

EFFECTS OF SOLITARY CONFINEMENT

HEARING BEFORE THE PENNSYLVANIA HOUSE OF REPRESENTATIVES  
DEMOCRATIC POLICY COMMITTEE

STATEMENT OF PROFESSOR JULES LOBEL ON BEHALF OF THE  
CENTER FOR CONSTITUTIONAL RIGHTS

I would like to thank Representative Ronald Waters and the members of the Democratic Policy Committee of the Pennsylvania House of Representatives for holding this important hearing on the effects of solitary confinement. I am the Bessie Mckee Walthour Chaired Professor at the University of Pittsburgh Law School and the President of the Center for Constitutional Rights (CCR). My statement today does not reflect or represent the views of the University of Pittsburgh, but does represent the position of the CCR.

CCR is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.

Both the CCR and I have a long history of challenging the use of isolation in U.S. prisons, and we believe that all people are entitled to dignity, safety, and humane treatment, irrespective of whether and where they are incarcerated. The use of solitary confinement across the U.S. is an assault on these basic human rights principles, and has drawn widespread criticism both domestically and internationally. In *Wilkinson v. Austin*, 545 U.S. 209 (2005), the U.S. Supreme Court unanimously agreed with CCR and the ACLU that the Due Process Clause of the Fourteenth Amendment gave rise to a liberty interest in avoiding solitary confinement in Ohio's Supermax prison. I argued that case in the Supreme Court on behalf of the Ohio prisoners.

In May 2012, CCR presented a constitutional challenge to prolonged solitary confinement in a federal class action complaint on behalf of prisoners at California's notorious Pelican Bay SHU facility, where prisoners are confined to windowless cells for between 22 ½ and 24 hours a day, without access to natural light, telephone calls, contact visits, and vocational, recreational, or educational programming.<sup>1</sup> I am lead counsel for the CCR in that case. At Pelican Bay, hundreds of prisoners have been held in solitary confinement for over 10 years; 78 prisoners have languished under these conditions *for over 20 years*.

In this Statement, I will address some of the human rights and constitutional implications of solitary confinement. I and the CCR sincerely hope that this hearing will result in the fundamental reassessment of the widespread use of solitary confinement in Pennsylvania and other states, and serve

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<sup>1</sup> See Second Amended Complaint, *Ruiz et al. v. Brown et al.*, 09-cv-5796 (N.D. Cal.) (Wilken, J.).

as a catalyst to end the brutalizing use of isolation for unconscionable periods of time in U.S. prisons, jails, and detention centers.

#### **A. Solitary Confinement Is Psychologically and Physically Destructive.**

In the early nineteenth century, the U.S. began imprisoning people in solitary cells, without access to any human contact or stimulation, as an experiment in rehabilitation. The results were disastrous: prisoners quickly and predictably became severely mentally disturbed. Describing the devastating effects of solitary confinement in 1890, Justice Miller of the Supreme Court observed that prisoners housed in isolation “fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.”<sup>2</sup> In light of these devastating effects, the use of solitary confinement was all but abandoned in the U.S.

A century later, the use of solitary confinement in U.S. jails, prisons, and detention centers has unfortunately reemerged – with similar ramifications. Today, tens of thousands of prisoners across the country are warehoused in cramped, concrete, windowless cells in a state of near-total solitude for between 22 and 24 hours a day – whether in Special Housing Units (SHUs), in “Supermaximum” facilities (hereinafter “supermax”), or in lockdown. Cells often contain a toilet and a shower, and a slot in the door only large enough for a guard to slip a food tray through. “Recreation” involves being escorted, frequently in handcuffs and shackles, to another solitary cell where prisoners can pace alone for an hour before being returned to their cell. Prisoners in solitary confinement are also frequently deprived of meaningful access to visits and telephone calls home, furthering their isolation and despair and preventing them from maintaining the family and community ties pivotal to their ability to successfully reintegrate into society upon release. As such, prisoners often live for years alone, without any normal human interaction, stimulation, or meaningful programming or vocational opportunities.

