County, runs the local jail based upon the precept of making life as tough as possible for the inmates. He says, "I want to make this place so unpleasant that they won't even think about doing something that could bring them back . . . I want them to suffer."<sup>128</sup> Arpaio has instituted chain gangs and has built "tent cities" in which his overflow inmates sleep in scorching temperatures of up to 110 degrees.<sup>129</sup> Television privileges have been taken away, as have coffee, soup and appliances; the inmates are given a steady diet of gray bologna and Newt Gingrich videos.<sup>130</sup> While Arpaio's correctional system was under investigation by the Justice Department for numerous allegations of inmate beatings, he was nonetheless considered by former presidential candidate Phil Gramm as a possible nominee to head the federal corrections system.<sup>131</sup>

Other states have made similar changes. In California, the legislature has repealed its "Prisoners' Bill of Rights," an agenda signed into law by then-Governor Ronald Reagan, which protected inmates' rights, including the right to receive mail.<sup>132</sup> Florida has instituted chain gangs.<sup>133</sup> South Carolina has abolished conjugal visits and is attempting to require all its inmates to participate in hard labor.<sup>134</sup>

Prison culture has suffered dramatically in the frenzy to gain votes with reactionary correctional policies. Furthermore, some of the legislation has been no more than completely meaningless propaganda. For example, the Louisiana legislature voted to ban martial arts programs from its prisons, although no such programs existed and the Mississippi legislature voted to ban individual air conditioners for inmates, even though no inmates had individual air conditioners.<sup>135</sup>

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Koonce, *Caning Cited as a Crime Stopper; A Kent County Assistant Prosecutor Thinks the Punishment Could Be Considered as an Affordable Way to Deal with Prison Space Concerns*, GRAND RAPIDS PRESS, Mar. 20, 1996, at A7.

128. See Lacayo, *supra* note 119, at 31.

129. See *Sheriff's Get-Tough Measure Spark Federal Inquiry, Lawsuits*, DALLAS MORNING NEWS, Sept. 16, 1995, at 33A.

130. See *id.*; see also Charlotte Lowe, *Crack Down on Prisoners' Possessions Hot Pots Have Become Hot Issues as the State Tries to Pare Down Prison Electric Bills*, TUCSON CITIZEN, Feb. 18, 1994, at 1B.

131. See *Sheriff's Get-Tough Measures*, *supra* note 130, at 33A; Lacayo, *supra* note 119, at 31.

132. See *Crim. Just. Inst., Inc.*, *supra* note 85, at 55.

133. See *Missing Link—Chain-Gang Prisoners to Go Separate Ways*, ORLANDO SENTINEL, Sept. 19, 1995, at D3.

134. See *Return of the Prison Chain Gang*, HERALD (Rock Hill, SC), Apr. 4, 1995, at 6A.

135. See Nossiter, *supra* note 118, at A1.

### C. Other Factors Aggravating Cultural Reform

#### I. Overcrowding

Overcrowding was cited as one of the contributing factors in the Lucasville uprising,<sup>136</sup> and it is certainly not a problem limited to the Lucasville facility or to Ohio. Overcrowding was the primary problem in the nation's prisons and jails throughout the 1980's.<sup>137</sup> The United States has the highest incarceration rate in the world and the prisons are operating well beyond their designed capacities.<sup>138</sup> There are currently over one million inmates in United States prisons.<sup>139</sup> Thirty-five states are operating their prisons at more than one hundred percent capacity, and the average American prison is operating at 114.9% of its rated capacity.<sup>140</sup>

To address the problem of overcrowding, many legislatures have adopted a very expensive solution: build more prisons. State and federal systems together are planning and/or constructing prisons that will increase capacity from 757,144 beds (the current capacity) to 984,934.<sup>141</sup> The plans, already under construction in a variety of states, are estimated to cost 4.3 billion dollars.<sup>142</sup> The building of prisons has not kept up with the needs. Even the new plans will not bring capacity up to the level necessary to accommodate the present population, let alone future prisoners.

In terms of cultural effect, overcrowding profoundly affects the correctional culture because it becomes more difficult to control the inmate population.<sup>143</sup> With overcrowding there is a decrease in the staff-to-inmate ratios, and inmates are housed in facilities designed to

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136. See Long & Stephens, *supra* note 76, at 9C.

