

COMMENTS TO THE JUNE 29, 2012, HEARING
BEFORE THE SENATE JUDICIARY SUBCOMMITTEE
ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

To: Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights

From: Geoffrey A. Gaskins, M.Div.
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Date: June 15, 2012

Re: Hearing on Reassessing Solitary Confinement, June 19, 2012

Honorable Senators of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights:

I thank you for the opportunity to submit on behalf of the California Interfaith Campaign on Solitary Confinement (CICSC) the following comments concerning the use of prolonged solitary confinement in our nation's prisons and other places of detention. CICSC joins a growing number of organizations across the nation calling for comprehensive review of penal policies and practices regarding isolated confinement, and we are grateful for your attention to this matter.

The California Interfaith Campaign on Solitary Confinement is affiliated with the National Religious Campaign Against Torture and is being established to raise awareness among faith communities in California about prolonged solitary confinement policies and practices in our state's prison system. While exact numbers are hard to come by, we believe that, today, over 3,500 people were being held in solitary confinement in California special housing units (SHUs)—513 for more than ten years, 78 for more than twenty—and hundreds more are being held in Administrative Segregation, awaiting a SHU assignment. People of faith and other people of conscience all over California are calling for an end to this practice as a long-term solution for individual prisoners.

Prolonged solitary confinement has long been considered a form of torture that destroys the humanity of those who suffer it. 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, often irreparably. Any practice that promotes that end does not reflect the values and moral principles that ground our nation and it is to this issue—the moral issue—that I here submit my comments for your consideration.

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, "Prisons and Jails: Development of Prisons and Jails in the United States" notes this history:

¹ *Procunio v. Martinez*, 416 U.S. 326, 428 (1974).

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 to advocate for reforms to make prisons more humane. Pennsylvania Quakers provided significant support for the Society’s efforts at prison reform and came 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 segregated. Corporal punishment was banned and new legislation developed by the Philadelphia Society shifted the focus from physical, often arbitrary punishment of offenders to their reform and rehabilitation. Inmates were given a Bible and religious instruction to facilitate solitary contemplation, and assigned to hard labor to teach self-control. It was thought that the combination of contemplation and self-control would bring about rehabilitation and redemption, and prisoners would be returned to society as law-abiding citizens.

Then, as now, extreme sensory deprivation and the total lack of human contact led to the development of psychoses and other forms of mental and physical illnesses in prison populations. 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 even more extreme forms as supermax prisons and special housing units.

What began with a religious impulse toward reformation and rehabilitation has become an often cruel and capricious system of warehousing inmates, with little, if any, concern for the genuine reformation and rehabilitation. And we all suffer consequences. Prisoners suffer years and

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>.

decades under conditions of extreme sensory deprivation and near-total social isolation. Our communities suffer when people who have been subjected to prolonged periods of social isolation are returned to our communities psychologically broken, unfit for social intercourse, and more likely to re-offend. Guards, prison staff, and other prison officials may also suffer a kind of moral injury from participating in practices and policy-making that essentially cage other human beings and encourage their inevitable physical and mental degradation. I suggest, further, that the soul of our nation is degraded, as is our ability to face the international community as the champions of human rights we claim to be.

We should also be cognizant of how the implementation of solitary confinement in U.S. prisons reinforces cultural biases and prejudices with which we have struggled throughout our history, particularly those around race and religion. In California, nearly ninety percent of solitary inmates are members of racial, ethnic, sexual, and religious minorities who are often assigned to solitary confinement as punishment for expressions of otherwise protected forms of religious and cultural traditions. Consider:

- Native American and Rastafarian inmates have been put into solitary confinement for not submitting to policies regarding hair length. “[I]n 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.”³
- For Muslims held in Communications Management Units (CMUs), our cultural bigotry is particularly evident. Clearly, widespread Islamophobia contributes to the disproportionate number of Muslim inmates being placed into CMUs. The Center for Constitutional Rights estimates that sixty percent to seventy-five percent of those in CMUs are Muslim, and unlike other federal inmates, CMU prisoners are forbidden any personal contact with their children, spouses, family members, or other loved ones.
- Homosexual, bisexual, and transgender inmates—sixty-seven percent of whom report having been sexually assaulted either by inmates or guards—have reported intentionally committing minor infractions in prison, knowing solitary confinement would be the outcome, yet preferring the horror of solitary to the horror of being repeatedly raped.

Prisoners are routinely assigned to solitary confinement—for a minimum sentence of six years in California—for minor infractions of prison rules, without having participated in any criminal activity during their incarceration. An inmate can be sentenced to solitary confinement for six years for talking to another prisoner assumed to be a member of prison gang; or for possessing artwork or literature assumed to contain gang symbols or unsanctioned philosophical ideology; or based on uncorroborated accusations made by other prisoners. Prisoners suffering from various forms of mental illness who, by virtue of their illnesses, are constitutionally unable to follow rules consistently, are likely to end up in solitary confinement, exacerbating their conditions and often leading to complete psychotic breakdowns.

