

# Solitary Watch

## Criminal Justice Issues and Prisoners' Rights

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by [Joshua Manson and Jean Casella](#) | March 20, 2017

Late in the night of Tuesday, March 7, Supreme Court Justice Stephen Breyer issued one of the Supreme Courts starkest opinions yet that solitary confinement may violate the Eighth Amendments prohibition against cruel and unusual punishment. Depending upon the future makeup of the Supreme Court and the cases it accepts for review, it also presents the possibility that the Court could find all or some uses of solitary confinement unconstitutional.

[Breyers comments](#) were made in dissent from the Courts refusal to issue a stay of execution for Rolando Ruiz, convicted in 1995 of carrying out a murder for hire in Texas. In *Ruiz v. Texas*, the plaintiffs attorneys had argued that his execution should be delayed because of a number of technical flaws in earlier court proceedings and because he was subject to lengthy incarceration in traumatic conditions that they argued constituted cruel and unusual punishment. These conditions included permanent solitary confinement lasting twenty years. After a delay of several hours while the court considered and turned down his appeal, Ruiz was put to death at the Texas State Penitentiary at Huntsville at 11 pm on March 7.

In his comments, Breyer cites a 127-year old case in which the Supreme Court recognized the many harms of solitary confinement. In [In Re Medley](#) (1890), the Court performed a historical analysis of the use of solitary, which had been pioneered by American prisons a century earlier. The Court found that overall, experience demonstrated that there were serious objections to solitary confinement, and described those objections as follows:

A considerable number of the prisoners 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.

Based on these conclusions, according to the *In Re Medley* decision, the nascent penitentiary system of the United States was modified because its main feature of solitary confinement was found to be too severe. In fact, it would be nearly a century before solitary was [once again used](#) on a mass scale in American prisons.

Following his discussion of the 1890 court case, Breyer cites an opinion written by another sitting Justice less than two years ago. In *Davis v. Ayala*, which was also ultimately about capital punishment, Justice Kennedy issued a landmark concurrence in which he departed from the precise legal questions presented by this case and urged the Court to consider the question of whether solitary confinement may constitute impermissible cruel and unusual punishment. Justice Kennedy, in his [concurrence](#), also cited *In re Medley*, in addition to writings ranging from a Charles Dickens novel to a British textbook on prisons to a *New Yorker* article on the story of Kalief Browders abuse and solitary confinement on Rikers Island.

Breyer, in noting that Ruiz's solitary confinement inflicted suffering with a particular intensity because it preceded his own execution, invoked Kennedys own words from two years earlier to remind the Court that this case presented an opportunity to hear the challenge that Kennedy called for. Breyer quoted Kennedy as recognizing that a human toll is wrought by extended terms of isolation, and that [y]ears on end of near-total isolation exact a terrible price. Kennedy had stated that the Court should examine whether solitary violates the Eighth Amendment whenever a relevant case presented itself. Breyer lamented the fact that the majority of the Court including Kennedy himself had not chosen to use the *Ruiz* case to conduct that constitutional scrutiny.

Breyer acknowledged the growing body of scientific evidence of the damage caused by prolonged prison isolation, noting that Mr. Ruiz has developed symptoms long associated with solitary confinement, namely severe anxiety and depression, suicidal thoughts, hallucinations, disorientation, memory loss, and sleep difficulty.

If extended solitary confinement alone raises serious constitutional questions, Breyer concluded, then 20 years of solitary confinement, all the while under threat of execution, must raise similar questions, and to a rare degree, and with particular intensity.

Will the Supreme Court eventually have the opportunity to fully consider the constitutionality of solitary confinement, as Justices Breyer and Kennedy apparently desire? With tens of thousands of Americans still subject to the practice, and increasing numbers of challenges

to solitary being made in the federal courts, it is bound to happen eventually.

What might happen in such a case remains to be seen. Even assuming the confirmation of Neil Gorsuch, Kennedy would presumably remain the swing vote in such a case, until such time as another Justice leaves the Court. And Kennedy has not only [denounced solitary confinement](#), but in a [separate case](#) affirmed that prisoners retain the essence of human dignity inherent in all persons.

In addition, [Supreme Court precedent](#) on interpretation of the Eighth Amendment states that the definition of what constitutes cruel and unusual punishment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society. [Legal opinion](#), as well as public and professional opinion on solitary confinement are certainly evolving. Yet overall, the federal courts remain extremely deferential to prison officials in determining what is necessary to preserve the safety and security of their facilities.

As a matter of interest, Judge Gorsuch, by his own account, *should* have directly encountered the issue of solitary confinement in his distant past but there is no evidence that he actually did. In announcing his nomination of Gorsuch, Donald Trump [stated](#): While in law school, he demonstrated a commitment to helping the less fortunate. He worked in both Harvard Prison Legal Assistance Projects and Harvard Defenders Program. Among other things, students involved in the Harvard Prison Legal Assistance Project sometimes represent incarcerated individuals facing disciplinary hearings on charges that often land them in solitary.

