



**Testimony of
Linda Gustitus, President, and Rev. Richard Killmer, Executive Director,
National Religious Campaign Against Torture,
Before the
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on Reassessing Solitary Confinement
June 19, 2012**

Mr. Chairman, Members of the Subcommittee, thank you for this opportunity to submit testimony on behalf of the National Religious Campaign Against Torture (NRCAT) concerning the harmful use of solitary confinement in our nation's federal prisons, jails, and detention centers. Due to the negative fiscal and public safety consequences of solitary confinement, NRCAT is encouraged that a growing number of states across the nation are reassessing the practice and implementing policies to limit its use. The Subcommittee's consideration of this issue at the federal level is opportune and urgent. It is due time that we learn from the states' successful reforms. We are confident that a transparent evaluation of the impact of the federal system's use of solitary confinement on prisoners, correctional staff, our budget, and society at large, will lead you to conclude that the pervasive use of prolonged solitary confinement is wrong both morally and economically.

The National Religious Campaign Against Torture is a coalition of religious organizations joined together to ensure that the United States does not engage in torture or cruel, inhuman or degrading treatment of anyone, including U.S. prisoners, inmates, and detainees. Since its formation in January 2006, more than 300 religious organizations have joined NRCAT, including representatives from the Catholic, Protestant, Orthodox Christian, evangelical Christian, Buddhist, Hindu, Quaker, Unitarian, Jewish, Buddhist, Muslim, and Sikh communities. NRCAT member organizations include denominations and faith groups, national religious organizations, regional religious organizations, and congregations.

The faith-based members that belong to NRCAT do not question whether individuals convicted of certain crimes deserve to be sent to prison. Rather, we are united in opposing treatment that is so severe that it violates our values as a nation, as people of faith, and as fellow human beings. This opposition has inspired us, along with people of faith and religious leaders across the nation, to participate in a 23-hour fast, symbolizing the 23 hours per day that tens of thousands of prisoners, inmates, and detainees, are warehoused in solitary confinement. As we have seen in recent prisoner hunger strikes in California and Virginia, refusing food is one of the few means prisoners

have to protest their conditions in solitary confinement. We are fasting for change on their behalf, asking for divine intervention that “drives out fear.” Today at noon, we will break bread together immediately after your hearing and pray that this will not be the end of your efforts to evaluate and reform this inhumane and destructive practice.

The 2006 Commission on Safety and Abuse in America’s Prisons (hereinafter “the Commission”), co-chaired by Nicholas Katzenbach, former Attorney General under President Lyndon Johnson, and John Gibbons, former Chief Judge for the 3rd Circuit Court of Appeals, produced a report that described life in a supermax prison like this:

Conditions in segregation vary across the country. In the most severe conditions—which are more likely to occur in disciplinary segregation units and super-max prisons—individuals are locked down 23 or 24 hours a day in small cells between 48 and 80 square feet with no natural light, no control over the electric light in their cells, and no view outside of their cells. They have no contact with other prisoners—even verbal—and no meaningful contact with staff. They may be able to spend up to an hour every other day alone in a concrete exercise pen. Though there are some exceptions, access to books and writing materials is limited; radio and television are often banned; calls to and visits with family are very infrequent, when permitted at all.¹

The faith groups and member organizations of NRCAT believe that solitary confinement is not only inhumane, but that in certain circumstances, it can rise to the level of torture.

As you already know, the universally recognized definition of torture is in the United Nations Convention Against Torture and Cruel, Inhuman or Degrading Treatment adopted by the UN General Assembly in 1984 and signed by the United States in 1988 and ratified by the U.S. in 1994. It defines torture as any act by which,

. . . severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.²

¹ COMMISSION ON SAFETY AND ABUSE IN AMERICA’S PRISONS, VERA INSTITUTE OF JUSTICE, CONFRONTING CONFINEMENT at 57 (2006), http://www.vera.org/download?file=2845/Confronting_Confinement.pdf [hereinafter *Commission*].

² Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, art. 1(1), Dec. 10 1984, 1465 U.N.T.S. 85.

In a 2011 report, the United Nations Special Rapporteur on Torture, Juan Mendez, cited 15 days or more of solitary confinement as “prolonged solitary confinement,” noting that some of the psychological effects caused by isolation become irreversible at that point.³ The severe pain and suffering caused by solitary confinement is clearly documented throughout history within literary, scientific, and legal sources.

Many Americans don’t realize that the harm of solitary confinement is, unfortunately, a lesson we have to relearn. In 1829, the Eastern Pennsylvania Penitentiary opened.⁴ It was called a penitentiary because the enlightened voices of the day, including Dr. Benjamin Rush, Benjamin Franklin, and key Quaker leaders, wanted inmates to spend time in isolation so they could think deeply about their crimes and become penitent.⁵ However, instead of becoming remorseful while in solitary confinement, the prisoners developed serious mental health problems, with many going insane. In 1842, Charles Dickens visited the Eastern Pennsylvania Penitentiary and wrote, “The system here is rigid, strict and hopeless solitary confinement. I believe it . . . to be cruel and wrong. I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body.”⁶ Recognizing this severe psychological harm, the Quakers apologized for devising solitary confinement cells.

Unfortunately, today, the same “daily tampering with the mysteries of the brain” that Dickens referenced is painstakingly evident in the countless letters sent to friends, family members, and organizations like NRCAT, from the tens of thousands of prisoners held within solitary confinement cells. Describing the impact of solitary confinement, one prisoner wrote:

[P]rolonged isolation tears at my soul, mind, and ability to cope. The cell collapses on top of me. I don’t breathe. I can’t breathe from crushing anxiety, literally. I utilize all coping mechanisms I know, and some conjure up to no avail. The end result is self-mutilation to escape or an attempt on my life. I can do fine for five, six or eight months. Then all hell inside my head breaks loose. I’m not choosing to be suicidal. It’s an unseen force which compels me to try to escape by any means.⁷

Many studies have documented the detrimental psychological and physiological effects of long-term segregation.⁸ Nationally recognized expert Dr. Stuart Grassian was

³ The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, and degrading treatment or punishment, *Interim Report*, ¶ 15, delivered to the General Assembly, U.N. Doc. A/66/268 (Aug. 5, 2011).

⁴ Laura Sullivan, *Timeline: Solitary Confinement in U.S. Prisons*, NATIONAL PUBLIC RADIO, July 26, 2006, <http://www.npr.org/templates/story/story.php?storyId=5579901>.

⁵ *Id.*

⁶ CHARLES DICKENS, AMERICAN NOTES 146 (Fromm Int’l 1985) (1842).

⁷ Citing a letter from a prisoner during video interview by Steve Martin, Board Member, National Religious Campaign Against Torture, with Shaheed Omar in Roanoke, VA (January 10, 2012).

⁸ See e.g., Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 INT’L J.L. & PSYCHIATRY 49 (1986); Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 NEW YORK

one of the pioneers in researching the harmful psychological effects of solitary confinement in super-max prisons in the early 1980s.⁹ In a statement submitted to the Commission, Dr. Grassian documented that nearly a third of the prisoners he evaluated experienced perceptual distortions, in which objects appear to change size or form.¹⁰ This is particularly alarming, he noted, since this symptom is more commonly associated with neurological illnesses, such as brain tumors, than with primary psychiatric illness.¹¹

Additionally, Dr. Craig Haney, social psychologist and Professor of Psychology at the University of California, Santa Cruz, who will address the Subcommittee today, found extraordinarily high rates of symptoms of psychological trauma among prisoners held in long-term solitary confinement in his systematic analysis of prisoners held in super-max prison.¹² More than four out of five of those evaluated suffered from feelings of anxiety and nervousness, headaches, troubled sleep, and lethargy or chronic tiredness, and over half complained of nightmares, heart palpitations, and fear of impending nervous breakdowns.¹³ Nearly half suffered from hallucinations and perceptual distortions, and a quarter of them experienced suicidal ideation.¹⁴

