

CRIMINAL JUSTICE

THE Politicalization of Crime And Its Unintended Consequences

By
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Unimaginable Horror

At approximately 7:00 p.m. in the evening of April 3, 1987 Cliff Barnes, a car salesman in the tiny bucolic town of Oxon Hill, Maryland arrived home from work. While Mr. Barnes was in the process of cleaning up, he heard a strange noise in the home he shared with his fiancée Angela Miller. Later, Mr. Barnes would tell the police that at the time, he did not feel overly concerned about the unexpected noise because he attributed it to Ms. Miller's return home. Within minutes of his arrival at home, Mr. Barnes would be viciously attacked dragged down to his cellar, bound, and then pistol whipped by an enraged stranger. That Stranger, an escaped Massachusetts convict by the name of Willie Horton also tied up, blindfolded, and repeatedly raped, the terrified Ms. Miller.

After subjecting the terrified couple to unimaginable horrors, Horton fled their home only

to be quickly arrested when police spotted him driving the wrong way on a local highway. Eventually, Horton would be tried, convicted, and sentenced to serve the rest of his life, plus eighty-five years, in the Maryland State Prison in Jessup. Horton's name would soon become synonymous with the politicalization of crime and corrections in America.

**At The Time of This Tragic Event
Massachusetts Governor
Michael Dukakis
Wanted to Become the Next
President of the United States**

Two very distinct factors separate this extremely violent act from countless other similar, and just as violent crimes. First, Willie Horton had escaped in

Unless the Political Winds Shift In Massachusetts The Damage That Was Done Many Years Ago May Yet Prove to be Insurmountable

1986 while out on a weekend furlough from a Massachusetts state prison where he had been serving a 1st degree life sentence for a murder that he had committed in 1974. Secondly, at the time of this tragic event, then Massachusetts Governor Michael Dukakis had some pretty serious political ambitions; he wanted to become the next president of the United States.

While Michael Dukakis may have been hell bent in his efforts to become the 41st president of the United States, his Republican opponent George H.W. Bush's election campaign was even more intent on completely destroying Dukakis' presidential ambitions. The Horton situation would provide the Republicans with the ideal opportunity to accomplish their objective.

To the General Public the Implications Were Crystal Clear, Michael Dukakis was Soft on Crime

During the 1988 presidential campaign, Republican strategists, led by Lee Atwater and Roger Ailes, ran television ads that depicted unflattering pictures of Willie Horton coupled with images of Massachusetts prisoners walking through a revolving door. To the general public, the implications were crystal clear: Mike Dukakis was soft on crime, and even softer on convicted criminals. There can be no doubt about the effectiveness of the negative TV ads that the Republican strategist ran; Michael Dukakis was soundly defeated. Election results showed that George H.W. Bush secured 48,886,097 to

41,809,074 popular votes (a 7,077,023 margin), and 426 to 111 of the total electoral votes cast.

Undoubtedly, there are some who may be under the erroneous assumption that Massachusetts is a completely liberal state. While that supposition may indeed hold some water when it comes to a variety of social issues, when it comes to matters related to criminal justice, Massachusetts has moved to the right of Attila the Hun. In support of that claim, one need look no further than that state's broken commutation system. There has not been a single case of a commutation being granted by a Massachusetts governor, to an offender convicted in a homicide case, since 1997. In that case, there were serious doubts for some time that not only was that particular individual, Joseph Salvati, actually innocent, but that he, along with several co-defendants, had deliberately been framed by members of law enforcement. Salvati and three of his co-defendants would spend over thirty years in prison before they were exonerated. Three other co-defendants: Ronnie Cassesso, Louis Grecco and Henry Tammiello, would pass away while imprisoned on those bogus charges.

Between 1945 and 1983 Massachusetts governors had approved up to 16 commutations annually. During his first term as governor, from 1975 to 1979, Michael Dukakis approved some 48 commutation petitions and granted 500 pardon requests. Dukakis then approved 10 additional commutation of sentence requests, and issued nearly 500 pardons during his second and third terms, which ran from 1983 through 1991. His successor, Republican Governor William Weld approved 7 commutations and 50 pardon requests during the next six and a half years.

As the serious political ramifications associated with the public's perception of being "soft" on crime began to take hold, politicians all across the country began to rethink their policy on criminal justice issues. Not to many of those politicians looked favorably at the prospect of commuting a sentence for any offender who was serving a life term after conviction in a homicide case.

In Massachusetts, the political reality of this fact is further borne out by the actions of the string of William Weld's successors. Paul Cellucci (Rep.) (1997-2001) - 0 commutation granted. Jane Swift (Rep.) (2001-2003) - 0 commutations granted. Mitt Romney (Rep.) (2005-2007) - 0 commutations granted, and Democratic Governor Deval Patrick (2007-2014) - 1 commutation granted.^(1.) According to some political pundits, there is absolutely nothing for a governor to gain and absolutely everything to lose if a prisoner who has had his or her sentence commuted commits another crime.

