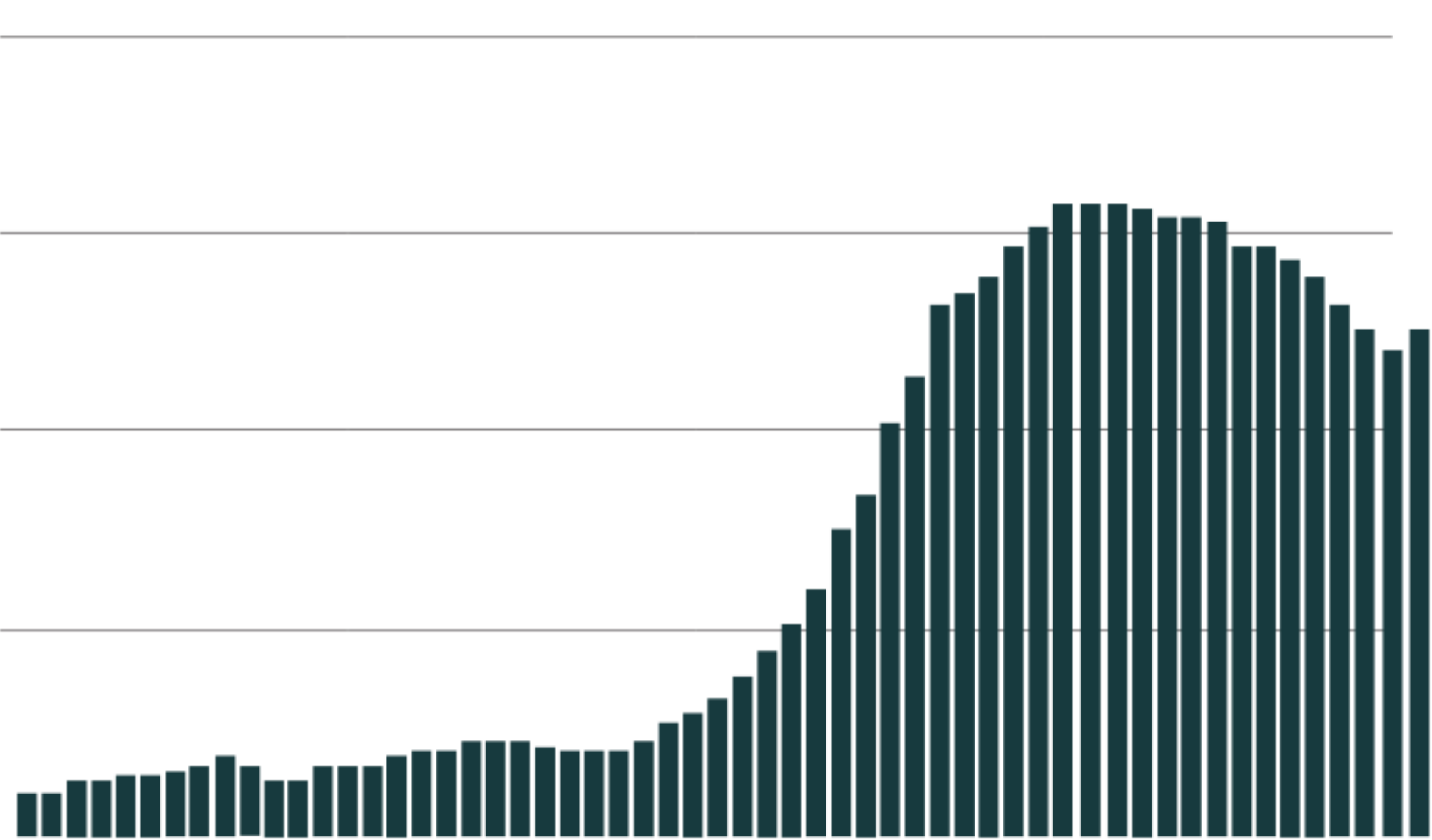


**Justice Abandoned:
How the Supreme Court
Ignored the Constitution
and Enabled Mass
Incarceration**

People in Prison

2,000,000
1,500,000
1,000,000
500,000
0

1925 1928 1932 1936 1940 1944 1948 1952 1956 1960 1964 1968 1972 1976 1980 1984 1988 1992 1996 2000 2004 2008 2010 2012 2014 2016 2018 2020 2022

