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United States District Court, E.D. Pennsylvania.

Martin HARRIS, Jesse Kithcart, Roy Cold, Delores Brown, Robert Spruill, George Mitchell, Russell Thomas and Michael Mobeley,
v.
Joan REEVES, in her official capacity as Commissioner of the Department of Human Services of the City of Philadelphia, Rev. Albert F. Campbell, Labora M. Bennett, James D. Barber, Allen M. Hornblum, Mark Mendel, Donald J. Padova, each in his or her official capacity as a member of the Board of Trustees of the Philadelphia Prison System, J. Patrick Gallagher, in his official capacity as Superintendent of the Philadelphia Prison System, Harry E. Moore, in his official capacity as Warden for Holmesburg Prison, Wilhelmina Speach, in his official capacity as Warden of the Detention Center, Elsa Y. Legesse, in her official capacity as Warden of the House of Corrections, David Pingree, in his official capacity as Managing Director in the City of Philadelphia, Hon. Wilson Goode, in his official capacity as Mayor of the City of Philadelphia, and The City of Philadelphia.

Civ. A. No. 82–1847. | Aug. 7, 1991.

Opinion

MEMORANDUM AND ORDER

SHAPIRO, District Judge.

***1** Once again before the court is a motion filed on behalf of the Office of the District Attorney of Philadelphia County to stay an order of this court. This motion was filed in the name of William G. Chadwick, Jr., First Assistant District Attorney and Acting District Attorney, to stay the court's Order of March 11, 1991, approving a Stipulation and Agreement that revised a Consent Decree in effect since December 30, 1986. The motion seeks a stay pending disposition of the District Attorney's appeal from the March 11, 1991 Order. The District Attorney is not a party to the Stipulation and Agreement, and presently has no right to appeal, so the stay is also sought pending disposition of the District Attorney's appeal of this court's denial of its motion to intervene.

The motion to stay is deemed filed by the Office of the District Attorney. The appeal from the court's Order of March 11, 1991 was filed on behalf of former District Attorney Ronald Castille on his last day in office. The instant motion to stay pending appeal was filed under the name of William G. Chadwick, then Acting District Attorney and First Assistant District Attorney. While this motion has been under advisement, a new District Attorney, the Hon. Lynne M. Abraham, was elected to fill the vacancy created by the resignation of District Attorney Ronald Castille. The court is unsure whether Chadwick retains his authority to act on behalf of the District Attorney. The court has no reason to believe there has been any change in the posture of the District Attorney regarding the matters under consideration; District Attorney Lynne Abraham submitted the Supplemental Reasons in Support of the Request for Stay Pending Appeals and did not indicate disagreement with the motion filed by Chadwick. It is appropriate under these circumstances to refer to the Office of the District Attorney without distinction as to the former or present occupants of the Office.

To understand the court's considered opinion that a stay at the behest of the Office of the District Attorney is unwarranted and unwise, an understanding of the procedural posture of this case is essential. The history of the case is reviewed at pages 1–18 of the court's Memorandum Opinion of March 26, 1991 (Memorandum Opinion), in support of the court's Order approving the Stipulation and Agreement.

On December 30, 1986, the court entered, with the consent of the parties, a Consent Decree designed to resolve this prison overcrowding litigation. The Consent Decree required construction of a 440–bed detention facility and established a non-admission policy that would be triggered if the prison population exceeded an agreed-upon limit. District Attorney Castille unsuccessfully moved to intervene to oppose that Decree; this court's denial of his intervention motion was affirmed by the Court of Appeals and a petition for certiorari was denied by the Supreme Court. Both the Court of Appeals and Supreme Court granted brief stays based on representations by the District Attorney of irreparable harm, similar to representations now before the court. Those stays were vacated after the District Attorney's position was rejected on the merits.

***2** Even though the District Attorney was denied the right to intervene, the court granted him status to appear and object. The Office of the District Attorney has had the opportunity to provide the court with information and be heard before its decisions on all matters, including the pre-trial non-admission and release procedures designed to relieve overcrowding, the principal focus of the District Attorney's current objection.

