



Truth and Justice

The Innocent Prisoner's Dilemma



By Jeff Deskovic

Parole is discretionary release from prison after an inmate has served the minimum time to which he was sentenced and has appeared in front of a parole board, a panel generally consisting of three or more commissioners who have been appointed by the governor to make determinations of whether or not a prisoner would, if released, remain at liberty without breaking the law. Part of their evaluation depends upon whether or not the individual has been rehabilitated. Factors which are typically considered include the inmates disciplinary record, his vocational and educational accomplishments in prison, any letters of support and any letters from the crime victim or surviving family members.

One factor which is not statutorily required, but which has become a de facto element in the process is whether or not the prisoner takes responsibility for their crime and expresses remorse.

That element creates a catch 22 situation, labeled by Law Professor Daniel Medwed as "The Innocent Prisoner's Dilemma." Medwed, who is a law professor at the University of Utah, used to be the Assistant Director to the now defunct "Second Look Program" at Brooklyn Law School, which sought to clear wrongfully convicted prisoners in non-DNA cases. The innocent prisoner, on the one hand, must maintain his innocence if he is to legitimately pursue every avenue of appeal and discovery potentially capable of reversing his wrongful conviction. On the other hand, if he maintains his innocence before the parole board, he is almost certainly going to be denied.

I am only too well acquainted with that dilemma, having gone through it myself. After I had completed my minimum fifteen year sentence pursuant to my wrongful conviction for rape and murder, I was aware of this phenomenon as well as the fact that the Parole Board was at that point in time under heavy mandate from then Gov. Pataki, to rubber stamp deny parole applications even from those who had turned their lives around

and/or would pose no threat to society if released. I personally knew any number of inmates who had already served more than 25 years on a 15 to life sentence, who had been repeatedly denied.

The situation is aggravated by the fact that courts are too deferential to parole decisions and very rarely reverse them; reversals in any event only result in another parole hearing. Viewing parole as another means by which I could regain my freedom, since by that point my appeals had been exhausted for a number of years, I attempted to protect myself from being denied by repeatedly raising the issue of my innocence, even though I knew that I was expected to take responsibility for the crime. The parole commissioners didn't want to hear about my innocence, and in their written denial stated that I had a good disciplinary record, an excellent educational record, letters of support from the community, and even a recommendation letter from a prison employee, but that nevertheless I had been convicted of a brutal and senseless crime and to release me would be to deprecate its seriousness.

Perhaps one of the best illustrations of the problem is Herbert Murray. Despite presenting 5 alibi witnesses, including a housing police officer and a Reverend, Murray was convicted of a robbery and murder in Brooklyn, New York in 1979, of a 59 year old blind man. There was no physical evidence connecting him to the crime, and none of the prosecution witnesses, which included a drug dealer on parole could say that they saw him commit the crime.

Murray maintained his innocence at his first four board hearings, all of which resulted in denials. According to the parole hearing minutes, posted by The New York Times, the commissioners told him "19 years is a long time, but you are no closer to the rehabilitative process than you were the day you walked into prison. First step in that process is the internalization of guilt. It makes all of the programs that you have taken

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for naught, you have programs that help you to maintain a posture in terms of getting a job and support your educational improvements. Your programming in other areas, that would help you to become a better citizen. But as far as the dynamics of your crime and the violence that you exhibited in this crime, it appears that you have not yet addressed that. You need to do some serious introspection and come to grips with your behavior. We have no doubt that you committed this crime. The jury had no doubt that you committed this crime. Sooner or later you will have to address the behavior.”

Desperate for release, he admitted at the fifth hearing and sixth hearings, but was denied. He maintained his innocence at the seventh and was again denied. The Second Look Program then stepped in and put together a brief documenting his evidence of innocence, including a letter from the trial judge stating that if he had decided the case he would have acquitted him. Upon reviewing the document, the eighth Parole Board released, him, by which time he had served 30 years.

Parole Boards work on the assumption that every conviction is a good one. In their minds, there are no actually innocent people in prison, and therein lies the crux of the problem. There are solutions on multiple levels. On an internal level, Parole Boards can no longer function under the pretense that every conviction was warranted because there have been far too many exonerations to continue to assume that every parole applicant was guilty. Having disabused themselves of the need to confirm his guilt, they must then look at the remainder of his file and determine if this individual who is now eligible for release would pose any threat to the

community.

In point of fact, it is time that the next governor appoint a commission to study the conditions and operational regulations under which the State Department of Parole has been functioning for the past several decades with a mind toward rewriting those regulations in light of what we now know about wrongful convictions and the significant percentage of actually innocent persons wrongfully convicted and serving time in the prison system. For openers, they should discard the de facto practice of demanding admissions of guilt, remorse, and taking responsibility

for the crime, for these hurdles are impossible for an innocent person to meet. For many such prisoners whose cases do not involve DNA, the scarcity of financial resources and the lack of legal assistance from an investigator and an attorney means that they will never be able to prove their innocence and thus parole is the only means by which they can regain their freedom. For our parole system to continue to operate as it presently does, is to condemn far too many innocent inmates to die in prison.

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