

## **ASSEMBLY HEARING, Sacramento Tom Ammiano, Public Safety Committee Aug. 23, 2011**

Policy review of CDCR SHU. Purpose is to help educate us as assembly members on the issues surrounding SHU. Recent events brought these units to the forefront and we want to ensure these units are administered in such a way as to maximize security (prison, public)

We will hear from former inmate from Corcoran, relative from PB SHU, series of academic speakers who will present on effects of isolation, reps from CDCR inform and update updates on current SHU policies, and any changes to those policies. updates and questions. For a lot of us it is a highly emotional issue.

We all have the same goal, to ensure the best outcomes of the safety of the public. This is a very small first step, we want as much transparency as possible what is happening particularly as to conditions in the SHU and this won't be the only hearing. Future/progress, commitments that have been kept, a report back hearing.

Steve Knight, the only Assemblyman who appeared (others did later, 4 of 6)

### **First panel: SHU inmates prospectus and supporters, Earl Fears, Glenda Rojas, Rev. McCarthy**

My name is **Glenda Rojas**, speaking on behalf of my family and hundreds out there who have someone in SHU. My cousin is serving a life sentence, falsely accused of being gang member oct 2009. This horrible accusation was backed by false evidence. The CO's who handled this case said he stabbed a man and they found blood on his shirt, which was not true, and a knife, not true either. Another officer went as far as lying, testified he witnessed the stabbing. Also the mistakes made state by gang investigation and still my cousin was falsely validated. The system of gang validation is wildly out of control and needs some real oversight with the power to enforce,

Because of these officers' lies, my cousin spent 3 months in SHU and 7 in ad/seg. It was 10 months that felt like 10 years, for both my cousin and our family. our world changed drastically overnight (crying). We were physically and emotionally and psychologically drained. We all lost weight, sleep, and peace of mind. Not to mention fighting the CDCR system is very stressful, the 602 process is delayed on purpose by COs, letters that we sent out and phone calls that we make are very seldom answered, and when they are answered they give you a runaround and we are treated very disrespectful and they have no professionalism at all. I was threatened several times by his counselor at the time and by two CO's, they told me to stop calling about this case or else.

My cousin was able to get out of ad/seg after 10 months of fighting. It was not because the institution said we made a mistake, it took phone calls to the warden, sergeants, the gang valid unit and letters to different departments within the prison. Also contacted the ombudsman, the inspector general, and Assembly rep from Modesto. This case was unusual because of dedicated family members and we were very blessed to have Carol Strickman and CPF to help us in exposing the lies that were constructed against my family member. If not for their help and our dedication as a family he would still be in there serving time for something he didn't do.

The positive effect is that I'm now encouraged to help other inmates who likewise have been falsely accused of gang affiliation. Some fighting for over 2 years; if they don't have outside help ... 3 of members lost contact with family because letters are "misplaced" or never make it to their destination. Let me be clear: prison did not destroy families, but false placement in SHU destroyed the family bond. In my eyes this is called abuse, no matter what anyone else wants to call it or how they want to look at it. And someone out there needs to hear our cries as a family and as a community and do something about it and put an end to this corrupted nonworking system.

**Earl Fears** (former Corcoran SHU) speak on behalf of being locked up in SHU programs and the system in general of lockup. When I come in here today I don't usually speak for a person that dress in front of a panel with suits and ties because that's not what type of person I am.. when I was in the system I was being

punished because of reasons that I did do in society. I admit to being a small time crack dealer, I admit to being an alcoholic, I admit to being a small time burglar, and these things are real.

I want to come in here today to speak on behalf of someone who wears T-shirt, saggin pants, crooked baseball cap because this needs to get out to people like yourself and people of the panel. These idea of going to prison cause me to one time go to the SHU program for a short time. But when I was in the SHU program I felt that this right here has gotta be crazy. I did 18 years in and out of prison but the SHU program is the bottom of the pits. What I witnessed in this short time I feel that when you cry, a man cry, a gangster cry, a killer cry, a con and an ex-con cry, it has to be a reason. I feel that these people who started the hunger strike they had to be wanting to get out to get their voice to somebody to hear it. For in order for a person to be willing to lay down and die just for somebody to hear the situations that go on in a SHU program they had to be serious.

Just small things in a SHU program causes people to wanna yell beat against the walls or whatever. I'm saying you got some kind of program you run in SHU program where you discipline people, but I don't think that a person that's in the SHU program should be punished by little things that are to aggravate a person that's locked down just because they have the power TO AGGRAVATE against a person who is already in a state of mind that's going through a mental process, small things like, maybe let's not deliver them their toilet paper today because I don't feel like passing them out. Let's not escort them to the showers today because I don't feel like running shower day today. When I want to go outside to see the outside which is straight up because there is nothing else around and I want to breathe natural air and somebody has the right to say let's not have unlock today and take 'em to the yard, this is the type of things I'm talkin' about that causes mental stress in a SHU program.

If I'm on a yard or in an open program inside prison I can talk to someone, I may get to a phone, but to get a phone or a letter that was given to me today and I don't receive it for 2 weeks or 3 weeks I think that's cruelty. If somebody working that shift that day and says something as small as "your mother died today." and you holler out your little tray slot and say, "what are you talkin' about my mama died today?" — "well I don't know what happened, you have to look into it"—well that's not right. Know what I'm sayin', the courtesy of a death or serious situation like that, I think a person that's being paid or running that shift should have the courtesy to stop and say, "Mr. Z, you had a member in your family death today."

I want to talk about the situations where people are released from different parts on the lockdown to put on the yard at the same time when fights can occur and people can sit back and laugh on who won that day. I want to also state from my understanding there's no prejudice in a SHU program because blacks, whites, browns, whatever all treated the same. I'm sayin I understand I'm in a SHU program because I did something wrong or accused of something that I didn't do, but I'm being punished, I AM HUMAN, and by bein' human I do have certain rights to get a shower, receive something to clean my physical parts, and then I do have emotions, emotions such as a grown man crying because you can't get in contact with your mother or your child or somebody. And what hurts really in your heart because when you have nobody to complain to because talking to a wall you don't get no response but sometimes we get the feeling in SHU you want to tell somebody, you wanna ask somebody for information, how do I go about. I really don't read, I really don't write, I really don't know how to go and talk to somebody that's superior to me about I'm having this problem. That's some of the cries you hear from some of these guys in the SHU program.

If I'm in this SHU program a year, or a month's time, I feel that why if I'm put in this place and I'm locked in this confinement, at times I start having mental problems, you start to have dreams. I have thoughts will I ever hear from my wife again, will I ever hear from my mother again, will anybody come in here today and teach me how to pray, teach me to just to deal with outside this wall because there is a world that goes on outside of this wall, and now I am confined, and in such as a SHU program, you shut off to all society. I can't get a phone call and call my lawyer and sayin' something wrong is being done here because in the hole you don't have a phone call to call a lawyer, you don't have a phone call to call your mother, to call your brother, to call your son, to call your child. You don't have that right when you in that SHU program.

