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Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2010/07/08/u-s-supermax-prisons-challenged-in-the-european-court-of-human-rights-and-fail-the-first-round/>

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by [Jean Casella and James Ridgeway](#) | July 8, 2010

For years, four British nationals have been fighting against their extradition to the United States to face various terrorism charges, arguing that such a move would place them at risk of human right violations, as defined by the 1950 European Convention on Human Rights. When courts in the UK ruled against the four men, they took their cause to the European Court of Human Rights in Strasbourg.

Among other things, the British suspects have argued that if extradited, they could face a lifetime of solitary confinement under special administrative measures (SAMs), most likely at ADX Florence, the notorious federal supermax prison in Colorado. Such confinement, they contend, would violate Article 3 of the European Convention on Human Rights, which states: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The UK sought to have the suspects' complaint dismissed. But today, the European Court of Human Rights declared admissible the portions of the complaint dealing with supermax conditions, as well as with life sentences without the possibility of parole.

A [press release](#) issued earlier today by the Registrar of the European Court summarized the case (*Babar Ahmad and Others v. the United Kingdom*) this way:

The applicants alleged in particular that, despite the diplomatic assurances provided by the United States, they were at risk, if extradited, of being subjected to an unfair trial due to the use of evidence obtained through torture and/or of coercive plea bargaining at the conclusion of which they could be designated as enemy combatants. They also alleged that, once extradited, they were at risk of extraordinary rendition and life imprisonment without parole and/or extremely long sentences in a supermax prison such as ADX Florence where special administrative measures would be applied to them. They relied on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private and family life) and 14 (prohibition of discrimination).

Based on promises made by the United States, the Court ruled that if extradited, the British suspects would not be at risk of extraordinary rendition, of being tried as enemy combatants, or of unfair trials or discrimination. It had also received assurances that the suspects would not face the death penalty. When it came to confinement for life in Florence ADX, however, the Court found a credible case could be made that such punishment would violate the European Convention. The Court requested further briefing on [a number of questions](#), including the following, before it issues its final ruling:

The four British terrorism suspects are represented by the firm of renowned British human rights lawyer Gareth Peirce (who wrote about the case [here](#)). The information presented to the European Court on Human Rights on their behalf reads like a rundown of evidence for the torturous nature of solitary confinement in general, and lockdown at ADX Florence in particular. Following are the relevant paragraphs from the Court's decision.

90. The applicants relied on a series of newspaper articles on ADX Florence, including a *Time* magazine article of 5 November 2006 described spartan cells and almost no contact between prisoners and other people, since food, mail and laundry were passed through a slot in the cell door. Prisoners were strip-searched before they were allowed to exercise. There were also staff shortages which caused irregular meal times, reduced telephone calls and exercise time. A television interview with a former warden also described frequent force-feeding as a result of hunger strikes by prisoners in protest at their conditions.

91. The applicants also provided a report by a psychiatrist, Dr Terry Kupers, which had been prepared specifically for the present proceedings. He considered that a supermax prison regime did not amount to sensory deprivation but there was an almost total lack of meaningful human communication. This tended to induce a range of psychological symptoms ranging from panic to psychosis and emotional breakdown. All studies into the effects of supermax detention had found such symptoms after sixty days detention. Once such symptoms presented, it was not sufficient to return someone to normal prison conditions in order to remedy them. If supermax detention were imposed for an indeterminate period it also led to chronic despair. Approximately half of suicides in prison involved the 6-8% of prisoners held in such conditions. The effects of supermax conditions were worse for someone with pre-existing mental health problems.

Dr Kupers conclusions were supported by a number of journal articles by psychologists and criminologists, which the applicants provided.

92. The applicants also provided a copy of the Istanbul statement on the use and effects of solitary confinement, which was adopted at the International Psychological Trauma Symposium in December 2007. Its participants included the United Nations Special Rapporteur on Torture. The statement included the following on the effects of solitary confinement:

it has been convincingly documented on numerous occasions that solitary confinement may cause serious psychological and sometimes physiological ill effects. Research suggests that between one-third and as many as 90 per cent of prisoners experience adverse symptoms in solitary confinement. A long list of symptoms ranging from insomnia and confusion to hallucinations and psychosis has been documented. Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions.

