

POLITICS OF INCARCERTION

I stumbled across an ad in the Prison Legal News asking for first hand experiences about prison life. The complications, the challenges, politics, pretty much all aspects of prison life from a first hand point of view. During my incarceration, some five years now, I have been constantly looking for venues to write essays about my personal journey. The most important reason for me to write is to try to make sure no one else falls into the same deep hole that I fell into. The hole is like a well, once you fall down the well, the sides are so slick with slim that it is just about impossible to climb back up to get back on your feet.

The past five years have been the most difficult of my entire 57 years of existence. Having been successful all my life. I considered myself a conservative. I voted in every election, paid all my taxes, owned a home, and was raising two wonderful young children that I had with my third wife, a women that immigrated to the USA on a fiance' visa back in 1999. I was completely blind to the oft hidden working of the 'American justice system'.

I now have many new beliefs about the justice system which for me was out of sight - out of mind for most of my adult life. I recognize that it is only through efforts like Hamilton College with their American Prison Writing Archives, that many people, will for the first time be awakened to the total disconnect the U.S. justice system as compared to other industrialized countries, when it comes to the incarceration of it's citizens.

Perhaps 80% (my own guess) of the American people never come before any judges for any kind of criminal activity. Therefore, our criminal justice system operates without a lot of scrutiny from most citizens. I know from my own experiences that my attitude was "if they (government) are arresting and prosecuting them (assumed criminals), they probably deserve it." I was damn ignorant. And that is a major obstacle to over come, ignorance.

The lack of interest shown by the majority of the American people creates a giant disconnect. Without realizing it, we have become a nation of over incarcerated brothers, sisters, husbands, wives, mothers, and fathers. We were ignorant as a nation, not to pay attention while allowing one group of people

to prosper on the backs of the unfortunate. These unfortunates being the ones that stepped over the line between right and wrong.

But where do we try to put blame? On the mass amount of criminals? Perhaps, but to be fair, it is also the fault with our current political system. Egos' of politicians, egos' of prosecutors, and yes, egos' of appointed for 'life' Judges that no longer maintain their role of making sure the government does not over step their boundaries by over prosecuting wrong doers. All of these contribute to a broken and unjust justice system.

Why do I say the Politicians are to blame? Well politicians, it seem to me, think about one thing after being elected. That is getting re-elected. Usually they are elected on some campaign to 'clean up' Washington, to 'fix' the broken system, to work with the other side of the aisle. Soon they become infected with the Washington flu, 'ego', which accompanies a lust of power that can only be fed by staying in office. To do that, they need to be re-elected. That is where their good intentions fall awry. They are scared of political death attributed by having controversial votes on their records, which could means losing re-election. I call this simply the 'Dukakis' effect.

Let me explain the "Dukakis" effect. Back in 1988 there was a close presidential election. The governor of Massachusetts Michael Dukakis ran a close race against the current Vice President, George Bush. Years eariler while governor, Dukakis had let a prisoner out on furlough from state prison, a man by the name of Willi Horton. He was not the only inmate to be furloughed, and the others never made the news. Dukakis felt that prisoners needed a chance to show society that they served their time and could be re-introduced back into society. But Mr. Horton was the one bad apple, he went on and once again killed innocent people.

The Republican party, with the help of a ever increasing powerful political entity, the 'media', played over and over how Governor Dukakis was 'soft' on crime. This tactic was exploited over and over and was the chief cause of the loss to George Bush.

The Willi Horton incident was a huge setback at that time for prison reform. The Republican's were severely strengthening incarceration laws. While it may be true that Horton's case is not a good example, (he was on furlow for murder when he raped and murdered again) the point still stands that actions

of politicians now keep them scared from doing the right thing with regards to justice and prison reform. Did you know the Republican's were severely strengthening incarceration laws under President Ronald Regan? The federal parole system was abolished, thus eliminating one avenue of reformed incarcerated inmates a way back to society. Still today, federal prisoners, have no Probation available to them. All fifty states have probation, but no federal probation - although there are federal probation officers! Does that make sense? It is true, federal probation does not exist today. Fixing our current broken justice system will take great courage from bold and brave politicians.

