

Solitary Watch

Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2012/07/06/guantanamo-is-not-an-aberration-how-the-war-on-terror-came-home/>

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by [Jean Casella and James Ridgeway](#) | July 6, 2012

An important new article by Laura Rovner and Jeanne Theoharis appears in the current issue of *American University Law Review*. Both Rovner and Theoharis have been deeply involved in the issue of solitary confinement: As director of the Civil Rights Clinic and the University of Denver's Sturm College of Law, Rovner has overseen several challenges in the federal courts to the use of long-term solitary confinement, both at the federal supermax known as [ADX Florence](#) and at the [Colorado State Penitentiary](#). Theoharis, a professor of political science at the City University of New York, is co-founder of Educators for Civil Liberties and has written and advocated on behalf of her former student [Syed Fahad Hashmi](#). Arrested in 2006, Hashmi was held in pre-trial solitary confinement under Special Administrative Measures (SAMs) in Manhattan's Metropolitan Detention Center for nearly three years before pleading guilty to conspiring to supply material support to a terrorist organization (largely in the form of clothing), after which he was again placed in extreme solitary confinement, at ADX Florence.

The Hashmi case forms the core of the new article, titled [Preferring Order to Justice](#). Rovner and Theoharis point out that in the decade since 9/11, much has been written about the War on Terror and the rights violations of people detained at Guantanamo, in naval brigades, or subjected to rendition and torture in CIA black sites. They continue:

In challenging these detentions, advocates for the detainees focused their efforts on federal court habeas review, and more recently, as prosecutions of Guantanamo detainees have resumed, many commentators have invoked the federal courts as exemplars of justice, contrasting them to military commissions. Because of the prioritization of advocacy around Guantanamo detainees, many human rights groups and advocates have been reluctant to scrutinize and to speak out against the practices used in those courts for fear of giving ammunition to conservatives and contradicting their own message to bring the Guantanamo detainees into the system. The federal courts are thus often referenced as the gold standard of American justice and held up to show what due process looks like when it is done right.

But today's federal courts are far from being exemplars of justice, the authors argue, especially when it comes to trying terrorism-related cases. Instead, while the attention of advocates has been focused on rights violations at such places as Guantanamo, Abu Ghraib, and Baghram, the federal system here at home has been similarly infected to such an extent that it now provides little real justice.

[T]he deference to assertions of national security that degraded protections for detainees at Guantanamo has similarly degraded the protections for defendants within the federal system. Guantanamo (without the accent) is more than a prison in Cuba; it represents a particular way of seeing the Constitution, of constructing the landscape as a murky terrain of lurking enemies where rights must have substantial limits and the courts must be steadfast against such dangers.

While many scholars and human rights advocates have elegantly demonstrated the dangers of these paradigms at work in the justification and maintenance of Guantanamo and the continued detention of 169 men there, this Essay argues that the federal system is similarly infected by such paradigms.

This Essay's thesis is that the preponderance of attention to places such as Guantanamo, Abu Ghraib, and Baghram and policies such as rendition, military commission trials, and indefinite detention overshadow the rights violations endemic to the federal system, with particularly severe impact over the past decade on Muslims facing terrorism-related charges. The lack of public attention to these issues stems in part from a post-civil rights paradigm that assumes the legal system in the United States is now relatively incorruptible, making it necessary to go outside of U.S. legal jurisdiction to circumvent the conundrum of the rights of terrorism suspects.

Accordingly, much of the focus on post-9/11 justice issues has framed the problem and solution around Guantanamo: the prison must be closed and the people either tried or released. While certainly a crucial part of the solution, this view of Guantanamo as a discrete space and process not just offshore, not just outside the rule of law, but contained is extraordinarily limiting. Many civil libertarians fear that raising questions about the fairness of the federal system will only embolden conservative pressure for military commissions.

However inadvertent, this has obscured the devolution of rights protection for people accused of terrorism-related charges here at home, the schisms of race and class that have long riven the criminal justice system and the disparate justice it produces, and the ways that the prison at Guantanamo Bay is not an aberration but part of a larger way of thinking about rights and security.

An examination of the Hashmicase, Rovnerand Theoharis contend, reveals a series of rights deprivations by government officials that not only undermine the idea of fairness of the federal system, but are all the more insidious because they are sanctioned indeed at times created by the law itself. Fahad Hashmi's case demonstrates that having a legal process in a terrorism case is not the same as having a just process; indeed, it shows that the fact of a legal process can be a mechanism for enabling injustice.

The lengthy article tracks the case in detail, pointing out that at every stage, violations of Hashmi's rights happened in daylight, were justified by the government's assertion of national security, and were upheld by the court. What's more, these things took place in New York, just a dozen miles from where Hashmi grew up, and not in a place like Guantanamo, where individuals were held and abused in a zone that was believed to be outside the reach of U.S. law. The case, they conclude, reveals that this was not an unfortunate or aberrational occurrence. Rather, it demonstrates how the rights protections of Muslims accused of terrorism-related crimes in post-9/11 America can be and have been treated as expendable.

