

Solitary Watch

Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2010/06/14/extradition-to-a-future-of-total-isolation-opposed-by-british-human-rights-lawyer/>

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by [Jean Casella and James Ridgeway](#) | June 14, 2010

A reader recently called our attention to an [long piece in the *London Review of Books* by Gareth Peirce](#), a British solicitor known for taking on high-profile and often controversial human rights cases. In the 1993 film *In the Name of the Father*, Peirce, played by Emma Thompson, is shown defending a group of Irish men wrongly convicted for bombings carried out by the IRA; more recently, she has represented Guantanamo detainees and other prisoners of the so-called war on terror.

In her May 13 article, Peirce argues against extraditing terrorism suspects from Europe to the United States. The extradition of several such suspects has been frozen for years while courts in the UK and now the European Court of Human Rights in Strasbourg determine whether there is a serious risk that sending them to the US would be to deliver them up to flagrantly unfair trials, severe and prohibited ill-treatment, or the death penalty. These determinations turn largely on the question of whether the suspects would be held indefinitely without trial or put before military tribunals, rather than tried in civilian courts.

But Peirce argues that in today's America, even the civilian criminal justice system is so compromised that almost every basic safeguard necessary to achieve a conventional fair trial for the accused has, in practice, long since been destroyed. It is true that no European state has been permitted to extradite in the absence of an assurance that conviction would not bring the death penalty. But there is nothing to protect extraditees from the grim reality of solitary confinement in a small sealed prison cell before and after trial, or sentences that could amount to a hundred years.

In a powerful condemnation of solitary confinement as it is currently practiced in the United States, Peirce asks:

But what of extradition to a future of total isolation? Can we comfortably, and within the law, contemplate sending men to that fate? Some of the men who currently await extradition are imprisoned in a small unit, where they are at least in the company of other human beings, and within the unit's limits can talk, argue, study, cook, write, paint or exercise outdoors in whatever sunlight imprisonment in Worcestershire may afford them. This is not luxury. It is deprivation, of family life, of freedom and of hope. But once on American soil these men have been told by US prosecutors to expect total isolation. Each extraditee will be held under Special Administrative Measures until trial and then, on his anticipated conviction, in solitary confinement in a Supermax prison, ADX Florence in Colorado, potentially for life and without any prospect of parole. He will be confined in a cell 7 feet by 12 feet, with a moulded concrete bunk; his food will be delivered through a slot in the door; external communication, even with a doctor, will come via a closed-circuit television in his cell. For one hour in each day, he will be able to visit a small dark pit where he can exercise alone. His fellow prisoners (although he will not see them) will be the most severely psychotic people the most experienced analyst of the effects of Supermax confinement, Terry Kupers, has seen in 25 years of psychiatric practice, and he will be likely, since the primary cause is isolation, to become one such himself. His solitary confinement can and perhaps will continue for life.

After his tour of America in 1842 Dickens wrote of the use of isolation in the American prisons he had seen: I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body. By the late 19th century, evidence of the devastating effects of solitary confinement on prisoners' health had surfaced, and in 1890, the Supreme Court, considering the case of a death-row prisoner, echoed the language of today's doctors: A considerable number of the prisoners fell, even after 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. In the 19th century, isolation was intended to provide an opportunity for the redemption of the prisoners' Christian soul, but Supermax prisons emerged, penologists argue, from a powerful rage to punish felt by many politicians and members of the public in the late 20th century. Craig Haney, one of those penologists, believes that the US now celebrates and often demands, rather than lamenting or merely tolerating, official cruelty and the infliction of pain in its criminal justice system. What once passed for penal philosophy now amounts to little more than devising creative strategies to make prisoners suffer.

Supermax confinement, built on the twin pillars of prolonged solitary confinement and extreme severity of conditions, is one of those strategies. The cells are carefully designed by architects to limit access to natural light, to eliminate stimulation or distraction, and reflect a total disregard for the principle that all prisoners are members of the human community. Although one US district court judge, in the case of *Madrid v. Gomez* in 1995, described conditions in a Supermax unit as pushing at the outer bounds of what most humans can psychologically tolerate and in the case of mentally-ill prisoners has the equivalent of placing an asthmatic in a place with little air to breathe, no constitutional bar to their continuing use has been imposed by any court.

