

Three Strikes Racks 'em Up

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In November of 1993 voters in Washington state passed Initiative 593 which mandates life without parole for defendants convicted of one of 42 qualifying felonies for the third time. The first attempt, in 1992, failed to get the necessary 182,000 voters' signatures for the initiative to qualify for the ballot. It appeared that the 1993 effort would meet the same fate until within the last few weeks before the July deadline by which initiatives must be filed with the secretary of state with the required signatures, the National Rifle Association (NRA) pumped \$90,000 into the campaign (out of a total \$170,000 raised). This allowed for a massive direct mailing to citizens across the state as well as paying professional companies to gather signatures.

Washington voters passed Initiative 593 "Three Strikes You're Out" by a three to one margin. Since then California has passed a similar measure, about 30 states are considering some form of it and it is the centerpiece of Clinton's vaunted "anti-crime bill". The proponents of three strikes claim it will keep "career criminals" off the streets and in prison. Within what passes for mainstream American politics today no one is seriously opposed to such measures (it should be noted that the American Correctional Association (ACA) and the Judicial Conference of the United States, which represents federal judges, have gone on record opposing three strikes legislation). The only dispute is how wide the net should be cast, i.e. all third time felons or just "violent" ones, life without parole or at least 25 years without parole. This is hardly a debate.

Little noticed by the mainstream media are other effects these laws have had. The Washington three strikes law eliminated good time or other time reductions for several offenses, including murder, rape, and robbery. It also forbids placing wide categories of prisoners in any kind of work release, home detention, or similar type of facility. The California law requires sentences be served consecutively, restricts good time credits for California prisoners and limits prosecutors' ability to strike prior felonies in reaching plea bargains.

It seems that no one has pointed out that these laws have already been tried in the past. Until 1984 Washington had a "habitual offender" statute which mandated a life sentence for a defendant convicted of a felony for the third time. Most states have some version of this law on the books. Its main purpose is to avoid trials whereby defendants will plea bargain to other charges in exchange for prosecutors agreeing not to "bitch" them. Occasionally the media reports the hapless defendant, usually in Texas who gets a life sentence for stealing a carton of cigarettes after being charged as a "habitual criminal".

Just who are these "career criminals" that are the focus of "three strikes" legislation? Fred Markham once told me that prisoners reminded him of the Wizard of Oz. The Wizard said he was not a bad man, just a bad wizard. Likewise, the vast majority of prisoners are not bad men, just bad criminals. Anyone who has done time in prison will

tell you that they are not filled with rocket scientists. Most of the people in prison are not evil nor professional criminals, they tend to be poor people with emotional, drug or alcohol problems who are caught doing something stupid. The "professional career criminal" tends to be a media myth, unless we count savings and loan bankers, fortune 500 companies,

About nine hours after California's three strikes law went into effect on March 7, 1994, Charles Bentely was arrested in Los Angeles and charged with the crime that could send him to prison for 25 Years without parole: a 50 cent robbery. Donnell Dorsey, 37, is also looking at his third strike, for sitting in a stolen truck. The California law also doubles presumptive sentences for second time offenders.

In March, 1994, Samuel Page became the first person in the US convicted and sentenced under a "three strikes" law. He pleaded guilty in Seattle. In total, by mid-1994, about 15 people in Washington state, mainly armed robbers and sex offenders, have been charged with a qualifying third strike. According to the latest report by the Washington Sentencing Guidelines Commission, in fiscal year 1993, there were 204 defendants who would have qualified as three strikes defendants had the statute been in effect at the time (the law took effect December 2, 1993).

On April 15, 1994, Larry Fisher, 35, was convicted of his third strike in Snohomish county Superior court in Washington. He will be sent to prison for the rest of his life. Fisher was convicted of putting his finger in his pocket pretending it was a gun and robbing a sandwich shop of \$151 dollars. An hour later police arrested him at a bar a block away while he was drinking a beer. Fisher's two prior strikes involved stealing \$360 from his grandfather in 1986 and then robbing a pizza parlor of \$100. All told the take from Fisher's criminal career totals \$611 dollars; he has never harmed anyone.

How much will society pay to protect itself from this \$611 loss? On average it costs \$54,209 to build one prison bed space, and \$20,000-\$30,000 per year to house one prisoner. The costs are higher if financing and related costs are factored into the equation. If Larry Fisher lives to be age 70, the total cost will be approximately one million dollars. Is society really getting its money's worth?

