

# Solitary Watch

## Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2010/06/22/two-clinton-era-laws-that-allow-cruel-and-unusual-punishment-redux/>

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by [Jean Casella and James Ridgeway](#) | June 22, 2010

Since late last night, when we published [our post about Albert Woodfox's appeal](#), several readers have written to us about the grim legacy of the AEDPA, the Anti-Terrorism and Effective Death Penalty Act of 1996. That's because the Fifth Circuit Court of Appeals cited the AEDPA extensively in ruling that Woodfox's conviction should not be overturned, and he should not receive a new trial. Under the heightened deferential standards of review demanded by the AEDPA, the Fifth Circuit said, the state court can be wrong or unjust in its conduct, as long as it isn't unreasonable. An unreasonable application of federal law, it said, is different from an incorrect or erroneous application of the law.

While the consequences may be especially grim for Woodfox, who has spent 38 years in solitary confinement at Angola prison, he is no different from thousands of other prisoners who have felt the effects of the AEDPA since it was passed fourteen years ago. Nothing in the USA-PATRIOT Act, or any other measures passed under George W. Bush, surpasses this Clinton-era law when it comes to restricting the rights of rank-and-file U.S. prisoners to challenge unjust treatment, either in the courts or in prison itself.

Back in February, we ran two posts related in one way or another to this subject. Since little has changed since then (notwithstanding an occasional [show of mercy](#) from the Supreme Court), we are re-running both posts here, more or less in full.

In [our previous post](#), we wrote about what the so-called War on Terror of the last decade owes to the longstanding War on Crime, in terms of how the United States treats its prisoners, and how willing we are to compromise their Constitutional and human rights. (In fact, UC psychology professor Craig Haney has suggested that the War on Crime ought rightly be called a [War on Prisoners](#).) When it comes to inmates in U.S. prisons, some of the most damaging legislation was passed not under the Bush presidency, but during the Clinton years.

The [Anti-Terrorism and Effective Death Penalty Act](#) of 1996 (AEDPA), passed after the Oklahoma City bombing with broad bipartisan support, undermined habeas corpus rights of U.S. prisoners long before the Bush Administration sought to withhold them from enemy combatants. AEDPA placed severe limitations on prisoners' ability to challenge death sentences or life sentences, or any unjust convictions in federal courts, even when they had new evidence of their innocence.

Under AEDPA, proof of [actual innocence](#) does not necessarily prohibit the execution or continued incarceration of prisoners. (A recent [Supreme Court decision](#) in the Troy Davis case questioned, but did not eliminate, this reality.) And while the pace of executions has slowed in recent years in spite of the AEDPA, the law still stands in the way of appeals by many prisoners across the country who might have just grounds for seeking to have their convictions overturned.

The [Prison Litigation Reform Act \(PLRA\)](#) also passed in 1996, was intended to deter inmates from bringing frivolous lawsuits, said the *New York Times* in a recent editorial. What the law has done instead is insulate prisons from a large number of very worthy lawsuits, and allow abusive and cruel mistreatment of inmates to go unpunished.

While it may not go as far as Bush's Justice Department in justifying torture, the PLRA sanctions treatment that would be considered cruel and inhumane under international standards. To mount a successful lawsuit against prison conditions, prisoners must now show that they suffered physical injury. As the *Times* describes it, Prisons across the country have used this requirement to dismiss suits challenging all kinds of outrageous treatment: strip-searching of female prisoners by male guards; revealing to other inmates that a prisoner was H.I.V.-positive; forcing an inmate to stand naked for 10 hours. Federal courts have also found that prolonged isolation and even prison rape often do not meet the physical injury requirement.

Both these laws are highly relevant to the issue of solitary confinement. Despite evidence of both the psychological and physical damage it causes, long-term lockdown has been deemed not to meet the physical injury requirement under the PLRA. And the AEDPA has limited recourse for wrongly convicted prisoners on America's death rows and segregated housing units.

After the 2008 elections, a coalition of organizations coordinated by the Constitution Project produced a [set of policy recommendations](#) for the new administration and Congress on criminal justice and the rule of law. Among them were guidelines for reforming both the [AEDPA](#) and the [PLRA](#).

House Democrats have introduced legislation to reform both of these laws: the [Effective Death Penalty Appeals Bill](#) and the [Prison Abuse Remedies Act](#). So far neither bill has made much progress in Congress. As for the White House, critics have [accused the Obama Administration](#) of doing too little to address the rollback of Constitutional rights that took place under Bush in the name of the war on terror. It remains to be seen whether it will do more or do anything to restore rights lost in the name of the war on crime.



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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It was the success of men like Fred Cruz of the documentary film *The Writwriter* in changing the oppressive policies in this case of the Texas Prison System of his time which motivates the PLRA.