Today, Many Believe That the Commutation Process In Massachusetts is Completely Dysfunctional

Unlike the granting of a pardon, an act that forgives the underlying offense upon release, a commutation merely shortens a criminal sentence and allows the original conviction to stand. Ever mindful of the Horton fiasco, neither the state Parole Board sitting in their dual role as the Advisory Board of Pardons, nor successive Massachusetts governors, have been eager to become involved in the commutation process. Records obtained from the Massachusetts Parole Board show that since the 1988 presidential campaign, a total of 778 commutation petitions have been filed by Massachusetts prisoners, most by offenders serving life sentences. Of those, only 44 hearings have been held and those hearings resulted in 22 favorable

votes by the Advisory Board of Pardons. Massachusetts governors have granted just 11 of those requests. The last request to be granted for a commutation of sentence, by a person serving a life sentence for murder in Massachusetts occurred over 18 years ago.

When commenting on the state's commutation process, retired Massachusetts Superior Court Judge Robert Barton, himself certainly no bleeding heart liberal when it came to sentencing violent criminals had this to say: *"Ever since what Willie Horton did to Mike Dukakis, governors are going to think not twice but 10 times before they ever commute anyone."* Those sentiments are echoed by others including Tufts University Political Science Professor Jeffery Berry who stated *"If I was a governor's advisor, I would recommend he be very cautious."* More telling are the comments of former Massachusetts governor Mitt Romney's advisor Eric Fehmstrom: *"Freed inmates who go to commit additional crimes are a cautionary tale that suggest a more conservative approach, which is what we adopted."* When he was asked about the commutation process, former governor Mike Dukakis said: *"You are never going to get the politics out of it. There are safeguards out there, but someone has to make the decision, whether you like it or not. Governors have this authority, and they've got to decide where and when it ought to be used."*

Others, such as Gary Wolfe, a lawyer with the American Civil Liberties Union of Massachusetts are quick to point out that *"Commutation should never be routine, it exists as an important "safety valve" to acknowledge changing circumstances - it allows for the possibility of change and growth on the part of either the individual or the criminal justice system."*

Today, there are over 1,000 male and female inmates confined in Massachusetts state prisons who are serving sentences of life without the possibility of parole. Barring some subsequent favorable legal action in the courts, the commutation process offers

Being Tough on Crime Has Not Necessarily Translated Into Being Smart on Crime

Factually Speaking, the Get Tough on Crime Policies That Have Been Implemented Over the Past Few Decades Have Literally Cost Taxpayers Billions of Misspent Dollars

their only hope for eventual release. During the last stages of the Patrick era, there were at least two or three politically safe opportunities to exercise the power of commutation. For whatever reason, he declined to do so. In the mind of many, Patrick's failure to act on at least a few of the dozens of commutation requests that were filed by offenders serving life sentences effectively rendered the commutation process in Massachusetts dysfunctional. Even some state legislators including Massachusetts State Representative Benjamin Swan, a Democrat from Springfield, and a strong supporter of Governor Patrick, appeared somewhat disappointed by the governor's position on commutations when he stated: *"The governor, I don't know why he's so hard line on people. I wish that he would take time to review individual cases of inmates who have really been reformed."*

When it comes to the politicalization of crime in America, The State of Massachusetts does not stand alone. In multiple jurisdictions across the country there have been a number of criminal cases that have had a serious impact on criminal justice policy. The Horton case stands alone only because of its immense importance on the outcome of a national presidential election.

Factually speaking, the get tough on crime policies that have been implemented over the past

few decades have literally cost taxpayers billions of misspent dollars. Those misplaced policies have also led to the highest levels of mass incarceration ever witnessed in this country. Today some 2.3 million Americas are incarcerated; triple the numbers that were in jail or prison during the 1980's. The cost in taxpayer dollars is immense. According to a January 2012 Report: **The Price of Prisons: What Incarceration Cost Taxpayers**⁽²⁾, the VERA Institute of Justice estimates that taxpayers spent at least \$39 billion in 2012 in prison cost alone. More recent estimates, published by the Pew Center on the States report that as much as \$52 billion is being spent annually in this country in corrections⁽³⁾. Other figures run as high as \$80 billion annually. Such astronomical expenditures can hardly be justified given the recent drop in crime, and could reasonably lead one to the conclusion that being tough on crime has not necessarily translated into being smart on crime.

