

H A R L A N   R I C H A R D S

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Scandalous Wisconsin Judges: Part II

Is there widespread judicial malfeasance in the Dane County Circuit Courts? Or was last week's story about Judge Flanagan an anomaly?

I have now been in prison for over 28 years. In 2011, after I had spent 9 years in minimum security and work release centers, I was yanked back to medium security ostensibly because of a 12-month defer issued by the parole commission. Numerous other prisoners have been permitted to remain in minimum facilities and work release centers with 12-month and longer defers. In fact, I am the only prisoner to be returned to medium security based on a 12-month defer without an underlying adverse change in circumstances.

I challenged the transfer in court via certiorari and within 6 months reversed the decision and was ordered to be returned to the work release center from which I was removed. However, certiorari actions can only reverse and remand for further proceedings. Courts cannot order an administrative agency to perform a specific act. The DOC official involved refused to return me to a work release center.

I realized that I had to do more so I filed a lawsuit in state court for violation of the constitutional rights to equal protection and due process of law. Judge John C. Albert was assigned to the action. He collected my filing fee and then dismissed my action, holding that I did not state a claim for relief (Richards v Heise, 12 CV 128).

A state court judge has a right to review a prisoner's lawsuit to determine whether he properly states a claim for relief and dismiss the action if he does not do so. However, when conducting this analysis, he is bound by the facts in the complaint. He must base his decision on the facts contained in the complaint and may not refer to or include facts from anywhere else.

Judge Albert took the initiative in this action and included additional facts in his decision dismissing my lawsuit. Something like this, although inappropriate, is really not that big a deal. After all, there may be instances where a prisoner

intentionally omits crucial facts from his complaint which, if included, would establish that he is not entitled to relief. However, in this case, it was a bit more than that.

Judge Albert asserted in his decision that I had already received a new classification hearing and that my custody had been reduced to minimum. The interesting aspect of this assertion was that the only place the information existed at that time was in the DOC database and my prison file. The only people who have access to the DOC database are DOC officials.

Not only did Judge Albert include facts from outside the complaint, those facts could only have been obtained through ex parte communication. Ex parte communication is defined as one party having communication with the judge without the other party knowing it occurred or what information was exchanged. In other words, Judge Albert or someone from his staff, contacted DOC officials and obtained what he believed were facts which would enable him to dismiss the action. Rather than being an objective adjudicator of the facts and the law, Judge Albert teamed up with the defendant to sabotage my lawsuit.

While it is true that I had a classification hearing and that the outcome of that hearing placed my custody level at minimum, the hearing was held in 2011 using the record as it existed in 2008 and was "for record-keeping purposes only." In other words, it had no bearing on anything. But apparently the person in the DOC who provided the information to Judge Albert failed to point that out to him.

I appealed Judge Albert's decision and it was recently reversed by the court of appeals and remanded for further proceedings.

So what's going on? Here are two egregious instances of judicial misconduct in the same county by two different judges against one prisoner. Is this the tip of an ice berg warning of widespread collusion between the Dane County Circuit Court and DOC officials? Or is it a conspiracy against one specific prisoner?

When the court system is corrupt, who do you turn to for help? We have a right-wing Republican governor and state legislature, and a dysfunctional state supreme court. There will be no help from them. Who can I turn to for relief?

As I said last week, my only hope is to inform the public and hope that exposure will shame the judges into acting ethically.