Following the denial of District Attorney Castille's intervention motion, the Commonwealth of Pennsylvania enacted a statute purporting to give the District Attorney automatic standing in any court proceeding relating to the release or non-admission of county prisoners, delinquents or detainees due to the fact, duration or other conditions of confinement. In addition, the Commonwealth conferred on the District Attorney the right to seek equitable relief to protect the District Attorney's asserted legal interest in the continued institutional custody and admission of county prisoners, delinquents and pre-trial detainees. Upon the effective date of this legislation, the District Attorney again moved to stay the court's admission moratorium pending decision on a renewed motion to intervene and a motion to modify the Consent Decree. This court again denied a motion to stay on June 6, 1988, and so did the Court of Appeals after temporarily granting, and then vacating, an emergency stay that same day.

This court denied the District Attorney's renewed motion to intervene on January 10, 1991; appeal of that denial is pending. On March 11, 1991, the court approved a Stipulation and Agreement revising the 1986 Consent Decree; that Order is also before the Court of Appeals. It is against this background that the current motion of the Office of the District Attorney to stay pending final appellate disposition of the Order of March 11, 1991, must be understood. The underlying premise of this motion is that the Court of Appeals will reverse the most recent denial of the District Attorney's motion to intervene so that the Office of the District Attorney will then have standing as an intervenor to appeal provisions of the Stipulation and Agreement. Therefore, it is consideration of the merits of the underlying court orders—the denial of the intervention motion and the approval of the Stipulation and Agreement—that informs the court's decision on the motion to stay. The court granted a temporary stay of the release provisions of the Stipulation and Agreement over the strenuous opposition of the plaintiff class to give full consideration to the arguments of the Office of the District Attorney.

To obtain a stay, the Office of the District Attorney must establish that:

1. The Office of the District Attorney will likely prevail on the merits of its appeal of the denial to intervene and obtain a reversal of this court's approval of the revised Stipulation and Agreement;

2. It will suffer irreparable harm if the stay is denied;

***3** 3. The parties to the Stipulation and Agreement will not be substantially harmed by the grant of a stay; and

4. The stay requested is in the public interest.

See Hilton v. Braunhall, 481 U.S. 770, 776 (1987); *Harris v. Pernsley,* 654 F.Supp. 1057, 1059 (E.D.Pa.1987).

The District Attorney cannot establish any of these factors.

1. ***The Office of the District Attorney is not likely to prevail on the merits.***

The Office of the District Attorney is not likely to convince the Court of Appeals that the District Attorney has a sufficient interest in this litigation to intervene. The scope of its interest is defined by the District Attorney's legal duties under Pennsylvania law. *See Harris v. Pernsley,* 820 F.2d 592, 597 (3d Cir.1987). In denying the District Attorney's first intervention motion, the Court of Appeals determined that Pennsylvania law did not grant him legal duties concerning operation of the Philadelphia prison system such that his intervention in this prison overcrowding litigation was required by law. The Legislature may grant the District Attorney new duties and responsibilities, but whether those new duties are sufficient to give the District Attorney a right to intervene remains a question of federal law. *Id.* at 597 n. 7.

The Pennsylvania Legislature has not created new duties or changed the District Attorney's responsibilities to grant a retroactive "legal interest" in the *Harris* litigation within the meaning of Federal Rule of Civil Procedure 24 as interpreted by the Court of Appeals. This court does not believe the Court of Appeals will permit the state Legislature to interfere with its rule of decision in a pending case by legislative declaration. This court has carefully and respectfully considered the views expressed by our Court of Appeals in the *Harris* case, and believes the decision to deny intervention again is consistent with those views and the discretion permitted a district court. Unless and until reversed on appeal, this court remains convinced both motions to intervene were properly denied.

Even if the District Attorney were permitted to intervene, this court is confident its approval of the Stipulation and Agreement will withstand appellate court scrutiny for the reasons stated in the court's Memorandum Opinion of March 26, 1991. The Office of the District Attorney claims it seeks intervention only to oppose the release or non-admission of Philadelphia county prisoners. However, the Stipulation and Agreement expressly provides that the release and non-admission provisions, intended to ameliorate overcrowding pending construction of new detention facilities, "are not severable from the Agreement as a whole; if the release mechanism established by Paragraph 17 is not approved and implemented, the Agreement is without force or effect." *See* Stipulation and Agreement at ¶ 32.

