

H A R L A N R I C H A R D S

May 30, 2011

In a surprising decision, the U.S. Supreme Court held that the California prison system constituted cruel and unusual punishment due to severe overcrowding. It was a 5 to 4 decision which means that one of the conservative justices crossed over to the liberal block to render a fair and just decision. That's something that rarely happens in this day and age.

California's politicians have been creating this problem over the last decade just so they can show how tough on crime they are. Gray Davis, as governor, issued a directive barring any person with a life sentence from receiving a parole. At about the same time the legislature enacted the 3 strikes law where any person convicted of 3 crimes was sent to prison for life without parole. I've heard stories about men sent to prison for stealing a pizza or shoplifting or other petty crime.

Wisconsin is trying to follow California's lead, albeit not to the same degree and not as quickly. Until 1984 life in Wisconsin permitted release on parole at 11 years, 3 months. Over the years it was first extended to 13 years, 4 months, then wherever the judge wanted to set at that point or further and finally life without parole was authorized. When Truth In Sentencing was enacted it was then up to the judge to decide if a lifer received a parole at the eligibility date established.

This racheting down of a lifer's chance of release on parole has become the norm in Wisconsin and has resulted in needless warehousing of lifers and other prisoners for decades. Prison overcrowding can be attributed in part to the longer amounts of time served by prisoners. One lifer can tie up a prison bed for decades. If that prisoner had been released after he no longer posed a threat to anyone, it would have freed up a prison bed to house a young, dangerous criminal.

What is interesting (and inexplicable) is that if you happen to be found guilty of the crime but "not guilty by reason of mental disease or defect" you have an easier time getting released from a mental institution than a sane prisoner has of getting paroled. This applies even if it is only a drug that makes you "sane." It is counter-intuitive, to say the least. Sec. 971.17(4), Wis. Stats., states that a person confined for a crime in a mental institution shall be released by a court "unless it finds by clear and convincing evidence that the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage if released." If this standard was applied to paroling decisions, the prisons would empty out in a hurry.

Instead, the paroling process uses vague, ambiguous guidelines to permit decisions based on politics, personal agendas and just about anything else the paroling authority wants. Until January 2010, paroles were governed by this standard:

"A recommendation for parole and a grant of parole shall be made only after the inmate has:

- (a) Become parole-eligible under s. 304.06, Stats., and PAC 1.05;
- (b) Served sufficient time so that release would not depreciate the seriousness of the offense;
- (c) Demonstrated satisfactory adjustment to the institution and program participation at the institution;
- (d) Developed an adequate parole plan; and
- (e) Reached a point at which, in the judgment of the commission, discretionary parole would not pose an unreasonable risk to the public."

The new rules revised this standard to make the decision making process more, not less, discretionary (PAC 1.06(16), Wis. Administrative Code):

"A recommendation for release or a grant or order of release may be made after consideration of all the following criteria:

- (a) The inmate has become parole eligible under s. 304.06, Stats., and s. PAC 1.05
- (b) The inmate has served sufficient time so that release would not depreciate the seriousness of the offense.
- (c) The inmate has demonstrated satisfactory adjustment to the institution.
- (d) The inmate has not refused or neglected to perform required or assigned duties.
- (e) The inmate has participated in and has demonstrated sufficient efforts in required or recommended programs which have been made available by demonstrating one of the following:
 - 1. The inmate has gained maximum benefit from programs;
 - 2. The inmate can complete programming in the community without presenting undue risk; or
 - 3. The inmate has not been able to gain entry into programming.
- (f) The inmate has developed an adequate release plan.

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"(g) The inmate is subject to a sentence of confinement in another state or is in the United States illegally and may be deported.
(h) The inmate has reached a point at which the commission concludes that release would not pose an unreasonable risk to the public and would be in the interests of justice."

Which standard would you like to be evaluated under?
Prison overcrowding is an intentional situation created to permit politicians to garner support by scaring the public. This is similar to what George Bush did for years after 9/11 to shore up his falling approval ratings. Every time he wanted to improve his ratings, Homeland Security issued a terror alert. How convenient!

Imagine how much public good could be done by implementing the clear and convincing evidence standard for parole decisions. Imagine cutting our prison population in half, closing half of the prisons and using the \$500 million in savings to provide health care and enough to eat for every Wisconsin citizen.

If you can imagine it, you can make it happen. It only takes one person to start a movement that can change the world and make it a better place for everyone.

Prison Photo

Stiff as wood,
Cigar store Indian
Of bygone era,
1850s daguerreotype.
Kernel of self peeking past
Body imprisoned in
Military bearing, drab uniform.
Loving heart, struggling
To burst from chest,
Translated into pixels,
Transmitted across oceans
Of time and space,
Lodged at last in loving hands,
Seeking eyes, feeling heart.

Harlan Richards

Unique

We are each unique,
Snowflakes of DNA,
Mixing, matching,
Creating a kaleidoscope
Of cultures, races, abilities.
Each new generation
Building on, benefiting from
Past pandemics.
Each new terror unveils
Opportunity to create, invent, solve,
Stave off Armageddon.
DNA evolves, mixing, matching
New ideas, new solutions,
New life.

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