Even Denmark, a country considered by the UN special rapporteur on torture to be entirely compliant with every other human rights obligation, was warned following an inspection that to detain a suspect in solitary confinement, if it were done in the expectation that it might induce an admission of guilt, could constitute torture contrary to Article 3 of the [European] Convention [on Human Rights].* The same special rapporteurs have expressed particular concern about conditions in maximum security prisons in the US which violate internationally protected rights, but they can do no more than register concern since they have no right to conduct internal inspections. Despite continual recommendations by the UN Human Rights Committee that the US government should scrutinise conditions in Supermax prisons and implement minimum UN standards, there have been no changes in practice, and the federal government is building more such facilities. Human Rights Watch found in 2000 that there were nearly 20,000 prisoners held in complete isolation in the US, nearly 2 per cent of the prison population (by now unofficial figures range between 25,000 and 70,000).

Peirce goes on to consider how courts in London and Strasbourg have responded to brutal conditions in U.S. prisons, including the prospect of permanent solitary confinement.

Such few judicial honours as can so far be awarded go to the extradition judge in [London] who so straightforwardly rejected the idea that a military commission conformed with the fair trial guarantees of the European Convention. On the isolation imposed by pre-trial SAMs he expressed extreme anxiety. It is in relation to these that I find the greatest grounds for concern and in the case of Abu Hamza, so disabled that he was likely if convicted to be imprisoned in ADX Florence only briefly before transfer to a prison hospital, he found that but for that fact the brutal isolation would violate Article 3.*

When the same issue has been considered in the high courts, the judges have sidestepped the facts: For a mature and sophisticated democracy that respects the rule of law, it would be unusual, to say the least, if one of its lawful and carefully prescribed methods of incarceration were to be condemned for giving rise to an automatic violation of Article 3. The inclusion of the word automatic is intended to describe the protection that litigation provides for a prisoner once in solitary confinement, but the prospects for an effective challenge are non-existent; there is no funding for prisoner litigation in the US and administrative obstacles prevent even the most determined litigant having his case heard within ten years. In any event, even prisoners who have gone for years without speaking to anyone other than Federal Bureau of Prisons officials have not been able to establish a claim under the 8th Amendment to the constitution, which prohibits cruel and unusual punishment, since human contact is not classified as a single identifiable human need such as warmth, food or exercise. Extreme isolation, even for life, is not considered under the US constitution to be a denial of the minimal civilised measure of life's necessities.

Strasbourg, the European court of last resort, has been criticised in the past for a lack of imagination, or at least of judicial understanding, of the impact of solitary confinement on prisoners, and of having too ready an acceptance of state interests. On the one hand, it has been reluctant to judge actual solitary confinement regimes as being in violation of the Convention, but, on the other, it has reminded itself of the irreducible nature of Article 3: States face very real difficulties in protecting their populations from terrorist violence the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned. The nature of the offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3.

But it is precisely the nature of the offence that will condemn the extraditees to conditions of imprisonment and lengths of sentence that are an inevitable consequence of the civilian trials constitutionalists argue for, established as these practices have become within an entirely constitutional structure. Is indefinite military detention really any worse a prospect?

You can [read the full article](#) at the web site of the *London Review of Books*. Although most of the site requires a subscription to access, the *LBR* has made this and [other important commentary by Gareth Peirce](#) available to all readers.

* *Article 3 of the European Convention on Human Rights: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*



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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While we are taking on the topic of Extradition to a Future of Total Isolation Opposed by British Human Rights Lawyer Solitary Watch, The prospect that a law could possibly be disregarded in favour of some increased sense of morality doesn't conform in reality, thinking about the potential implications of consistently disregarding law on the grounds of the subjective concept of justice.

you know i was born in europ all i can say is it they say yes know this what going to happen to them i just as a sahamed of then as i am of us then its just sick i mean no ones knows how bad solitary real is for you lol let me say some parts of effets never go a way and it dosent have to be more then the use of it in schools to cos all the effts shesome gos a way but some never dose no mater how you treat it those who ben in say prison takes a art of you so dose solitary or suclueshion or what ever you want call it sept it dose something to you perment scars you cant get rid of i do not suport solitarty but i do thingk anyone who dose needs to go thow solitary them self thare no other way to understand just what it dose to you i thngk of the cash song that was sones 9 inch nails called hurt it makes me thinkg of just what they say it dose to you in some sens but in all it is still rong

Renee your right about the UK.

I said to myself ha when I read these words from Gareth Peirces piece
Make sure you say that you were treated properly

Those who have categorized these things place them in the lesser tradition of stress torture; not because they are less painful, but because they leave less of a visible mark. Long-term restraint in virtually any position will produce agonizing muscle pain. Forced static standing causes ankles and feet to swell to twice their size within 24 hours. To move is to be in extreme pain; large blisters develop; the heart rate increases and some people faint.