The devastating psychological and physical effects of these harsh conditions have been well-documented by psychological experts. Their conclusions are inescapable: the use of solitary confinement results in severe psychological and physical harm. Researchers have demonstrated that common psychological effects of prolonged solitary confinement include a persistent and heightened state of anxiety, and paranoid and persecutory fears. This mindset commonly persists long after prisoners are released from solitary confinement. Other common symptoms experienced by prisoners in prolonged solitary confinement include severe headaches, ruminations and irrational anger, violent fantasies, oversensitivity to stimuli, extreme lethargy, and insomnia. Scientists have also shown that prisoners in prolonged solitary confinement find their ability to concentrate significantly impaired, and experience an extreme state of confusion. A significant proportion of prisoners in prolonged solitary confinement describe hearing voices, and experience hallucinations, perceptual distortions, and frequent bouts of dizziness. Prisoners in prolonged solitary confinement also often suffer from a decreased ability to control their impulses, leading to self-mutilation and violence towards others.

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<sup>2</sup> *In re: Medley*, 134 U.S. 160, 168 (1890).

Many in prolonged solitary confinement experience severe panic attacks and a sense of an impending nervous breakdown. Even those who withstand the ordeal without succumbing to mental illness or suicide develop a profound sense of emotional and mental “numbness” from years of isolation.

Psychological experts have also explained that the psychological and physical effects of solitary confinement coalesce into a debilitating, far-ranging, and discrete illness in its own right. Prisoners in prolonged isolation are often so debilitated by the experience that they may become unable to live under any other circumstances; the psychological changes they experience may be permanent. Because almost every aspect of these prisoners’ day-to-day existence is so circumscribed, they lose the ability to set limits for themselves or control their behavior through internal mechanisms. Prisoners in these conditions sometimes “act out” in a desperate attempt to prove to themselves that they are still alive and capable of eliciting a genuine response from other human beings.

Psychological experts also report that the symptoms commonly they have found in prisoners in prolonged solitary confinement may in fact be worse than they suspect. The extent of these prisoners’ psychological dysfunction may not be fully quantifiable until after they return to more normal social settings. This is because these prisoners are minimally functional under conditions of solitary confinement, and so never receive careful and routine psychiatric assessments. And where prisoners have been kept in solitary confinement for years at a time, their symptoms are almost identical to those described in psychological literature about the long-term effects of severe trauma and torture.

In California, the Pelican Bay SHU prisoners report that they experience unrelenting and crushing mental anguish as a result of the years they have spent under these conditions, and they fear that they will never be released from the SHU. Echoing the findings of psychological experts on solitary confinement, prisoners have described their confinement there as “a living nightmare that does not end and will not end.” As CCR client Luis Esquivel puts it, “I feel dead. It’s been 13 years since I have shaken someone’s hand and I fear I’ll forget the feel of human contact.” And as CCR client Gabriel Reyes wrote in 2011:

You don’t really know what makes [the SHU psychological torture] unless you live it and have lived it for 10, 15, 20 plus years 24/7. Only the long term SHU prisoner knows the effect of being alone between four cold walls with no one to confide in and only a pillow for comfort. How much more can any of us take? Only tomorrow knows. Today I hold it all in hoping I don’t explode.

Similarly, CCR client Todd Ashker experiences great feelings of anger at his situation, which he tries to control and suppress, but this just deadens his feelings. He feels that he is “silently screaming” 24 hours a day.

As a result of the severe psychological distress, desperation, and hopelessness that they experience from languishing in the SHU for decades, hundreds of Pelican Bay prisoners engaged in two sustained hunger strikes in 2011. Almost every participant with whom we have spoken reported viewing the possibility of death by starvation as a worthwhile risk in light of their current situation. These prisoners are the survivors of these bleak conditions. It is well known that the incidence of suicides,

attempted suicides and the development of mental illness is much higher amongst prisoners in solitary confinement than those held in the general population.

Placing prisoners in these devastating conditions for years at a time – whether at Pelican Bay, or one of the innumerable SHU or Supermax facilities across the country – exposes those prisoners to a significant risk of descending into irreversible mental illness. As CCR contends in *Ruiz v. Brown*, the Eighth Amendment to the U.S. Constitution, which forbids the imposition of cruel and unusual punishment, cannot tolerate such a risk. Solitary confinement strips human beings of their basic dignity and humanity, and simply violates contemporary standards of human decency.