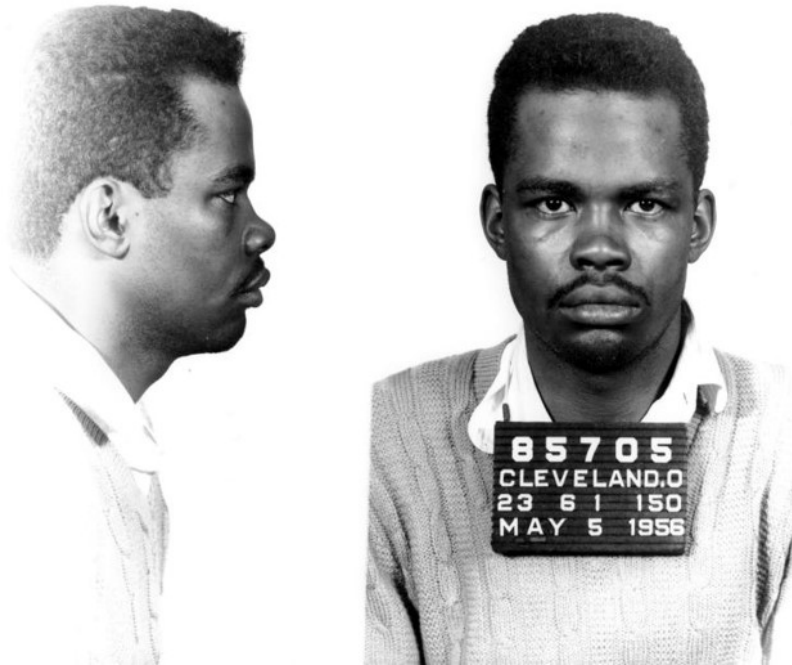




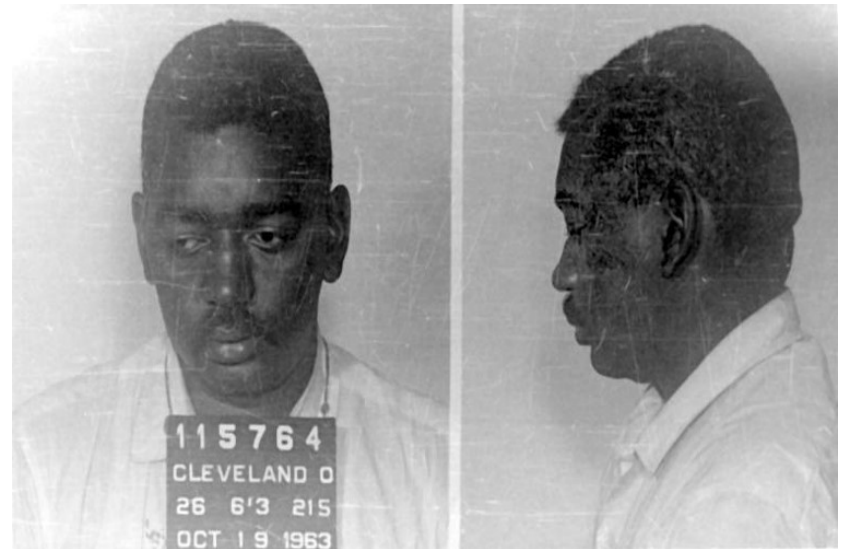