In 2011, the United States Supreme Court stated that “[p]risoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment.”¹⁵ United States case law has specifically recognized solitary confinement’s clear harm¹⁶ and in certain circumstances, has declared the practice as a violation of the Eighth Amendment.¹⁷

Due to the overwhelming evidence that solitary confinement causes severe mental pain and suffering, NRCAT believes prolonged solitary confinement is a violation of the inherent God-given dignity in every human being. We concur with the Supreme Court that this inherent dignity does not end at the prison gates.

Dr. Atul Gawande, surgeon and staff writer for the *New Yorker*, asked in his 2009 article, “Hellhole,” “If prolonged isolation is—as research and experience have

UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE 477-570 (1997); Craig Haney, Mental Health Issues in Long-Term Solitary and “Supermax” Confinement, 49 CRIME & DELINQ. 124 (2003).

⁹ See e.g., Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450 (1983).

¹⁰ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 JOURNAL OF LAW AND POLICY 325, at 335 (2006), <http://law.wustl.edu/journal/22/p325grassian.pdf>.

¹¹ *Id.* at 338.

¹² Haney, *supra* note 8.

¹³ *Id.* at 133.

¹⁴ *Id.* at 134.

¹⁵ *Brown v. Plata*, 131 S.Ct. 1910 (2011).

¹⁶ See *In re Medley*, 134 U.S. 160, 168 (1890) (noting that prisoners held in isolation became violently insane and suffered some irreparable mental damage).

¹⁷ See, e.g., *Jones’El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001) (finding that placing mentally ill prisoners in solitary confinement constitutes an Eighth Amendment violation); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995) (equating placing mentally-ill inmates in solitary confinement to placing asthmatics in a room with insufficient air); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999).

confirmed for decades—so objectively horrifying, so intrinsically cruel, how did we end up with a prison system that may subject more of our own citizens to it than any other country in history has?”¹⁸

We believe that responding in fear, rather than objectively evaluating evidence-based best practices, is how we ended up here. Following an attack on two correctional officers in 1983, Marion Prison in Illinois instituted a permanent lockdown of its entire facility, in which all inmates were confined alone in their cells for 23 hours per day.¹⁹ The use of solitary confinement has increased dramatically since then. In 1989, California built Pelican Bay Prison to house prisoners exclusively in solitary confinement cells. Today, there are more than 40 super-max prisons across the country, including one federal facility, the Administrative Maximum Facility (“ADX”), located in Florence, Colorado.

The Commission noted that from 1995 to 2000, the growth rate of segregation units significantly surpassed the prison growth rate overall: 40% compared to 28%.²⁰ Long-term isolation has become a default management tool, not only as a response to violent behavior, but exceedingly as routine practice for minor rule infractions, involuntary protection, and as a means of managing difficult inmates, particularly those with mental illness. Walter Dickey, former secretary of the Wisconsin Department of Corrections, testified before the Commission that his state’s super-max prison was filled with the wrong people, “the young, the pathetic, the mentally ill.”²¹ Similarly, psychiatrist Stuart Grassian told the Commission, “Many of these people who are said to be the ‘worst of the worst’ are simply the wretched of the earth. They’re sick people.”²²

The notion that prolonged solitary confinement is a necessary evil to maintain safety in our prisons, jails and detention centers, is not rooted in evidence. A study evaluating the impact of segregating prisoners in super-max facilities on prison violence in three different states found that segregation did not decrease prisoner-on-prisoner violence in any of the states and had divergent results on prisoner-on-staff assaults.²³

The demonstrated success of reducing the use of solitary confinement is evident among several states that have proven that not only are there safe alternatives, but there are more cost-effective options.²⁴ For example, Mississippi experienced a decline in violence within its prisons after it drastically reduced its use of solitary confinement by

¹⁸ Atul Gawande, *Hellhole*, NEW YORKER, March 30, 2009, http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande.