In Massachusetts Everything Related to Criminal Justice Issues is Political

On January 11, 2011, five members of the seven member Massachusetts Parole Board were summoned to a meeting with Mo Cowan then Governor Deval Patrick's Chief of Staff. At that meeting each member was handed a pre-typed resignation letter and told that they had just ten minutes to sign it or according to one former Parole Board member Pamela Lombardini, *"it would get ugly."*⁽⁴⁾ The governor's demand for the unprecedented mass resignations emanated from the shooting death of Woburn Police Officer John B. Maguire during a December 26, 2010 robbery that

took place at a Kohl's Department Store. Paroled habitual offender Dominic Cinelli. was also killed in the shoot-out with Officer Maguire.

The five Parole Board members who were forced to resign represented the five board members who had voted in favor of releasing Cenelli from prison early on parole in 2008. The action of Governor Patrick was a direct result of the enormous amount of political pressure that he faced not only from the general public, but also from politically connected and very powerful police organizations. Shortly before the governor issued his demand for the mass resignations, dozens of Massachusetts Police Chiefs had staged a mass demonstration on the steps of a Woburn Court House. Their message, heard by all was loud and clear: take action against those responsible for the early release of Dominic Cinelli, or we will.

Very few people in Massachusetts, and perhaps elsewhere, truly appreciate or fully understand the enormous amount of political power that can be wielded by police organizations. It is not at all farfetched to state that their organizations can, by their sheer numbers alone, make or break a political candidate for elected office, should they chose to do so. In Massachusetts, everything, related to criminal justice issues is political, and Governor Patrick and his advisers were quick to recognize the peril of inaction in the Cinelli case. The police have long memories when it comes to those who cross them. The politicalization of that particular case, and the dramatic action that resulted, undoubtedly sent a very clear message to all those with future political ambitions.

Like the Horton matter, the Cinelli case has also had a profound impact on crime and justice policy. While the Cinelli affair may have been more localized, it basically had the same result, politicians took action. However, often political expediency comes at a great financial cost. In filling the vacancies he created, the governor sought out several individuals with either lengthy backgrounds

in law enforcement or prior experience as prosecutors. One of those people was Joshua Wall.

Wall, was a career prosecutor with the Suffolk County District Attorneys Office in Boston. During his many years as a prosecutor, Wall had successfully prosecuted hundreds of criminal cases and many of those were homicide cases. Appointed to the Chairmanship position on the Parole Board, Wall, believing that he had a mandate, wasted little time in implementing the most restrictive parole policies ever seen in Massachusetts. Almost overnight, parole rates dropped like a rock. During Wall's first full year as Chairman, the Parole Board held 139 hearings for life term prisoners. The Board voted favorable in only 17 of those cases. A parole rate of just 12 percent. In comparison, the parole rate for the same grouping during the previous year had been 34%.

The plummeting parole rates created a one year increase in the total prison population of 4.3%⁴, thus significantly adding to an already overcrowded Massachusetts correctional system. It has been estimated that the financial burden incurred as a result of the significant reduction in parole rates under Josh Wall's Parole Board cost Massachusetts taxpayers, at lease an additional \$42,408,000.⁽⁵⁾

Crediting Wall with bringing order to the parole process in Massachusetts Governor Deval Patrick rewarded him with a Superior Court Judgeship appointment. A position that carries with it, at least a \$135,000 a year salary.

The Revolving Door of the American Prison System

The unintended consequences of the politicalization of crime and criminal justice policy in America can best be measured by the rate of recidivism. A 2005 to 2010 Justice Department study conducted in 30 states found that three out of

four released prisoners will be rearrested within five years of their release. A Massachusetts Department of Correction study of 2,536 prisoners (1,613 males and 923 females) released during 2007 shows that 1,079 (707 males and 372 females) were returned to prison within three years of their release. That number represents a 44% rate of recidivism for males and a 40% rate for females. The 2011 Pew Center on the States study ⁽⁶⁾ clearly shows that Massachusetts was one of only six states that showed an increase greater than 10 percent in its recidivism rate for the years 1999 to 2004. The other states were Minnesota, Mississippi, Missouri, Nebraska and South Carolina. The true rates of recidivism are often much higher than the official rates as those numbers only reflect those ex-offenders who get caught committing new crimes. According to Lois Ahrens, Director of the Northampton, Massachusetts based Real Cost of Prison Project the state of Massachusetts has spent well in excess of \$5 billion on correctional cost over the past five years. Over \$3 billion of those taxpayer dollars went directly to the Massachusetts Department of Corrections⁽⁷⁾, where it appears, that very little "correcting" is taking place.

Hope Springs Eternal: Both Ends of the Political Spectrum May Finally be Coming Together On Criminal Justice Issues

By any rational standards, the current system of corrections in America is nothing short of an abject failure. As presently maintained, our correctional institutions are doing very little correcting, and may very well inadvertently be contributing to crime. With virtually no accountability, this disservice to the general public could continue to flourish for decades.