But in addition to offending our Constitutional commitments, it offends our dignity as a society to allow tens of thousands of human beings to languish under such severe conditions, slowly losing their grip on sanity and ability to function. Many prisoners who have been held in solitary confinement will ultimately be released into the community. If these prisoners have been broken down to a point of inability to function, we cannot have any hope that they will be successful in their efforts to reintegrate into society, or that the mistreatment to which they have been subjected will ultimately serve the interests of public safety.

#### **B. Solitary Confinement Is Disproportionately Used Against Prisoners of Color, and Other Vulnerable Incarcerated Populations.**

A common misperception is that solitary confinement is reserved for the “worst of the worst” – that is, for violent “super-predators” who cannot function in the normal prison environment. CCR firmly believes that no human being should be placed in cruel and inhumane prolonged solitary confinement, irrespective of the circumstances. In reality, however, just as we now know that the prisoners placed in Guantanamo Bay were often not the “worst of the worst” or even terrorists at all, many prisoners warehoused in solitary confinement for many years within the United States have not committed any violent misbehavior in prison. Instead, race, political affiliation, religion, association, vulnerability to sexual abuse, and challenging violations one’s rights all too frequently play a role in which prisoners are sent to solitary confinement.

There are, for example, significant racial disparities in who is sent to solitary confinement. Confinement in isolation units – and therefore the resultant psychological and physical harms that ensue – is disproportionately visited upon African American and Latino prisoners. For example, 85% of the prisoners at the Pelican Bay SHU are Latino. While it is justified by corrections officials as necessary to protect prisoners and guards from violent prisoners, all too often solitary confinement is imposed on individuals, particularly prisoners of color, who threaten prison administrators in an altogether different way. Consistently, jailhouse lawyers and doctors, who administer to the needs of their fellow prisoners behind bars, are placed in solitary confinement. They are joined by political prisoners from various civil rights and independence movements. Several African American prisoners in Louisiana known as the “Angola 3” have been held in solitary confinement for over 30 years, and are unlikely ever to be released by prison officials from solitary confinement in large part due to their association with the Black Panther Party and their political beliefs. And as one California District Court recently observed in the context of prison officials actions against a Black Nationalist held in the SHU, prison officials “may have taken a

race-based shortcut and assumed anything having to [do] with African-American culture could be banned under the guise of controlling the [Black Guerilla Family].”<sup>3</sup>

So too is gender identity, sexual identity, and vulnerability to sexual assault inappropriately used to confine prisoners in solitary confinement – ostensibly for prisoners’ own protection. Confining prisoners who are vulnerable to sexual assault in prolonged solitary confinement is simply inappropriate and harmful to these prisoners. Prison officials must be able to ensure the safety of all prisoners without resorting to placing those who are the most vulnerable to abuse in involuntary solitary confinement. This includes prisoners who are lesbian, gay, bisexual, transgender, intersex, and/or gender non-conforming prisoners and those who are perceived as such regardless of their identity. Too often, prisoners with disabilities, young or old inmates, and other inmates targeted for violence are similarly warehoused in solitary confinement.

California is an example of a state that imposes prolonged solitary confinement based not on specific acts of violence, but instead on a prisoner’s alleged *association* with a prison gang. While California purports to release “inactive” gang members after six years in the SHU, in reality their gang validation and retention decisions (and resulting indefinite SHU placement) are made without considering whether a prisoner has ever undertaken an illegal act on behalf of a gang, or whether they are – or ever were – actually involved in gang activity. CCR client George Ruiz, for example, has been held in the Pelican Bay SHU for 22 years under conditions of extreme isolation, based on nothing more than his appearance on lists of alleged gang members discovered in some unnamed prisoners’ cells, and his possession of allegedly gang-related drawings. His only way out of isolation is to “debrief” to prison administrators (i.e. report on the gang activity of other prisoners). Thus, California prison officials condition release from inhumane conditions on cooperation with prison officials in a manner that places prisoners and their families in significant danger of retaliation, whether or not these prisoners – many of whom have been in solitary confinement for over 25 years – have gang-related information to report.