¹⁹ Sullivan, *supra* note 4.

²⁰ Commission, *supra* note 1, at 53.

²¹ Commission, *supra* note 1, at 54.

²² Commission, *supra* note 1, at 60.

²³ Chad Briggs, et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*. 41 CRIMINOLOGY 1341 (2003).

²⁴ Erica Goode, *Prisons Rethink Isolation, Saving Money, Lives and Sanity*, NEW YORK TIMES, March 10, 2012, <http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html>.

85 percent in one super-max unit; Mississippi eventually closed the facility all together.²⁵ “The [segregated housing] environment . . . actually increases the levels of hostility and anger among inmates and staff alike,” Donald Cabana, former Mississippi Warden, told the Commission.²⁶ Maine and Colorado also have recently made significant reductions in the use of solitary confinement without jeopardizing prison safety.²⁷ Maine Department of Corrections Commissioner Joseph Ponte explained, “Over time, the more data we’re pulling is showing that what we’re doing now [through greatly reducing the use of solitary confinement] is safer than what we were doing before.”²⁸

The daily cost per inmate of solitary confinement far exceeds lower security facilities because individualized cells and increased correctional staff are required, and prisoners do not contribute to the ongoing maintenance of the facility, such as cleaning, cooking, and laundry. Indeed, Mississippi has reportedly saved \$5 million by closing its super-max unit.²⁹ Thanks to the transfer of more than 400 prisoners out of solitary confinement in the past year, the Colorado Department of Corrections plans to close its super-max unit, Centennial Correctional Facility, by 2013, which will result in savings of \$4.5 million.³⁰ Other states, strapped for cash, are taking note. Illinois Governor Pat Quinn recently announced a proposal to close Illinois’ super-max prison, Tamms Correctional Center, projecting annual savings of \$21.6 million in the upcoming fiscal year and \$26.6 million each year thereafter.³¹

Not only do these states demonstrate that limiting the use of solitary confinement can save taxpayer dollars and does not come at the cost of safety within prisons, we can not sit idly by and neglect a much larger public safety concern. The effects of prolonged solitary confinement impact all of us. In a recent interview about why Colorado reduced its reliance on solitary confinement, Colorado Department of Corrections Executive Director Tom Clements pointed out that 47 percent of those held in solitary confinement

²⁵ Terry A. Kupers, et al., *Beyond Supermax Administrative Segregation: Mississippi’s Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. & BEHAV. 1037, 1041 (2009); John Buntin, *Exodus: How America’s Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010).

²⁶ Commission, *supra* note 1, at 54.

²⁷ Lance Tapley, *Reform Comes to the Supermax*, PORTLAND PHOENIX, May 25, 2011, <http://portland.thephoenix.com/news/121171-reform-comes-to-the-supermax/>; COLORADO DEPARTMENT OF CORRECTIONS, REPORT ON THE IMPLEMENTATION OF ADMINISTRATIVE SEGREGATION PLAN 1-2 (2012), available at <https://www.aclu.org/prisoners-rights/report-co-docs-implementation-administrative-segregation-plan>.

²⁸ Video interview by Richard Killmer, Executive Director, National Religious Campaign Against Torture, with Joseph Ponte, Maine Department of Corrections Director, in Augusta, Maine (October 4, 2011).

²⁹ Erica Goode, *Prisons Rethink Isolation: Saving Money, Lives and Sanity*, NEW YORK TIMES, March 10, 2012, <http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html>.

³⁰ Kristen Wyatt, *Colorado Closing Canon City Prison*, The Gazette, March 19, 2011, <http://www.gazette.com/articles/colorado-135471-denver-prison.html>.