Terry v. Ohio

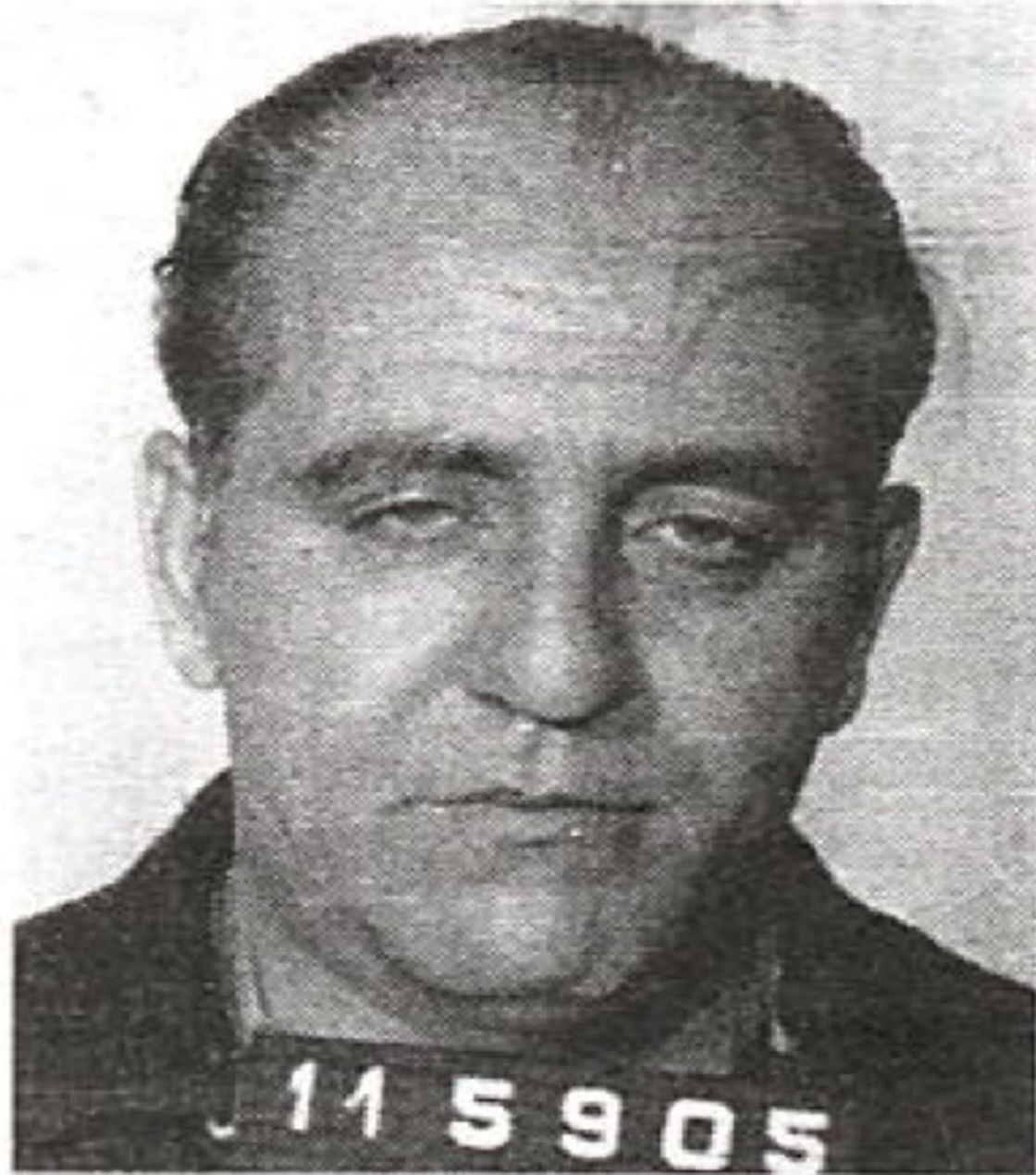
392 U.S. 1 (1968)