Disturbing the release mechanism agreed to by the parties will invalidate the entire Stipulation and Agreement. Invalidating the entire Stipulation and Agreement would harm the interests of the plaintiff class and the City defendants, and would achieve the result the Office of the District Attorney seeks. The Office of the District Attorney's current appeals represent an attack not only on the Stipulation and Agreement but on the Consent Decree that would remain in effect if the Stipulation and Agreement were set aside.

***4** The Consent Decree provides for an admissions moratorium and release procedures more stringent in many respects than the provisions complained of now. It became final when the Court of Appeals affirmed the denial of the District Attorney's initial motion to intervene and held that he had no standing to appeal the Consent Decree. The Office of the District Attorney in filing this motion to stay has seized an opportunity provided by the revised Stipulation and Agreement to renew its motion to intervene and press a position formerly rejected. This court considers it unlikely that the matters currently before the Court of Appeals could or would disturb the finality of a Decree so long in effect, at least not without an initial remand to this court.

2. ***The Office of the District Attorney will not be irreparably harmed if the stay is denied.***

The Office of the District Attorney in urging a stay pending appeal, continues to predict that the release and non-admission mechanism of Stipulation and Agreement will have a catastrophic effect on Philadelphia's criminal justice system.

The Office of the District Attorney's use of sensational and distorted facts is intended to divert attention from the real issue before the court: whether implementation of the release mechanism embodied in the Stipulation and Agreement pending resolution of the aforementioned appeals will irreparably harm the purported "interests" of the District Attorney.

Even assuming the Office of the District Attorney has an interest in the continued incarceration and non-release of Philadelphia prisoners, that interest is exceedingly weak. As the Court of Appeals stated:

To the extent that the ceiling on the prison population and any resultant release of inmates may be required to maintain constitutional conditions in the prisons, the District Attorney has no legally protected interest in causing the constitutionally-imposed maximum to be exceeded.

See Harris v. Pernsley, 820 F.2d at 601. At the time the Court of Appeals expressed this view, the prison population was deemed excessive at 4,300. The Office of the District Attorney's interest can only be viewed as weaker now, when despite the City's efforts over a three-year period to reduce the prison population through various release and non-admissions mechanisms, the prison population for the period May 29, 1991, to July 25, 1991, ranged from a low of 4,587 inmates on July 20, 1991 to a high of 4,773 on May 30, 1991.

It is difficult to articulate what "harm" the Office of the District Attorney will suffer from implementation of the Stipulation and Agreement pending appeal because releases and non-admission to the prison will almost certainly continue even in the unlikely event that the Office of District Attorney's appeals are successful. If the Stipulation and Agreement is set aside, the release and non-admission policies will still remain in effect in accordance with the 1986 Consent Decree. The Office of the District Attorney may challenge the validity of the Consent Decree also but even so, a stay of a 5½ year old Consent Decree on a matter of such importance would be unlikely.

***5** Releases and non-admissions are also likely to continue even if the 1986 Consent Decree is vacated by this court or the Court of Appeals. In that event, preliminary injunctive relief in a form similar to the release mechanism under the Stipulation and Agreement might be imposed in view of length of time required for final disposition on the merits at trial and on appeal. So even assuming the District Attorney wins every possible appeal, until a new prison is built under the procedures set forth in the Stipulation and Agreement, releases and non-admissions will in all likelihood continue. Without them, the prison population will assuredly spiral out of control and subject prisoners, guards and the surrounding community to unprecedented danger.

The Office of the District Attorney's argument that it will suffer irreparable harm in the absence of a stay continues to misrepresent the Stipulation and Agreement by insisting that it will require the release of 175 inmates per week even if none are eligible for release. The City must only propose 175 pre-trial detainees per week if there are sufficient inmates in the prison population eligible for release under the strict criteria specified by the court. Those criteria were determined after public hearings at which the Office of the District Attorney participated vigorously and effectively.