Individuals may react to solitary confinement differently. Still, a significant number of individuals will experience serious health problems regardless of the specific conditions, regardless of time and place, and regardless of pre-existing personal factors. The central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimuli that many will experience as insufficient to sustain health and well-being.

The use of solitary confinement in remand prisons carries with it another harmful dimension since the detrimental effects will often create a de facto situation of psychological pressure which can influence the pretrial detainees to plead guilty. When the element of psychological pressure is used on purpose as part of isolation regimes such practices become coercive and can amount to torture.

93. The applicants also submitted a report from the Civil Rights Clinic at the University of Denver, which had acted for a number of prisoners at ADX Florence. The report noted that conditions were even more severe for those prisoners who were subjected to special administrative measures. For example, such prisoners could only communicate with his attorney of record. This made it impossible to contact an attorney to request representation to challenge special administrative measures. Requests made directly to the court to have an attorney appointed were denied. There had been no successful challenges to designation to ADX Florence and challenges could only succeed where confinement in supermax affected the prisoners date of release or where he was severely mentally ill. The report accepted that the step-down programme could take a minimum of three years but prisoners could be removed from it and returned to general population if they were found guilty of misconduct or for administrative reasons. The report highlighted the cases of several Muslim prisoners who had fulfilled all of the criteria for admission to the step-down programme except for the requirement that the original reasons for placement at ADX Florence be sufficiently mitigated. However, several prisoners had only been transferred from lower security prisons to ADX Florence after 11 September 2001 (despite no evidence of their involvement in the attacks) and thus it was difficult for them to demonstrate that the reason for their placement had been mitigated. Two Muslim clients of the Civil Rights Center had spent respectively five and ten years in general population units but had not been admitted to the step-down programme. Another had spent five years in a general population unit and had only been admitted after retaining the Center in a lawsuit.

94. Both the applicants and Government made reference to a letter dated 2 May 2007 from Human Rights Watch to the Director of the Federal Bureau of Prisons which followed a tour the organisation had been given of ADX Florence. The letter expressed concerns that a number of prisoners convicted of terrorism offences had been sent to the prison based on the nature of their crimes and, despite good conduct since their arrival, had remained in general population units and thus outside the step-down programme for up to nine years. The letter made suggestions for improvement in respect of recreation, mail, telephone use, the library. It also noted that progress was to be made on better meeting prisoners religious needs, such as the provision of a full-time imam and commended the educational programmes available through the prisons television system. The letter urged the prison authorities to investigate reports of retaliation against prisoners who were on hunger strike in the form of transfer to harsher cells. The letter also said that Human Rights Watch was extremely concerned about the effects of long-term isolation and highly limited exercise on the mental health of prisoners and criticised reports of rushed consultations between prisoners and psychologists, as well as the fact that evaluations were carried out via closed circuit television.

95. The applicants obtained a second letter from Human Rights Watch, dated 21 August 2008, which stated that Human Rights Watch considered conditions at ADX violated the United States treaty obligations under the International Covenant on Civil and Political Rights and the United Nations Convention Against Torture. It was unremarkable that minor adjustments had been made to the regime but it remained in essence one of long-term and indefinite incarceration in conditions of extreme social isolation and sensory deprivation.

96. Human Rights Watch's second letter also provided extracts from two United Nations reports from 2006 on supermax detention. In the first, the United Nations Human Rights Committee stated:

The Committee reiterates its concern that conditions in some maximum security prisons are incompatible with the obligation contained in article 10 (1) of the Covenant to treat detainees with humanity and respect for the inherent dignity of the human person. It is particularly concerned by the practice in some such institutions to hold detainees in prolonged cellular confinement, and to allow them out-of-cell recreation for only five hours per week, in general conditions of strict regimentation in a depersonalized environment. It is also concerned that such treatment cannot be reconciled with the requirement in article 10 (3) that the penitentiary system shall comprise treatment the essential aim of which shall be the reformation and social rehabilitation of prisoners. It also expresses concern about the reported high numbers of severely mentally ill persons in these prisons, as well as in regular in [sic] U.S. jails.