<http://www.pbs.org/independentlens/writwriter/film.html>

By most measures, Fred Cruz was an ordinary criminal. But in prison he studied law in order to file an appeal of his conviction and 50-year prison sentence. Before long the harsh field labor, brutal corporal punishments and arbitrary disciplinary hearings experienced by prisoners prompted Cruz to file lawsuits against the prison system. He was classified as an agitator and transferred to the Ellis Unit the Alcatraz of Texas a maximum-security prison overseen by C.L. McAdams, the most feared warden in Texas.

Under pressure from McAdams and his guards to drop his lawsuits, Cruz was subjected to long periods in solitary confinement on a bread and water diet. Despite the isolation and confiscation of his legal papers, he managed to help other prisoners with lawsuits.

Here is a comment left on this site by an ex-con.

I actually had a cell partner shipped off because the building Captain found a lawsuit under his mattress during a shakedown. The threat of retaliation was very real, but due to the tough conditions we lived under, inmates attempted getting word out a lot more than the film leads one to think most often with ugly consequences when they got shipped off to a more dangerous unit or to live in an every-man-for-himself open barracks camp.

But aside from all the memories the film invites, I wanted to say Thank You because I appreciate the film for the archive value that the average PBS viewer may simply take for granted and overlook but for inmates was an integral part of the institutional life the backbreaking field work in the hot Texas sun picking this crop or that, or grabbing a hoe or a sling blade and waiting to see who attacks who, the field horses trained to bite when you fall behind the rest of the squad, the reins used as whips, the threat of falling out and ending up on the water wagon to be abused, the intimidation of watching the state high school track star turned dog-boy making his daily cross country runs in the distance while listening to the sounds of hounds tracking him down as practice in case one of us turns rabbit, the daily routine of strip-down out on the back dock and herding of naked men into the buildings after work, the constant awareness for sexual predators in the showers, the survival training to mind your own business, just do your time easy, protect yourself, but still not get punked out because you choose not to join a clique for protection, the regular random fights on the cell block and in the dayrooms to prove yourself, standing on the wall for four hours as punishment for minor infractions, the right-ups and kangaroo court, the unbelievable mind bending experience of just two weeks in solitary when I knew men who had spent many months in and out of those pitch black starvation cells, the payoffs to Row Tenders for favors, the payoffs to front office Trustees to get your name placed on the preferred list for good inside Trustee jobs, so you can wear heavy starched whites, get better food, and make a few bucks hustling other inmates who need favors

After the 70s and the development of the TDCJ, it seemed like the system actually got better more humane treatment, more intentional

access to civil rights, and groups of predator inmates had a little less control over the general population. But based on what I hear from young guys coming out nowadays, the taxpayer and the public have become apathetic and avoid the burden of dealing with that fringe group of American men and the gangs and violence and machismo training is as bad as it ever been.

With all this said, I offer this final observation

Life is hard, but it's harder when you're stupid. Trust me on this one! I'm an expert. Bob.

Posted by: Bob Beamer Spring, Tx on June 21, 2008

March 3, 2003, 4:07pm EST

Upon closer review I would like to make some corrections to my last comments:

Citizens United decided that corporations could make INDEPENDENT expenditures but they cannot coordinate their expenditures with political campaigns.

They are still subject to contribution caps and cannot give unlimited money to a campaign, just like any other person natural or otherwise.

However they may make independent ads advocating a candidate, (instead of call your representative and tell them to take care of this problem, they can say vote for so and so, so they can take care of this problem.), which you and I cannot afford.

Also the latest Supreme Court decision is one that supports my view that laws should not be so vague as to give police officers and lawyers wide discretion in implementing them.

I also agree that citizens should know what activity is criminalized, and that constitutional principle applies to both the rich and poor (see Chicago v. Morales).

It is the appearance of these factors following these other two acts that alarm me and undermine my confidence in the justice system.

While we have just seen how lopsided the law is when you're an improvised, undereducated, prisoner with no legal defense attorney you now have this ruling to ponder.

Justices Limit Use of Honest Services Law Against Fraud

<http://www.nytimes.com/2010/06/25/us/25scotus.html?hp>

Of course this only affects well connected corporate criminals.

Combine this with the courts recent decision to allow corporations to contribute unlimited amounts of money to campaigns and you realize that Brain Stevenson is correct when he says:

In this country the opposite of poverty is not wealth in America, the opposite of poverty is justice.

In the fall of last year North Western University's Medill Innocence Project entered into a battle with Cook County prosecutors over student files.

The state's attorney had subpoenaed the students grades, notes and recordings of witness interviews, the class syllabus and even e-mails they sent to each other and to their professor David Protess. This after the journalism students had won a new hearing for a man in prison.