I know you have this SHU program, have rules and regulations and it's not everyday prisoners sent to the SHU program, but they still are human and somebody has to look into it. I know that you have things you need to do each and every day. It might seem to you that having toilet paper may not mean something but try not having it yourself for a day. Being able to talk to a mental person that is a professional, you don't have that right once a month. Or whatever. One time—I'm an insulin dependent, I take shots, and it works better for you when you take your insulin shot on a routine day like 4:30, take it at 4:30, at 6:30, take it at 6:30, that's what my doctor said, but if the person who's passing out the insulin that day doesn't seem to feel that's important to get me on time, that could give me a reaction that could cause me to go into a diabetic coma, or cause me to go into a diabetic reaction, and the timing is important. Things that a lot of people in here today ..

I wanted to come in here, and if I was coming in here my way, if I was talking to a doctor or lawyer on a street I might have used a little profanity and might have said a something a little disrespect, but now I'm here representing 1000s of people incarceration, they just wanted to get the word out here. I didn't know how to come out here, because I know how to go to the streets and be a criminal, I know how to become a better person by going to school or something like that, but I don't know how to get from inside the walls of a person in confinement and ask, how do I go about this, how do I learn about this, how can I get some knowledge out here to pass to the next family or the next member of a person that's in a SHU program.

### **REV WILL MCGARVEY**

Statement to the California Assembly Committee on Public Safety Hearing on Secure Housing Units (SHUs) in California Prisons Sacramento, California August 23, 2011

Elected state representatives, Ladies and gentlemen, my name is Rev. Will McGarvey. I am pastor of Community Presbyterian Church of Pittsburg, CA – we are dually aligned with the Presbyterian Church (USA) and the United Church of Christ. I am the past chair of the Justice, Advocacy and Caring Committee of the Presbytery of San Francisco, and I serve on the national board of More Light Presbyterians.

I am one of the earliest clergy signers of the National Religious Campaign Against Torture's "Statement on the Optional Protocol to the Convention Against Torture" – something both my denominations have also signed. And I regularly visit elected leaders with a contingent from the Bay Area Religious Campaign Against Torture, asking for transparency from our military and police forces in following our nation's laws. The National Religious Campaign Against Torture (NRCAT) is a membership organization of over 300 religious organizations committed to ending U.S.-sponsored torture, including torture in U.S. prisons.

I am here today to share inter-religious perspectives on solitary confinement within our criminal justice system. I would draw your attention to our NRCAT statement, "Ending Prolonged Isolation," which has been sent to you. It states: Solitary confinement typically embodies the following:

- Prisoners are usually confined alone in their 8' x10', often cage-like, windowless, and soundproof cell for 23 hours per day.
- Prisoners are subjected to sensory deprivation and/or sensory assault.
- Some prisoners have been held for months, even years, in complete isolation and suffer life-long consequences in their ability to function.

Prolonged solitary confinement under these kinds of conditions has long been considered a form of torture, which destroys the humanity of those who suffer it, particularly those with mental illnesses, those with learning disabilities, those with developmentally disabilities, and young people.

As of May 18, 2011, 3,259 people were being held in solitary confinement in California special housing units (SHUs) and hundreds more are being held in Administrative Segregation, awaiting a SHU assignment. People of faith all over California are calling for a comprehensive and public review of solitary confinement practices in California prisons and an end to the implementation of this practice as a long-term solution for individual prisoners.

Our laws and all faith traditions recognize the inherent and inviolable dignity of every human being. As Justice Thurgood Marshall so poignantly stated: "When the prison gates slam behind an inmate, he does not lose his human quality ...." Prolonged solitary confinement destroys that human quality. Any practice that promotes that end does not reflect the values and moral principles that ground our nation and this great State.

As you may know, the history of solitary confinement in U.S. penal institutions has a religious underpinning. Edith E. Flynn and Margaret Zahn, in their article on legal history: "Prisons and Jails: Development of Prisons and Jails in the United States" notes this history,

Reflecting the legacy of their European ancestors, the American colonists made extensive use of corporal punishment, with death, mutilation, branding, and whipping decreed for serious offenses, and public ridicule, such as the stocks, the pillory, the public cage, or the ducking stool, imposed for lesser offenses. In general, the colonial penal system was harsh, exacting, and motivated principally by revenge....

After the Revolutionary War... reform-minded colonists began to experiment with new criminal codes.... They also embarked on a course of penal reform that would not only affect America but eventually spread throughout the world."

By 1787, a small group of concerned citizens in Pennsylvania organized the Philadelphia Society for Alleviating the Miseries of Public Prisons advocated for reforming the existing penal structure to make prisons more humane. Pennsylvania Quakers provided significant support for the Society's efforts at prison reform. It was actually the Quakers that come up with the idea of solitary confinement as a rehabilitation practice. It was thought that prisoners confined in solitary conditions, with time to reflect on their actions, would be rehabilitated through penitence. The term "penitentiary" comes from the Quaker idea that solitude would bring about penitence.

The Wall Street Jail in Philadelphia was the first to experiment with solitary confinement. First constructed in 1776, according to Flynn and Zahn, *"this jail had all of the hellish characteristics of its predecessors."* Men, women, and children were kept in the same facility, where conditions were brutal and inhumane. The Wall Street Jail was renovated in 1790, becoming the nation's first "penitentiary." Debtors were separated from hardened felons, and men, women, and children were now separated. Corporal punishment was banned. New legislation developed by the Philadelphia Society shifted the focus from physical, often capricious punishment of offenders to their reform and rehabilitation. Inmates were given a Bible and religious instruction to facilitate solitary contemplation and hard labor to teach self control. The combination of contemplation and self-control would bring about rehabilitation and redemption and prisoners would be returned to society as law-abiding citizens.

Then, as now, the total lack of human contact led to the development of psychoses and other forms of mental and physical illnesses among the prison population. Then, as now, suicide was a frequent response of prisoners who were left in solitary confinement for prolonged periods. By the late 1880s, U.S. prisons authorities began looking at clinical evidence from Europe that confirmed the dire effects of solitary confinement experienced in Wall Street Jail and other U.S. penitentiaries, and the practice of solitary confinement was abandoned in U.S. prisons from the 1880s to 1970 when it was revived in its most extreme forms in Supermax prisons and special housing units.

Friends, what began with a religious impulse toward the reformation and rehabilitation of inmates has become an often cruel and brutal system of warehousing inmates, with little, if any, concern for the genuine reformation and reclamation of the individual as a suitable member of society. And we all suffer consequences: prisoners suffer and our communities suffer when many people who have been subjected to prolonged periods of isolation from any human contact are returned to our communities psychologically broken and unfit for social intercourse. Inmates who have experienced long-term solitary confinement show some of the same effects as prisoners of war and those who have been held hostage.<sup>3</sup> And we should remember that while this system of confinement causes social and mental injury to the inmate, it also causes moral injury to the guards who witness and participate in the long-term consequences of this system.

Inmates in the U.S. have been put into solitary confinement for many different reasons, including disciplinary actions. I will leave it to others speaking to you today to document the psychological and social impairments which solitary confinement produces, but we should also note how solitary confinement is used to enforce cultural biases, particularly around race and religion.