The State party should scrutinize conditions of detention in prisons, in particular in maximum security prisons, with a view to guaranteeing that persons deprived of their liberty be treated in accordance with the requirements of article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

97. The second report was from the United Nations Committee Against Torture, which stated:

The Committee remains concerned about the extremely harsh regime imposed on detainees in supermaximum prisons. The Committee is concerned about the prolonged isolation periods detainees are subjected to, the effects such treatment has on their

mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment (art. 16). The State party should review the regime imposed on detainees in supermaximum prisons, in particular the practice of prolonged isolation.

For more on ADX Florence, see *60 Minutes*, [Supermax: A Clean Version of Hell](#) and the [ADX page](#) at Supermaxed.com.

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

Solitary Watch encourages comments and welcomes a range of ideas, opinions, debates, and respectful disagreement. We do not allow name-calling, bullying, cursing, or personal attacks of any kind. Any embedded links should be to information relevant to the conversation. Comments that violate these guidelines will be removed, and repeat offenders will be blocked. Thank you for your cooperation.

are usa federal and state prisons or the private prisons subject to ANY outside oversight?

i think that any prison that holds citizens of other countries should be subject to unannounced and unhampered site inspections from an international agency.

also, maybe trials of non-citizens should be tried in an international court or have some representation from their own country. i would guess that courts are not really that independent of politics.

This is old as crap I know, but no one ever answered you.

Both are technically subject to a lot of oversight, the problem is just about everything in the U.S. runs according to public opinion. Prisoners receive little to no consideration and large amounts of antipathy from the public at large so theres little pressure on prisons to reforms. Many, many state prisons are run by private companies which creates some REALLY perverse incentives and the prison guards unions are very influential in states that have them and not only thwart any attempts to get more teeth to oversight bodies but get more people locked up.

They tried to close an AdMax prison in Illinois, far south from Chicago because it was a burning money pit (again, no one really cares about the prisoners) and had a hell of a fight from the guards unions.

Courts in the U.S. are overall insulated relatively well from politics, but of course nothing is completely independent of politics. Theyre either appointed, at the federal level, or elected in some states (terrible idea). Wed never let international agencies or organizations have a say in anything we do. The U.S. takes its sovereignty with the utmost importance. And to be honest, I dont consider them much better. They have different politics, about half the Americans who know what they are would say anti-American politics, but are still very political. Besides, Id consider that an issue between the citizens home country and their custodial country.

My two counter points are, the U.S. prison system is VIOLENT. Very violent. The public is able to see a purpose behind them because of the level of violence many are responsible for in prisons without such measures. I think the bigger issue arises when prisoners are sent to such places without adequate reason, never mind whether a better solutions couldnt be found.

These prisons exist as a punishment worse than death for inmates that escaped the death penalty but killed a guard, cops or terrorists. Honestly, the Bureau of Prisons knows its torture, thats how they designed it.

Last, my second counter point. From studying comparative legal systems and politics I find the U.S. to have much better safeguards and rights for the accused than most Western countries. Like anything, we can cherry pick failures and point to excesses, but the U.S. has the highest burden of evidence for the state of any country. U.S. courts routinely tosses solid evidence and convictions because of technicalities based on rights and procedure designed to protect the accused. Id do the same thing if I were these suspects, but if I had to be accused of a crime and go to court anywhere itd be in the U.S. for sure.

I guess you have enough money to mount a proper defense because an inadequate defense leaves a defendant at the mercy of what the U.S. Supreme Court has called the machinery of law enforcement. In acknowledgment of this vulnerability the 1963 Supreme Court's ruling on *Gideon v. Wainwright* established the constitutional right of criminal defendants to an attorney, even if they had no money to pay for one.

When *Gideon v. Wainwright* was decided, fewer than half of all defendants were poor currently over 80 percent are. In the 1969, there were less than 200,000 people in prisons.

Today, we have 2.3 million people in jails and prisons so our need for lawyers is much greater. But this increased need is not being met so we find that over 90% of all cases in this country are being resolved by a plea deal.

Twenty years after *Gideon*, *Strickland v. Washington* created minimal standards for a lawyer's conduct; we've discovered over time that they had been set too low. Even the U.S. Department of Justice has found that the right-to-counsel services in America exist in a state of crisis and are unworthy of a legal system that stands as an example to the world.

We all know the result; the gates of the abyss opened wider and the prison population grew ever faster with many suffering the dual consequences of longer sentencing and harsher prison conditions.