137. See Alfred Blumstein, *Prison Crowding*, CRIME FILE: PRISON CROWDING, NAT'L INST. OF JUST. 1 (1986); Robert C. Grieser, *Wardens and State Corrections Commissioners Offer Their Views in National Assessment*, RES. IN ACTION, NAT'L INST. OF JUST. 1 (1988); Randall Guynes, *Nation's Jail Managers Assess Their Problems*, RES. IN ACTION, NAT'L INST. OF JUST. 1 (1988) (all reporting that overcrowding is the most pressing concern of prison and jail administrators, and how overcrowding adversely affects the operation of prisons and jails).

138. See *id.*

139. See Crim. Just. Inst., Inc., *supra* note 85, at 3. As of January 1, 1995, American prisons housed 1,065,388. See *id.*

140. See *id.* Montana leads the way, with its institutions currently at 182.4% of their capacity. See *id.*

141. See *id.* at 41.

142. See Crim. Just. Inst., Inc., *supra* note 85, at 41.

143. See Alfred Blumstein, *Prison Crowding*, A STUDY GUIDE: PRISON CROWDING, NAT'L INST. OF JUST. 1 (1986).

accommodate fewer inmates. Procedures such as feeding and counting inmates become more difficult to accomplish. In fact, many procedures must change in order to accommodate the larger population.<sup>144</sup> Overcrowding makes it much more difficult for prisons to provide even "minimally adequate living conditions."<sup>145</sup>

The strain on prison resources makes it necessary for prison staff to contend with not only larger populations, but more discontented populations. Space previously used for recreational and educational programs is converted into dormitories.<sup>146</sup> There are less resources available to inmates. Inmates have increased free time, with little or nothing to do. These factors combine to create a less manageable atmosphere within the facilities, which increases violence among inmates, and violence between inmates and staff.<sup>147</sup> In order to take charge of the larger, more discontented population, the staff must ultimately attempt to manage the population with a custodial-control approach, as opposed to a more cooperative approach.

## 2. Health Issues

The rise in inmate health problems has had a profound effect on inmate culture. Resources have not been allocated to deal with the health problems and having more sick inmates results in increased tension. The control of the transmission of tuberculosis was one of the key issues in the Lucasville uprising. The United States Center for Disease Control and Prevention estimates that 240,000 tuberculosis-infected prisoners were released untreated in 1992 alone.<sup>148</sup> It is estimated that between ten and twenty-five percent of the inmate population is in-

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144. See Susan P. Sturm, *The Legacy and Future of Corrections Litigation*, 142 U. PA. L. REV. 639, 688 (1993).

145. *Id.* at 687.

146. *See id.*

147. *See id.* See also Su Perk Davis, *Inmates Who Kill in Prison*, CORRECTIONS COMPENDIUM, Nov. 1990, at 1. Between 1984 and 1989, 411 people were killed in federal and state prisons, 21 staff members and 390 prisoners. *See id.* at 7. During this period, 20 inmates were sentenced to death for murders committed inside prison; eight of the inmates had killed staff members and 12 had killed other inmates. *See id.* In 1995, 66 inmates were killed in federal and state prisons. *See* Crim. Just. Inst., Inc., *supra* note 85, at 29-30. Federal courts have recognized the grave problems caused by overcrowding. *See, e.g.,* Occoquan v. Barry, 717 F. Supp. 854, 858-64 (D.D.C. 1989); Fambro v. Fulton County, Ga., 713 F. Supp. 1426, 1428 (N.D. Ga. 1989); Jackson v. Gardner, 639 F. Supp. 1005, 1009 (E.D. Tenn. 1986); Palmigiano v. Garrahy, 639 F. Supp. 244, 249 (D.R.I. 1986); Albro v. County of Onondaga, 627 F. Supp. 1280, 1285-86 (N.D.N.Y. 1986).

