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Criminal Justice Issues and Prisoners' Rights

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by [James Ridgeway](#) | March 27, 2014

At a time when New York State is [winning praise](#) for removing vulnerable people from solitary confinement in its prisons, the case of Mark Gizewski offers a sobering counterpoint.

Although he suffers from extreme physical disabilities and lives with constant pain, Gizewski has been in and out of solitary confinement for various prison rule violations. Now, he is suing the state in federal court, asserting that he has suffered medical neglect and physical abuse while held in New York's prison system.

Gizewski's disabilities result from him being what is colloquially called a [Thalidomide baby](#). In 1960, while pregnant, Gizewski's mother took the drug Thalidomide, which at the time was widely prescribed throughout the world for morning sickness. As a consequence of Thalidomide use, at least 12,000 children were born with birth defects, most of them in Europe. (In the United States, the number reached only to dozens, because one conscientious scientist at the FDA, Frances Kelsey, refused to approve the drug without further research.)

Like most Thalidomide victims, Mark Gizewski has severely deformed limbs. He was born with one leg much shorter than the other. His arms are also two different lengths, with club hands: the right with four fingers, the left with three. He has a hip deformity and has had one shoulder replaced. He also has dwarfism, scoliosis of the spine, and an anal deformity. Like many Thalidomide babies, he was institutionalized in his early years, and hospitalized afterwards for a series of surgeries, including amputation of his right leg at the age of nine.

Now 54 years old, Gizewski was most recently convicted of third-degree attempted criminal possession of a weapon, which carried a relatively short sentence. But the conviction also triggered parole violations on earlier sentences for robbery and drug use, for which he had received six years to life unless paroled, he could remain in prison indefinitely. Gizewski was denied parole in 2010, and again earlier this year.

As a victim of Thalidomide, Gizewski receives monetary support from the Thalidomide Trust in the UK, and has used these funds to pay attorneys and launch a civil suit against the New York Department of Corrections and Community Supervision (DOCCS) and the warden, a physician, and a corrections officer at Five Points Correctional Facility, where he was sent in 2012. The suit claims violations of the Eighth Amendment, which prohibits cruel and unusual punishment, and the Americans with Disabilities Act, which bans discrimination against disabled persons.

According to the complaint filed in February 2014 in U.S. District Court in upstate New York, Gizewski's disabilities are severe, debilitating, and degenerative in nature. The complaint alleges that Gizewski was repeatedly denied painkillers that he had received at other prisons to control the pain in his back and limbs, and instead given Tylenol.

Gizewski has claimed that the foot on his prosthetic leg was broken, and that it was too large to maneuver in his cell. He asked that it be repaired; the request was ignored. He was given a wheelchair, but denied a request for a lightweight wheelchair that would accommodate his upper-body disabilities. He could not get out into the prison yard because the prison was not equipped with a wheelchair ramp. Gizewski says he asked for some means of access, but it was never provided.

When Gizewski asked for medicine for a persistent earache, he contends, his guards ignored his request. Finally they gave him some ear drops, but because of his clubbed hands, Gizewski could not get the drops into his ear. He says the prison administration refused to give him the brush he needs in order to be able to clean himself after using the toilet, and another to clean his body in the shower. Ultimately, they gave him a brush that he was supposed to use for both purposes. He also requested, but was never given, a grabber tool that he needed to reach things in his cell.

Cheryl Kates-Benman, one of Mark Gizewski's attorneys, told Solitary Watch that her client began receiving a series of disciplinary tickets in retaliation once he began complaining about the lack of accommodation, and was placed in solitary confinement in the Special Housing Unit (SHU). The prison claimed that Gizewski assaulted a nurse who was giving out medication, but Kates-Benman says she obtained video footage which showed that at the specified time of the assault, the nurse was in the company of a corrections officer,

calmly walking along doling out pills. There was no sign of any assault. On another occasion Gizewski was accused of using drugs while in the SHU something that is virtually impossible without the connivance of corrections staff. Kates-Benman suspects a set up.

On January 4, according to the federal complaint, The Corrections Officer at Five Points injured Plaintiff by pushing him out of the wheelchair. As a result, Plaintiff's elbow was shattered in five (5) different places. The Corrections Officer, with extreme force, proceeded to kick Plaintiff in the abdomen, as a result of which, Mr. Gizewski temporarily lost consciousness and suffered from urinary incontinence. The Corrections Officer later threatened Mr. Gizewski with future bodily harm if he told anyone about what transpired.

