

# Oregon Suspends the Writ of Habeas Corpus

by Yvonne L. Heinrichs

*Here's another example of the "slippery slope" of unconstitutional laws. To cope with the "unforeseen" consequences of one unconstitutional law (like those in our "war on drugs"), government is inevitably forced to embrace additional unconstitutional acts. When government decided to "git tuff" on drug use, it filled our prisons to overflowing but then found itself unable or unwilling to allow constitutional remedies to protect the people against unconstitutional incarceration. As a result, even the U.S. Congress has proposed additional laws to neuter the Writ of Habeas Corpus — the cornerstone of individual liberty since the Magna Charta was signed in 1215 AD.*

*Written in March, 1997, this article expresses one side of the growing controversy over the Writ of Habeas Corpus. Government contends that the Writ is being overused, even abused by prisoners and jailhouse lawyers. For example, one federal prisoner has allegedly filed a Habeas Corpus because his Rice Crispies didn't "snap, crackle, and pop". Prisoners, on the other hand, contend that the growing use of Habeas Corpus is based on 1) increasing and unlawful abuse of government's power to arrest and incarcerate, and 2) a growing understanding among Americans that we have no rights unless we fight for them.*

*I have nothing but contempt for the lamebrain convict who files Writs based on soggy cereal; his arrogance helps compromise the claims of indi-*

*viduals truly abused by the system. On the other hand, no matter how offensive a convict's abuse of process may be, it is finally trivial when compared to unlawful and unconstitutional acts knowingly committed by judges who are trusted to serve and protect — not abuse — the American people. The convict who clogs the courts with mindless paperwork and the judge who clogs the jails with innocent men are spiritual equals. Neither is fit for society. Both belong in prison. But the judge is worse.*

*We jail a greater percentage of our "free" people than any other nation on Earth. It follows that our courts can't maintain our world-record rate of incarceration without cutting constitutional corners and routinely jailing both innocent and guilty without due process. Therefore, it also follows that the use of Habeas Corpus to escape unlawful incarceration should also be increasing. Nevertheless, it's hard to find evidence that any element of our government is truly concerned with the violations of individual liberty that inevitably occur in any system of mass incarceration. Instead, we are left to wonder if the purpose of our criminal justice system is to enforce the law and punish the guilty — or maintain high occupancy rates for the world's biggest prison system?*

*Although circumstances and details presented in this article may have changed for the better (or worse) since it was first written, the article illustrates that judicial abuse is becoming increasingly overt, obvious and even shameless.*

**T**he Writ of Habeas Corpus has been variously described as "The Most Sacred Right" and "The Great Writ". It dates back to the Magna Charta is arguably the cornerstone of Western government and personal liberty. According to Black's Law Dictionary, the purpose of the Writ, "is not to determine a prisoner's guilt or innocence, [but only] whether the prisoner is restrained of his liberty by due process." Its sole function is, "to release from unlawful imprisonment." The Writ of Habeas Corpus applies primarily to persons held in custody by the government. In ancient times and today, the Writ is designed to prevent government from unlawfully and indefinitely incarcerating innocent persons and isolating them in circumstances from which they can't possibly escape.

Article I, Section 9, Clause 2 of the Constitution for the United States of America declares, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." A similar guarantee for this Writ is found in Article I, Section 23 of the Oregon State Constitution. Nevertheless, Marion County, Oregon, has effectively suspended the Writ of Habeas Corpus in direct violation of both the United States and Oregon constitutions.

Today, if a prisoner in Oregon files this Writ, the courts should quickly answer just one question: was the prisoner denied Due Process rights under either

the United States or Oregon constitutions? In other words, did the government imprison the individual without following all the prescribed, lawful procedures designed to insure that no innocent person remains in jail? If due process rights were denied, the court must order the person be released from unlawful imprisonment.

However, the courts of Marion County, Oregon, receive 85 to 90 Writs of Habeas Corpus a month – some waiting to be considered go back to 1995, which also violates our right guaranteed by the constitutions of the United States [Art. VI] and Oregon [Art. I Sec. 10] to obtain justice *without delay*. After all, if a person were illegally incarcerated, what good would the Writ do if it didn't have to be considered for several weeks, months, or years while an innocent man languished in jail? Therefore, the Writ of Habeas Corpus requires a quick, virtually *immediate* decision by the courts.