The release provisions apply to pre-trial detainees only. Unlike release orders in other jurisdictions, no sentenced prisoner has been released on this court's order before termination of his or her sentence and no convicted inmate has been released prior to sentencing, even where sentencing has been unreasonably delayed. No one has been or will be released if charged with murder, attempted murder, forcible rape, attempted rape, involuntary deviate

sexual intercourse, corrupting the morals of a minor, arson, kidnapping, aggravated assault, a crime of violence committed or attempted with a firearm, knife or explosive, escape or domestic violence and abuse. *See* Stipulation and Agreement at ¶ 17(a).

The fact that this court's release orders have been limited to pre-trial detainees demonstrates the weakness of the Office of the District Attorney's contention that it is suffering irreparable harm. Experience has shown that a substantial number of pre-trial detainees are ultimately not convicted and are, in fact, innocent. This court is unable to provide the District Attorney's current conviction rates in general or the rates for non-violent crimes subject to this court's release orders. However, of persons who would have been incarcerated for longer periods of time but for the City's posting bail through the BailCARE program, the City's Prison Management Unit reported as of June 30, 1991, that of 1,260 cases disposed of since December 1, 1987, 689 resulted in no conviction, a conviction rate of only 45%. Were it not for this court's remedial orders, all these persons could have remained in prison for extended periods awaiting trial.

***6** Perhaps the most frustrating aspect of the opposition of the Office of the District Attorney to the court's release order to relieve overcrowding is its presumption that all persons arrested and incarcerated for lack of bail are guilty as charged. Assistant District Attorneys before the court persist in contemptuously referring to all pre-trial detainees as convicted criminals. The Office of the District Attorney may consider the presumption of innocence some technicality effective only at trial, but the Supreme Court has consistently maintained the distinction between convicted criminals and pre-trial detainees:

A person lawfully committed to pretrial detention has not been adjudged guilty of any crime. He has had only a "judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest."

See Bell v. Wolfish, 441 U.S. 520, 535 & n. 16 (1979) (quoting *Gerstein v. Pugh,* 420 U.S. 103, 114 (1975)). Essentially, the District Attorney's assertion of irreparable harm, rests on the assumption that everyone charged with crime, no matter how serious or how minor, who is unable to raise the amount of bail the District Attorney advocates to state judicial officers, should be incarcerated pending trial, no matter how long until trial or how likely the defendant is to be convicted. While it may be a District Attorney's predilection to believe this, such pre-trial detention is not so favored by the courts and cannot be the basis for establishing irreparable harm.

The Office of the District Attorney places all of the blame for the problems of the Philadelphia criminal justice system on this court but much of that responsibility rests with the Office of the District Attorney itself. The Office of the District Attorney can prevent pre-trial releases by urging prompt trials. The District Attorney has asserted in a Commonwealth Court pleading that:

In addition to her rights established in 18 Pa.C.S.A. § 1108, the District Attorney is a constitutional officer under Article 9, Section 4 of the Pennsylvania Constitution. Pursuant to statutes and case law, she is responsible for enforcing the criminal laws in Philadelphia. Her duties include, *inter alia,* prosecuting those charged with criminal violations, advocating the amount of bail to be set, defending bail decisions, defending convictions in post verdict proceedings, and representing the Commonwealth's interest with respect to the discharge of inmates from correctional institutions. (*Abraham v. Department of Corrections, et al.,* Commonwealth Court No. 166, M.D. 1991 Amended Petition for Review at ¶ 5).

Nowhere in this litany of responsibilities and duties is mentioned an obligation to assure prompt trials and speedy sentencing, although this would do much to relieve prison overcrowding. Inmates convicted and sentenced to a maximum exceeding five years, including those ineligible for release, would be delivered to state custody. Inmates not convicted and not subject to parole or other detainers would presumably be released. Many of the pre-trial detainees when finally brought to trial are released for time served or acquitted. The advantage of prompt trials should be obvious.

***7** This is particularly true in the case of inmates who are subject to extradition orders. Even when inmates in the Philadelphia prisons are sought by another jurisdiction, they are currently detained for disposition of local charges, no matter how long that disposition takes.

