

Testimony submitted on behalf of T'ruah: The Rabbinic Call for Human Rights

by Rabbi Jill Jacobs, Executive Director

Rabbi Rachel Kahn-Troster, Director of North American Programs

Rabbi Lev Meirowitz Nelson, Director of Education

Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on "Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety
Consequences"
February 24, 2014

Mr. Chairman, Members of the Subcommittee, thank you for this opportunity to submit testimony on behalf of T'ruah: The Rabbinic Call for Human Rights concerning the use of solitary confinement in our nation's prisons, jails, and detention centers. T'ruah's stance against solitary confinement is informed by our moral and religious values, as well as centuries of Jewish legal tradition. Since the Subcommittee's last hearing on the subject on June 19, 2012, T'ruah has organized over 125 rabbis to support prisoners on hunger strike in California's Pelican Bay Prison. More than 15 congregations have screened the film *Herman's House* as part of discussions on empathy, repentance, and solitary confinement, and we have created new educational resources to help Jewish communities further delve into the topic. Additionally, New York's recent decision to enact sweeping reforms in its use of solitary confinement makes this a ripe moment for action on the national stage. We appreciate the Subcommittee, under the leadership of Chairman Durbin, spending time today examining America's use of isolation.

T'ruah is a rabbinic organization that acts on the Jewish imperative to respect and protect the human rights of all people. Prior to January 2013, we were known as Rabbis for Human Rights—North America. T'ruah represents approximately 1,800 rabbis from all streams of Judaism. Grounded in Torah and our Jewish historical experience and guided by the Universal Declaration of Human Rights, we advocate for human rights in Israel and North America. We were founding members of the National Religious Campaign Against Torture, and our mission to end the use of prolonged solitary confinement in the United States is an outgrowth of our anti-torture campaign.

On the broadest and highest level, we stand against prolonged solitary confinement because of our basic, fundamental beliefs about humanity. Genesis chapter 1 teaches us that human beings are created in the divine image, which imposes obligations on us to treat each person as a unique and precious individual—even when that individual has committed a crime. This is expressed in concrete terms later in the Torah, where we read that when a court administers corporal punishment, the convicted person may not be given more than forty lashes, "Lest beating him more than these many lashes would degrade your kin in your eyes" (Deuteronomy 25:3). Rashi, the renowned rabbinic commentator from the 11th century, notes that the verse specifically calls him "your kin," to remind us that once punishment has been administered, we must treat the person as one of us, not as a sinner.

In Genesis chapter 2, which expands on the creation story found in chapter 1, God says that it is not good for man to be alone (verse 18). This is the second essential thread that runs through our religious

and moral understanding of humanity: we are social creatures. Isolating a human being from all social contact for an extended period of time denies that person's humanity.

Moving beyond the level of grand claims about human nature, we come to the body of Jewish law and lore that deals with punishment, and particularly with incarceration. Rabbi Jonathan K. Crane, PhD, a professor of ethics at Emory University, discusses the centuries-long legal debate in his article "Judaism and Solitary Confinement," from which the following highlights are drawn. Rabbi Crane points out that the bible offers a single portrait of a person held in solitary confinement—the prophet Jeremiah, who is twice confined by King Zedekiah and twice released into more comfortable imprisonment (chapters 37 and 38). Conditions in solitary—where he is held without food or water—threaten the prophet's life in a matter of days. Rabbi Crane writes, "Perhaps taking their cue from these biblical stories, the rabbis stipulate that solitary confinement is to be used for only certain reasons... only recidivist criminals of the most egregious of crimes warrant this kind of treatment. Still, such confinement does not mean total segregation: conjugal visits were considered appropriate even for the imprisoned." In contrast, prisoners today may be sent to solitary for the slightest infractions, or even simply due to lack of space in general population, and can only receive visits from loved ones through thick glass and telephones (Kerness and Lewey, 2014).

In addition to the question of the harm or appropriateness of solitary confinement, there is the equally important question of how long a prisoner is held. Various Jewish forms of punishment or imprisonment are always time-limited, with return often triggered by the prisoner's sincere repentance. Rabbi Crane writes, "The only remaining aspect of solitary confinement that perhaps could receive some Judaic imprimatur is its desire to induce attitudinal and behavioral reform... indefinite confinement that ends only by the whim of some authority is not tenable." Human rights advocates define solitary confinement of more than 15-30 days as a form of torture (Kerness and Lewey 2014); Rabbi Crane writes that according to Jewish law, more than two days is considered "excessive and degrading." Especially given the body of evidence documenting the deleterious, rather than restorative, effects of solitary confinement, no Jewish principle allows for isolating individuals for periods longer than these.

There is also the question of prisoners' treatment in solitary confinement, which goes to the root of why they are in solitary in the first place. Conditions such as lights that are never turned off, temperature extremes, limited and low-quality food, no access to educational materials or treatment programs, and loud patrols by guards as often as every 45 minutes—as described by Kerness and Lewey—add insult to injury. They make the experience of solitary even more psychologically and physically debilitating, further decreasing the likelihood that prisoners will succeed when returned to the general prison population or to the outside world. Even if we stipulated that some prisoners may be held in solitary confinement for limited periods of time—which we emphatically do not—there is no reason for conditions in solitary to be made worse than they inherently are. Prisons cannot be redesigned or rebuilt overnight, but prison procedures can be modified. If the ostensible goal of solitary is to control or segregate dangerous prisoners, control and segregate them—don't subject them to torture and doom them to self-fulfilling prophecies of failure.