Native American inmates have been put into solitary confinement for not submitting to policies of wearing short hair, and Rastafarians have been targeted for declining to have their dreadlocks cutoff, also a protected religious expression. For the last 10 years, Kendall Gibson and 10 other prisoners have been kept in solitary confinement in Virginia for keeping the Biblical injunction found in Numbers 6:5, "There shall no razor come upon his head."

Also "in Virginia, over 30 inmates were moved to a maximum security facility for "non-compliance"... with standards that require hair to be above one's shirt collar and beards to be completely shaven."

For many Muslims, it is worse. Islamophobia contributes to a significant number of Muslim inmates being placed into solitary confinement, now called Communications Management Units (or CMUs) in some prisons, for fear that they may be terrorists who need to be separated from one another. The Center for Constitutional Rights estimates that 60-75% of those in CMUs are Muslim. Unlike other Federal prisoners, CMU prisoners are forbidden from any physical contact with their children, spouses, family members or other loved ones during their visits.

On the flip side of this problem are Lesbian, Gay, Bisexual, and Transgender inmates, 67% of whom report that they have been sexually assaulted by another inmate during their incarceration – a rate 15 times higher than the general population.<sup>6</sup> The faith community is univocal that rape should not be a part of anyone's sentence, but a surprising number of LGBT inmates – especially the transgender inmates – have reported knowingly committing minor infractions in prison in order to go into the horror of solitary confinement in order to avoid systematic rape. Fortunately, California allows for conjugal visits for same-gender loving couples, whereas most states do not. Still, there continues to be considerable discrimination against LGBT inmates not only by other inmates, but also from the staff and officers of the jails and prisons.

Ladies and Gentlemen, the United States is a signatory of the U.N. Convention Against Torture. I would submit that persistent, long-term solitary confinement constitutes torture under this definition: it is clearly an intentional infliction of physical and mental pain and suffering. Prisons that use debriefing practices – offering prisoners freedom from solitary confinement if they become informants on other inmates – also break this convention. Since there are ways to protect inmates that are a danger to themselves and others without completely isolating them from human community, and given what we have known since the late-nineteenth century about the impacts of extreme isolation, I believe what we are doing in supermax and control-unit prisons in California is a form of torture and a violation of human rights in which we are all implicated.

Rev. Richard Killmer, Executive Director of NRCAT, wrote,

“The National Religious Campaign Against Torture vehemently believes that even those convicted of crimes are human beings with inherent dignity and worth, and they deserve humane treatment.”<sup>8</sup>

Each of our faith traditions reminds us of the inherent worth of each human being. As people of faith, we are called to recognize, bless, and reclaim the human dignity within each person. In the Christian tradition, we call this the *imago dei*, the image of God found within each individual.

What concerns us as people of faith is the destruction of the human spirit. When human beings are subjected to conditions that destroy who they are, it is incumbent upon the whole faith community to call our culture, and yes, even our government, to accountability. If we allow solitary confinement to continue in our society – especially when we have been informed of the harmful results – what does that say about the kind of people we all have become?

Thank you for your time.

Written with the aid of Geoffrey Gaskins, from the Bay Area Religious Campaign Against Torture

## **PANEL #2: Research-based Perspectives on SHU.**

Charles Carbone, Laura Magnani, Dorsey Nunn, Terry Kupers, Craig Haney

Public Safety Committee, Holly J Mitchell ... dist 47, LA – D

**Charles Carbone,** I'm a prisoner rights attorney from SF, litigated more gang validation cases, counseled more inmates in SHU and visited more SHU units than any other advocate in US. Based on that (JD prisoner rights lawyer) offer my thesis, the reasonable conclusion that SHU policies serve neither public safety nor prison safety. In fact they undoubtedly undermine prison safety by creating a disparate system of segregation and punishment for prisoners based on protocols and procedures that unjustly place men and women in SHU without sufficient legal or factual assurance that they are deserving of such treatments. a San Francisco prisoner rights lawyer with extensive experience representing gang members, stated that SHU's undermine both prison and community safety

(will not address conditions of confinement, Thelton Henderson reviewed, “SENSELESS suffering and wretched misery”). Focus my comments (not addressing conditions of confinement) on three issues:

- brief history of SHU policies and legal parameters that have led us to this particular point;
- present state of the law, which requires and demands action from the legislature (judiciary not equipped, nor does it have the jurisdiction grant of authority to fix many of these issues, which places a greater emphasis and obligation on legislature);
- poverty of lawful application of gang validation policies

I – 2 elements of brief history of SHU: We've done this already. Had legislative hearings between 2002 & 2004 (leadership of Sen. Vasconcellos and Romello [Romero?]) appellate record. Unfortunately many issues raised are exact same issues we are discussing here as today, and many if not all of those issues went wholly unresolved. 2) Castillo case, I personally litigated for 8 years in [US District Court, California] Northern District before Hon. Martin J. Jenkins. Three lessons learned:

- 1) Prior to 2004, despite law being very clear that CDCR had an obligation to tell prisoners what was the evidence being used against them and give those very same prisoners opportunity to rebut that evidence, CDCR did not do that for years and years, up until about 2004.
- 2) Second, one of directives out of the Castillo case was effort to move away from mere association to purposeful participation in unlawful gang activity. Title 15, supposed to be done by "articulable basis," meaning something that resembled logic had to fly out of the mouths of institutional gang investigators why the association between two gang members had to be more than just the weather or prison life, that it had to be about gang activity. That's something the CDC committed to in 2004 and has not done so at all to date.
- 3) Use of confidential sources of info. Hundreds of prisoners validated based on evidence that is completely and utterly confidential, CDC 1030 is a scant amount of detail, minimal amount of information. Strange that first of this month governor signed bill disallowing the exclusive use of confidential informants in criminal cases, yet have this same practice in SHU, serving minimum based on confidential sources. If the core concern is those informants are suspect or unreliable, perverse incentives, that principle should apply to SHU. Section 3341, also Title 15 section 3378 were embodied, and section 3341 of Title 15.

How policies not applied today:

- 1) I've seen the past decade a great variance between institution within department how are applied; lack of training; had wildly differ interpretation depending who we were talking to relative to on same set of rules, most of these policies are based on personality not policy.
- 2) They are decision makers, which raises a whole set of red flags in terms of the competency of CO's, competency question, making decision if person stays in SOL for minimum of 6 years. supposed check and balance is Office of Correctional Safety, good at taking square pegs and stuffing in round holes, because their record of overturning those gang validation packets is next to nil. There is no meaningful checks and balance. Within the department vis a vis OCS.
- 3) Association for purpose still lingers.
- 4) Lingering question whether all or 1 evidence has to be 6 years or older [newer?]. Department takes crude position of only one item. Department still relies on "laundry list", mere naming of names without criminal activity being identified; single source pool, counting same incident a number of times; overbreadth; historical facts that are being used to support gang validation cases (George Jackson) gang validation (the Art Of War) to base a validation on, strange considering we have PC 2601, Prisoner bill of rights, allowing prisoners to have periodicals.
- 5) Form of retaliation; allow debriefer to occur w/in one year being violated
- 6) 6 year inactive requirement and active requirement; substantial questions over this
- 7) In response to media, CDCR spokesman Hidalgo said SHU prisoners earned their way into the SHU because of numerous staff or inmate-to-inmate assaults; if that were true, where are the 115s? the serious rules violations? Overwhelming Majority of SHU based on a gang validation have not committed serious rules violation of any kind, much less related to gang activity.