According to an article in the [Wall Street Journal](#), however, of roughly three dozen students who participated in the two programs while Mr. Gorsuch was at Harvard Law School from 1988 to 1991, only one had a vague memory of him briefly being involved with the Harvard Defenders. No one who worked with Harvard Prison Legal Assistance Project at the time remembered him ever doing anything at all.

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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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To those who have never been in an isolated situation you have no idea what the everlasting effects are. Unlike traveler too who refers to inmates as goofballs, has no concept of reality. SOME of those housed under such conditions are eventually found to be actually innocent. Its in the hundreds!!! A cell alone would prevent violence for those who did commit a crime but lack of environmental stimuli such as talk to other human touch of other humans or ANY interaction with others is inhumane and can and does have a profound effect.

My brother has been housed on death row in Arizona for 22 YEARS. yes I said YEARS of isolation. You say well, he deserved it. How could you know what anyone deserves? As the court system, like humans, have flaws. Being innocent does not always guarantee a fair trial. after all humans are running the show. Attorneys make mistakes Judges make mistakes. but when it comes to life or death, only God should decide.

I met with a man during my long journey in the death penalty world, he too was placed in isolation for a crime. He too claimed to be innocent. It fell on deaf ears for decades. Until one day when the truth came out and after the years of paying for a crime he did not commit he was released.

This one man went on to start an organization for others in the same situation. With the help of a few Attorneys with the same view point, Rubin Hurricane Carter started the Defense of the Wrongfully Accused. Berry Scheck was the instrument to the next step which has freed HUNDREDS of innocent men and women based on DNA.

So when these men and women are released with no human interaction how would you expect them to act?? Would you advise them to purchase a new television to keep them busy and out of the world which they were wrongfully taken from?? What about one of these gentlemen sitting next to you on a bus how would they act after so much mental damage? You ASSUME all that go into the system stay there NEWS: THEY DONT!!! They are your neighbors, your friends brother or sister and God forbid maybe one of your own loved ones.

The motto here is, treat others as you would be treated as no one can predict the future and you may just find yourself in such a situation. We know, but I'm innocent! YOU would say, but then again you would be able to have someone purchase a television as you sit in your cell and count the number of holes in the block walls and wait for the wheels of justice to turn.

It's a long, slow process. If you care to read about my brother and his case, here is the information. Although it is apparent, you feel you do not need any information to have an opinion, especially such an uninformed opinion.

Visit <http://jamesharrod.net> The Truth Yet Told

June Harrod  
President  
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A lot of those goofballs in prison should be put in solitary confinement. They are a danger to the other prisoners and themselves. If they have a television set, they won't get bored.

Solitary confinement, and the accompanying social isolation often employed by prisons, causes extremely damaging effects that I believe would absolutely constitute cruel and unusual punishment. At the same time, if someone is an active danger, it is not realistic for correctional officers to let that person continue occupying the common space while they continue their dangerous behaviors. This creates a tension between what is humane and what is realistic.

Isolation depriving people of human contact is not necessary even if a person needs to temporarily be in their own room. The amount of human contact that is needed to prevent the adverse effects of this practice is something that could be determined empirically. There is no reason that people cannot receive ample, warm human contact even if they need to be in their own room. The staffing demands of this are high. This might also increase motivation of correctional facilities to move people out of their own rooms if they don't actually need to be there.

How long people need to be in their own room is an equally important question. If someone is causing a great deal of trouble at one point, can prisons reasonably say that they are still known to be a danger three years later? Or five? Or ten? In reality, isolation itself is likely to make people worse, so they may well still be a danger, but the timeframes allotted for some of this solitary confinement is ridiculous.

The concerns raised about institutional security—that is, prisons that feel that they cannot manage people in their facilities without solitary confinement—also suggest a need for more training for staff in the prisons. Many people currently in prison are going to be out in the communities following their sentences. If prison staff feel unable to manage their issues and behaviors in a highly controlled setting, how do they expect them to do in the community? If prison staff are not able to handle managing a certain level of risk and responding to situations in measured ways that combine effective use of force along with de-escalation and attempts to create humane and therapeutic communities, then they need to work harder on developing those skills. They can learn from other prison settings that have engaged in these efforts in the past.

Isolation (that is, deprivation of human contact) should be regarded as cruel and unusual punishment. There is no security risk involved in having staff provide warm, ample human contact to anyone who needs to temporarily be in their own room. Setting limits on the length of time people can be in their own room that align with UN recommendations would be another reasonable step.

There are obviously always going to be exceptions to the rule and this is what makes this work tricky. The fact is that there may be some people who are truly extremely heinous, devious and committed to harming anyone in any way they can. They may be imprisoned for life, and may need a much higher level of security. These situations should not prevent reasonable restrictions on the practice of solitary confinement. There may be exceptions to humane norms (that is, a few people who may need a higher level of security and to be in their own room for larger portions of time while still receiving ample, caring human contact from staff with re-evaluation of their risk as time passes). These situations should be shared and evaluated in a transparent and open way with the public and outside groups with an opportunity for input from legislators, etc.

But everyone should receive human contact. Isolation (deprivation of nearly all human contact) is not necessary for security and it is also incredibly inhumane.

Thank You Zoe! Very well said..????

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