Using the Sentencing Commission's figures as a base to assume that 200 defendants a year will be third striked in Washington state alone, allows us to calculate a need for that many prison beds a year. Because they will never get out this will continue to grow; within ten years they will occupy at least 2,000 prison beds. The average prison in Washington holds about 800 prisoners. At the same time that Washington voters passed I-593 they passed I-601 which limited the ability of the legislature and governor to raise taxes. All tax increases are now tied to population growth and must be approved by voters. This will present something of a contradiction in coming years; voters want to lock everyone up for the rest of their lives but do they want to pay for it? More importantly, can they pay for it? Stagnant economic growth (itself a leading cause of crime) results in a smaller tax base for which to pay for more prisons.

There is a lot wrong with these three strikes laws. Aside from the fact that only poor people will bear their brunt there is the matter of proportionality. Everyone has heard the term "an eye for an eye". The original meaning of this was that punishment should be proportionate to the offense. If someone's cow wandered into your pasture this meant your village did not destroy the village of the cow's owner. Does stealing \$151 dollars merit life in prison? Is 50 cents worth 25 years?

There are already numerous laws which mandate life without parole for certain first time or repeat offenses. The federal Armed Career Criminal Act, passed in 1988, mandates 25 years without parole for a three time felon found in possession (not using mind you, just possession) of a firearm. Michigan and the federal government also mandate life without parole for possession of more than 650 grams of heroin or cocaine for a first time offender. The only other offense in Washington state which carries a life without parole penalty is aggravated murder.

When the laws make no distinction in punishment between killing five people, having a gun, having 650 grams of drugs or stealing \$151 dollars there is something wrong. Washington and California police have reported that since the 'three strikes' laws went into effect suspects have become more violent in resisting arrest. A suspect knowing that if convicted for a \$151 dollar robbery he will spend his life in prison has, quite literally, nothing to lose if he has to kill a few people to avoid arrest. The result of this, I suspect, will eventually be the broadening of the death penalty. Seattle Police Sgt Eric Barden was quoted in the *New York Times* saying "It now looks like some of these three strike cases might try to get away or shoot their way out. Believe me, that's not lost on us. We're thinking about it."

It is perverse logic where the proponents of these type of laws cite with approval the increasing numbers of people receiving such sentences, be it life without parole or the death penalty, claiming they are a deterrent. If such laws were effective the numbers would decline. Neither the mainstream media nor the politicians have any interest in using logic or common sense in formulating public policy. All these laws will achieve are an increasing number of poor people in prison, more violence, more state repression and eventually, greater use of the death penalty.

No laws will be passed making corruption by public officials, endangering public health by corporations, a "three strikes" offense. In 1989 the Federal Sentencing Guidelines Commission was going to increase the penalties and punishment for corporations convicted of crimes, including making its executives criminally liable. Corporate America promptly lobbied the Commission and Congress and these amendments never materialized. Unfortunately, poor people affected by three strikes laws don't command a voice that Congress or the media will listen to: the rich get richer, the poor get prison.

Karl Marx wrote that history repeats itself, first as tragedy, then as farce. In 19th century England people were hanged for offenses like pick pocketing and poaching. In this country many mandatory minimum sentences were repealed in the 1960s and 1970s as people realized they did not work and their only effect was to destroy what chances

prisoners had to rebuild a life. Unfortunately, this repetition of history will not be farcical for those swept up by baseball slogans masquerading as social policy.

These three strikes laws give the impression that most defendants had a chance to hit the ball the first few times. In reality, by the time most defendants step into a courtroom for the first time they already have a couple of strikes against them: their class, alcohol and/or drug problems, illiteracy, joblessness, poverty and oftentimes their race or a history of abuse. They've been striking out a long time before they got up to the plate.

Assuming a three strikes defendant has been to prison twice before he gets his third strike it would seem that its only fair to receive a decent chance to get a hit or a home run. Instead, most prisoners go back to the same neighborhoods with the same poverty, joblessness, illiteracy and other problems with which they left, compounded by the brutalization and dehumanization inherent in the American prison experience of the 20th century. Right now legislators and DOC's are endeavoring to "make prisons tougher" by eliminating what token vocational and rehabilitational programs now exist. Combined with idleness, overcrowding, endemic violence etc., a self fulfilling prophecy is being created: more third strikers. Its hard to get any wood on the ball under these conditions.

Will things get any better? Georgia's governor is proposing "two strikes you're out". California governor Pete Wilson, hot on the heels of signing "three strikes" into law declared that California needs a "one strike" law for child molesters, arsonists and rapists. He called for a mandatory death penalty for murders committed during drive-by shootings or carjackings. It won't be long now before they dispense with the wimpy one strike stuff and just go for the death penalty.