I submit that Substantial changes are needed in this area, and is the proper purview of legislature to xx these changes.

STATEMENT OF PROFESSOR CRAIG HANEY TO CALIFORNIA ASSEMBLY COMMITTEE ON PUBLIC SAFETY, HEARING ON SHU CONDITIONS IN CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

AUGUST 23, 2011

My name is Craig Haney. I am a Professor of Psychology at the University of California, Santa Cruz. I have been studying the psychological effects of prison confinement, including the effects of solitary confinement, for well over 30 years. That research has included in-depth analyses of the conditions of confinement in many if not most of the facilities in the California Department of Corrections and Rehabilitation (CDCR), including the Pelican Bay Security Housing Unit. I have testified as an expert witness in most of the major prison conditions lawsuits that have occurred in California over the last several decades, including ones directly pertinent to today's hearing—Toussaint v. McCarthy,<sup>i</sup> Coleman v. Gomez,<sup>ii</sup> Madrid v. Gomez,<sup>iii</sup> and the most recent case of Brown v. Plata.<sup>iv</sup> In the 10 short minutes I have available to me I want to make several brief points that hopefully will put today's important issues in a somewhat larger context.

The first is some historical context. It is that CDCR officials certainly knew—or should have known—at the time they created the Pelican Bay Security Housing Unit in the late 1980s, that it would expose prisoners to psychologically dangerous conditions of confinement. Indeed, as a society we have known since at least the mid-19<sup>th</sup> century that the practice of solitary confinement was psychologically harmful and could significantly damage those persons who were subjected to it on a long-term basis. Indeed, a hundred or more years before Pelican Bay was designed and built, public figures like Charles Dickens and Alexis De Tocqueville wrote eloquently about the evils of prison solitary confinement and its power to drive prisoners mad.

Our own United States Supreme Court acknowledged as much in an 1890 case known as In re Medley, when Justice Miller wrote that this form of imprisonment had been universally abandoned because, in his words: “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 sufficient mental activity to be of any subsequent service to the community.”<sup>v</sup>

If CDCR officials were unaware of these vivid historical precedents, they certainly were aware of many more immediate ones. Indeed, for the 10 years preceding the construction of Pelican Bay, the Department was engaged in continuous and contentious litigation— from the late 1970s through the 1980s—that focused on



exactly these issues: the harmful effects of solitary or isolated confinement and the wrongheadedness of attempting to use it as a technique to control prison gangs. Both issues were at the very heart of a federal court case in which federal judge Stanley Weigel repeatedly chastised the Department of Corrections for the inhumane conditions that were being operated in the so-called lockup units in San Quentin, Folsom, Soledad, and DVI. I know this personally because I provided much of the testimony that helped to establish many of those facts.

Instead of taking that expert information and those judicial admonitions to heart, CDCR officials simply and cynically ignored them, and moved on to create yet another lockup unit, this one on a vast, unprecedented scale that was explicitly designed to impose hitherto unimagined levels of isolation in the “supermax” prison at Pelican Bay. There can be no doubt that they knew the risks they were taking with the psyches of the prisoners who were confined there; as I say, I and many other experts, and at least one federal judge, had clearly and repeatedly told them so throughout the Toussaint litigation. In fact, in the entire 10-plus year period of that litigation, the Department never presented one single expert witness to dispute the facts that we presented about this potential to do great harm. They just deliberately and indifferently ignored them.

Indeed, notwithstanding the clear and undeniable evidence that long-term solitary confinement exposed prisoners to extreme psychological dangers, and despite the unprecedented and uncharted levels of nearly complete isolation to which they knew Pelican Bay would expose prisoners, there is no evidence that CDCR officials ever bothered to consult with any other psychological or mental health experts about the design of the facility to obtain advice about what the effects of the kind of isolation they were planning to impose might have on the prisoners in order to determine how those effects might be ameliorated by one or another design feature or approach. As one sign of how little they appeared to care, CDCR officials chose to open Pelican Bay prison and operate it for well over a year with only one single master’s level psychologist on staff to administer to the needs of the entire population of approximately 4000 prisoners at the entire prison, including the 1500 who were housed under truly dangerous levels of isolation in the SHU.

When those isolated and deprived conditions and their psychological effects were finally scrutinized in federal district court a few years later, Judge Thelton Henderson acknowledged that, in his words, the Pelican Bay SHU “may press against the outer limits of what humans can psychologically tolerate.”<sup>vi</sup> As you no doubt

know, Judge Henderson ordered some significant changes in certain practices that took place at the prison, most notably in its use-of-force policies and the screening and removal of the most seriously mentally ill prisoners. He did not shut the prison down, although perhaps in retrospect wonders if he should have.

What is important to keep in mind, however, is that although he did not shut the Pelican Bay SHU down, the facility had only been in operation for a few years at the time of the hearing in Madrid, and had been operating for a mere 6 years at the time of he issued his strongly worded Madrid opinion. Back then, in 1995, as Judge Henderson himself noted, “[we could] not begin to speculate on the impact that Pelican Bay SHU conditions [might] have on inmates confined in the SHU for periods of 10 or 20 years or more.”<sup>vii</sup> Of course, it is now more than 20 years since the facility was opened. Unfortunately, we no longer need to speculate. Indeed, some of the men who were on that first busload of prisoners brought to this stark, barren, and desolate place in the late 1980s are still there, never having left.

It is critically important in this hearing that we not lose sight of the fact that all of the men confined at the Pelican Bay SHU and in other housing units like it in CDCR continue to be treated very badly, routinely worse than prisoners in any civilized nation anywhere else in the world are treated, under conditions that many nations and international human organizations regard as torture. They live their entire lives within the confines of an 80 square foot windowless cell, which they leave for an hour a day when are allowed to enter a concrete encased but otherwise barren outdoor exercise pen. Save the small glimpse of overhead sky they have when they look directly up inside this pen, they have no contact with the natural world, not even to touch or see a blade of grass.

They have no contact with the normal social world either. Indeed, the only regular physical contact they have with another human being is the incidental brushing up against the guards who must first place them in handcuffs and chains before they escort them out of their cells and housing units. They visit loved ones through thick glass and over phones, and are thus denied the opportunity to ever touch another human being with affection. This has gone on unabated, for years and years, for some of these men for several decades now.

