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Criminal Justice Issues and Prisoners' Rights

https://solitarywatch.org/2010/03/12/cruel-punishment-is-the-usual-for-clarence-thomas/

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by James Ridgeway and Jean Casella | March 12, 2010

Veteran *New York Times* Supreme Court reporter Linda Greenhouse has an opinion piece today on Clarence Thomass silent but sure stance on prisons, andspecifically the meaning of the Eighth Amendments prohibition against cruel and unusual punishment. Thomass position is highly relevant to the issue of solitary confinement, since critics oflong-term lockdown argue that it violates the Eighth Amendment.But Thomas does not believe that any kind of prisoner abuse qualifies as cruel and unusual. Greenhouse writes:

In February 1992, the Supreme Court ruled in Hudson v. McMillian that a prisoner need not have suffered a significant injury in order to pursue a lawsuit against prison officials for the use of excessive force. Keith Hudson, the Louisiana inmate who brought that case, had been kicked and punched by three guards while he was handcuffed and shackled. He suffered bruises, swelling and loosened teeth, injuries that a federal appeals court, in dismissing his lawsuit, deemed so minor as to be beneath the notice of the Eighth Amendment.

Mr. Hudsons appeal to the Supreme Court was supported by the George H.W. Bush administration, and John G. Roberts Jr., then a deputy solicitor general, argued on the inmates behalf. In an opinion by Justice Sandra Day OConnor, the court reinstated the lawsuit. What mattered in such a situation, the court held, was not the extent of the injury, but the nature of the force that was applied. When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated, Justice OConnor wrote.

Justice Thomas dissented. He had been on the court for four months. During his Senate confirmation hearing, he had claimed a certain empathy for prisoners. He described looking out the window of his chambers at the Court of Appeals and watching prisoners being loaded into buses to be taken back to their cells. I say to myself every day, but for the grace of God there go I, he told the members of the Senate Judiciary Committee.

In his dissenting opinion in the Hudson case which Justice Antonin Scalia joined, making the vote 7 to 2 the new justice said that the Constitutions framers simply did not conceive of the Eighth Amendment as protecting inmates from harsh treatment. The Eighth Amendment dealt with only the actual sentence, he maintained, and not with conditions inside a prison or deprivations that were not a formal aspect of the sentence. He said the Supreme Court had taken a wrong turn in the 1970s when it adopted a more expansive view, and he added, The Eighth Amendment is not, and should not be turned into, a National Code of Prison Regulation.

Last month, Thomas demonstrated his grim consistency on this subject when the court considered another excessive-force case, a prisoners appeal that was so clearly meritorious that the justices ruled in the inmates favor without bothering to call for briefs or hear argument. This time,a North Carolina state prisoner claimed that a guard had responded to his request for a grievance form by slamming him onto the concrete floor and then punching, kicking and choking him until another guard pulled the attacker off. A lower court found that the prisoners injuries werent all that bad, and dismissed the case.

Because of the precedent set by the Hudson v. McMillian decision, Greenhousewrites, The vote was 9 to 0, but it was not a happy 9 to 0. Justice Thomas, joined by Justice Scalia, concurred only in the judgment, not the courts opinion. I continue to believe that Hudson was wrongly decided, he said. Thomas also noted that no party to this case asks us to overrule Hudsonsuggesting that he would welcome the opportunity to do so. Greenhouse continues:

Justice Thomas has been trying and failing repeatedly to get someone to bring the court a vehicle for revisiting its prisoners-rights jurisprudence. Dissenting from a 2002 decision, Hope v. Pelzer, he objected to reinstating a lawsuit brought by an Alabama inmate who had been handcuffed to a hitching post and left to stand shirtless in the sun for seven hours without water or bathroom breaks. I remain open to overruling our dubious expansion of the Eighth Amendment in an appropriate case, Justice Thomas wrote hopefully.

Greenhouse writes that there have been no takers yet. This is not surprising, sinceso many potential prisoner abuse claims are now effectively barred from the courtsunder the Prison Litigation Reform Act. As described by the SAVE Coalition, which advocates for a change to the PLRA:

In the past decade, individuals who have been physically and sexually abused, subjected to life-threatening medical mistreatment, denied the ability to practice their religion, and severely mistreated as children have been denied access to relief from federal courts. Why?

These individuals were in prison when these violations occurred and the Prison Litigation Reform Act (PLRA) imposed insurmountable obstacles to judicial relief. In 1996, Congress enacted the PLRA, which was intended to stem frivolous lawsuits by prisoners, but too often denies justice to victims of rape, assault, religious restrictions, and other rights violations.

Because the PLRAdemands that prisoners must suffer serious physical injury in order to sue in federal court,solitary confinement does not qualifynor do a host of other abuses that cause physical and psychological suffering, but not physical injury in the eyes of the law. The law also demands that prisoners jump through a series of nearly impossible procedural hoops before their cases can be heard ineven the lowest federal court, much less the Supreme Court.