I have experienced this first hand at the age of 12 in the California Youth Authority. Two counselors made us stand nude with our arms out at our sides until most if not all of us could no longer hold up our arms. Still we were not released at this point but made to remain standing at attention for several more hours until the weaker guys started to wobble and faint. Only after several had fallen were we finally allowed to go to our bunks for what remained of the night.

Some days later these same counselors woke us up around 1:00 AM and ordered us to all get dressed as rapidly as possible. Once we were all dressed we were ordered outside and made to line up in formation in the pitch blackness of a country night. There was no moon that evening which left only the stars to illuminate the road behind the lodge so one of the two counselors had to use a hand-held flashlight to observe us lining up and to also lead us down the road. As we marched into the night he called out a rapid paced cadence in military fashion. Then once we were at the base of a nearby hill about a mile away we were ordered to halt. We stood there at attention in silence, while maintaining our formation and wondering just what these two were going to have us do next. We didnt have to wait long until the other counselor appeared in his four wheel drive pickup truck then set about maneuvering it in such a way as to illuminate the entire hill using his high beams. Once he was satisfied with the angle we were given the order to march up the hill. Then back down the hill, over and over again without pause. The hill was about two football fields in length with a steady steep incline which necessitated that we lean forward in order to maintain our balance. Up and down the hill we marched to their rapid cadence until the counselors grew tired of the drill which was well over an hour later. Sweaty and tired to the bone we all marched back to our lodge moaning from the pain in our leg muscles. Once outside the lodge we were given the order to enter the shower area, strip down to our underwear, store our cloths and return to our bunks. As I laid down I could see from my rooms elevated position that many of the others in the dorm room below had decided to sleep on top of their blanket having become too fatigued to bother opening it up, some of these even had their feet still dangling off the bed as I fell to sleep exhausted.

On yet another occasion we were made to participate in a cross country run in the mid-day summer sun. The run ended only when someone passed out from heat exhaustion.

His article goes on to say:

It was in Mandate Palestine that British soldiers and police after 1938 subjected prisoners to forced standing These tortures were clean and allowed for plausible denial; today the interrogation style of the Israeli GSS called shabeh by its victims continues to draw on them and on the techniques used by the British in Northern Ireland. They include sleep deprivation, positional tortures, exhaustion exercises, exposure to extremes of temperature, the use of noise and chair torture. (We have all seen the restraint chairs used in our nations jails. It is from these and their predecessors that the Americans have drawn for the last seven years.

By 1 August 2002, White House lawyers were itemizing techniques that would not in their view constitute torture under the Federal Torture Act, including forced standing, hooding, starvation and thirst, sleep deprivation, the frog crouch, the Israeli shabeh and extreme noise.

To protect ourselves for the future, we need to know what has occurred in the past. We cannot do it on trust; investigations by the bodies empowered to act as our proxy have been triggered, if at all, by the accidental emergence of accounts from victims or their families, and will be allowed to tell us nothing.

What is unsustainable is the belief that what we have been told is enough, and the willingness to accept that we are to be told nothing more.

ok let me make that more clear what i mean by that first statement i saying yes i do love my country it self but i do not like what it become i want for it to be restored to it glory it was ones so i can be proud of it as a hole i saying it this nashion dose not clean up it self

god will have a lot to say bout it in reagrads to the part of god f the usa he will if we do not get back to what this nashion is ment to stand for what men died for to make it it is better then a lot of other lands but it shames it self wen it coms to what happens after trial this is where the shame of what it ses it is comes to it i just feel that we fly this flag all over i want to be pround of it thats all

god help them what a sick fate i rather be dead then be sentined to LWOP in solitary confinement god shoot me first it makes me sick to live in this nashion knowing we do this to anyone the us may be free more then others but the usa i see makes me sick to call my self a part of some one look at the flag and tell me you do not see the stanes of blood we shed for this land and what we did to thais lands good name it had ones ones i was pround to be one of this land now i am sick to call it home if this is what the us wants to do to us all the god fff the usa for its owen good but i hope we bless are land with what it was bled for to be what it was long a go when i was pround of my country till then i wave no flag for i see no glory in her

Is indefinate solitary confinement going to be tolerated agaist our own people fix this first then foreigners. America holds its own people for years and years in isolation and we have constitutional right to not be subjected to cruel and unusual punishment. Why should there be any thought given to those who are not Americans?

Help our people 1st. UK doesnt have much better record. They have kept a man named Michael Peterson AKA Charlie Bronsan in isolation for 35 years,and recently subjected him to a canine attack while he was in a sealed and gaurded room, Lets take care of our own countrymen, My heart breaks thinking of mentally ill, children, even murderers, being crulely tortured right here and where is their voice? there help?

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