148. *See* Crim. Just. Inst. Inc., *supra* note 85, at 30.

ected with tuberculosis.<sup>149</sup> The growth of tuberculosis in prisons is believed to be closely related to overcrowding, as the disease is much easier to contract in close confines.<sup>150</sup>

Of those inmates with tuberculosis, studies have shown that as many as ninety-five percent are also infected with the human immunodeficiency virus (HIV).<sup>151</sup> The dramatic rise in HIV infection and AIDS cases in correctional facilities is a new and profoundly difficult health issue.<sup>152</sup> According to a 1992 study by the American Association for Correctional Psychology, the rate of inmates infected with HIV is fourteen times the rate in the population as a whole.<sup>153</sup> Fewer than one-fourth of American inmates were tested for HIV in 1994; of these 4.2% (5721 inmates) tested positive.<sup>154</sup> Even those who test positive for HIV sometimes receive no health care.<sup>155</sup>

When a correctional facility becomes violent, there is an increased rate of sexual assaults, and HIV can turn short prison terms into death sentences.<sup>156</sup> In 1994, 1023 prisoners died as a result of AIDS.<sup>157</sup> This number is increasing rapidly; there were fewer than four hundred AIDS

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149. See Lawrence O. Gostin, *The Resurgent TB Epidemic in the Era of AIDS: Reflections on Public Health, Law, and Society*, 54 MD. L. REV. 1, 51 (1995).

150. See *id.*

151. See *id.* Gostin cites a New York study which reached this result. See *id.* Similar findings have been found in studies in New Jersey and California. See *id.* (citing M. Miles Braun et. al., *Increasing Incidence of Tuberculosis in a Prison Inmate Population*, 261 JAMA 393 (1989); Perry F. Smith et. al., *HIV Infection Among Women Entering the New York State Corrections System*, 81 AM. J. PUBLIC HEALTH § 35 (Supp. 1991)).

152. In the late 1980's, reported AIDS cases among inmates increased over 600%. *AIDS Commission Reports Prisons Fail to Provide Adequate Care for HIV-Infected Inmates, Corrections Compendium*, Apr. 1991, at 13 (quoting Nat'l Comm. on AIDS, *HIV Disease in Correctional Facilities*). "[P]risons are failing to provide adequate health care and education for prisoners infected with AIDS, [even though] 'no other institution in this society has a higher concentration of people at substantial risk of HIV infection.'" *Id.* Studies show that those entering the corrections system have an HIV infection rate between 2.1 and 5.9% and that in some states, such as New York, the infection rate can be much higher (17.4%). See *id.* The Commission also found that despite high rates of HIV infection, and the opportunity to educate inmates about HIV, inmates are re-entering society with little or no added knowledge about the disease, or how to prevent it. See *id.*

153. See Charles M. Sennott, *AIDS Adds a Fatal Factor to Prison Assaults: Rape Behind Bars*, BOSTON GLOBE, May 2, 1994, at Metro 1.

154. See *Crim. Just. Inst., Inc.*, *supra* note 85, at 30.

155. See *Indiana Corrections Officials Neglecting Health Issues, Critics Say*, AIDS WEEKLY, Feb. 7, 1994, available in 1994 WL 2565085.

156. See Sennott, *supra* note 154, at 1; see also Ralf Jurgens, *Sentenced to Prison, Sentenced to Death? HIV and AIDS in Prisons*, 5 CRIM. L.F. 763 (1994).

157. See *Crim. Just. Inst., Inc.*, *supra* note 85, at 29.



deaths in prisons in 1988.<sup>158</sup> Also, when a facility is not well managed, there is an increase in the use of intravenous drugs and inmates tattooing their bodies.<sup>159</sup> This is significant because HIV is transferred through the use of shared needles.<sup>160</sup>

Apart from the tension caused by the rise of health problems in prisons, the rise of health problems has also drawn resources away from other areas of reform. In 1994, Governor Mario Cuomo announced a state plan to spend \$150 million dollars to renovate New York's prison infirmaries.<sup>161</sup> Budget Division Spokesman, John Clarkson said, "the prison system was never designed to accommodate a population of sick inmates as we have today."<sup>162</sup> To combat this potential drain on prison budgets, some states require prisoners to pay for all or part of their medical costs, from a two dollar maximum charge, to the full amount for over-the-counter medications, prosthetics, and elective procedures.<sup>163</sup> Resentment for this payment also fuels tension.

### 3. *The Changing Characteristics of Inmates*

Since the Attica uprising, the composition of correctional populations has changed dramatically. Most significantly, there have been increased rates of incarceration for minorities, women, and juveniles,<sup>164</sup> and increased numbers of inmates incarcerated for drug-related crimes.<sup>165</sup>

Increases in juvenile and female populations in correctional facilities create administrative difficulties as these inmates are generally segregated from the adult male population. Furthermore, many of the new

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158. *See id.*

159. *See Sennott, supra* note 154, at 1.