Not surprisingly, this mistreatment has had terrible consequences for many of them. In our studies of prisoners at Pelican Bay, we have documented the multiple ways in which they are suffering. The list of

symptoms is far too long for me to recite in the short time available to me (but it is contained in the written material I have provided to your staff).<sup>viii</sup> In short, prisoners in these units complain of chronic and overwhelming feelings of sadness, hopelessness, and depression. Rates of suicide in the California lockup units are by far the highest in any prison housing units anywhere in the country. Many SHU inmates become deeply and unshakably paranoid, and are profoundly anxious around and afraid of people (on those rare occasions when they are allowed contact with them). Some begin to lose their grasp on their sanity and badly decompensate. Others are certain that they will never be able to live normally among people again and are consumed by this fear. Many deteriorate mentally and emotionally, and their capacity to function as remotely effective, feeling, social beings atrophies

These prisoners are paying a terrible price as pawns in this failed experiment, a price in terms of the pain they feel during the time they are housed in isolation, and a perhaps an even greater price when they are released and find they are unable to cope with the demands of a normal social life outside prison. To my mind, there is now clear and convincing evidence that this misguided attempt at managing California prison gangs simply does not work: when Pelican Bay came on line in the late 1980s California had a serious prison gang problem; it now has the worst one in the entire nation. Indeed, do not believe the CDCR can present one single shred of reliable evidence that its gang-control-through-isolation policy is effective. In fact, I believe that a compelling argument can be made that the SHU units actually have made the state prison system's gang problem much worse rather than better. Thus, the suffering of the SHU prisoners is not only in vain, it is counterproductive.

The specter of gangs is being used as a justification to continue to impose these draconian conditions, but it must not be allowed to. People join gangs in prison for the same reason that they join them on the streets—because they believe their own safety and self defense depends on it, and because they have no other way to gain access to things they need (like a sense of belongingness and purpose in a world that seems to deprive them of it) and things they feel they want (sometimes illicit things, ones that are made more attractive by the deprived circumstances under which they live). But this also means that gangs can be effectively controlled in prison in much the same way that they are effectively controlled on the streets. To be sure, steps have to be taken to make the “neighborhoods” in which prisoners live as safe as possible, by limiting access to the worst

aspects of gang life—weapons and drugs. (In prison, frankly, this also means doing a better job of policing correctional officers as well as prisoners.)

More importantly, however, gangs are effectively controlled on the streets by providing members and potential members with meaningful and hopeful alternatives, pathways to genuinely better futures that they can choose instead of gang life, and which their gang involvement would sacrifice. In prison, just as on the streets, gangs flourish where these kinds of alternatives are limited or non-existent. The overcrowded wasteland that the California prison system has become over the last 30 years, one almost completely lacking in meaningful rehabilitation programs, vocational or educational programming goes a long way in explaining the proliferation of the gangs.

In 2002, for example, only a little more than half of all prisoners in California were employed in prison jobs of any kind.<sup>ix</sup> By 2006, the situation had gotten worse rather than better: more than 50% of California prisoners were released from prison that year without having participated in a single rehabilitation or job training program nor having had a single work assignment throughout their period entire prison sentence.<sup>x</sup>

The gangs have stepped in to fill this void. Because the CDCR offers most prisoners little or nothing in the way of programming or pathways to a better future,<sup>xi</sup> many feel they have little or nothing to lose. In the same way that gang abatement programs on the street that focus entirely on punishment and suppression are doomed to fail, the CDCR's SHU-based isolation- and deterrence-only model will never work in the absence of genuine, meaningful pathways for prisoners to do productive time.

Finally, I am aware that the CDCR intends to make some due process modifications in the procedures and practices that are in use in the Pelican Bay SHU (and presumably the other SHU units in the state), and that we are going to hear about them momentarily from Department of Corrections officials who will testify next. As best I understand them, these changes represent first steps along the path of creating a system that is fairer and more humane. For this, the Department is to be applauded. These new procedures suggest that the CDCR has come a very long way since those early days when it insisted on stubbornly ignoring the warnings that many of them give them about the path they had embarked on. It has taken a long time—far too long, in my opinion—but at least the process has begun.

However, as a veteran of the process of trying to create improved prison conditions and practices in California, I have to remind you that announcing intentions are not the same thing as solving problems or actually making changes. Moreover, these first steps are not final solutions and they do not begin to effectively address the core injustice and inhumanity of the Pelican Bay—the profound isolation it imposes and the sheer lengths of time to which so many men are subjected to it.

I have no reason to believe that Department officials are insincere, and I am willing to take them at their word that they are trying to improve this notorious facility. But Pelican Bay's legacy—its history of mistreatment, misery, and willful neglect—is long-standing. It will take a great deal of effort, and oversight to overcome the atmosphere of distrust and abuse that has surrounded this place. I am hopeful that this Committee will remain vigilant in this regard, and help the Department follow through on its new commitment, a commitment to at least begin the process of meaningful change.

**Laura Magnani** American Friends Service Committee in SF, author of study “Buried Alive: Isolation in Prisons,” 2008, addressing torture in SHUs. Working on this issue since 1970s, yet shocked when began to gather these statistics. Committee on Safety and Abuse in American Prisons found 80,000 prisoners in long-term isolation in year 2000, 40% increase from just 5 yrs earlier. Most experts put number at 100,000 nationwide. Our research found CA holds close to 4000 in SHU and close to 14,500 in some form of segregation (protective custody, administrative, psychological). REPORT ON PAGE 6. Shocking stats given. State is hard up for \$ and costs at least twice as much to house people in these units. Over 240 in isolation are women, face particular hardship because of special needs, and extreme lack of privacy. When male COs have 24 access to women's most intimate functions, creates extreme form of oppression, and often trauma, made all the more acute because history of abuse in prisons at hands of men. Isolation on the one hand, also lack of privacy—even in their isolation they cannot escape the cameras, and slots in cell doors, seeing every move.

No clear definition of torture? UN Convention Against Torture and Other Cruel And Degrading Treatment or Punishment: any state-sanctioned action by which severe pain or suffering, mental or physical, is intentionally inflicted for obtaining information, punishment, info, intimidation, discrimination. By this definition SHUs fail on several counts: they cause severe pain both physical and mental, they do so often or even primarily for the purpose to extract info and intimidation, and are the most racially segregated part of the prison system.

By our estimate people held there is over 90% people of color, because they are used largely to control, to judge what prison officials judge gang-related matters, no distinction made between association and alleged affiliation [membership]. UN human rights [commission] responsible for implementation of convention on rights say prolonged solitary confinement is prohibited as a form of torture. Units themselves = torture; violent cell extractions, 3 pt restraints or hog-tying, or more recently contraband watch (diapers, leaving them in their own waste for days at a time). No only do these practices violate international treaties, they violate our sense of human decency. Justification is always the prisoner “may” have engaged in some kind of violent behavior.

“No exceptional circumstances whatsoever, whether a state or threat war or political emergency ... may be invoked as a reason for torture.”

Legislative recommendations to begin to move the state away from torture:

- 1) (always been vetoed) Restore right of reporters to enter facilities and interview prisoners, not just those hand-selected by administrators. FREE PRESS, one of most important safeguards against abuse.

- 2) Implement limits on amount of time a person can be held in isolation. (More than 30 days), must get due process w/ access to attorneys and impartial judge, not just an administrator. Short of an actual time limit ... to determine if sentence is prolonged (review every few months).