Making or creating new legislation that appears 'soft' on crime will not please conservatives and other large groups. Votes, whether for this or against that, the way the politician votes over the course of time is always brought up by the opposition during elections. Perhaps, being transparent on political voting records is not always called for. Maybe what is needed to fix real problems before congress are secret ballots. The transparency of the politician's voting record feeds and drives the 24 hour news cycle of the 'media'. Opposition candidates use the media to drive the negative aspects of voting done long in the past. Look at all the attention the media brings about simply because over the years some politician may change his or her mind regarding a particular issue. "Flip - flopping", the media shouts out. But isn't true that you would be ignorant if you kept your old beliefs when new information becomes available? Don't we all change our mind from time to time?

Say for example, Senator XYZ or Congresswoman ABC vote for a bill making federal 'good time' more consistent with the majority of state laws. Good time being the time off awarded for good behavior during an inmate's incarceration. For example, a new bill is up to change federal good time from the current 47 days a year to 90 days a year. It passes. Federal prisoners now serve 8 years, 8 months and 18 days for a ten year sentence, will then serve 7 years, 6 months and 13 days (if I did my math correctly). Now let us say we have 1000 inmates that are released earlier due to the 'good time' bill being enacted into law. Now, let us look a few years down the road. What has happened to those men that served a shorter sentence due to the bill? Unfortunately there will always be some percentage of recidivism. But, perhaps a man jumps into a

lake after a sinking car to save a mother and infant. He is paraded around as a hero, making all the morning shows. Does it come up that he was an ex-inmate? Not likely. Another ex-inmate runs into a burning building and pulls out an elderly couple, another hero with the media. Yet, he is not interviewed with the lawmaker that is touting prison reform. No, not one politician will say, "hey I voted to let him out early." But, if just once, a felon, whether he was just released or had been on the streets for 10 years or more, commits a sensational crime of rape or murder, then the media is all up in arms over the ex-inmate back on the street early because XYZ or ABC voted for the 'good time' bill that facilitated an early release.

Currently the main reason that inmates are being incarcerated for such lengthy and draconian like sentences is because of what are called sentencing enhancements. When you are charged by a grand jury indictment, or in many cases a 'complaint', the crimes are listed by statute numbers. These criminal statutes are found in the United States Code (U.S.C), a multivolume published codification of Federal Statutes. It is here in the U.S.C. that the mandatory minimum and statutory maximum are listed.

What is unknown to nearly everyone is that there exist another obscure book entitled "United States Sentencing Guidelines, (U.S.S.G.). Within the U.S.S.G. are hundreds of what are called sentencing enhancements. These sentencing enhancements consist of many factors which are often used to greatly enhance sentences. It should be noted that even the courts themselves have a hard time properly interpreting these complicated sentencing factors. These sentencing enhancement adds years upon years on top of sentences listed within the U.S.C. These enhancements can double, and in my own case, tripled sentences, all on the whim of a Federal Judge.

For example, in my case, I had a 5 year mandatory minimum incarceration with a twenty year maximum, according to the United States Code, (U.S.C.) I was a first time offender. Never was I in any trouble with any State or Federal jurisdiction in all my 52 years. Therefore, I made a pivotal mistake in assuming I would receive a sentence close to the low end of the statute (USC), around five years.

I qualified for a federal defender, however my mother hired an attorney thinking that it would be best so that I could get back to my family as

quickly as possible. She felt that I would do a lot better with a private attorney instead of a Federal Public Defender (we have since learned, the hard way, that is not necessary true. In fact many times it works against you - another story).

To support my defense and to make a case for the low end of the guidelines, my mother hired several expert witness. One of my experts, Dr. Ted Shaw holding a PHD, had testified in hundreds of cases for the prosecution, both in state and federal courts. Dr. Shaw had his PHD in deviant sexual behavior, participating and lecturing in seminars to educate many different law enforcement agencies throughout the country. Dr. Ted Shaw performed psychological testing, interviewed me several times and look over and examined all the digital evidence of my crime. Afterward, he wrote up an extensive report that was submitted to the court. After that report was written, Dr. Shaw had a relapse of throat cancer, so my sentencing hearing was delayed while he underwent chemo therapy. During the sentencing hearing, Dr. Shaw testified in a weak raspy voice, making his answers hard to understand. However, his written report clearly written and submitted before his relapse, stated , that I was an extremely low on chances of recidivism, which he reiterated in court. He explained that nothing is 100 percent but as best as he could tell through his testing and experience, I posed little risk for recidivism. His testimony has always been golden in all other court rooms, but not in mine. Most likely because of prejudice of his sickness or for some other reason!

