

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

March 1, 2014

1,400 Lifers Paroled In California  
In the Last Three Years

The news media reported this past week that nearly 1,400 California prisoners serving life sentences had been paroled over the last 3 years. This is a reversal of decades of "get tough on crime," "Lock 'em up and throw away the key," and blanket parole denials based on politics.

In California, governors must personally approve the release of lifers on parole. I wrote a blog dated August 21, 2012, based on the book, Life After Murder, by Nancy Mullane, discussing the status of lifers in California. The politicizing of the process led to Governor Gray Davis only issuing 2 paroles during his 3 year tenure. Gov. Schwarzenegger paroled 557 lifers during his 6 years in office. But current Governor Jerry Brown, facing pressure from multiple sources, began granting paroles. He is the one responsible for the 1,400 releases in the last 3 years.

Wisconsin is in the same place California was when Gray Davis was governor. Gov. Walker refuses to allow his parole commission chairperson to release lifers on parole. I'm sure he'll claim that he has nothing to do with parole decision and that Kathleen Nagle is just doing her job. But I know better. He would not have appointed her unless he was sure she would not grant very many paroles. To think otherwise is naive. Walker is focused on retribution, not rehabilitation. I previously wrote a blog on January 9, 2014 discussing the ideological refusal of Gov. Walker to allow the parole commission to release lifers on parole.

There are some differences in Wisconsin's situation as compared to California. For one thing, Wisconsin is not facing a federal court order to reduce its prison population so there is no incentive to reduce overcrowding. Secondly, California courts have issued decisions forcing the parole commission to issue rational decisions based on actual facts. The California Supreme Court held in In re Lawrence, 44 Cal. 4th 1181, 1214, 190 P. 3d 535, 555 (Cal. 2008):

"[T]he aggravated nature of the crime does not in and of itself provide some evidence of current dangerousness to the public unless the record also establishes that something in the prisoner's pre- or post-incarceration history, or his or her current demeanor and mental state, indicate that the implication's regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety."

This means that the parole commission cannot merely mouth platitudes about how dangerous somebody is based on the original offense. They must give current, rational explanations for parole denials. I attempted to persuade the Wisconsin Court of Appeals to adopt the Lawrence standard in State ex rel Richards v Landreman, 11 AP 2731 (see blog posting dated Nov. 4, 2013 to see how that turned out).

Wisconsin judges live in fear of the next election. They are afraid to issue controversial or unpopular decisions because they don't want to see their decision featured in an opponent's campaign ad. Imagine what it would be like if Wisconsin courts followed the mandate of Chambers v State of Florida, 309 U.S. 227, 60 S.Ct. 472, 479 (1940):

"Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement."

Another difference between Wisconsin and California is the size of those states. California is too big to be overwhelmed by out-of-state campaign contributions. Walker would not be governor if not for the millions of dollars in out-of-state campaign contributions from like-minded right-wing ideologues (64% of Walker's campaign contributions came from wealthy out-of-state donors in 2013). Neither would we have a state supreme court packed with right-wing ideologues. Wisconsin Manufacturers and Commerce, along with out-of-state donors, bought those elections.

Gov. Walker likes to pretend that his agenda is to cut taxes and reduce state government. But he is very selective in what he cuts. Wages for state workers: cut; funds for schools: cut; funds for prisons: budget increases. The DOC budget has increased every year since Walker became governor. Ideology trumps fiscal responsibility every time. Wisconsin spends over a billion dollars per year on the DOC. The latest Wisconsin Blue Book (2011-12) states that it cost \$50,625 per inmate per year in fiscal year 2008-09 to house a Wisconsin prisoner. With thousands of elderly prisoners (many of them lifers) needlessly filling prison beds, Walker is throwing away tens of millions of dollars which could be used to fund our schools, provide health care to needy families or house homeless people. No rational person would warehouse a bunch of old people while free citizens live on the street with no money, no job and no hope.

We can do better.