160. *See id.*

161. *See* Kyle Hughes, *Prison Hospitals Will Cost \$150M*, Gannett News Service, Jan. 19, 1994, available in 1994 WL 11247694.

162. *See id.*

163. *See* Crim. Just. Inst., Inc., *supra* note 85, at 53.

164. Bureau of Justice statistics reveal that in 1984 the jail population in the United States was 93% male and 7% female, while in 1989, those figures changed to 91% male and 9% female. *See id.* at 573. In 1984, the jail population was 59% white, 40% black and 1% other (Native American, Alaskan Natives, Asians and Pacific Islanders), while in 1989 the jail population was 43% white, 41% black, 15% Hispanic and 1% other. *See id.* In 1975, there were 74,270 juveniles incarcerated in the United States while in 1987, there were 91,646. *See id.* at 559. In 1995, 102,582 juveniles were in correctional programs. *See id.* at 1.

165. Drug-related crimes range from simple theft to pay for drugs to first-degree murder. *See* Stephen Labaton, *Glutted Probation System Puts Communities in Peril*, N.Y. TIMES, June 19, 1990, at A16.

young offenders are the most violent and difficult to manage, creating a more violent and less controllable culture.<sup>166</sup>

With the increase in inmates incarcerated for drug-related crimes, there has also been an increase in the number of inmates with drug addictions. These inmates repeatedly cycle through the corrections system, and drug treatment programs have become a necessary staple in correctional facilities in order to deal with their addictions.<sup>167</sup> There were well over one hundred thousand inmates enrolled in drug treatment programming at the end of 1995, from drug education classes to individual counseling.<sup>168</sup> These drug treatment programs take a significant amount of resources away from other programming.

Also, not only are drug-addicted inmates much more difficult to manage, but with the increase in the number of drug-addicted inmates, there has been an increase in drug-dealing within prisons. Just as in Lucasville, prison administrators have turned to a custodial-control management philosophy to deal with this problem.

#### IV. HOW DO WE CHANGE PRISON CULTURES?

The problems with prison cultures are profound and it is unrealistic to believe that prisons will ever be cooperative, positive, idyllic communities. It is not unrealistic, however, to believe that the American prison system can improve its cultures so that it does not rank number one in incarceration rates, violence, and recidivism. Five goals that address problems raised in this article are: (1) alter our correctional philosophy; (2) change the relationship between staff and inmates; (3) break down total institutions; (4) decrease the number of prisoners; and (5) improve health care.

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166. See Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 976-77 (1995). Between 1983 and 1992, violent crimes perpetrated by juveniles increased by 57%. See *id.* at 976 (citing Howard N. Snyder, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION FACT SHEET #3, 1992 Juvenile Arrests (May 1994)). "Juvenile offenders account for about one homicide arrest in seven." See *id.* at 977 (citing FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES: 1992, at 227-28 (1993)).

167. See Marcia R. Chaiken, *Prison Programs For Drug-Involved Offenders*, RESEARCH IN ACTION SERIES, NAT'L INST. OF JUST. at 1-3 (1989). Drug treatment was de-emphasized in the 1970s and 1980s, but the Federal Bureau of Prisons began a comprehensive look at drug treatment in 1988. See Marjorie Marlette, *An Essential Part of Corrections—Drug Treatment Programs for Inmates*, CORRECTIONS COMPENDIUM, at 5 (Aug. 1990). Today, more than 85,400 prisoners in the United States are in drug treatment programs and 15,000 are waiting treatment. See *id.* In 1980, drug offenders comprised 25% of the federal prison population, and by 1988 that figure rose to 50%. In 1995, it is estimated to be 70%. See *id.*

168. See Crim. Just. Inst., Inc., *supra* note 85, at 67.

### A. *Alter Our Correctional Philosophy*

The "tough-on-crime" political philosophy of the 1990's has had a damaging effect on prison culture. It has become a popular notion that prisoners are sent to prison *for* punishment, as opposed to *as* punishment. This philosophy undermines any rehabilitative effort that might be made in prison and creates volatile prison cultures.