I also underwent around 40 hours of private counseling while I was incarcerated at the Pinellas County jail, by a Licensed Mental Health Counselor, (LMHC) Robert Drake. I also received a very favorable polygraph report on the depth of my illegal actions that was administered by a retired director of the National Polygraph Program of the Federal Bureau of Investigations (FBI), Mr. Richard Keifer. Interesting note to Mr. Keifer, while active in the FBI, Mr. Keifer had supervised the polygraphs during the famous Soviet spy case of former FBI Agent Robert P. Hanssen.

My high priced attorney failed to educate me on the complicated judicial process involved. He looked for an easy way out by persisting I take a plea agreement. Never did he mention sentencing enhancements! Pressured by my

attorney furnishing false information, out-right lies, not only to myself but also to my mother, I felt coerced into signing a plea agreement. That plea agreement never mentioned any harsh sentencing enhancements. All I knew was that by statute, I was looking at the lower end of 5 to 20 year sentence, and was a candidate for possible less because of all the evidence that included test and expert witnessess.

Having done all that we felt was necessary to receive a fair sentence, and only after reluctantly signing the plea, did the court order the probation department to write up a Presentence Investigation Report (PSR). Once again, remember, no where up to that point, and the courts acceptance of my plea was there any mention of sentencing enhancements by either my hired attorney, Suarez, or from the court itself.

Most properly prepared plea agreements will list out possible sentencing enhancements. It is the defense attorney's job to make sure, otherwise how could a reasonable person sign a plea agreement when he has no knowledge of all the factors to his possible imprisonment? In todays climate of criminal proceedings, few people go to trial. Instead, the prosecution is to work with the defense attorney and negotiate a plea agreement. Defense attorneys are require to faithfully work on making the best possible deal for their clients. Often, this may include threats of going to trial, when the plea negotiations fail to bring any positive results to the defendant. Most of the American public does not know that when most defendants sign a plea agreement, that the defendant many times has to give up important constitutional rights. Again, a defendant is made to give up his constitutional rights! This is called an appeal waiver. By signing a plea, you have signed a contract that says you can not appeal your case on the many technical errors made through out the proceedings. However, since you give up substantial rights, you are required to be 'rewarded' by the prosecution by them giving you something in return. Only after you are found guilty at a trial, or only after you sign a plea agreement, does the court order the PSR where all the enhancements start adding years to your sentence. A proper plea agreement would limit or dismiss many of these sentencing enhancements.

According to my probation officer in my case, I had a sentencing level of 22 along with a criminal history category of I. Looking at a sentencing chart,

my time of incarceration should be 41 to 51 months. But the probation report (PSR) added seven (7) enhancements, (85% of crimes within the statute (U.S.C.) contain these same factors, not making them unique) increasing my sentencing level to a 40. With 3 levels credit for acceptance of responsibility and signing a plea within a reasonable time, left a sentencing level at 37, criminal category of I, which equates to 210 to 262 months incarceration.

The point I need to stress and make clear here is that these sentencing enhancement are not base on empirical evidence. These enhancements are all political. They are generated solely because of silent legislation slipped into other appropriation and other bills, without debate, so that politicians can say to their constituents i.e. voters, how 'tough' on crime they are by passing stronger sentencing. No, not because scientific or collegiate studies or social specialist with PHDs, or even due to effort of the United States Sentencing Commission, (who actually say that many enhancements are not needed to reduce crime), but solely on political emphasis - "looking tough on crime."

It is time that Politicians make inroads to correcting this disparity of logic and corruption. These enhancements are a major aspect of the politics of the incarceration.

Prosecutor! They are never wrong! Does the American public know that Federal Prosecutors have a 90% ± conviction rate? Can that be right? Depending on the material at hand, you will find the 90% rate being touted. Remember, I am writing as an inmate and I have no internet to verify my facts, I could be off some. I admit when I am wrong. That however, is not in the DNA of federal prosecutors. All that seems to matter is that they get the 'win'! And with that win, cause as many years behind bars as possible. Regardless of the truth.