Terry



Chilton





The Policeman's Pal



Crime Rate vs. Stop-and-Frisk New York City



Note: Rates are per 100,000 for violent crimes, and per 30,000 for property crimes and stop-and-frisk



The Road to Preventive Detention for Dangerousness



Attorney
General John
Mitchell

VIRGINIA LAW REVIEW

VOLUME 55

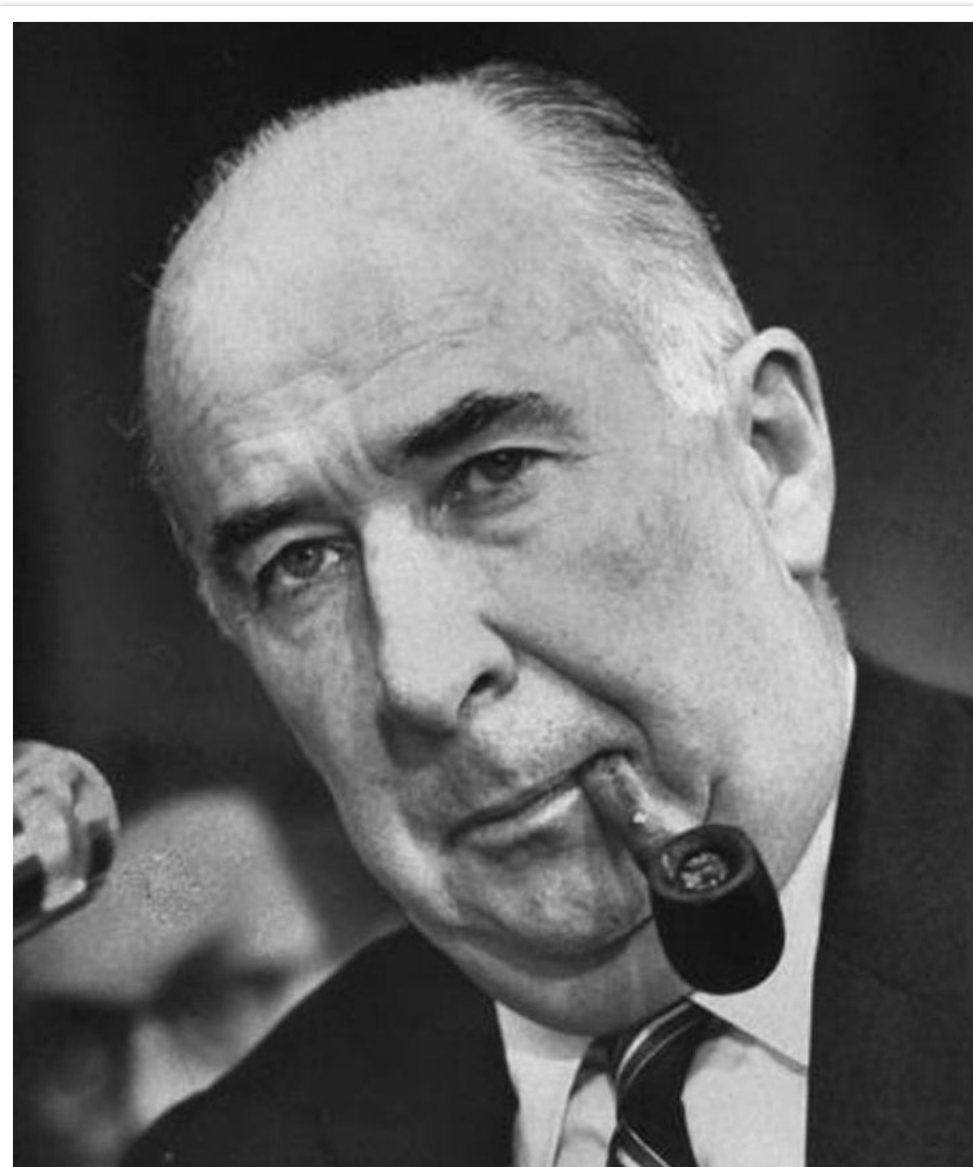
NOVEMBER 1969

NUMBER 7

BAIL REFORM AND THE CONSTITUTIONALITY OF
PRETRIAL DETENTION

*The Honorable John N. Mitchell**

ON January 31, 1969, President Nixon, in his first public statement on crime control, called for legislation to permit "temporary pretrial detention" of criminal defendants whose "pretrial release presents a clear danger to the community."¹ Pursuant to the President's directive, the Department of Justice sent to the Congress, on July 11, 1969, a proposal² amending the Bail Reform Act of 1966³ which would, *inter alia*, permit the federal courts to detain up to 60 days prior to



Professor
Laurence Tribe