After this incident, Gizewski was transferred from Five Points to Walsh Medical Center, located at nearby Mohawk Correctional Facility, where he is in a secure infirmary cell in effect, in medical solitary.

The corrections officer accused of injuring Gizewski has not been disciplined, and the state has not yet filed an answer to the complaint. Solitary Watch's request for comment to the New York State Department of Corrections and Community Supervision had received no response at the time of this publication.

James Ridgeway (1936-2021) was 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.

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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For all those self-righteous, angels without dirt on them. Shut up! People like you are the reason why all the abuse goes on. Chances are if we dug into everyone of your pasts we would find skeletons. Hmmm, interesting to know people think it is ok to abuse and torture people if you make mistakes and GET CAUGHT! People who think they are so good and perfect are usually the worst human beings. Some of these ignorant posts just prove it. If you want people who do criminal acts or are convicted of them to be better human beings then you first have to have their keepers not be sadistic power hungry thugs. There are some good decent ones but many more have lost their humanity. Hope any of you never find yourself at the wrong place at the wrong time, might end you up in our lovely prison system. Don't think it can't happen.

What happened to Mark Gizewski SHOULD NEVER EVER BE ALLOWED TO HAPPEN TO ANOTHER PRISONER!

Maybe Mr Gizewski felt that he had to resort to whatever he did that landed him in prison. I am not excusing any bad behavior on Mr. Gizewski's part, however, I will not be excusing any bad behavior coming from any prison staff members being perpetrated upon the imprisoned.

Are we a civilized society or are we just nothing more than a bunch of modern-day barbarians?

I have a loved one who is on the autism spectrum/aspergers and I can sympathize with Mr. Gizewski's experience. My loved one was put in an Upstate prison too and had issues from extortion, inmate abuse, medication issues, solitary confinement issues and before incarceration, he was denied reasonable accommodations and discriminated. He is out and back home but I hope and pray to seek justice and help advocate for others with disabilities in unfortunate situations. Thank you.

Greetings

This is a sad unfortunate situation. I feel sorry and compassion for Mr. Gizewski for his severe handicaps. No doubt he was victimized by his mother and definitely given a difficult life to live. However, I sense in Mr. Gizewski's statement complete anger and frustration, not only for the conditions and treatment but for the issues he personally has to contend with. This man is crying out for help louder than most people. His facility is specific for handicap prisoners. His handicaps are severe and extreme and most people in his condition don't put themselves in prison. Did he need a grabber for the gun he was caught with or the drugs. I suggest he behave himself as best he can and get out and never commit another crime. He already had a taste of prison but it just wasn't bad enough so he was released and committed another crime. Now the experience is worse and he is complaining. If he is in a dire situation his lawyer can obtain injunctions which would remedy his situation immediately. If his attorney is not pursuing these options, the dire conditions do not exist or he needs a new attorney. Mr. Gizewski I suggest you keep yourself out of institutions so you can live a more comfortable life.

Also despite individual issues this doesn't mean there aren't kind law-abiding people who work for corrections. There are. One bad apple can make many people look bad. Despite what people feel or don't feel about inmates. There are basic standards which must be followed despite what they are convicted of.

Rick, we have repeatedly sought permission to visit shut-ins in New York state prisons and been rejected by the department of corrections.

I have read some of the comments here. Please know NYS just settled a lawsuit brought against them by the ACLU for statewide conditions in solitary confinement. Their report boxed in can be viewed online at their website. One of the agreements in that settlement was to release certain classes of people from SHU.

Puuuhhhleeeeeez!!! I work at Five Points. It's 100% handicap accessible, and about 98% covered by camera and audio. Solitary confinement?! It doesn't actually exist at Five Points except for the most violent inmates. An inmate admitted to SHU at Five Points has a cell-mate. The truth of the matter is that most inmates spend more time out of their cells, during any given day, than they do in them. They receive better health care benefits than most law-abiding citizens. I had it harder struggling to put myself through college than the convicts do living at Five Points. That's a fact. While I think her heart is probably in the right place, I wish people like Helene Kendler would educate themselves before forming and spouting their opinions. Come take a tour of the jail. See how these guys actually live, and how they're treated. It's not what you see on TV. I guarantee that you won't feel sorry for them when you leave. You might actually be disgusted to learn how easy the life of a convicted murderer, rapist, or child molester is inside prison. I know you'll feel stupid for believing that SHU is torture after walking through 12 Block at Five Points.