### C. Solitary Confinement in Pennsylvania

While the CCR has not litigated any cases involving solitary confinement in Pennsylvania, the State’s use of solitary confinement raises serious constitutional issues. In 2000, the Pennsylvania DOC established the Long Term Segregation Unit, which was based on the Pelican Bay model to keep prisoners in isolation. Solitary Watch has reported that 2,500 prisoners, or approximately 5% of the Pennsylvania prison population is currently held in some form of solitary. There have been a number of suicides in Pennsylvania’s solitary confinement Restrictive Housing Units, unfortunately illustrating the use of solitary to warehouse mentally ill prisoners as well as the extreme psychological distress that solitary causes. Currently the United States Justice Department is investigating the failure to provide adequate mental health care in SCI Cresson, and the broader question of subjecting mentally ill prisoners to prolonged solitary confinement in violation of the Eighth Amendment.

Many prisoners in Pennsylvania are kept in solitary for prolonged and indefinite periods of time, which in the CCR’s view violates the Eighth Amendment. A particularly disturbing and glaring example of

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<sup>3</sup> *Harrison v. Institutional Gang of Investigations*, 2010 U.S. Dist. LEXIS 14944 \*21 (N.D. Cal. 2010).



this practice is the continued, indefinite, solitary confinement of Russell Maroon Shoats. Shoats, a 68 year old prisoner has spent the last twenty-one years in solitary confinement in Pennsylvania prisons. He has not violated any prison rules, nor has he been issued any misconducts in more than two decades. Despite his excellent prison record over the past decades, the Pennsylvania Department of Correction continues to hold him in 23-24 hour lockdown in a Restrictive Housing Unit (RHU) at the SCI Greene based on acts that occurred more than thirty years ago. The RHU's typically are tiny, windowless concrete cells, that contain a concrete slab for a bed and a thin foam mattress to sleep on, and a sink and toilet. The cell remains constantly illuminated twenty four hours a day, and exercise is permitted only for one hour five days a week alone in a caged area not much larger than the cell itself.

During this long period of solitary confinement, Russell Shoats has experienced several serious health problems that have been exacerbated by the intense stress of the RHU. These conditions – which are typical of those experienced by prisoners detained for long periods of time in solitary – include hypertension, lack of sleep, and other health issues such as the development of cataracts in both eyes.

Shoats' extremely prolonged confinement in the very harsh conditions of confinement in the RHU constitutes a violation of his right to be free from torture and other cruel inhumane and degrading treatment both under the U.S. Constitution and International human rights law.

Moreover, it seems apparent that the Pennsylvania DOC never intends to release Shoats from the RHU. The U.S. Supreme Court has held that prisoners confined in the type of harsh solitary confinement practiced in Pennsylvania are entitled to “meaningful review” of their confinement. Twelve years ago, the Third Circuit Court of Appeals termed Shoat's then almost 8 year confinement in “virtual isolation” as an “extraordinary long period”, but nonetheless held that he had been accorded meaningful review of his solitary confinement.<sup>4</sup> Now, more than 12 years later, Shoats has been held in solitary for almost three times as long, and it is clear, as it should have been then, that the Pennsylvania DOC never intends to grant Shoats any meaningful review of his confinement. As the Tenth Circuit Court of Appeals has recently held, meaningful review requires that the prison authorities inform the prisoner what he must do to work his way out of solitary confinement.<sup>5</sup> Shoats has never been told what he can do to get out of solitary, and in fact, it seems like there is nothing he can do.

Indeed, Shoats situation seems very similar to that of the Angola 3, three Black prisoners who were kept in solitary for three decades, two of whom are still in solitary and one is testifying here today. In a lawsuit brought by the three prisoners challenging their solitary confinement, a Federal District Court denied the prison officials motion for summary judgment, holding that the prisoners had produced sufficient evidence to set forth an eighth amendment violation.<sup>6</sup> The Court found that the plaintiffs had introduced evidence showing that they had been diagnosed with several conditions, such as hypertension, “that may either be caused by or exacerbated by the lack of exercise, sleep and isolation.”<sup>7</sup> What the Court said in the Angola 3 case is equally applicable to Shoats: to keep the inmate

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<sup>4</sup> Shoats v. Horn, 213 F.3d 140, 142,144 (3d Cir. 2000).