Of particular interest to opponents of solitary confinement are sections on the long-term isolation Hashmi endured pre-trial, and how it functioned as an instrument of coercion, undermining due process rights:

What is especially troubling about the use of pretrial isolation is its potential as a coercive tool. Although public debate has circled around the efficacy of using torture for gathering intelligence, inhumane treatment particularly the use of prolonged solitary confinement can be an effective means to secure convictions. These methods can psychologically break down the accused, making it difficult for them to participate effectively in their own defense. It does so by severely impairing detainees' mental health, compromising their ability to focus, and making them more willing to fire their lawyers or interrupt their own trials with impromptu harangues. In turn, authorities can use behavior problems caused by prolonged isolation to justify imposing further draconian conditions. And the conditions make it more likely that people will take a plea rather than risk a lifetime in such isolation.

Hashmi did indeed take a plea and was promptly shipped off to ADX to serve out his 15 years under similar conditions of isolation conditions which are, the authors point out, more likely to be imposed on Muslims than on non-Muslims convicted of terrorism-related charges. And once again, the courts offer no recourse, since they have largely failed to find any Constitutional violations in the imposition of virtually indefinite solitary confinement.

At the end of this sobering article, the authors warn that as such rights violations occur as part of the federal process and are sanctioned by the courts, they become woven into the fabric of the justice system. And as they become more ingrained in the fabric itself, the violations are not only harder to see, they are also harder to remove, affecting not only those charged with and convicted of terrorist-related crimes in the [federal] courts, but also the Constitution itself.

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.

It STILL amazes me how the mass population of these our United States Of America just can not and will not grasp that these are THEIR freedoms you are speaking of.. Power like this always leads to abuse and Lord know their abuse is already showing!

An excerpt from a more current article:

The U.S. government plunges headlong into new high-tech surveillance technologies, such as its Utah Data Center, capable of monitoring every email and text message sent around the world.

The NSA denies that the facility will be used to spy on Americans, but it's hardly far-fetched to surmise it will have such capabilities.

http://redtape.msnbc.msn.com/_news/2012/07/06/12583821-is-us-government-reading-email-without-a-warrant-it-doesnt-want-to-talk-about-it?lite

And a not so funny cartoon representing the intrusions.

<http://harpers.org/media/image/blogs/misc/preypredator600.jpg>

Solitary Confinement is the final result but the civil rights abuses begin with surveillance into our everyday life which may appear on the surface to be less sinister even protective of us:

You can find the links to the following quotes below in my previous comments on this site here:

<http://solitarywatch.com/2012/03/09/the-gray-box-upcoming-new-york-event-on-solitary-confinement/>

One threat noted by scientists:

the possibility of the development of technologies that could make it a lot easier for oppressive regimes to weed out dissidents or to perform surveillance on their populations, so that you could have a permanently stable tyranny, rather than the ones we have seen throughout history, which have eventually been overthrown.

Evgeny Morozov wrote in *The Net Delusion*, his book on the Internet's darker sides,

Denying that greater information flows, combined with advanced technologies can result in the overall strengthening of authoritarian regimes is a dangerous path to take, if only because it numbs us to potential regulatory interventions and the need to rein in our own Western corporate excesses.

Recent investigations by the Wall Street Journal and Bloomberg News have revealed just how expansively these technologies are already being used. Intelligence agencies throughout the Middle East can today scan, catalogue, and read virtually every email in their country. The technology even allows them to change emails while en route to their recipient, as Tunisian authorities sometimes did before the revolution.

These technologies turn activists' phones against them, allowing governments to listen in on phone calls, read text messages, even scan cell networks and pinpoint callers with voice recognition. They allow intelligence agents to monitor movements of activists via a GPS locator updated every fifteen seconds. And by tricking users into installing malware on their devices as is currently happening in Syria government agents can remotely turn on a laptop webcam or a cell phone microphone without its user knowing.

These companies seem fully aware of what they're doing after all, the better they understand how to help secret police find and terrorize dissidents, the better their products will do on the market but far less concerned about the implications. As Dutch member of the E.U. Parliament Marietje Schaake told us last week, The bulk of this digital arms trade happens under the radar; through spin-offs of well-known companies, but mostly by players without a reputation to lose with consumers.

Unfortunately, apart from the work of a few individuals, this problem has gone mostly ignored by Western governments, and the digital surveillance trade still seems to be flourishing.

Here at home:

Everything a person does from traveling to buying groceries is to be displayed on a graph, allowing the NSA to paint a detailed picture of any given individual's life.

With this in mind, the agency now indeed looks to be the most covert and potentially most intrusive intelligence agency ever, as Wired.com puts it.

William Binney, NSA's former senior mathematician-gone-whistleblower, holds his thumb and forefinger close together and tells the on-line magazine:

We are that far from a turnkey totalitarian state.

P.O. Box 11374
Washington, DC 20008

info@solitarywatch.org

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