A plan for expedited disposition of homicide cases, a category of prisoners not subject to the court's release orders, would also relieve overcrowding and the necessity for pre-trial releases. According to information submitted to the court by the Office of the District Attorney on May 9, 1991, as of April 18, 1991, there were 451 inmates in the Philadelphia prison system charged with or convicted of homicide; 142 defendants were in custody for over one year (4 were pre–1989 cases where defendant is still in custody in Philadelphia). Of these 142, 73 were awaiting trial; 66 were sentence-deferred, 3 were not competent for trial and 2 were awaiting disposition of appeal in county rather than state facilities.

As a practical matter, the release process takes time; releases have been and will continue to be delayed where there is a trial date approaching. If the District Attorney is prepared for trial and objects to defense or court continuances, many more pre-trial detainees will come to trial before the dates for their releases.

The Office of the District Attorney is understandably concerned about the failure to appear rate and the increase in the number of bench warrants issued (but not outstanding). However, as the court has explained at length, *See* Memorandum Opinion, at 38–43, there is no evidence that this is solely, or even primarily, the result of this court's release orders in view of many other operative factors. Notwithstanding any increase in numbers of defendants who fail to appear, or the number of bench warrants, whether or not the result of *Harris* orders, the Philadelphia justice system is not and will not be on the verge of collapse. The Philadelphia courts have markedly improved their criminal disposition rate since this litigation began and the Court of Common Pleas has a significantly reduced backlog. Memorandum Opinion, at 41–44.

The District Attorney contends that its recent institution of litigation in Commonwealth Court (*Abraham v. Department of Corrections,* No. 166, M.D.1991) is a supplemental reason in support of a stay. The Commonwealth Court action seeks to force state and local officials to find alternative prison facilities for persons charged with offenses subject to this court's release orders. Even if the District Attorney were to prevail in Commonwealth Court and on appeal to the Pennsylvania Supreme Court, entry of a final order would not finally or immediately end overcrowding in Philadelphia prisons in view of the time and effort required for implementation. The Commonwealth Court would only be faced with problems similar to those facing this court.

If and when, by whatever means, the Commonwealth Court or any other state court reduces the Philadelphia prison population in existing institutions below 3,750, the admissions moratorium and releases under this court's orders will cease under the terms of the Stipulation and Agreement itself. There is no reason to stay implementation of this court's order because of litigation instituted years after the initial Consent Decree and appellate court denial of intervention by the District Attorney. The relief agreed to by the parties and approved by this court will alleviate prison overcrowding, expedite prompt prison construction, and permit the termination of this extended litigation.

3. ***The parties to the Stipulation and Agreement will be substantially harmed by the extension of the temporary stay and the grant of a stay pending appeals.***

***8** The court's Order of March 11, 1991, intended to become effective on April 11, 1991, has already been stayed too long. The court recognizes that the stay frustrates the realization of the short- and long-term objectives of the Stipulation and Agreement. Counsel for plaintiff has pointed out that delay gratifies the cynical expectations of those members of the plaintiff class who have insisted that the "System" would not allow the Stipulation and Agreement to be implemented.

In urging the court to lift the temporary stay, class counsel has reminded the court that the class will move to reinstate a class motion to vacate the Stipulation and Agreement if short-term relief (release orders controlling the recognized extreme overcrowding to a limited degree) is not forthcoming:

I disfavor dismantling the structure that has been so carefully crafted because I believe it presents the best if not only hope for genuine improvement in the physical and operational aspects of the Philadelphia criminal courts and jails, and for ameliorating prison overcrowding. The interests of the class and the public interest will be served poorly if the Consent Order is undone.

Class counsel makes clear that harm to the plaintiff class also inflicts grievous harm on the City defendants. To understand why this constitutes harm to the public interest as well, it is important to understand the progress that has been made by the City in implementing the long-term objectives of the Stipulation and Agreement in anticipation of the court's approval and institution of the short-term relief measures bargained for by the parties.

The court's Memorandum Opinion reviews not only the extended procedural history of this long pending action but the continued efforts of the court to control overcrowding by limited release orders and alternative detention facilities. Release of prisoners, even pre-trial detainees, has only been utilized as a temporary measure; construction of a new prison facility has always been contemplated by the parties. Nevertheless, the overcrowding has at times reached dangerous crisis proportions in the opinion of Commissioner J. Patrick Gallagher who is responsible for prison operations.