This philosophy must be reversed. A prison sentence should be viewed as the punishment. In other words, if a person is sentenced to prison for ten years, those ten years of imprisonment are the punishment. It should not be the role of prisons to make those ten years as punitive as possible. Instead, it should be the role of the prisons to structure those ten years so that the individual is less likely to return to prison.

Contrary to popular belief, the more punitive a prison sentence is in terms of poor treatment of inmates, the more likely the inmate is to return to jail.<sup>169</sup> Thus, incarceration should be less punitive in order to be more successful. Towards this end, in order for positive reformatory micro policies to be effective, and to infectiously spread throughout the prison system, a change of philosophy must be accepted by the general public and directed from the highest levels of the judicial, legislative, and executive branches of government.

### B. *Change the Relationship Between Staff and Inmates*

Part of changing our correctional philosophy is working with prison staff to change their roles, and their perception of their roles, as a part of the correctional system. Everyone who works in a prison should play an integral part in creating a non-volatile and rehabilitative culture. These roles must be guided by prison administrators because, as the district court recognized in the Puerto Rico, these administrators must run their own correctional facilities in order to effectuate long-run change.<sup>170</sup>

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169. Potts, *supra* note 94, at 455-58. Indeed, it has been suggested that incarceration itself probably increases recidivism. *See id.* at 456. Charles Colson, following his imprisonment for his part in Watergate, spoke of this factor: "Take a group of people, strip them of possessions and privacy, expose them to constant threat of violence, overcrowd their cellblock, deprive them of meaningful work—and the result is an embittered underclass more intent on getting even with society than on contributing to it." *Id.* at 458 (citing Charles Colson, *Crime and Restitution: The Alternative to Lock-Them-Up Liberalism*, 43 POL'Y REV. 14 (1988)).

170. *Id.* at 372. *See also* Lloyd C. Anderson, *Release and Resumption Over Consent Decrees in Structural Reform Litigation*, 42 U. MIAMI L. REV. 401, 410-11 (1987).

In terms of staff-inmate relationships, we can also learn a great deal from our European counterparts. European prison systems emphasize the treatment and rehabilitation of offenders, not their punishment. For example, the prison service in Britain provides psychologists to work with inmates and to treat their individual problems, while correctional officers also provide counseling.<sup>171</sup> Instead of focusing on being "tough" on criminals and keeping them off the streets, prison staff assess each offender individually and formulate a program which will best correspond to his or her needs and prevent a repeat offense.<sup>172</sup>

### C. Break Down Total Institutions

Beyond the rhetoric of change, how do you fundamentally change correctional institutions to improve their culture? The key is changing prisons from "total institutions" to integrated institutions. As long as prisons are isolated cultures of dissatisfied employees and alienated persons prone to criminal behavior, the legacy of Attica will continue.

Prisons as total institutions fail society because most inmates we lock up are eventually released.<sup>173</sup> Therefore, these prisoners will not simply exist within the prison culture they will bring the culture of the prison back out on the streets with them. By allowing inmates to remain connected to the culture of society-at-large, the prison culture will be more reflective of life outside of prison.<sup>174</sup>

One of the groups that should have a greater impact on the prison culture is the families of inmates. Seventy-five percent of women in prison are mothers, and two-thirds of them have children under the age of eighteen.<sup>175</sup> Correspondingly, sixty percent of the male inmate

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171. *Inside Psychology: A Career as a Prison Psychologist*, HER MAJESTY'S PRISON SERVICE, HOME OFFICE PUBLIC RELATIONS BRANCH 8 (1993). They provide programming dealing with "anger management, sexual deviancy, poor social and cognitive skills, drug and alcohol addiction, and anxiety control." *Id.*

172. *See id.*

173. *See* JOHN J. DI IULIO, NO ESCAPE: THE FUTURE OF AMERICAN CORRECTIONS 71 (1991). Seventy-five percent of convicted criminals are not behind bars. *See id.*

174. *See* Garry Boulard, *Crime Locked Education Door Raises Fears for Inmates; Ex-Warden and Prisoner Advocates Say Loss of Pell Grants Takes Away Hope. But Tough Line Is Backed by Those Who See Coddling*, L.A. TIMES, Mar. 7, 1995, at 5 (describing Project Return, New Orleans program sponsored by Tulane University which provides employment, education, and counseling opportunities to offenders and has resulted in lower recidivism rates among participants). Half-way houses, in which residents work for public and private employers, have been found to be similarly successful. Potts, *supra* note 94, at 495-99.