We must also turn our attention outside the prison walls to the impact solitary has on society at large; our era of tight budgets and fiscal conservatism forces us to consider the financial cost of solitary as well as the human cost. While estimates vary as to the specifics and there are no clear nationwide statistics, there is no question that housing prisoners in solitary is more expensive than housing general population prisoners (Solitary Watch). When cuts are being made to food stamps, unemployment benefits, and pensions for veterans, every dollar counts. Limiting the use of solitary confinement is not only better for those held in solitary, it is a responsible use of taxpayer dollars that could be better spent elsewhere.

Finally, we should note the Jewish principle that overrides all other legal principles: the preservation of a life. All but three Jewish laws (the prohibitions on murder, gross sexual impropriety, and idolatry) may be set aside to save a life, and the rabbis of the Mishnah (2nd century) teach that one who saves a life is credited as if she or he had saved an entire world. According to Kerness and Lewey, half of all successful prison suicides occur in solitary, and prisoners who spend time in solitary are almost twice as likely to commit another crime upon a person upon their release. Taken together, these statistics suggest that solitary endangers the lives of both prisoners and the population at large. The Jewish imperative to save life drives us to call for an end to prolonged solitary confinement.

In particular, we join with other faith-based organizations and colleagues of conscience in asking the Subcommittee to act on the following four items:

1. Congress should support increased federal oversight, monitoring, transparency, and funding for alternatives for solitary confinement.

- Federal, state, and local prisons, jails, detention centers, and juvenile facilities must be required to report to the Bureau of Justice Statistics who is held in solitary confinement and for what reason and how long, as well as the impact of the practice on cost, facility safety, incidents of self-harm, and recidivism.
- On an annual basis the raw data and statistical analysis should be published by BJS,, presenting a comprehensive review of the use of solitary confinement in the United States. In conjunction with the annual release of these statistics, a review panel of appointed experts would conduct public hearings to review the findings, hear from stakeholders, and issue recommendations.
- Provide federal funding through the Bureau of Justice Assistance (BJA) or other entity to support federal, state, and local efforts to reduce the use of solitary confinement, with a focus on programming and other alternatives.

2. Congress should require reforms to the use of solitary confinement in federal facilities operated by the Bureau of Prisons (BOP).

- BOP should be required to reduce its use of solitary confinement and other forms of isolation in federal prisons by implementing reforms based on the standards for long-term segregated housing established by the American Bar Association, as well as the findings of the Government Accountability Office (GAO), and the ongoing study of BOP's use of segregation being conducted by outside contractors.

- BOP should immediately implement a ban on the solitary confinement of juveniles held in federal custody and ensure that prisoners with mental illness are excluded from solitary confinement units.
- BOP's newly acquired facility at Thomson, Illinois, should not be designated for use as an ADX (supermax) facility. Instead, it should be converted for use as a lower custody, general population prison.

3. Congress must ensure that the United States fully engages in the international effort to reform the use of solitary confinement.

- The Subcommittee should formally request that the U.S. Department of State play an active role in the overdue process of updating the United Nations Standard Minimum Rules for the Treatment of Prisoners. New provisions should be included to ban the solitary confinement of juveniles and individuals with serious mental illness, protect against prolonged solitary confinement for all persons, and to prohibit the use of "gender identity" and "sexual orientation" as grounds for discrimination in prisons.
- The Subcommittee should formally request that the U.S. Department of State stop impeding the longstanding formal request by the United Nations Special Rapporteur on Torture to investigate the use of solitary confinement in U.S. prisons. This investigation should include site visits as requested by the Special Rapporteur.

4. Congress should support rulemaking to reduce the use of solitary confinement in U.S. prisons, jails, detention centers and juvenile facilities

- The Subcommittee should call for rulemaking by the U.S. Department of Justice to ensure the development of smart, humane and evidence-based national best practices and regulations that will limit the use of all forms of isolation and solitary confinement.

Mr. Chairman, Members of the Subcommittee, T'ruah believes strongly that solitary confinement is a form of torture incompatible with our Jewish and American values. The United States should do everything in its power to reverse our harmful and expensive reliance on solitary confinement. This is a moral imperative that should not be put off. Moreover, it is a political issue that can garner bipartisan support. We implore you to take action, through legislative and/or executive channels, that limits the use of prolonged solitary confinement. Your taking the time to hold this hearing is an important part of that process; we thank you deeply for doing so and for allowing us to contribute this testimony.

References

Crane, Jonathan K. "Judaism and Solitary Confinement."

http://truah.org/images/stories/Jonathan_Crane_Solitary_Confinement.pdf

Kerness, Bonnie and Jamie Bissonette Lewey. "Race and the Politics of Isolation in US Prisons." *Atlantic Journal of Communication*. 22:1. Published online January 30, 2014.

<http://dx.doi.org/10.1080/15456870.2014.860146>

Solitary Watch. Fact Sheet: The High Cost of Solitary Confinement. <http://solitarywatch.com/wp-content/uploads/2011/06/fact-sheet-the-high-cost-of-solitary-confinement.pdf>