All inmates say they are innocent. That is what most people on the outside think. That is not true here in prison. There are some that always say they are innocent or victim of circumstances. But there are many that say yes, I committed that crime, but I didn't do that. So many men are here for crimes that do not justified for the length of sentence. If truth meant the truth, prosecutors would not drive for such severe sentences. I say this because prosecutors ignore the truth in many cases. It is not convent for their own case against the defendant. But that is how the prosecutors are judged, by

prosecuting to the fullest and then some. It is their only reward system. Truths that let a man off with a less severe sentence when its possible to ignore the truth adds to their record. Seldom is it found out. Unless a successful appeal which they try to avoid by the appeal waiver. If it does come to light that a man is over prosecuted, it is just a mistake, no 'malice' on the prosecution part. After all, the courts now a days are on the prosecution side, or so it seems. Prosecutors are looking for blood and when he or she smells blood, they go for the kill. And they do it in many unscrupulous ways.

I challenge my own federal prosecutor, Amanda Kaiser any time, any day about her staying within the ethics of the ABA. I believe she could not pass a polygraph concerning her misrepresenting facts in her government reply to my 2255 motion of ineffective assistance of counsel. No doubt about it, as I prove it beyond a reasonable doubt using court transcripts. Let me explain.

At my second day of sentencing, 30 days after day one of a two day sentencing hearing, the prosecutor, Amanda Kaiser, handed up to the podium of the judge, thus into the court record, victim impact statements, all against the Rules of Criminal Proceedure. Victim Impact Statements, if and when warranted are to be included in the PSR report that is due 30 days before any sentencing hearing begins so that the defense attorney along with the defendannt may object to the relativity of such statement. That allows the defense attoreny time to go through each and every one. Most of these VISs are generic, being entered into court after court by the same victims of child pornography. These are entered to prejudice Judges against the viewers of pictures that were taken long before the pictures were found on the internet.

But these irrelevant generic VISs first came to light just an hour before sentencing. In the transcripts, the judge is quoted as saying, "I don't see them here [referring to the PSR]". And let me remind you, this was day 2 with 30 days before, day one, so these impact statements were over 60 days late to enter. Yet federal Judge Richard Lazarra referred to these victim impact statements being so disgusting and horrific as being enought reason to disregard all of my expert witnessess and "because he could", he sentenced me to 210 months of incarceration along with 30 years supervised release. And my lawyer never objected but when asked about them from the Judge said, "if I

wanted too, I'm sure Amanda Kaiser would have let me look at each and every one of them..."

During my appeal, I show that the Prosecutor misled the court in thinking that my lawyer had in fact objected to these very same Victim Impact Statements in a letter to the probation officer, yet that very letter was written some 80 days before the VISs ever came to light!

I really thought that Prosecutors were out to stop all the bad guys, yet they pick and choose who they give a great deal to and those they give not an inch. There is no law dictating them on who gets what. It is their call. Telling the TRUTH is irrelevant. That kind of statement has to be hard for all law abiding citizens to understand. Coming before a court to obtain first hand experience with the American Justice system, is so much of a shock for a first timer. That is why we put our trust in lawyers. We all believe that this system works well, but then we learn the truth. Remember when you were five or six, when you found out there was no Santa Clause, the heart break of knowing the truth. Increase that heart ache 1000 times. Our Justice System is broken.

I have a cousin that is a city prosecutor in Richmond Va. She knows me. She knows how I have always been towards others, yet when I was arrested, she became blind and has since refused to even answer any letters. And no she has nothing that would jeopardize her own work. But she has the Prosecutor's eyes, and while refusing to hear the truth, she and many other prosecutors refuse to see the truth.

Finally Judges. What can you say about men that believe that they are God? With a wave of the hand, they can either sentence you "sufficient but no greater than necessary" or they can put you away for a long, long time. And they answer to no one. Seldom can you come back because you signed away your right to appeal. Judges can sit back and put you away without any repercussions. What a system. So much power. How can a man be appointed to life and maintain his complete control of peoples lives without being responsible to anyone. That is a question Americans need to ask. Are all Federal Judges fit, free of all prejudices? Can they truly determine what is fact and fiction between a prosecutors version and a defense attorney's version. Does it really matter that more prosecutors are made into judges than defense attorneys?

At one time, Judge Sewell, stated that he felt that he did his job when he could find a man innocent of the charges that a government brings against him. That was what a judge was to do, make sure that the prosecutor proved beyond a reasonable doubt that a defendant deserved all the time the prosecutor asked for. The day of being innocent until proven guilty is long gone. Today you are guilty until proven innocent, do not let anyone fool you.

Captain Shipwrecked