The Consent Decree of December 30, 1986, required the City to build a 440–bed downtown detention facility by December 31, 1990. The City initially planned to build a detention facility and courthouse for the criminal division of the state courts, called the Criminal Justice Center, at 13th and Arch Streets. By June, 1988, the City estimated that the facility would not be completed until late Spring, 1991. By January, 1989, the court was informed that the project would not be finished until September, 1991. In February, 1989, the City halted construction of the Criminal Justice Center and claimed escalating costs exceeded the amount of bond money available for the project.

On May 8, 1989, the court held a hearing on a Rule to Show Cause why the City should not be held in contempt for abandoning the downtown detention facility that they

were ordered to construct. At the hearing, the City submitted a plan for a new prison, not downtown, but in Northeast Philadelphia, adjacent to three existing facilities. On May 31, 1989, the court ordered the City to provide financial, architectural and programmatic information to the Special Master and a court-appointed consultant, Donald Stoughton. The court required the information to determine whether the downtown facility should be constructed as ordered, or whether the City's alternative plan, alone or modified, would be acceptable.

***9** Consultant Stoughton reported that he could not recommend building a prison in the Northeast because the City's plan lacked a preliminary site analysis and detailed functional and architectural programs. The plan failed to provide adequate space for health care and food services in the new facility but did not address whether existing facilities could provide these services. The City withdrew its proposal and the parties, aided by the court's Special Master and consultant, began negotiating in late Spring, 1989, to develop a comprehensive long-range plan to alleviate crowding and build a new prison. That process resulted in the Stipulation and Agreement approved by this court on March 11, 1991.

The Stipulation and Agreement obliges the City to implement a comprehensive Prison Planning Process; it calls for development of a plan to cope with prison overcrowding in a rational, comprehensive manner. The process comprises a plan for: 1) Population Projections; 2) Prison Population Management; 3) Physical and Operational Standards; 4) Capital Projects Management; 5) Operational Management; and 6) Management Information Services for the use of the prisons, judiciary and law enforcement personnel, including but not limited to the Office of District Attorney.

This planning process, long needed by the City of Philadelphia Criminal Justice System and beneficial to the interests the Office of the District Attorney asserts, is threatened by the action of the Office of the District Attorney in seeking to stay the short-term relief on which the Prison Planning Process is conditioned.

Since the Stipulation and Agreement of the parties, the City has established a Justice Facilities Systems Improvement Project (JFSIP) management team under the full-time leadership of Deputy Managing Director, Richard Moore. With the assistance of a Planning and Design Coordinator and Program Management Coordinator and the approval of the Mayor and City Council, construction sites for a new 500–cell/1000–bed prison and courthouse (the Criminal Justice Center) have been selected.

Under the leadership of Deputy Managing Director Moore, a two-tiered decision making process has been developed. The three person management team will coordinate all planning, design and management in consultation with a Stakeholder's Policy Group representing users of the programs and facilities being developed. The second level of decision making will be a Management Policy Group, comprised of key City officers, representatives of City Council and the state judiciary. The Management Policy Group will oversee the overall program to ensure adherence to schedule and budget; it is chaired by the Managing Director who has decision making responsibility as the representative of the Mayor. The Managing Director has convened a Leadership Coalition for consultation as he deems necessary.

Just as important as the planning process has been the City's good faith efforts to obtain the funds necessary to meet its obligations under the Stipulation and Agreement.

***10** In 1986, the Philadelphia Municipal Authority (the "Authority") issued $165,000,000 of bonds for the City of Philadelphia to finance a Criminal Justice Center "located at 13th and Arch Streets ... including therein court, detention, correction and rehabilitation facilities." In 1988, the Authority issued $170,000,000 of Criminal Justice Center Refunding Revenue Bonds, Series of 1988, (the "1988 Bonds") to refinance the 1986 Bonds.

When the City announced in 1989 the abandonment of the "downtown detention facility with at least 440 beds" that it had agreed to construct on or before December, 1990, the court ordered on May 31, 1989, that:

No bond or capital funds unencumbered as of the date of this Order shall be expended or committed by present legally binding obligation or contemplated subsequent transfer without ten (10) days' advance notice to the court.

