

Statement to the California Assembly Committee on Public Safety
Hearing on Secure Housing Units (SHUs) in California Prisons
Rev. Will McGarvey
Sacramento, California
August 23, 2011

Elected state representatives, Ladies and gentlemen, my name is Rev. Will McGarvey. I am pastor of Community Presbyterian Church of Pittsburg, CA – we are dually aligned with the Presbyterian Church (USA) and the United Church of Christ. I am the past chair of the Justice, Advocacy and Caring Committee of the Presbytery of San Francisco, and I serve on the national board of More Light Presbyterians.

I am one of the earliest clergy signers of the National Religious Campaign Against Torture’s “Statement on the Optional Protocol to the Convention Against Torture” – something both my denominations have also signed. And I regularly visit elected leaders with a contingent from the Bay Area Religious Campaign Against Torture, asking for transparency from our military and police forces in following our nation’s laws. The National Religious Campaign Against Torture (NRCAT) is a membership organization of over 300 religious organizations committed to ending U.S.-sponsored torture, including torture in U.S. prisons.

I am here today to share inter-religious perspectives on solitary confinement within our criminal justice system.

I would draw your attention to our NRCAT statement, “Ending Prolonged Isolation,” which has been sent to you. It states,

Solitary confinement typically embodies the following:

- Prisoners are usually confined alone in their 8' x10', often cage-like, windowless, and soundproof cell for 23 hours per day.
- Prisoners are subjected to sensory deprivation and/or sensory assault.
- Some prisoners have been held for months, even years, in complete isolation and suffer life-long consequences in their ability to function.

Prolonged solitary confinement under these kinds of conditions has long been considered a form of torture, which destroys the humanity of those who suffer it, particularly those with mental illnesses, those with learning disabilities, those with developmentally disabilities, and young people.

As of May 18, 2011, 3,259 people were being held in solitary confinement in California special housing units (SHUs) and hundreds more are being held in Administrative Segregation, awaiting a SHU assignment. People of faith all over California are calling for a comprehensive and public review of solitary confinement practices in California prisons and an end to the implementation of this practice as a long-term solution for individual prisoners.

Our laws and all faith traditions recognize the inherent and inviolable dignity of every human being. As Justice Thurgood Marshall so poignantly stated: “When the prison gates slam behind an inmate, he does not lose his human quality”¹ Prolonged solitary confinement destroys that human quality. Any practice that promotes that end does not reflect the values and moral principles that ground our nation and this great State.

As you may know, the history of solitary confinement in U.S. penal institutions has a religious underpinning. Edith E. Flynn and Margaret Zahn, in their article on legal history: “Prisons and Jails: Development of Prisons and Jails in the United States” notes this history,

Reflecting the legacy of their European ancestors, the American colonists made extensive use of corporal punishment, with death, mutilation, branding, and whipping decreed for serious offenses, and public ridicule, such as the stocks, the pillory, the public cage, or the ducking stool, imposed for lesser offenses. In general, the colonial penal system was harsh, exacting, and motivated principally by revenge....

After the Revolutionary War... reform-minded colonists began to experiment with new criminal codes.... They also embarked on a course of penal reform that would not only affect America but eventually spread throughout the world.”²

By 1787, a small group of concerned citizens in Pennsylvania organized the Philadelphia Society for Alleviating the Miseries of Public Prisons advocated for reforming the existing penal structure to make prisons more humane. Pennsylvania Quakers provided significant support for the Society’s efforts at prison reform. It was actually the Quakers that come up with the idea of solitary confinement as a rehabilitation practice. It was thought that prisoners confined in solitary conditions, with time to reflect on their actions, would be rehabilitated through penitence. The term “penitentiary” comes from the Quaker idea that solitude would bring about penitence.

The Wall Street Jail in Philadelphia was the first to experiment with solitary confinement. First constructed in 1776, according to Flynn and Zahn, “*this jail had all of the hellish characteristics of its predecessors.*” Men, women, and children were kept in the same facility, where conditions were brutal and inhumane. The Wall Street Jail was renovated in 1790, becoming the nation’s first “penitentiary.” Debtors were separated from hardened felons, and men, women, and children were now separated. Corporal punishment was banned. New legislation developed by the Philadelphia Society shifted the focus from physical, often capricious punishment of offenders to their reform and rehabilitation. Inmates were given a Bible and religious instruction to facilitate solitary contemplation and hard labor to teach self control. The combination of contemplation and self-control would bring about rehabilitation and redemption and prisoners would be returned to society as law-abiding citizens.