175. Arthur Burnett, *Prison Effect on the African-American Community*, 34 HOW. L.J. 528, 539 (1991). *See also* IRA P. ROBBINS, PRISONERS AND THE LAW XV (1991); Stephen J.

population are fathers.<sup>176</sup> These family members, as well as the parents of inmates, could play a critical role in changing the culture of prisons through family programming.<sup>177</sup> Instead, because the visiting process is not fostered by most correctional systems and policies, the inmate culture is isolated from these positive influences.<sup>178</sup>

Using community service programs in which inmates go into the community and work, also could help to break down the "total institution." If inmates are going into the community to do service, they provide valuable resources and interact with groups and people that have values that will enhance the culture that they return to at the end of the day.

#### D. *Decrease the Number of Prisoners*

Obviously, the prison system would be in much better shape if we could decrease the number of prisoners. In support of this goal, more creative sentencing alternatives should be developed. If the system can avoid placing people within the inmate culture, it is something to be strived for. House arrest and electronic monitoring keep those convicted of crimes out of the prison culture. Furthermore, the cut in correctional costs by home arrest and electronic monitoring would allow the resources that are now being used to build new prisons to be better allocated. States are starting to shift to such alternative forms of sentencing. As of the beginning of 1995, eighteen states and the District of Columbia were using electronic monitoring,<sup>179</sup> and three states employed day reporting as an option to incarceration.

Electronic monitoring has been shown to be a successful and more affordable alternative to incarceration.<sup>180</sup> A study of the electronic monitoring program in Florida, one of the largest in the nation, has shown it to be a successful and desirable alternative.<sup>181</sup> Because of the

Schulhofer, *The Feminist Challenge in Criminal Law*, 143 U. PA. L. REV. 2151 (1995).

176. *See id.*

177. *See* Justin Brooks & Kimberly Bahna, "It's a Family Affair"—*The Incarceration of the American Family: Confronting Legal and Social Issues*, 28 U.S.F. L. REV. 271, 298-99 (1994).

178. *See* Brooks & Bahna, *supra* note 178, at 298-307. Programs, such as "family time programs, inmate educational programs involving children, parenting education programs, family service programs and family education programs" have been shown to "serve a vital role in combating the effects of incarceration on inmates and their families." *Id.* at 298.

179. *See* Crim. Just. Inst., Inc., *supra* note 85, at 54-55.

180. *See* Potts, *supra* note 94, at 488-94.

181. Joseph E. Papy & Richard Nimer, *Electronic Monitoring in Florida*, FED. PROBATION, Mar. 1991, at 33.

rapid development of such programs,<sup>182</sup> it is anticipated that by the year 2000, there will be 70,000 inmates in electronic monitoring programs.<sup>183</sup>

Another alternative to incarceration, which seems to pose promising results, is the use of half-way houses for less violent criminals.<sup>184</sup> Such programs foster an easier reintegration of inmates back into the community.<sup>185</sup> An ideal program is one in which residents of the half-way house work during the day and are provided with educational or counseling programming in the evening.<sup>186</sup> Such programs, with residents working for both public and private employers, have produced excellent results.<sup>187</sup> The programs are more cost-effective, both in terms of being less costly themselves, and in terms of the inmates' productivity and ability to learn trades useful later in their lives back in the outside world.<sup>188</sup> This type of program is also believed to decrease recidivism.<sup>189</sup>

Also, there is no way that prison populations will be able to be controlled if there is an increase in the use of mandatory minimum sentences. It is estimated that these guidelines will create an explosion in the federal prison population.<sup>190</sup> Prison populations in Florida and New Jersey have already risen since the adoption of mandatory minimum statutes.<sup>191</sup> Hopefully, the mandatory minimum "fad" will pass

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182. Within four years after such a program was first used, 37 states had adopted it as an alternative to incarceration. See Joan Cheever, *Hard Time? House Arrest Seen as Solution for Crowding*, NAT'L L. J., Mar. 26, 1990, at 30.