On November 14, 1990, the court ordered that:

No bond or capital funds remaining as proceeds from the Criminal Justice Center Refunding Revenue Bonds, unencumbered as of the date of this Order, shall be diverted, expended or committed by present legally binding obligation or contemplated subsequent transfer without the express approval of this court. City defendants shall not transfer title, use, or construct on the 13th and Filbert Street site unless and until plans have been approved for the prison beds that were to have been included in the previously planned Criminal Justice Center and funding for that prison project has been assured.

By approving the revised Stipulation and Agreement on March 11, 1991, the court agreed that the requirement that the City complete construction of a 440–bed detention facility in downtown Philadelphia by December 31, 1990, was superseded and the City would not be held in

contempt in return for the City defendants' agreement to the orderly prison planning process described at length in the Stipulation and Agreement. However, prior orders regarding the Criminal Justice Refunding Revenue Bond funds remained in effect so that these funds could not be committed for any purpose without notice to the court in order to ensure continued secure funding for the City's obligations under the Stipulation and Agreement.

The City then introduced an ordinance in City Council to refinance the 1988 Bonds. The Ordinance passed by City Council enabled the Authority to issue and sell approximately $224,170,000 in Justice Lease Revenue Bonds (1991 Bonds) to fund a portion of the costs of construction and equipping the Detention Facility and the Criminal Justice Center. The court issued an order releasing its stay on the 1988 Bond funds and the 1991 Bonds were sold on July 31, 1991. However, without the express prior written approval of this court, the City of Philadelphia will not agree to an amendment of any lease or contract between it and the Authority to permit the portion of the 1991 Bond proceeds dedicated to construction of the new prison to be used for any other purpose. *See* Order of July 31, 1991.

***11** The Court of Appeals ordered this court to exercise its jurisdiction to address the problem of severe overcrowding in the Philadelphia prisons. *See Harris v. Pernsley,* 755 F.2d 338 (3d Cir.1985). Now, after nine years of litigation and five years of this court's supervision of a consent decree, there are plans and funding in place that should lead to the construction of two, state-of-the-art criminal justice facilities in Philadelphia. As a result of pressure from this court, planning for the prison is further along than for the courthouse, but the court is confident that construction of both facilities will proceed expeditiously in accordance with the timetable set forth in the Stipulation and Agreement. However, the task of solving Philadelphia's chronic overcrowding problem is far from complete.

The parties and the court now accept that prison overcrowding is unavoidable without detailed consideration of the future demands on the Philadelphia Prison System and the likelihood and effect of changes in the Philadelphia criminal justice system. Rational planning requires the involvement not only of representatives of the City and plaintiff class but also the Philadelphia judiciary, the Office of the District Attorney, and the Defender Association, all of whom will be invited and encouraged to participate.

This progress and the hope and momentum it has engendered among the many segments of the City's criminal justice system should not be impeded by staying the implementation of the Stipulation and Agreement in any respect. The short-term relief provisions to which the Office of the District Attorney especially complains, are an integral part of the Stipulation and Agreement. They were expressly made non-severable by the parties. Stipulation and Agreement at ¶ 32. The public interest in allowing implementation of this Stipulation and Agreement should be self-evident.

The continued stay of this relief will be vacated and it will be so ordered. As provided by the Stipulation and Agreement, the Office of the District Attorney will continue to have the opportunity to review proposed release orders and object because of erroneous application of release criteria or for public safety consideration.

ORDER

AND NOW, this 7th day of August, 1991, upon consideration of William Chadwick, Jr.'s Motion to Stay Pending Appeal, Plaintiff's Memorandum in Opposition, Defendant's Memorandum in Opposition, District Attorney's Supplemental Reasons in Support of Request for Stay Pending Appeal and Plaintiff's letter response of June 10, 1991, thereto, it is ORDERED that:

1) The Motion to Stay Pending Appeal of the proposed Intervenor is DENIED.

2) The Stipulation and Agreement approved March 11, 1991, remains in full force and effect; Paragraph 17 thereof shall be implemented as of August 14, 1991.