The request seems harassing and an obvious attempt to scare off future students in an effort to undermine the entire project.

Turning over such a wide range of information could cripple the Innocence Project's ability to get witnesses to cooperate in the future.

Now on Monday, June 21, 2010 the high court upheld a federal law that outlaws providing material support to any terrorist group. The law part of the USA Patriot Act makes it a federal crime to provide any help or support to a terror group even support designed to teach a violent group how to use legal and peaceful means to achieve political change.

Such humanitarian support as expert legal advice or assistance even to people believed to have been wrongly accused or convicted could bring with it a prison sentence of up to 15 years.

My question is, does this apply to legal aid in cases like the Angola 3?

Yes some prisoners, like some non-prisoners, do file frivolous law suits. But the PLRA has resulted in the dismissal of claims that no reasonable person would characterize as frivolous.

When you have been wronged do you want to be denied access because others have filed frivolous cases? And when you decide to file do you want to navigate a system obviously geared to make it next to impossible to have your 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 US is primarily left up to the federal courts.

The result of the PLRA is

- 1) Fewer law suits are being filed.
- 2) Of those filed fewer are being won by the prisoners.
- 3) The filing procedures require hard to come by documentation combined with time restraints that are so technically incomprehensible to the inmates that even constitutionally meritorious cases are often thrown out of court.
- 4) Previous progress towards prison reform in states like Texas and California is now being eroded.
- 5) For those of us in the free world many acts that produce only mental or emotional injury are treated as serious crimes under US criminal law. Not so for inmates under this act.

6) Thus the internationally recognized harm that is done to inmates in long term Solitary Confinement is being ignored as is the emotional distress following a rape by guards.

7) All of this is of course exponentially more difficult for juveniles to deal with. But sadly they must.

MICHELLE ALEXANDER recently said The entrance to a new caste system can be found at the prison gate, because that is when you are branded. Once you are branded a felon. Your life as you knew it before is over. All the forms of discrimination that are illegal for the rest of the country, can now be practiced against you with impunity.

I understand:

The AEDPA requires a prisoner to petition the federal court within one year after the state conviction becomes final.

(Imagine entering the horrifying new environment of prison and still be forced to file these appeals even if you knew the law and were aware of the rights violations involved. I think your immediate survival might be a higher priority dont you?)

And then they must make all such claims for relief at one time.

State prisoners who are unaware of the one year limitation will often lose their right of appeal even if the prisoner was at the time unaware of any such violations of his rights under the law.

(This is very likely since newly arriving prisoners rarely have the legal advice, background or understanding of these complex legal issues.)

The Supreme Court itself points out that the lower courts can misinterpret the ruling of the Supreme Court or constitutional law.

Compounding this problem is the fact that prisoners seeking federal review generally have no right to a lawyer and few have the funds to hire one independently.

(As Bryan Stevenson said; In this country the opposite of poverty is not wealth in America, the opposite of poverty is justice.)

So consequentially those that are aware of at least the time limit often file their own inadequate petitions.

Or if sometime down the road the prisoner learns of his rights and/or comes up with the money to hire a lawyer, its often too late.

In the case of a constitutional rights violation by a state court under clearly established rules of the Supreme Court, its ruling can only be reversed if the state courts application of the law was not just incorrect, but unreasonable.

A right that has been clearly established by all the lower courts wont do?

No! Even if the Supreme Court has spoken clearly about the rights existence and the state appellate court misunderstood the law if its incorrect interpretation was reasonable then it stands.

Predictably this provision means that fewer habeas petitions will be granted.

So your constitutional rights can be violated during your trial, then the state appellate court can compound this by incorrectly reaffirming your conviction and the Supreme Court can still rule that the mistake was reasonable, and you will not get a new trial.

All of this is especially sad if it is a death penalty case. But of course this is exactly the motivation for the law in the first place. Lets just kill em and get it over with!

But as Bryan Stevenson said in his interview with Bill Moyer; For every eight people who have been executed, weve identified one innocent person. If we will tolerate that kind of error rate in the death penalty context, it reveals a whole lot about the rest of our criminal justice system and about the rest of our society.

Knowing this can only deepen the prisoners distrust of the court and his anger will grow by the day and with every humiliation and abuse that he endures.

The rage that he feels is shared by many others and together their voices ultimately lead to a confrontation with the men running these prisons. Why pass it then? Because then if the prisoners act out even more draconian measures can be deployed.

This ruling is useful only if the court wants to further disenfranchise prisoners but otherwise this ruling only seems to allow cover for the mistakes, or the willful disregard of our fellow citizens rights, by the lower courts.

this i know more then you want to know faces this fate it makes me sick that we do this and every one wants to know why i sick of this nashions pride let there be light in justice for the it is up to us to take mercy on them for the tribunal has none

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