Article I, Section 10 of the Oregon State Constitution: “No court shall be secret, but justice shall be administered openly and without purchase, completely and without delay, and every man shall have remedy by due course of law

for injury.” Nevertheless, Marion County appointed two Circuit Court Judges (Joseph Ochoa and Paul Lipscomb) to *prejudge* the *suspended* “Writs” by 1) dividing all of the pending (i.e., “suspended) Writs into four categories; 2) pre-selecting just *one* case from each category for oral arguments in open court by a lawyer representing the particular case; and 3) ruling on *all* the Writs in each category based on the decisions made for the single, pre-selected Writ from each category.

This process is in total violation of both Federal and State Constitution's since it allows manipulation by the Judge's to pre-select the weakest cases, or the one's with the most inept lawyers. This process also allows the Judges to make the law in secret based on the “categories” *they choose* to put each case in, then apply to all other cases the decisions made in the four cases. For example, suppose the judge mis-classified your Writ of Habeas Corpus into an improper “category”, and then issued a blanket denial of all the Writs in that entire category. Your Writ would be denied without ever having a proper or public hearing, based solely on a judge's

“classification” made in secret, behind closed doors. This secret judicial process circumvents the exclusive right of the Legislature to make the law, and the Supreme Courts to set the precedents. The predetermined “classifications” made by two judges amount to secret judgements, and violate the Constitutional right of the people/prisoners to have a judicial remedy administered quickly, openly and completely.

**T**here are multiple causes for this judicial chaos: politics, government corruption, public hysteria created by angry, undereducated, disenfranchised citizens who violate the law — and cynical politicians who exploit the actions of those lawbreakers to increase the hysteria and gain votes. The last cause is Judicial games played by inept lawyers who fail to represent their clients' Constitutional rights and Judges afraid to rule based on law and the Constitution.

The political responsibility lies at Governor Kitzhauber's feet and reflects the fact that prisons are Oregon's largest industry. The great number of people employed by the prison industry keep the unemployment rate low and makes the Governor's administration look good. Gov. Kitzhauber endorses prison expansion to help absorb the growing population, either through imprisonment or through prison employment. This creates a false “win-win” public perception.

Many of the Writs are suspended due to State-ordered psychological evaluations of prisoners prior to release on parole. These evaluations effectively create an *ex-post facto* release requirement not included in the prisoner's original sentence. In other words, depending on the evaluation of some state-employed psychologist, a prisoner can be held in prison indefinitely after his court-ordered release date. This surrender of the power to incarcerate to psychologists doesn't merely violate — it abandons — the concept of due process.

Government corruption can be traced from the Department of Corrections, to the Judiciary, to the Legislature, and to the Governor. A significant per-

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centage of the suspended Writs of Habeas Corpus are due to:

1. The Judiciary, itself, creates the need for “Writ’s of Habeas Corpus” with inept decisions based on prosecutorial inference, instead of factual evidence, while denying defendants exonerating evidence and witnesses at trial.
2. The Governor will not challenge or defy the faulty decisions of his own Administrative State Agency’s because he needs their political support and will not admit he erred in appointing them.
3. The Legislature has failed to

provide effective sanctions for lawyers and Judges who deny citizens their Constitutional rights. The Legislature authorizes the member lawyers and judges of the Oregon State Bar to “judge” themselves. The Oregon State Bar not only judges itself but also provides it’s own insurance, making it much like the proverbial fox empowered to guard a hen house. An independent commission of non-lawyers is needed to evaluate complaints against lawyers and judges.

4. Bogus psychological and psychiatric evaluations by full time State Department of Corrections employees

who fear losing their jobs if they don’t declare any prisoner qualified for parole a “threat to society”. The reasoning appears to be that a person — especially an innocent one — who has been imprisoned for years may be considered dangerous, or pose a threat to those that denied him justice and imprisoned him unlawfully. Evaluations by private psychologists or psychiatrists who determine a person is not a threat to society, are ignored. As a result, people who are incarcerated under questionable or unlawful circumstances can be held indefinitely if they are “crazy enough” to believe they are entitled to justice and redress of grievances after they are released.

**T**here is no reasonable excuse for Marion County’s growing, monthly backlog of 85 to 90 Writs of Habeas Corpus. The Writ of Habeas Corpus requires the courts to quickly answer to just one question: was a person placed in custody denied Due Process rights under either the United States or Oregon constitutions. If rights were denied, the person *must* be released from unlawful imprisonment. Any Judge who’s been to law school should know and understand the clear language of the Federal and State Constitution’s and be able to make that determination based on the facts.

If all illegally held prisoners were released, the Oregon prison industry might falter, but Oregon taxpayers wouldn’t need to spend more money to build more new prisons. Perhaps it’s time for Oregon’s own “Bastille Day!”

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