Leaders from both ends of the political spectrum seem to have finally reached somewhat of a similar conclusion: **Our criminal justice system as presently structured is in need of a complete top**

to bottom overhaul. This directional shift became apparent even before libertarian billionaires Charles and David Koch began donating money to organizations such as the National Association of Criminal Defense Lawyers. Even presidential candidates like Texas Republican Senator Paul Cruz seem to be joining the ever growing chorus of high profile figures who are suddenly calling for criminal justice reform. Cruz has been quoted as stating that: *"Today, far too many young men – and in particular African American young men – find themselves subject to a sentence of many decades for relatively minor, nonviolent drug infractions."* None other than Democratic presidential candidate Hillary Clinton has also recently declared: *"It is time to end the era of mass incarceration."* Taken at face value, that is a pretty powerful statement coming from the wife of former President Bill Clinton. Least anyone forget that it was President Clinton who, during his first term of office in 1994, signed into law the infamous **Violent Crime Control and Law Enforcement Act.** That particular piece of legislation poured over \$8 billion into new prison construction and implemented the federal three strikes law.

In yet another sign of a shift in direction at the highest levels of government, President Barack Obama recently commuted the prison sentences of 46 federal prison inmates, all in a single day. While all were considered as non-violent offenders, at least a dozen of them were serving life in prison sentences. Speculation runs wild with some (perhaps wishful thinkers) now believing that Obama will grant up to 100 additional commutations during the upcoming Christmas holiday season. Whatever the case, there is now ample evidence that the pendulum has begun to swing in a different direction when it comes to criminal justice related issues.

Advocates for criminal justice reform in Massachusetts may also be beginning to see some small signs of movement. There, lawmakers have recently indicated that they may consider a possible repeal or modification of the so-called mandatory minimum sentencing laws that impact drug offenders. State officials have also requested a

partnership funded by both the U.S. Department of Justice and the Pew Charitable Trust. In what is commonly called the justice reinvestment initiative, the program will include a top to bottom review of the state criminal justice system and will be conducted by the Council of State Governments. Already working in 33 other states, the justice reinvestment program also calls for collaboration between both judicial and political leadership. With a focus on cutting the cost of corrections and redirecting saved monies into programs that help reduce recidivism, it is estimated that this initiative will take at least nine months.

In January 2015, Charles Baker became the governor of Massachusetts. His campaign against Attorney General Martha Coakley was essentially devoid of criminal justice issues. Since taking office, Governor Baker has yet to issue his guidelines for commutation as is the tradition of incoming governors. Just how those guidelines will stack up against the now obsolete guidelines of his predecessor Deval Patrick remains to be seen.

Given a combination of systemic criminal justice failures, including shocking recidivism rates, failures at rehabilitation, a dysfunctional commutation process and overburdening financial cost, it is apparent that the unintended consequences of overreaction have taken their toll. Criminal justice issues now hang like an albatross around the neck of those who must decide to support progressive change or fall by the wayside.

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- (1) It should be noted that just prior to leaving office, Massachusetts Governor Deval Patrick did issue a single commutation. That commutation of sentence went to a female offender Deanne Hamilton who was serving a 7 and a half year state prison sentence at MCI-Framingham for a drug conviction.
 - (2) The VERA Report: "The Price of Prisons: What Incarceration Cost Taxpayers" only reports on cost data that was submitted by 40 states.

- (3) Pew Center on the State of Recidivism: The Revolving Door of America's Prisons, April 2011.
- (4) Ex-Parole Board member files suit by Javier Panzar – The Boston Globe, July 24, 2013 page B-3
- (5) At the time, the Massachusetts prison system was operating at 143% of their designed capacity, with some facilities operating at 222% and 295% of their design capacity.
- (6) An increase of 333 state prisoners x \$46,000 per prisoner per year=\$15,318,000. The increase of 774 county prisoners x approximately \$35,000 per year per prisoner=\$27,090,000 for a total of \$42,408,000. – Source: August 15, 2011 letter to Governors Council from Boston Attorney Patricia Garin, Leslie Walker, Executive Director, Massachusetts Prisoners Legal Services, Lyn Levy, Executive Director SPAN and Wallace Holohan, Clinical Professor of Law, Northeastern University School of Law.
- (7) Department of Correction FY 2015 budget=\$561,699,788. 2015 County House of Correction budget= 548,000,000. 2014 DOC Budget=\$547,113,917. 2014 County House of Correction budget= \$520,798,000. 2013 DOC budget= \$541,217,210. 2013 County House of Correction budget = \$451,687,710. 2012 DOC budget=\$509,360,246. 2012 County House of Correction budget= \$429, 715,000. 2011 DOC budget=\$510,220,000 2011 County House of Correction budget (unavailable). Budget information courtesy of Lois Ahrens, Director, Real Cost of Prisons Project, Northampton, MA www.realcostofprisons.org