Assembly members now here: SKINNER AND MITCHELL AND HAGMAN

**Dorsey Nunn**, Exec Director of Legal Services for Prisoners with Children, a public-interest law office. All of Us Or None, a project of LSPC [working for] full restoration of civil rights of incarcerated people. I have been visiting within CDC for 51 years; 22 years personal visits, 29 years professionally as paralegal. Contacted consistently since opening of PB where prisoner rights being violated. June 28, 2011, with HS looming, visited PB for first time. Too hard to ignore people stating they were willing to risk lives ... Interviewed people with standard questions, med history, emergency contact info, and ... potential death of the strike efforts.

There must be a line to cross where punishment becomes torture. [Isolation] may not be torture for a few days, few months, but can be something totally different to isolate them for a few years or a few decades. One of the people I visited was PJ, knew him as fellow prisoner. They had put him in ad/seg in 1988; he knew about Abu Graib, Guantanamo Bay, knew about torture, [didn't understand] why something would be considered torture at Guantanamo Bay and not Pelican Bay. Noncontact visiting area; [PJ] was much lighter, lost color. I learned that the lack of direct sunlight where people exercise, referred to as the dog run – there, unable to experience what is considered 'outdoors': no trees, no grass, natural sunlight has to squeeze over a very high wall. It's a blessing to see the sun and the clouds, blessing not to get wet on rainy day, lack of protection against inclement weather. I wonder if white people could tell when black people experience color change? Do we always appear to be tanned to them?

Two people told me that day, hey I miss talking to black people. What it would be to be annihilated culturally? found it refreshing to talk to the same race in America. One guy complained he only spoke to one other black person legally in 20 years; other time he made the attempt he was given disciplinary report. What does this mean to reentry when only contact with other human beings are hostilities; not to be touched or only to be touched suspiciously. [Nunn questioned the deprivation of human contact and the ability of someone to do something as simple as speak to someone of the same race.]

PJ was locked up most of this time because of association, and the fact he did not name names. If this particular visit has any real meaning to this hearing, you would have to consider:

- Can justice be had absent an admission of wrongdoing? It is my belief people have been tortured for multiple years.
- Can a system be fair and just if based on confidential info extracted through questionable means?
- Should people have a fundamental right to confront their accuser? Placed in ad/seg based on flimsy info secured by questionable methods, unfairly deprive people of right to be reasonably considered for parole. [PJ has been] eligible for parole for 35 years, how much programming and rehabilitation time has been lost?
- Didn't want to be labeled a gang member based on association; labels the state uses to not be held accountable for their acts of violence.

**Dr. Terry Kupers**, psychiatrist, prof. at Wright Institute: I have served in dozens of litigations about conditions of confinement, currently federal court-appointed monitor in Mississippi of a large class action lawsuit.

Time for legislative oversight very much needed, in a democracy is a duty of legislature to oversee prison functioning. [I speak as an MD and MSP.] Much needed in CA, have gotten out of control, the last Supreme Court decision said have to reduce the prison population, because it's not working and prisoners are being abused.

Prisoners' demands are VERY reasonable; they're actually common sense. They are not asking for anything not spelled out in 2006 US Commission on Safety and Abuse in America's Prisons, a bipartisan panel.

Prisoners demands come right of that report. CDCR says they are in compliance with that report; they are absolutely not, witness the section on isolation/segregation confinement. Far out of compliance. [The commission's report is] Recommended reading.

Delighted you are looking into this: Problem of secrecy: For abuses, for human damage to go on, for prisoners needs to be blatantly ignored, the process has to be secret. Otherwise citizens would get very upset. By having hunger striking prisoners have direct attention. public media on plight of prisoners in isolation, an important development and offers us opportunity to intervene. Legislature could reverse the media ban—it is illegal for prisoners to talk to media in California, that needs to be reversed as part of legislation that flows from this intervention.

CDCR will say they are doing many of the things this panel recommended they do, "it was already in the works." In 2007 there was a very high level work group that made a report advising the very changes the prisoners asked in their demands; none of that has been implemented. While CDCR will say they are implementing changes like what we are talking about today, they actually haven't done a thing and legislative oversight is very much needed, urgently.

The question of security comes up: There is delicate balance between constitutional safeguards and security issues. In litigation we get to "X or Y is violation of 8<sup>th</sup> amend (cruel & unusual punishment)." DC will say need it for security. The US Constitution was written with security in mind! The Constitution takes security into consideration, and the requirement that we need security is not a reason to violate constitution. CD will say need Supermax is to control gangs; this is contrary to social science research. Since late 1980s, advent of Supermax, has witnessed *increase* in violence within the prisons... Mississippi (I gave a hard copy of our report to this committee) downsized from 1000 to 200 cells – the result was a *decrease* in violence throughout the entire Mississippi CDC and a decrease in infractions ... so Supermax not necessary to support safety. When prisoners, when they get out of Supermax they are still in max security, a prison issue, they are not going home from supermax.

Legislature should address:

- 1) Due process should be addressed: Wilkinson v Austin, out of Ohio; Supreme Court did not hold existence of supermax unconstitutional but said it constitutes significant hardship, so prisoners have standing and are entitled to due process, spelled out in great detail. Ohio policy was in violation of that rule and they were forced to rewrite that policy, and once that was done as in Mississippi, rate [of violence] went down in Ohio prisons. So needs to be something spelled out, I am happy to work with committee, has to be more than what CDCR now allows, because lot of violations of their own policy are in practice every single day.
- 2) Conduct-based SHU assignment, for a lifetime indeterminate sentence, they don't get out, so a lot there since late 1980s since designed.. Needs to be conduct-based consignment to segregation. If get in fight, penalty of 30 days to segregation and then you get out. In Calif, it's not conduct that gets you in there but *assumption* you're gang affiliated, often on very poor [evidence?], and you're in there for life, unless you debrief, give up information about other gang members, which is likely to get you killed. In Indiana and New Mexico, SHU used for very different purposes elsewhere, to change behavior w/in prison. They are in max security community, and if misbehave put in SHU for delimited time, usually 6 months, given a program with assignments they have to accomplish, and if do and stay out of trouble they get out. And this changes their behavior, and this is far from how these units are being used in California and would go a long way... most states, gangs left in general population unless do something (gang behavior) that is proven with due process,
- 3) Phase programs: we have statistics, research, talk to 1000s of prisoners and CO staff, one of the most stunning statistics in criminology today, suicide is a big problem in jails today, over twice [the rate as in the] general population at large in any state prison system. This is true in CA in spades, over half of actual successful suicides in entire prison system involve the 2-6% of prison population that happens

to be in segregation in any given time. That is a stunning statistic and supports the idea that the despair of these kinds of segregated situations breeds suicide (among other things, acting out and other problems). So need to reverse the dead time in segregation, an indeterminate sentence, not going to get out until they die or inform on someone else. What that does is breed despair, and despair leads to suicide. That can be reversed by legislative means – phases within the segregation system can be offered to prisoners to learn to behave right so they can get out and be law-abiding citizens. That can be included in legislation.