Although she does not reference the PLRA,Greenhouse writes that it could be a long wait before the Supreme Court gets another Eighth Amendment casebut if it does, she says, Justice Thomas will be ready.

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James Ridgeway and Jean Casella

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.

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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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Luckily not everyone agrees!

Annals of Human Rights

Hellhole
The United States holds tens of thousands of inmates in long-term solitary confinement. Is this torture?
by Atul Gawande

In 1890, the United States Supreme Court came close to declaring the punishment to be unconstitutional. Writing for the majority in the case of a Colorado murderer who had been held in isolation for a month, Justice Samuel Miller noted that experience had revealed serious objections to solitary confinement:

A considerable number of the prisoners fell, after even 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; while those who stood the ordeal better were not generally reformed, and in most cases did not recover suffcient mental activity to be of any subsequent service to the community.
This past year, both the Republican and the Democratic Presidential candidates came out firmly for banning torture and closing the facility in Guantnamo Bay, where hundreds of prisoners have been held in years-long isolation. Neither Barack Obama nor John McCain, however, addressed the question of whether prolonged solitary confinement is torture. For a Presidential candidate, no less than for the prison commissioner, this would have been political suicide. The simple truth is that public sentiment in America is the reason that solitary confinement has exploded in this country, even as other Western nations have taken steps to reduce it. This is the dark side of American exceptionalism. With little concern or demurral, we have consigned tens of thousands of our own citizens to conditions that horrified our highest court a century ago. Our willingness to discard these standards for American prisoners made it easy to discard the Geneva Conventions prohibiting similar treatment of foreign prisoners of war, to the detriment of Americas moral stature in the world. In much the same way that a previous generation of Americans countenanced legalized segregation, ours has countenanced legalized torture. And there is no clearer manifestation of this than our routine use of solitary confinementon our own people, in our own communities, in a supermax prison, for example, that is a thirty-minute drive from my door.

Read more of this article at:

http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande#ixzz0i4QjFG4u

In 2000, and again in 2006, the United Nations Committee Against Torture condemned the kind of isolation imposed by the U.S. government in federal, state and county-run supermax prisons, calling it extremely harsh. The Committee is concerned about the prolonged isolation periods detainees are subjected to, they stated, the effect 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.

The following quotes can be found at:

http://realcostofprisons.org/blog/archives/control_unitsshusupermax/index.html

Tom Coburn (R-OK), Chair of the Senate Judiciary Subcommittee on Corrections and Rehabilitation, issued a similar warning before a Senate hearing in 2006. The experiences inmates have in prison whether violent or redemptive do not stay within prison walls, but spill

over into the rest of society, he said. Federal, state, and local governments must address the problems faced by their respective institutions and develop tangible and attainable solutions.

John McCain reportedly said of his two years of isolation as a prisoner of war in Vietnam, It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.

Mental illness has been criminalized in our country over the last 30 years, U.S. Sen. Dick Durbin, D-Springfield said. By allowing our prisons and jails to become a primary provider of mental health services, we have taken a step backward in the effort to protect the human rights of people with mental illness.

Were not trying to close Tamms, said State Rep. Rep. Julie Hamos, the suburban Chicago Democrat behind the legislative push to change the prison, including allowing an inmate to earn increasingly less-isolated conditions for good behavior. To leave them in that setting 10 years or longer is inhumane, in my estimate, and a human rights violation. It just cannot be condoned.

Courts must give substantial deference to prison management decisions against the brutal reality of prison gangs, Kennedy added.
Still, the justices expressed some concerns about the harsh conditions, with Kennedy writing that inmates are deprived of almost any environmental or sensory stimuli and of almost all human contact. Lights were always kept on in the cells, he said, and the treatment was more harsh than that of death row inmates.
The court did not address the issue of whether the detentions are unconstitutionally cruel.

http://www.huffingtonpost.com/2009/05/16/scrutiny-promised-for-ill_n_204183.html

Amnesty International recognizes that it may sometimes be necessary to segregate prisoners for disciplinary or security purposes. However, it is concerned that the current conditions at Tamms, taken cumulatively and applied over a prolonged period, are incompatible with the USAs obligations to provide humane treatment for all prisoners.

The USA has ratified the International Covenant on Civil and Political Rights, Article 10 of which requires that all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person. The Human Rights Committee (the treaty monitoring body) has further emphasized that the absolute prohibition of torture or cruel inhuman or degrading treatment under international law relates not only to acts that cause physical pain but also to acts that cause mental suffering and has stated that prolonged solitary confinement may amount to torture or other ill-treatment. Both the Human Rights Committee and the United Nations (UN) Committee against Torture have criticized the excessively harsh conditions of isolation in some US supermax facilities.

Amnesty International believes that Bill HB2633, if enacted, would be an important step to providing fairer standards, accountability and oversight of the operation of Tamms. The organization is also urging the authorities to alleviate conditions for all prisoners who remain at the facility, including improving the exercise facilities, reviewing visitation conditions and providing some opportunity to participate in rehabilitation programs.

P.O. Box 11374
Washington, DC 20008

info@solitarywatch.org

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