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Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2014/05/24/holder-makes-obama-administrations-first-public-statement-solitary-confinement/>

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by [Jean Casella and James Ridgeway](#) | May 24, 2014

In a weekly video message earlier this month, Attorney General Eric Holder made the first public statement on solitary confinement to emerge from the Obama White House (or, as far as we know, any U.S. presidential administration).

A [statement accompanying the 3-minute video](#) on the Department of Justice's website outlines the position taken by Holder and, by implication, the DOJ and the Obama administration as a whole:

Attorney General Holder spoke out against excessive use of isolation and solitary confinement for young people with disabilities at juvenile detention centers, saying that juvenile incarceration must be used to rehabilitate, and not merely to warehouse and forget. Citing reports that described young people being held in confinement for up to 23 hours a day, the Attorney General called for an end to unnecessary or excessive seclusion of youth with disabilities, which can be counterproductive and in some cases extremely harmful.

Any statement on solitary by the nation's top justice official is certainly significant. Yet it would be difficult to add more qualifiers to Holder's denouncement of solitary confinement. His criticism is limited to the use of solitary on the most extremely vulnerable (and sympathetic) victims: children with mental illness and other disabilities and even then, only to unnecessary or excessive isolation.

Holder's video ends without any concrete commitment to take action, although the ACLU has for some time [been calling on the Attorney General](#) to ban the use of solitary for all youth held in federal custody. But a week later, on May 21, the Justice Department [released some news](#) that signaled its intent to back Holder's statement, even if on a limited basis:

The United States and private plaintiffs announced today that it has reached an agreement with the state of Ohio, under which the State Department of Youth Services (DYS) will dramatically reduce, and eventually eliminate, its use of seclusion on young people in its custody. DHS will also ensure that young people in its juvenile facilities receive individualized mental health treatment to prevent and address the conditions and behaviors that led to seclusion. The order resolves allegations that the state subjects young people with mental health needs in its custody to harmful seclusion and withholds treatment and programming, in violation of their constitutional rights.

Overreliance on solitary confinement for young people, particularly those with disabilities, is unsafe and counterproductive, said Attorney General Eric Holder. This agreement will help ensure that incarceration in Ohio's state facilities is humane and that appropriate treatment is provided for young people with mental illness. The Justice Department will continue to evaluate the use of solitary confinement so that it does not become a new normal for incarcerated juveniles.

This move, which comes after years of litigation, will end one particularly abominable use of solitary confinement, and will improve the lives of countless children in juvenile facilities in Ohio. And it may set a precedent for similar DOJ action in other states. In this sense, it is a laudable example of incremental change.

But the agreement does not extend to the tens of thousands of children held in adult prisons, a significant percentage of whom, [evidence suggests](#), may experience solitary confinement. In fact, in his video address, Holder explicitly acknowledges that isolation is a necessary tool for controlling captive populations, including youth.

Furthermore, by criticizing solitary only for one small, specific group, Holder's statement more than implies that the use of isolation is all right for everyone else. This conviction is borne out by other actions taken by the U.S. DOJ and the Obama administration more broadly, including its treatment of detainees both at Guantanamo and on American soil. It was, after all, the White House and its friends in Congress who engineered the purchase of a prison in Illinois slated to house men in extreme isolation, on the order of the notorious ADX Florence in Colorado.

In fact, one day after its announcement of the Ohio settlement, the DOJ successfully beat back a Constitutional challenge from Thomas Silverstein, who is perhaps the most brutally isolated man in America. A federal appeals court [ruled](#) that Silverstein's 30 years of solitary confinement under a no human contact order in ADX and a series of other federal prisons does not constitute cruel and unusual punishment. (Read Silverstein's description of his time in solitary [here](#), and judge for yourself.)

<https://www.youtube.com/watch?v=4e0dDi7ZQOo>

James Ridgeway (1936-2021) was the founder and co-director of Solitary Watch. An investigative journalist for over 60 years, he served as Washington Correspondent for the Village Voice and Mother Jones, reporting domestically on subjects ranging from electoral politics to corporate malfeasance to the rise of the racist far-right, and abroad from Central America, Northern Ireland, Eastern Europe, Haiti, and the former Yugoslavia. Earlier, he wrote for The New Republic and Ramparts, and his work appeared in dozens of other publications. He was the co-director of two films and author of 20 books, including a forthcoming posthumous edition of his groundbreaking 1991 work on the far right, *Blood in the Face*. Jean Casella is the director of Solitary Watch. She has also published work in The Guardian, The Nation, and Mother Jones, and is co-editor of the book *Hell Is a Very Small Place: Voices from Solitary Confinement*. She has received a Soros Justice Media Fellowship and an Alicia Patterson Fellowship. She tweets @solitarywatch.