³¹ Dave McKinney & Andrew Maloney, Editorial, *Governor Pat Quinn: Close Super-max Downstate Tamms Prison*, CHICAGO SUN-TIMES, February 21, 2012, <http://www.suntimes.com/news/politics/10785648-418/gov-pat-quinn-close-super-max-downstate-tamms-prison.html>.

are eventually released directly to the community.³² This lack of transition from solitary confinement straight to society is alarming, considering prisoners who are freed directly from solitary confinement cells are significantly more likely to commit crimes again.³³

Mr. Chairman and members of the Subcommittee, we hope that your leadership on this issue will extend beyond this hearing. To that end, we would strongly support your leadership in sponsoring legislation that would limit the use and length of solitary confinement. We urge Congress to pass legislation that would:

- prohibit the placement of the most vulnerable populations, including persons with mental illness and juveniles, in solitary confinement;
- provide adequate training to all correctional officers concerning signs of mental illness and effective behavior management techniques for this population;
- ensure that prisoners, inmates, and detainees held in solitary confinement receive routine and meaningful mental health evaluations and divert individuals exhibiting signs of mental illness from isolation to mental health treatment units that provide habilitative care;
- designate solitary confinement as a last resort by narrowing the types of conduct that qualify prisoners, inmates, and detainees to be involuntarily placed in solitary confinement to include only active and serious safety concerns, such as escape attempts and severe violent behavior;
- require that prisoners, inmates, or detainees who voluntarily request and are granted placement in solitary confinement have the right to request immediate reintegration into the general prison population;
- improve the due process guarantees provided to prisoners, inmates, and detainees recommended for placement in solitary confinement, including providing the prisoner, inmate, or detainee with the written reasons for his or her recommended placement in isolation and ensuring meaningful hearing by an objective panel;
- provide prisoners, inmates, and detainees placed in solitary confinement with individualized plans specifying the specific behaviors they must demonstrate in order to increase their privileges within isolation and eventually be granted release from solitary confinement;
- ensure that the resources and opportunities to reach those behavior benchmarks are accessible;
- provide recognition of and incentives for correctional staff who successfully utilize alternative behavior management techniques that prevent prisoners, inmates, and detainees from entering solitary confinement;

³² Kirk Mitchell, *Colorado Prisons Turn Away from Heavy Use of Solitary Confinement*, DENVER POST, June 4, 2012, http://www.denverpost.com/news/ci_20775290/colorado-prisons-turn-away-from-heavy-use-solitary.

³³ See, e.g., Lovell, et al., *Recidivism of Supermax Prisoners in Washington State*, 53 CRIME AND DELINQ. 633, 633-56 (October 2007).

- disincentivize the use of solitary confinement by holding the correctional officer who refers a prisoner, inmate, or detainee to solitary confinement accountable for assisting that individual in meeting the behavior benchmarks in his or her individualized plan;
- establish more frequent and meaningful due process guarantees for those who remain in solitary confinement to demonstrate whether or not they have met the expectations listed in their individualized plans, including additional review and approval by higher level correctional officials in order for prisoners, inmates, and detainees to remain in solitary confinement beyond designated lapses in time;
- require that prisoners, inmates, and detainees in solitary confinement be reintegrated into the general prison population at least six months prior to being released to the general public;
- establish an absolute maximum amount of time any prisoner, inmate, or detainee may be held in solitary confinement; and
- provide regular and independent oversight bodies with authority to access and inspect solitary confinement units in all jails, prisons, and detention centers; such bodies should not depend on corrections agencies for funding and should have the authority to issue public reports, to make recommendations, and to compel implementation of those recommendations.

Mr. Chairman, Members of the Subcommittee, the National Religious Campaign Against Torture believes strongly that the United States should do everything it can to reverse our nation's reliance on solitary confinement. The United States has from its inception tried to live up to the vision of its role in this world as the "shining city on the hill." That luster has been dimmed by the destructive, counterproductive, and immoral use of solitary confinement. We need to immediately take steps to clearly and emphatically end the use of prolonged solitary confinement. Your hearing today is a very important effort in doing that, and we thank you for the opportunity to contribute to it.