Helene, my point is that there are three sides to every story; his, theirs and the truth. I just get upset with all the POOR INMATE stories. I'm not saying lock him up and throw away the key. He is there to pay his debt to society whether he is handicapped or not. If their medical department, I'm sure it's a Doctor, says he doesn't need the medication he is demanding there must be a reason; if this is true. It's amazing the amount of people who actually believe EVERYTHING they read or hear. We might just as well give them a College education while we're at it, oops that got shot down already.

To Julia Miller, TJ, and SC, I say and the United Nation says solitary confinement is torture. Period. End of sentence (absolutely no pun intended). This is all you need to know. However, maybe there are other things that you need to know: even if a person is sneaky, SC, they do not have to be locked in a little box for 23 hours a day. And to TJ, even if this story is one-sided, as you contend even if you are right about that I say again, solitary confinement should not be part of ANY side of ANY story. And Julia, to you I can say that, as someone who had spine surgery last year and, for three months, could not shower or put on my underwear without assistance, or pick up a single damn thing from the floor without a grabber, I hope you never have to go through any of that at any time in your life. And as for the lack of adequate pain management for Mr. Gizewski? Take it from me a privileged person, with good health care, who was not and never has been in prison, who has a comfortable bed and a nice, sunny, spacious apartment to live in: if you're in terrible pain and you don't get appropriate pain management, you might as well be in hell. Does Mr. Gizewski deserve the hell of chronic pain on top of the hell of solitary?

Hey, all of you and all of us these are our tax dollars at work. Do we all want to be complicit in committing torture? Robbery, drug use, and attempted criminal possession of a weapon: no, not good things to do, and things that do deserve some sort of societal response: but how about rehabilitation, income equality, and all of the necessary accommodations for disabilities, instead of solitary? And don't respond that I am naive: I work with people who have committed terrible crimes. But, perhaps, precisely because of this, I am convinced that solitary for anyone, let alone a person who is unfortunate enough to suffer severe and chronic pain and disability, is the kind of misery and terror that no one other than Adolf Hitler deserves.

My heart breaks for Mark Gizewski

Wrong!! Five Points main yard IS handicap assessable, the entire facility is video monitored and recorded and he was assigned a cell assistant to help him with his daily tasks. As for the contention of smuggling drugs into the prison, he does not need assistance, as his lawyer suggests, without the connivance of corrections staff. He is a sneaky person and just because he is handicapped, does not mean his actions are sincere.

There's no excuse for treating a person like that. Just because the jailers are law enforcement shouldn't give them the right to abuse inmates. But unfortunately the immunity card they carry seems to make them untouchable.

This is a one-sided story people. Don't form an opinion without all the facts. You should try dealing with a violent felon day in and day out before believing this guy. He thinks society owes him something even after being convicted and sent to prison. We have rules and regulations in place in prison and this convict could not follow them. This is why he was put in SHU. It is there for a reason. Your average citizen just doesn't understand unless you have been there.

Lack of accommodations? Stay out of prison!!! Why would he need a grabber? He can't reach the spot to put it there in the first place. Five Points is a handicap facility meaning ALL yards are wheelchair accessible. Using drugs in SHU is virtually impossible? I call BULLSHIT!! Visitors bring them in all the time. I'm sure this is like most lawsuits FRIVOLOUS. If he was truly beaten as he claims it will be on video since the article claims everything is on video.

which prison?

This is not the only problem facing New York prisons. Another issue is. My husband's in prison. They have 10 handicapped parking spaces. I'm handicapped and 9 times out of 10 the handicap parking is taken by the employees. There are over 100 stairs if you park in the parking lot. I live 8 hours away. When I complained to the superintendent he said there was adequate handicap parking available. Not when your employees are using their parents' placards. I find it hard to believe that that many handicapped employees work for the prison. A big part of rehabilitation is a strong community support system with a visitation program. When you tell the prison about these things we are treated less than human. The comfort of their employees is all that matters. The system and the employees are scum.

My prayers are with you..stopconfinement..

Let us all know when you have a petition to various authorities that we can all sign. More voices, and bringing this to various news outlets, may be of help.

Wow! this is an incredible story and precedent, thanks for posting this one itll make some waves.

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