- “No tenable concept of due process could condone a balance that gives so little weight to the accused’s interest in pretrial liberty”

VIRGINIA LAW REVIEW

VOLUME 56

APRIL 1970

NUMBER 3

AN OUNCE OF DETENTION: PREVENTIVE JUSTICE IN
THE WORLD OF JOHN MITCHELL

*Laurence H. Tribe**

IN the land of Freuchen, punishment was replaced with social hygiene

DC Pretrial Detention Law

- Passed in 1970
- Allowed detention for a maximum of 60 days (with option for extension to 90 day on a showing of good cause)
- Government had to show “substantial probability” the defendant committed the charged crime
- Used ~60 times in first five years after enactment

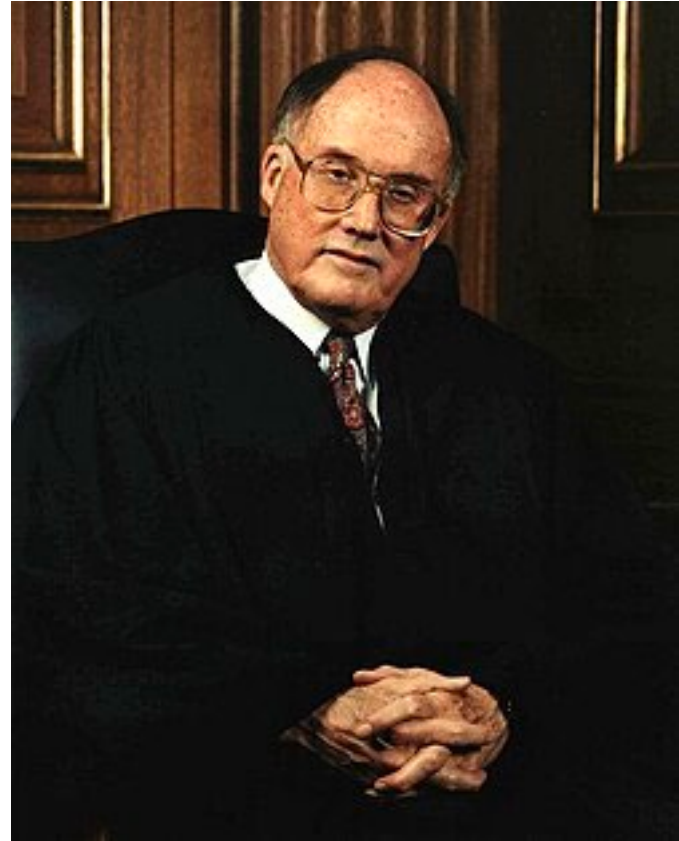
Bail Reform Act of 1984

- Presumptions of detention
 - Drug crimes with statutory maximums of 10 years or more or using a firearm in furtherance of a drug crime
- Allows limitless periods of detention
 - Average is now 255 days
- Fewer than 24% people detained before its enactment; today 75% of federal defendants are detained

