

Solitary Watch

Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2010/02/16/two-clinton-era-laws-that-permit-cruel-and-unusual-punishment/>

Campaign and Advocacy

close

Search

close

close

by [Jean Casella and James Ridgeway](#) | February 16, 2010

In [an earlier post](#), we wrote about what the so-called War on Terror of the last ten years owes to the longstanding War on Crime, in terms of how the United States treats its prisoner or detainees, and how willing we are to compromise their Constitutional and human rights. (In fact, UC psychology professor Craig Haney has suggested that it 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 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

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.

There seems to be little or no progress across the board in the area of prison reform. The media doesn't even address prison conditions unless they are talking about immigrants or terrorists.

P.O. Box 11374
Washington, DC 20008

info@solitarywatch.org

Solitary Watch

Copyright 2022, Solitary Watch

Read about [rights and permissions](#).



Solitary Watch News