Accurate information and authentic storytelling can serve as powerful antidotes to ignorance and injustice. We have helped generate public awareness, mainstream media attention, and informed policymaking on what was once an invisible domestic human rights crisis.

Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by [Juan Moreno Haines](#)

October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

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Go get em CYA! Tommy still there 30 years and counting

The body of precedent is called common law and it binds future decisions.

So Silversteins case will be cited in the future to justify isolating others just as Robert L. Griffins case was cited in deciding Silversteins.

And the following should be of concern to those in the legal field as well.

<http://www.nytimes.com/2014/05/25/us/final-word-on-us-law-isnt-supreme-court-keeps-editing.html>

Final Word on U.S. Law Isnt: Supreme Court Keeps Editing

WASHINGTON The Supreme Court has been quietly revising its decisions years after they were issued, altering the law of the land without public notice. The revisions include truly substantive changes in factual statements and legal reasoning, said Richard J. Lazarus, a law professor at Harvard and the author of a new study examining the phenomenon..

I find the five references in this summary of judgment to Silversteins IMPROVED CONDITIONS AT ADX, a place former warden Robert Hood described as A CLEAN VERSION OF HELL. as being hollow to say the least.

But I am also glad to see that the ASSOCIATION OF BLACK PSYCHOLOGISTS and THE MENTAL HEALTH PROJECT OF THE URBAN JUSTICE CENTER have both realized that everyone has a stake in this case. If the system can hold Silverstein in such conditions for decades they can hold others as well. One can only hope that the interracial solidarity of the Pelican Bay hunger strikers inmates takes hold elsewhere.

Page 14: According to this expert, the only means for the BOP to protect him is to undergo a formal debriefing and enter protective custody; however, he has not indicated his interest in such a process.

And here:

Page 45: In order for the BOP to protect him he must enter protective custody.

What they reveal then is that they have the means to protect him but what they want in exchange is to have a death warrant placed on the man along with any close family members by forcing him to debrief.

In their latest denial of relief for Silverstein, they expose the long delays after transferring Silverstein to ADX, and then their ever so slight easing his conditions to be no more than legal maneuvers to win their case. (Im referring to the Six Year Statute of Limitations the BOP claimed beginning in November 1983 on his appeal for relief.)

The brief states as much here: the district court determined Mr. Silversteins Eighth Amendment request for injunctive relief was limited to the conditions imposed after his July 2005 transfer to ADX Florence, and not his prior confinement at Leavenworth because he had not shown he is likely to be subject to those conditions again.

This brief also brought up another similar example of such tactics here:

U.S. District Judge James Ware, wrote, The crushing conditions of the SHU present an overwhelming incentive for an inmate to embrace the risk of debriefing, He called Roberts time in the SHU a shockingly long period of time and said the state presented no evidence that he continued active [gang] participation while confined in the SHU. . . .

Further confinement is tantamount to indefinite administrative segregation for silence an intolerable practice in modern society.

BERZON, Circuit Judge, dissenting:

Three times in 2006, 2009, and 2010 the district court ordered state officials (California or the State) to release Robert L. Griffin from segregated housing conditions. Three times, state officials defied that command. California could have appealed the district courts substantive rulings to us at least twice: after the 2006 Order requiring Griffins release, and after the district court in 2010 declined to grant a Federal Rule of Civil Procedure 60(b) motion for relief from that order. But it did not.

The authorities also won this case!

The use of such transparent tactics only shows that the authorities are willing to win these cases at any cost.

<http://solitarywatch.com/2013/09/25/federal-appeals-court-considers-tommy-silversteins-30-years-extreme-solitary-confinement/#comment-27647>

Only under budget and national pressure do the obvious solutions appear. Like this:

In California, Life With Parole Increasingly Leads To Freedom

by SCOTT SHAFER

May 26, 2014 4:06 PM ET

For Older Parolees, A Low Rate Of Recidivism

A study by the Stanford Criminal Justice Center found that among murderers paroled in California, fewer than one percent were returned to prison for new felonies. The main reason? Paroled lifers are typically older, and therefore much less likely to commit violent crimes.

Associate Warden Jeff Lawson says that as more and more lifers are granted parole and leave prison, the inmates here are taking notice.

Most of these guys understand there is a light at the end of the tunnel now, so it just helps improve the overall environment for them, Lawson says. And it gets the ones who were maybe straddling the fence to actually get off the fence and get on the right side.

Even they realize that men change given hope.

P.O. Box 11374
Washington, DC 20008

info@solitarywatch.org

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