Unable to pay for proper legal representation the jail house lawyers were their only hope of salvation. Appeals written by such inmates increased along with the incarcerated population with many an inmate filing frivolous shots in the dark appeals.

So in 1996 the Anti-Terrorism and Effective Death Penalty Act was passed. This act required that prisoners who wish to appeal their convictions under state courts must petition the federal courts within one year. In addition, inmates must make all their claims for relief at one time. Impoverished, and under-educated, rank-and-file prisoners operating from behind bars, were henceforth required to file their appeals quickly and correctly.

All of these conditions have deepened the distrust of the American justice system, and this attitude is made worst by the racial imbalance in prisons and with each humiliation and abuse that prisoners endure.

Rage against the system that had begun during the 1960s, was by 1970 frequently leading to confrontations with the men running these prisons. With so many losing hope of ever reentering civil society, the number of violent incidents increased dramatically in the 1970s, leading to ever more draconian measures being deployed against inmates.

In response to this rise of institutional violence, the Control Unit was created at the United States Penitentiary in Marion, Illinois in 1973. Marion was designed as the place where prisons across the nation could send their most radicalized inmates and violent gang members. As Marion's Control Unit received more and more, of the worst of the worst, Marion's security deteriorated to the point where violence became the new norm. Marion's warden may have indeed been seeking an excuse to lock down the whole population at the institution when in October 1983 Thomas Edward Silverstein and Clayton Fountain supplied him with a politically correct excuse to do so. The Supermax Prison model was thus born.

As Oscar Wilde wrote in *Duchess of Padua* (Act 4),

We are each our own devil, and make this world our hell.

And today if such prisoners wish to challenge these harsh measures, another law waits to thwart all their efforts:

The Prison Litigation Reform Act (PLRA) was also passed in 1996. The PLRA imposes strict filing procedures which require hard-to-come-by documentation, combined with inflexible time restraints all of which are technically incomprehensible to almost all inmates. The result is even constitutionally meritorious cases are often thrown out of court.

All of this is exponentially more difficult for juveniles in adult prisons to manage. But sadly they, too, must navigate this maze of bureaucratic red tape, even as they struggle just to survive another day in prison.

Governor Hugh Carey of New York was the first to lobby his state's legislature to pass the state's Juvenile Offender Act of 1978, which allowed juveniles to be charged and punished as adults. The law is now known as the Willie Bosket law. After its passage a few other states quickly followed suit but by the end of the 1990s, the rest of the 50 states, having been encouraged by financial incentives in President Clinton's Juvenile Crime Control Act, had all passed their own laws allowing or requiring select juveniles between the ages of 10 and 17 to be charged and punished as adults. An estimated 250,000 youth are now tried, sentenced, or incarcerated as adults every year across the United States most for non-violent offenses.

Is it right that persons who have legitimate claims should be denied legal recourse because others have filed frivolous cases? When they choose to seek justice, should they have to navigate a system obviously geared to make it next to impossible to have their grievance heard? A bedrock

principle of international human rights law is the equality of all persons before the law. But in reviewing this act,

Human Rights Watch has said that it is not aware of any other country in which national legislation singles out prisoners for a unique set of barriers to vindicating their legal rights in court.

This is all the more alarming because the monitoring of conditions in prisons, jails, and juvenile facilities, in the U.S. is primarily left up to the federal courts.

The result of the PLRA is that fewer law suits have been filed by prisoners, and of those filed, fewer are being won. Many acts that would be treated as serious crimes if perpetrated upon those of us in the free world can legally be perpetrated upon prisoners under the tenets of this act.

This includes any act that is deemed to produce only mental or emotional injury. Thus, the internationally recognized harm that is done to inmates in

SOLITARY CONFINEMENT is sanctioned and ignored, as is the emotional distress caused by the rape of inmates, whether by other prisoners or by guards.

Whether or not an inmate actively fights the system, after he has been classified as a member of a security threat group all his actions are viewed through this prism. From that moment on any resistance that he may exhibit is documented while all cases of compliance even in the face of an injustice are given no mention. With no avenue in the SHU to prove otherwise, this classification becomes his new reality. As Jorge Luis Borges once wrote,

A man gradually identifies with the form of his fate; a man is, in the long run, his own circumstances.