¹ Procunio v. Martinez (1974)

² Prisons and Jails - Development of Prisons and Jails in the United States - Private, Inmates, Penal, and Punishment <http://law.jrank.org/pages/18929/Prisons-Jails.html#ixzz1VbpPydbB>

Then, as now, the total lack of human contact led to the development of psychoses and other forms of mental and physical illnesses among the prison population. Then, as now, suicide was a frequent response of prisoners who were left in solitary confinement for prolonged periods. By the late 1880s, U.S. prisons authorities began looking at clinical evidence from Europe that confirmed the dire effects of solitary confinement experienced in Wall Street Jail and other U.S. penitentiaries, and the practice of solitary confinement was abandoned in U.S. prisons from the 1880s to 1970 when it was revived in its most extreme forms in Supermax prisons and special housing units.

Friends, what began with a religious impulse toward the reformation and rehabilitation of inmates has become an often cruel and brutal system of warehousing inmates, with little, if any, concern for the genuine reformation and reclamation of the individual as a suitable member of society. And we all suffer consequences: prisoners suffer and our communities suffer when many people who have been subjected to prolonged periods of isolation from any human contact are returned to our communities psychologically broken and unfit for social intercourse. Inmates who have experienced long-term solitary confinement show some of the same effects as prisoners of war and those who have been held hostage.³ And we should remember that while this system of confinement causes social and mental injury to the inmate, it also causes moral injury to the guards who witness and participate in the long-term consequences of this system.

Inmates in the U.S. have been put into solitary confinement for many different reasons, including disciplinary actions. I will leave it to others speaking to you today to document the psychological and social impairments which solitary confinement produces, but we should also note how solitary confinement is used to enforce cultural biases, particularly around race and religion.

Native American inmates have been put into solitary confinement for not submitting to policies of wearing short hair, and Rastafarians have been targeted for declining to have their dreadlocks cutoff, also a protected religious expression. For the last 10 years, Kendall Gibson and 10 other prisoners have been kept in solitary confinement in Virginia for keeping the Biblical injunction found in Numbers 6:5, "There shall no razor come upon his head."⁴

Also "in Virginia, over 30 inmates were moved to a maximum security facility for "non-compliance"... with standards that require hair to be above one's shirt collar and beards to be completely shaven."⁵

For many Muslims, it is worse. Islamophobia contributes to a significant number of Muslim inmates being placed into solitary confinement, now called Communications Management Units (or CMUs) in some prisons, for fear that they may be terrorists who need to be separated from one another. The Center for Constitutional Rights estimates that 60-75% of those in CMUs are Muslim. Unlike other Federal prisoners, CMU prisoners are forbidden from any physical contact with their children, spouses, family members or other loved ones during their visits.

³ http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande#ixzz1ViF9N38r

⁴ <http://news.change.org/stories/sentenced-to-solitary-confinementfor-dreadlocks>

⁵ <http://prisonintro.blogspot.com/2011/03/respecting-inmate-culture.html>

On the flip side of this problem are Lesbian, Gay, Bisexual, and Transgender inmates, 67% of whom report that they have been sexually assaulted by another inmate during their incarceration – a rate 15 times higher than the general population.⁶ The faith community is univocal that rape should not be a part of anyone’s sentence, but a surprising number of LGBT inmates – especially the transgender inmates – have reported knowingly committing minor infractions in prison in order to go into the horror of solitary confinement in order to avoid systematic rape. Fortunately, California allows for conjugal visits for same-gender loving couples, whereas most states do not. Still, there continues to be considerable discrimination against LGBT inmates not only by other inmates, but also from the staff and officers of the jails and prisons.⁷

Ladies and Gentlemen, the United States is a signatory of the U.N. Convention Against Torture. I would submit that persistent, long-term solitary confinement constitutes torture under this definition: it is clearly an intentional infliction of physical and mental pain and suffering. Prisons that use debriefing practices – offering prisoners freedom from solitary confinement if they become informants on other inmates – also break this convention. Since there are ways to protect inmates that are a danger to themselves and others without completely isolating them from human community, and given what we have known since the late-nineteenth century about the impacts of extreme isolation, I believe what we are doing in supermax and control-unit prisons in California is a form of torture and a violation of human rights in which we are all implicated.

Rev. Richard Killmer, Executive Director of NRCAT, wrote,

“The National Religious Campaign Against Torture vehemently believes that even those convicted of crimes are human beings with inherent dignity and worth, and they deserve humane treatment.”⁸

Each of our faith traditions reminds us of the inherent worth of each human being. As people of faith, we are called to recognize, bless, and reclaim the human dignity within each person. In the Christian tradition, we call this the *imago dei*, the image of God found within each individual.

What concerns us as people of faith is the destruction of the human spirit. When human beings are subjected to conditions that destroy who they are, it is incumbent upon the whole faith community to call our culture, and yes, even our government, to accountability. If we allow solitary confinement to continue in our society – especially when we have been informed of the harmful results – what does that say about the kind of people we all have become?

Thank you for your time.

Written with the aid of Geoffrey Gaskins, from the Bay Area Religious Campaign Against Torture

⁶ <http://www.justdetention.org/pdf/CFCLGBTQJan09.pdf>

⁷ <http://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf>

⁸ <http://obrag.org/?p=41341>