183. See Tracy Thompson, *Electronically Monitored House Arrest Far from Perfect*, WASH. POST, Dec. 10, 1990, at D1.

184. See Potts, *supra* note 94, at 495.

185. See *id.* at 496.

186. See *id.*

187. See Potts, *supra* note 96, at 498-501. Inmates successfully worked for Best Western, handling telephone reservations. See *id.* at 498 (citing BARBARA J. AUERBACH ET. AL., *WORK IN AMERICAN PRISONS: THE PRIVATE SECTOR GETS INVOLVED* 28 (1988)). They have also been involved, with positive reviews, in manufacture of clothing. See *id.* at 498-99 (citing William Kissel, *Hard Time and Hemlines*, L.A. TIMES, Jan. 16, 1992, at E1). Potts also cites other public and private jobs in manufacturing and in infrastructure. See *id.* at 500.

188. See Potts, *supra* note 94, at 501.

189. See Sharon Goodman, *Prisoners as Entrepreneurs: Developing a Model for Prisoner-Run Industry*, 62 B.U. L. REV. 1163, 1164 (1982); Potts, *supra* note 94, at 511.

190. See Anne Kornhauser, *Prison Population Study Frees Criminal Justice Debate*, N.J. L.J., Aug. 22, 1991, at 18 (book review). Mandatory minimums, when combined with new crime laws, are expected to result in a population increase of between 71% and 275% by the year 2002. See *id.*

191. See Charles M. Harris, Jr., Comment, *Prison Overcrowding—The Time for Policy*

and these sentencing laws repealed.

### *E Improve Prisoner Health Care*

Prisoners have a right to health care.<sup>192</sup> They are in particularly vulnerable positions in which they cannot secure their own health care, and are physically unable to avoid sickness or infection present in the prison.<sup>193</sup> Moreover, the government is responsible for health problems that come about as a result of incarceration. Yet many prisons are not accredited by the American Correctional Association and do not meet its health care standards.<sup>194</sup> In fact, most prison hospitals do not conform to medical profession standards.<sup>195</sup>

Furthermore, although there is no known cure for HIV infection, prisons have a responsibility to protect inmates as best they can from infection, and to provide adequate medical treatment to infected inmates.<sup>196</sup> The best way of doing so, according to the Center for Disease Control, is by taking necessary precautions and by providing both staff and inmates with AIDS education.<sup>197</sup> Instead, many prison facilities simply adopt reactionary policies, such as those banning condoms in prisons, which only exacerbate the HIV problem.<sup>198</sup>

Finally, just as in the general public, preventative medical treatment of prisoners ultimately costs less health care dollars.<sup>199</sup> This is even more important in prisons because illnesses spread so quickly and can be the cause of increased tension and volatility.<sup>200</sup>

### CONCLUSION

At the time of the Attica uprising, the facility was referred to by

*Change Has Come!*, 18 FLA. ST. U. L. REV. 489, 491 n.19 (1991); Diane Mastrull, *Examining Price of War on Crime*, PHILADELPHIA INQUIRER, Mar. 4, 1993, at S1.

192. *See* *Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244-45 (1983) (holding that prison officials have a duty to provide medical care to inmates).

193. *See* Potts, *supra* note 94, at 465.

194. *See id.* at 470 (citing Elizabeth Neuffer, *Death Raises Prison Health Care Questions*, BOSTON GLOBE, July 1, 1991, at 17).

195. *See id.* (citing Jonathon Turley, *Why Prison Health Care Is a Crime*, CHI. TRIB., Mar. 19, 1991, at C 19).

196. *See* Kathleen Knepper, *Responsibility of Correctional Officials in Responding to the Incidence of the HIV Virus in Jails and Prisons*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 45, 92-93 (1995).

197. *See id.* at 47.

198. *See generally* Jennifer Norberry et. al., *HIV/AIDS and Prisons*, Proceedings of a Conference Held November 19-21, 1990 (1991).

199. *See* Knepper, *supra* note 199, at 95-96.

200. *See* Potts, *supra* note 94, at 465-70.

commentators as “all prisons.” If Attica was “all prisons,” then it was time for large-scale institutional reform. Unfortunately, that reform never came to fruition. Although litigation improved conditions of confinement, prison cultures have become more violent and volatile, and recidivism rates have increased. Our present prison system is overcrowded, expensive, and unmanageable, and after twenty-five years of prison reform, we have not even addressed the fundamental causes of the riot that sparked the reform movement.

Attica brought to light the fact that prisons were not working because their cultures were volatile and isolated. It is time to rethink the management and structure of prisons in order to improve their cultures and end the legacy of Attica.