We didnt get here overnight over two centuries ago the American doctrine of civil death helped pave the way for the present day advocates of capital punishment, minimum mandatory sentencing, three strikes laws, and the less-than-fully-human status of prisoners all of which contributed to the current crisis.

Holy crap, did you just copy an paste a different article from somewhere and add a random conclusion?

Or even read anything I wrote?

What are you even responding to? I got the first sentence was a response to a very shallow reading of one of my paragraphs but other than that it took me two days to muster the effort to read through the wholly unnecessary history lesson on points that either no one contested, didnt already know or werent relevant to the few points talked about.

To recap, is the U.S. legal system perfect? No. Is it even very great? No. Do I prefer it than trusting a judge to investigate, advocate AND decide my fate as is the case in an inquisitorial system? Absolutely. While that causes some distortions, Id much prefer a separation of powers than have one person working for the state be judge, jury and (in an allegorical sense) executioner.

Also, no one on here is defending solitary punishment. The history is nice, but imminently available through a brief internet search. You happen to respond to the one person on the internet willing to read through that much unresponsive text, I wanted to avoid that.

It'd be easier to change or address if there was any remote public concern for prisoners. A chronology of bills, legal cases and failures readily available to anyone interested doesnt really explain why it was allowed to happen or continue. Public opinion does. So thats what I tried to explain.

Please do not take my comment as a personal attack it is not!

Yes I read your comment thoroughly and I singled out the only part that I felt needed a bit of clarification. I am in total agreement with your other points. In my comment on the latest article above;

Kafka and the Debate Over Solitary Confinement,

I also acknowledge the publics lack of concern.

My comment was directed to all those that are not going to bother to take the time to research this material. The essay is my own compilation in an effort for me to understand how we got to this point. You said it took you awhile just to read my post how many will take the time to do the research?

BTW my comment is comprised of excerpts from many hours of my research on the subject. I share it whenever the opportunity arises to aid those too busy to do the same.

No one said you were in support of solitary confinement.

You wrote that you studied comparative legal systems but how many of our citizens have taken the time to learn about their own?

I admit I was unaware of much of what I wrote until a few years ago.

BTW I didnt address the bail system yet but here is an article on the need for bail reform in NY.

<http://www.nyclu.org/content/testimony-regarding-examination-of-new-yorks-bail-system-and-need-reform>

So Ill need to add this topic too.

As for history one needs to know it (you may already have) to understand the present.

History does not repeat itself, but it does rhyme. Mark Twain

The bail problem has long been known and as you have noted a quick google search brings many papers like the following.

The Bail Reform Act of 1966: Need for Reform in 1969 by Warren L. Miller

Thank you for taking the time to read my essay I tried to condense it down to the bare bones.

As Saul Bellow wrote:

No one will be heard in the future that does not speak in short bursts of truth.

Ive found that its not easy however!

In closing Id like to quote Thomas Paine 1791, The Rights of Man:

I do not believe that any two men, on what are called doctrinal points, think alike who think at all. It is only those who have not thought that appear to agree.

Check out <http://www.seangarland.org>

Worldwide support is needed to stop his extradition to the USA.

Regards.

Its about time and its long overdue!. I have long known that standards for human rights in Europe are much higher than here in the US. This especially includes criminal justice and conditions of confinement. I have also known that persons facing extradition from European countries to counties where they might be subject to torture and/or degrading conditions of confinement is a routine question. I have often wondered when these questions would be applied to an extradition back to the US where the suspect would face conditions of confinement that where below European standards.

I also have known that prison inmate advocates could find allies in Europe and the European Union beyond the usual European protests of use of the death penalty, which European nations are forbidden from extradition if there is a prospect of usage. American prison inmate advocates need to learn to look for advocates and think beyond American shores!

Before everyone gets upset and says why are we focusing on foreigners lets remember how international pressures have brought about meaningful and needed changes here at home.

A case in point is the integration of the armed forces which only came after advent of WW II. Post war America found that its desired image abroad as the defender of democracy was at odds with the reality of its segregated armed forces. Therefore to promote our system of government abroad and to counter the rising communist influence in nations of color, Truman set out to integrate our nations military. Truman realized that this nations military personnel are Americas representatives abroad. Therefore what better place to begin the process of integration than in this disciplined population under direct government control?

We are now in another ideological war and this type of criticism may well usher in the necessary changes for our own citizens locked up in these hellholes.

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