We know from psychological research dating from the eighteenth century to the work of contemporary experts like Drs. Terry Kupers and Stuart Grassian that prolonged solitary

³ <http://prisonintro.blogspot.com/2011/03/respecting-inmate-culture.html>.

confinement creates, exacerbates, or encourages profound mental and physical pain and suffering, often with permanent long-term consequences. Extreme isolation and sensory deprivation can induce psychoses, delirium, systemic physical degradation, premature aging, and chronic and acute depression, among other serious physical and psychological damage. To intentionally inflict this kind of physical and mental pain and suffering surely constitutes torture under UN statutes which define “torture” in exactly these terms. (I suggest, further, that prolonged solitary confinement also violates Eighth Amendment provisions in the U.S. Constitution against cruel, unusual, and excessive punishment.) It is for these reasons, among others, that the use of solitary confinement has been largely abandoned by most of the international community, which leaves the United States in league with some of the most notorious human rights violator nations in the world.

Proponents of the use of solitary confinement say that solitary confinement is necessary to maintain safety within prisons and the public safety without. We know from recent efforts reducing solitary confinement populations in prisons in Maine, Colorado, and Illinois, however, that reducing solitary confinement populations does not make prisons or the public more unsafe; rather, the contrary has turned out to be true. Moreover, the annual cost of maintaining an inmate in solitary confinement (approximately \$71,000-\$78,000 in California) is significantly higher than housing that person in the general population (approximately \$58,000 in California), taxing already strained state budgets. These considerations, taken with all of the research and our centuries of experience, suggest that we seriously ask ourselves why our penal institutions continue to use prolonged solitary confinement. Prolonged solitary confinement serves no good purpose. It does not make us safer; it does not make prisons safer; it is needlessly expensive given the alternatives; and prolonged solitary confinement arguably constitutes torture under both domestic and international law.

Given what we know about prolonged solitary confinement, then, we must conclude that prolonged solitary confinement violates the “standards of decency that mark the progress of a maturing society.” These are Chief Justice Earl Warren’s words in *Trop v. Dulles* (356 U.S. 86 (1958)) and constitute the basis upon which he believed the Eighth Amendment of the U.S. Constitution “must draw its meaning.” In our continued use of solitary confinement, we, as a nation, have failed that standard. Prolonged solitary confinement violates the standards of decency and morality that truly mark the progress of a maturing society. A maturing society cannot abide the systemic use of torture in its institutions, and we continue to do so to our enduring shame.

The twelfth century Jewish sage Maimonides has stated the following:

Redeeming captives takes precedence over providing food and clothing for the poor. There is no greater mitzvah than redeeming captives, for the captive is in the category of the starving, the thirsting, and the naked, indeed in danger of losing their own life. One who remains indifferent to the captive's redemption transgresses.” (*Mishneh Torah*, “Laws of Gifts to the Poor.” 8:10)

From the Christian Scriptures we read:

Remember those in prison, as though you were in prison with them; those who are being tortured, as though you yourselves were being tortured.” (Hebrews 13:3)

What is expressed in these teachings is a recognition the inherent worth of each human being, without qualification. In the Abrahamic traditions, every human being is considered created in the image of God and, therefore, capable of redemption and worthy of an opportunity for personal transformation. For this reason, as people of faith, we are called to defend the human dignity within each person, even those in prison; perhaps especially those in prison. As Rev. Richard Killmer, Executive Director of the National Religious Campaign Against Torture, has written,

“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.”⁴

What concerns people of faith in this conversation is how prolonged solitary confinement destroys the humanity of both those who suffer it and those to promote and perpetuate it. Indeed, when human beings in our institutions are subjected to conditions that destroy who they are and who they can be, it is incumbent upon all people of conscience to challenge ourselves and our institutions to higher standards of moral conviction.

If, knowing what we know, we allow prolonged solitary confinement to continue, we must ask ourselves what this says about who we have become as a people. And that is the question I hope receives thoughtful consideration in your deliberations about this matter. The issue of prolonged solitary confinement is not only about those who are suffering, some for decades, under unconscionable conditions in prisons across the nation. It is also about who we are as a people to condone such practices. Ultimately, as a people, we are responsible for the moral and ethical standards that guide our public institutions and to which they must be held accountable. And we, as a people, stand convicted to the extent that we allow systemic torture in the form of prolonged solitary confinement in U.S. prisons to continue. As a people, knowing what we know, I suggest to you that nothing less than the soul of our nation is at stake.

Thank you for your time and your thoughtful attention to this matter.

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⁴ <http://obrag.org/?p=41341>.