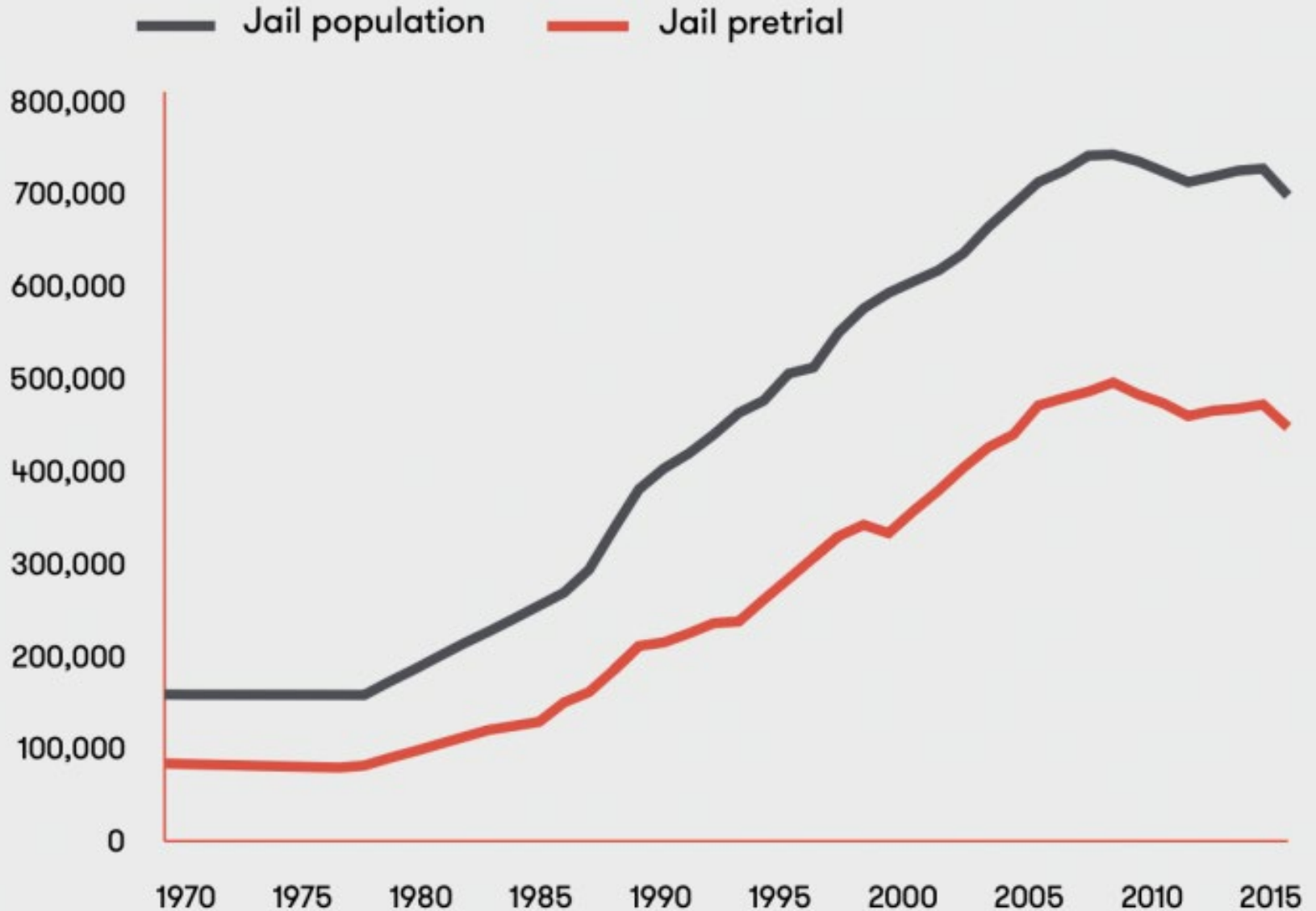


United States v. Salerno

481 U.S. 739 (1987)



U.S. pretrial and total jail population, 1970-2015

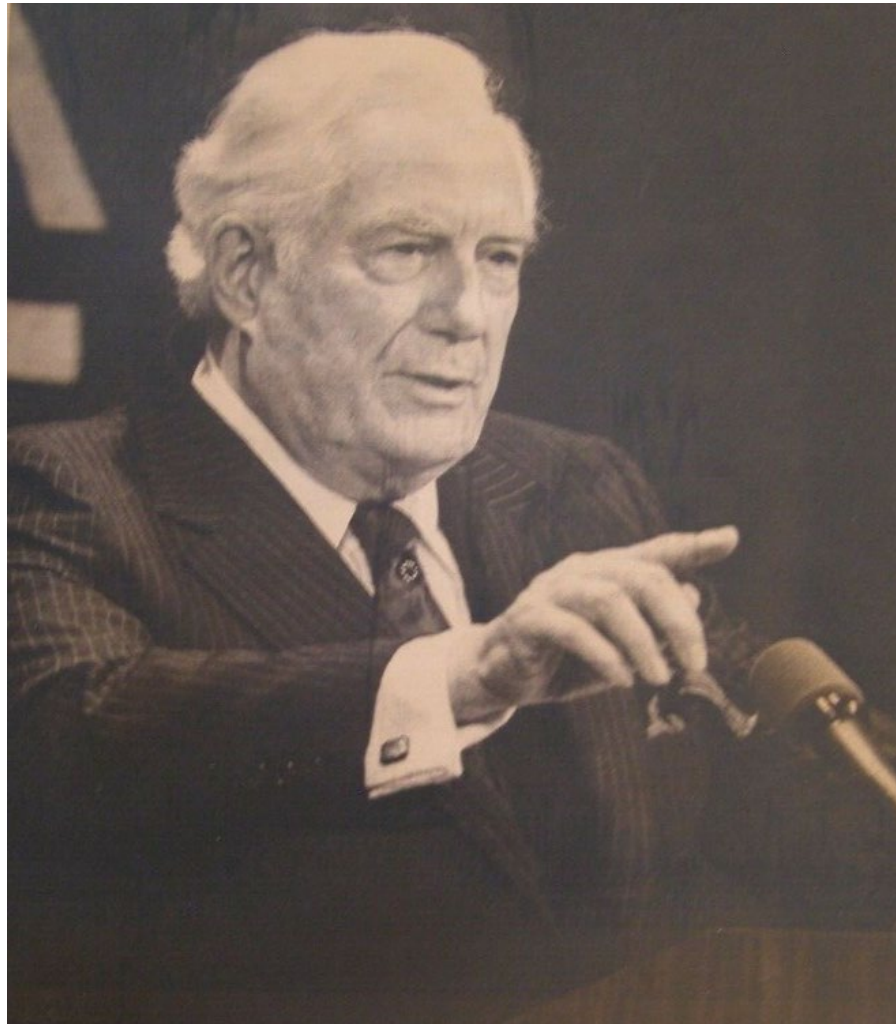


PRETRIAL DETENTION =
30% INCREASE IN FELONIES
20% INCREASE IN MISDEMEANORS

The Downstream Consequences of
Misdemeanor Pretrial Detention, 69 Stan. L.
Rev. 724 (2017)

Bordenkircher v. Hayes

434 U.S. 357 (1978)



WHAT GETS ME IS THAT
WE **PLEA-BARGAINED**
FOR ALL THIS!



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Cruel and Unusual Punishment

Harmelin v. Michigan, 501 U.S. 957 (1991)



Rhodes v. Chapman

452 U.S. 337 (1981)



McCleskey v. Kemp

481 U.S. 279 (1987)

“The McCleskey decision was not really about the death penalty at all; rather, the Court's opinion was driven by a desire to immunize the entire criminal justice system from claims of racial bias....Racial discrimination, the Court seemed to suggest, was something that simply must be tolerated in the criminal justice system, provided no one admits to racial bias.”—

Michelle Alexander