- 4) Need alternatives to debriefing. Violence in CA prisons has been skyrocketing while supermax units have been in existence. One has to wonder why that is. One reason: one of most violent is PB, half SHU, half general population. GP is maximum security, and If you get out of SHU you will be typically placed on yard at PB and you'll be killed -- because it's assumed you snitched on somebody, assumed that's how you got out-- so a lot of violence on yard in PB. So to extent that's the case, that is example of the existence of the Supermax *increasing* rather than decreasing the violence. So alternative to debriefing is phases where people can work their way out of a gang by behaving appropriately within the phases. (Connecticut, northern correctional facility)
- 5) Maxing out of the SHU – people leave and go immediately into community, there's bad record of drug use, recidivism, more crime because in isolation for years. Most states with these units have 6-month policy in congregate resocializing program before released. Made big mistake in Calif in 1980s, big prison violence due to massive crowding from War on Drugs. Instead of reversing crowding and population as Supreme Court has now ordered Calif to do; we villainized a subsection of prison pop and said violence is due to them being predators and called them 'worst of the worst' and it has been downhill ever since. We should have reduced the crowding and set up rehabilitation in which learn skills other than fighting with others. An opportunity for legislature to do that now.

AMMIANO: [some are] concerned we are up here parroting 2 years ago and how we got stuck, and I am committed to making sure there is some movement on this.

NANCY SKINNER , CA state assembly, dist. 14, Berkeley – D

Aware of any comparisons of costs, life w/o parole vs. style of incarceration in PB—is it higher?

[MAGNANI?:] It's twice as expensive as cost of housing people on mainline; security costs very high, ratio of officer to prisoner is very high. Charles Carbone: about \$57,000 per SHU inmate. Embedded cost is also intersection between SHU/ and policies and board of parole hearings. If you have been subject to gang validation, prospects of parole are virtually non-existent, so impact on state for prisoners servicing long sentences for achieving parole and ongoing costs for lifetime ...

KUPERS: Conversion: these buildings exist, people locked up 24/7, but the buildings can be used for other purposes. In New Mex., downsized SHU and knocked hole in wall to create an outside yard—one reform agreed to was to allow prisoners to go outside for actual exercise and recreation—and built a recreation area. Conversion is relatively inexpensive (cheaper), [SHUs] can be converted for other uses. they don't have to stop using the building.

#### **LAST PANEL – CDCR**

Scott KERNAN, undersecretary of Operations, CDCR

Anthony Childs, Chief of Operational Safety (he didn't talk)

Assemblyman CURT HAGMAN, district 60, Chino Hills, R

**SCOTT KERNAN**, CDCR: facts need to be illustrated. SHU created in response to serious security threat of gangs in our system. Way to protect inmates, staff, public from tangible threats from gangs – murder, extortion, rape, drugs, are examples of criminal activity that require the department to do something. About 3000 inmates in SHU in total pop of 165,000 inmates in our system, "*very small number.*" 8000 assaults or stabbings the



department has each year, gangs would be primary cause. Millions of taxpayer dollars wasted each year, gangs would be identified as primary problem. People not show up because afraid of gang retaliation.

During HS we did prevent the media coming into PB during course of it but right after HS was dismissed, we invited members of media to come in and tour our SHU. We simply don't allow media to talk to individual inmates for fear of them sensationalizing their crimes, like Charles Manson or Scott Peterson having media inquiries all day.

Segregation is critical to protect inmates who want to program. [Segregated: only] 3000 out of 165K. SHU has been heavily litigated. Courts have upheld validation in due process and conditions. Admittedly there are harsh conditions but not unconstitutional and not torture or human rights violations. What might be a violation is the violence the gangs perpetuate. That is, [a prisoner] must stab a member of a rival gang or be in fear of retaliation. We have duty to protect all the rest of the inmates in our system. CDC agrees we can and should make some changes in policy, in fact as a result of the HS we are in discussions with advocates and inmates, we can make some positive policy changes and still allow us to protect our charges.

CDC in 2007 contracted national experts to review policies and make recommendations on best national practices. Many were related to validation and debriefing process. A lot of it involves stepping down process where by virtue of behavior [prisoners] can be placed elsewhere and show by behavior where they can program without violence. Overcrowding has been a problem, we just have not had the space. The 3 judge panel, the reductions, the government realignment program will provide for the first time in many decades additional space for the department to make some of those positive changes.

Realignment panel has given impetus for some quality decisions on program on SHU and still maintain safety: behavior-based system with due process, incorporate best process and incorporates safety; not another study but substantive changes that can occur in short term. We must be careful how we make these changes; what's [hangs] in balance is safety of inmates and staff in our system. 1000 [inmate-on-inmate] assaults last year, and same number of inmate-on-staff assaults; we cannot permit policy changes to perpetuate violence, people's lives are at stake.

Will work with all parties, many of the panelists today we have worked with as a result of the HS, anticipate the CDC will evaluate our policies in matter of months, not years, to come up with a policy that meets the target. We will involve all state, law enforcement, CCPOA, labor unions, legislature itself, national experts. (heard you, Mr. Chair, that you would like to have continued hearings, so you can get full bearing of extent of problem). We have gathered SHU policies, our lockup policies, for 28 states, developed a warden's advisory group to evaluate and develop the policy, once the Secretary approves that, then the stakeholder review, then regulatory process. We do believe process that gives inmates [incentive for] disciplinary-free behavior is appropriate...[??] targets 6 prison gangs needs to be modified, and need to ID security threat groups. I do admit our policies just target prison gangs today and not capturing those inmates who should be segregated.

Process would allow inmates to earn way out of system by behavior and require the department to document when we feel not the case. Weighted system, not process permit us to just ID an inmate as having associated with a member and therefore must remain in SHU; will require us to document that behavior and stand the test of due process. Step down process is a critical part: have to show while in SHU have to be involved in programs with other gangs and races and to not participate in violent behavior and they can earn their way out.

The CDC gang policy: With 3000 of 165K inmates is intended to protect inmates we are charged with, and staff, policy has been litigated and court tested and upheld. Dept is committed to making changes, please rest assured we are going to do it with this in mind, to protect inmates we're charged with.

AMMIANO: CCPOA was invited here..., we DO want a balanced ... there was no malevolent gesture to exclude anybody ... We've been going now for an hour and a half, will have quite a bit of public comment, how to handle the rest of this, with time constraints follow template, and will be scheduling another hearing. [seems very committed]

AMMIANO: it's 2011, any ideas about why recommendations made in 2007 haven't happened?

KERNAN: Worst economic times since Great Depression. A lot of this requires resources; the CDC is challenged with realignment, biggest change in history;

AMMIANO: I want to work with you so it happens—and [before] 2015!

AMMIANO: Are you making changes to debriefing program? That comes up a lot.

KERNAN: Inmates have a choice to come out of the system. We will always use all intelligence that we get in making our determinations. If you talk to inmates who went through debriefing process, 99% say, 'You got it right. When you validated me as a gang member, you got it right.' So for them not to have a voice in this as well would not make any sense. We will continue to have a debriefing process. That will not dissuade someone who by their behavior wants to get out of the gangs.

AMMIANO: What about point that debriefing can place prisoner at serious risk for their lives and the lives of their family?

KERNAN: people making conscious choice of their own to dissociate from gangs; we should be encouraging that. that's one way to get out of SHU. The Department does wonderful job documenting using numbers of sources of information, I think that we got it right. The 3000 inmates in SHUs are the ones perpetuating the gangs, are the generals, disciplining inmates who don't stab staff on sight.