<sup>5</sup> Toevs v. Reid, 646 F.3d 752,758 (10th Cir. 2011).

<sup>6</sup> Wilkerson v. Stadler, 639 F. Supp. 2d 654 (D. La 2007).

<sup>7</sup> *Id.* at 680.

in isolation solely because of the original infraction which occurred many years ago is “constitutionally infirm”.<sup>8</sup> And as in the Angola three case, there is evidence that Shoats is being kept in solitary confinement for racially discriminatory and politically retaliatory reasons, or as the Angola 3 court put it; because of their “association with the Black Panther Party and their personalities as leaders.”<sup>9</sup>

The Shoats situation is but an extreme example of the arbitrary, discriminatory, and inhumane treatment of prisoners in solitary confinement, both in Pennsylvania and in other states. While the use of administrative, indefinite solitary confinement is denoted by the prison authorities as preventive, it is in fact punitive and does not make either prisons or society safer.

#### **D. Solitary Confinement Is a Form of Torture and Violates Human Rights Standards.**

The growing understanding of the destructive effects of prolonged solitary confinement has resulted in international condemnation of the practice. International human rights organizations and bodies, including the United Nations, have decried solitary confinement as a human rights abuse that can amount to torture. In August 2011, for example, the U.N. Special Rapporteur of the Human Rights Council on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment issued a Report on solitary confinement.<sup>10</sup> The report found that prisoners must, at a minimum, have access to windows and light, sufficient sanitary fixtures, outdoor exercise and programming, access to meaningful human contact within the prison, and contact with the outside world (including visits, mail, and phone calls from legal counsel, family and friends, and access to reading material, television or radio). The conditions seen in SHUs and Supermax facilities in the United States typically fall well short of these basic standards. The prisoners at the Pelican Bay SHU, for example, are forbidden all access to the outdoors, are deprived of programming, and cannot call their loved ones and family.

The Special Rapporteur also concluded that use of solitary confinement is appropriate only in exceptional circumstances, and where imposed, its duration must be as short as possible and for a definite term that is properly announced and communicated. Prolonged solitary confinement, he found, is prohibited by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the Convention against Torture and other cruel, inhuman and degrading treatment or punishment (CAT). The U.S. has ratified both the ICCPR and CAT. And yet, the forms of solitary confinement condemned under both continue to proliferate across the U.S. The Special Rapporteur explicitly concluded that, depending on the circumstances, prolonged solitary confinement constitutes either torture or cruel, inhuman or degrading treatment or punishment. Thousands of prisoners have languished in solitary confinement U.S. prisons for years at a time. At Pelican Bay, hundreds of prisoners have been held under these conditions for well over 10 years – over 250 times the amount of time the U.N. has deemed acceptable.

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<sup>8</sup> *Id.* at 681.

<sup>9</sup> *Id.*

<sup>10</sup> See Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Aug. 2011).

Our obligations under these international human rights instruments demand that we seriously re-examine the use of solitary confinement, and bring our practices in line with standards and norms recognized by the international community.

#### **E. Conclusion**

With strong leadership, effective policies, and sound practices, U.S. prisons can develop ways to house prisoners in settings that are less restrictive and more humane than solitary confinement, and thereby meet international human rights and Constitutional standards.

States such as Massachusetts, Vermont, and Washington have long limited the length of time a prisoner may be placed in solitary confinement to 15, 30, and 20 days, respectively. Colorado and New Mexico have recently passed legislation to limit or study the effects of solitary confinement, and similar bills have been introduced in Virginia, Pennsylvania, and Texas. Other states, including Maine, Mississippi and Ohio, have significantly reduced their solitary confinement population in the last decade through voluntary changes. To our knowledge, in none of these states did prison violence increase after the use of solitary confinement diminished. Working to eliminate the use of solitary confinement is to the benefit of everyone – prisoners, staff, and ultimately the communities to which almost all prisoners eventually return.

Notable steps have been taken in this direction, but much progress must still be made to eliminate the use of solitary confinement for all but the most limited periods of time. We hope that today's hearing represents an important step in this direction.