AMMIANO: under new model will you address due process concerns?

KERNAN: any inmate who doesn't want to be in gangs there will be a way out. There will be a hope for them. One of problems with the Department has been, these inmates, the desperation, these are people who are involved in gang activities every day, so they will be able to by own behavior work their way out of the SHU.

AMMIANO: will you continue relying on anonymous informants?

KERNAN: yes, use confidential informants as a source, not the only source. weighted system, we have to use that, every law enforcement in the country uses confidential information sir.

AMMIANO any process for prisoner to confront or appeal an anonymous witness?

KERNAN: no, it's one piece of weighted system

AMMIANO: were you ever require, do you see this on the horizon, corroboration of a debriefer statement, considering alleged to be coerced and therefore reliability questioned?

KERNAN: we corroborate all evidence, so yes.

AMMIANO: Who judges if prisoner guilty of committing such behavior and , what protections ...? (We want to do something fair and impartial) You are in the trenches, you have your perspective you have a lot of experience but there's still something wrong. We need to know how to make this more fair, I'm not saying you'd like the suggestions, but we're trying to come up with something impartial and would meet some of the reasons as I see it for that HS.

KERNAN: we're going to continue to make our policy with stakeholders as fair as we possibly can, I told you that all along, many issues raised by the panelists have been litigated by the courts. There is a safeguard for those processes. We are going to make the decision as the people responsible for the prison system. And of course there will be external review of the offender.

AMMIANO: legislature has a role in this: I did like some of the suggestions for legislation. MORE TO COME.

NANCY SKINNER: my intention is not to have any kind of conflict in our discussion today but I am /... the data we heard in the panels and also the data I've seen through press reports and other materials indicates once a prisoner is in PB SHU it is very infrequent for them to be moved out. So I'm concerned, rather I see a bit of a disconnect, between your answer and at least the data I've seen.

KERNAN: average stay at PBSP SHU is 6.8 years. Certainly there are offenders been there much longer. I can give you those statistics. But average stay is 6.8 years.

SKINNER: given your remarks earlier, doesn't that seem rather a long average stay if our policy is to be able to move them? it seems contradictory to the comments you had made earlier.

KERNAN: the 6.8 years that an offender in SHU is an average of the total. The offenders in SHU with mountains of documentation of illegal criminal activities both out on the streets and public in prison is vast. Not information that we because of its sensitivity would necessarily share with public, clearly these are the generals and are involved in terrible assaults on other inmates and on staff. The SHU serves a purpose to separate those inmates from those that want to program safely in our prison system. I agree CA has a unique gang problem and I agree with the panelists it's not curtailed and may have even increased. Separating these offenders has in my opinion led to a decrease, it should be much higher if we let these .. run prison gangs.

HAGMAN: from notes, we talk about current and future policies: right now, you have SHUs in existence since the 80s, can you outline what gets you into a SHU, and current policy what gets you out?

KERNAN: system based on points: offender has to have 3 points to be validated as a member (tattoos, stabbing, self-admission, any number of criteria), generally have to have 3 pieces of evidence to support their placement as a validated member in indeterminate SHU. System Contemplating much to the 2007 report would weight those systems; confidential informant piece of information might be worth 2 pts. for example and not enough; but that plus tattoo plus gang paraphernalia in house might be sufficient. That's what other states are doing. What experts say.

HAGMAN: so prior to prison system can be ID'd or do have to do particular acts while sentenced to go to that level?

KERNAN: one point of the 3 points of validation can be given to us from outside law enforcement agents; all this is documented in personnel file;

HAGMAN: To be released out of that area into different populations you have a protocol, particular outline for behavior?

KERNAN: inmate who has for 6 years no information, has come forward involved in that activity; they can be placed on inactive status and out of SHU, that's the current process.

HAGMAN: Some of the reasons for solitary, communication with other inmates; panelist talked about being on their own, no human contact, can you explain security side of that reasoning?

KERNAN: One of primary things do in SHU does in segregating offenders is inhibit ability to communicate and call orders to other inmates or hits to other inmates. The inmates can write family members, number of other activities the inmate can. One result of HS we're evaluating is creature comforts (we don't allow holographs or colored pencils because had instances of passing on gang information; maybe we could permit hobby craft items). Privileges we're evaluating.

HAGMAN: does CDC have studies does it act as deterrents from activities happening?

KERNAN: difficult position dept. is in, only place in segregation, could only anecdotally what might have been prevented ...

HAGMAN: you testified 8000 stabbings in general population and you're trying to pull out the worst offenders and isolate them from the gangs ... it's easy to look at one side, I'm trying to get bigger picture, future legislation, does these things work as deterrent, do they work as rehabilitation, what data can we gather from that, compare to similar people with similar types of crimes in GP.

KERNAN: we know that inmates who elect to debrief come back and tell us about SHU; ID leadership of gangs are and criminal activities. So not anecdotal, information comes to us of individuals retained in SHU of their current activity in criminal enterprise. So a future panel, balanced, Panel of law enforcement experts in state, many of our gang xxx are involved in .. RICCO, cases, running other systems, gang activities across the nation.

HAGMAN: any kind of independent advocate in your organization among inmates? Fair ear to listen to today if feel unrightly charged with something, authority to go look at some of the confidential information without compromising security, to give a third party position? Do you have someone like that Advocate general, internal affairs law enforcement, can look at them independently and say validated, give more peace of mind systems are being followed, with a particular inmate not weighted, but fair process.

KERNAN: we are most audited and reviewed DEPT in state government. Office of inspector general has independent oversight and May have been doing review of SHU cases and asked DEPT for information BSA. We have internal affairs, if allegations of excessive force or inappropriate valid, we have an appeal process, if all of that doesn't get the inmate, they can go to the courts.

HAGMAN: There are things now where inmates can go to internal affairs or court if feel unrightly being treated or classified.

KERNAN: we have internal ombudsman offices, just spent 15 years with Madrid class action settlement a master attorney that spent a lot of time in PB SHUS evaluating our policies and our issues, just got that class action resolved. And they're gone now.

HOLLY J. MITCHELL: To follow up [on question of Assemblyman] Hagman, current rules that govern SHU system: according to our notes, 5 yr. term murder of a guard, 3 yr. term for murder of other prisoner; so I'm curious, as you move into your new system, will it amount to less time than 6.8 years?

KERNAN: now segment if offender breaks the rules have determinate SHU;

MITCHELL: if gang affiliated is indeterminate, will that be the consistent policy going into the new system?

KERNAN: I believe it will but we are evaluating now; will it protect public safety that dept. believes needs to be protected.

MITCHELL: I'm curious. And just to give us a context, going back to the determinate sentences, non-gang affiliated; how many guards have been harmed or murdered in last 10 years?

KERNAN: I can tell you there's been a number of staff that have been harmed, both inmate on inmate and inmate on staff. I don't have that information but can say [there are a] number of staff who've been harmed. [I can provide that info]

MITCHELL: I was cautiously optimistic about hearing your presentation, given what we've read and heard. and I have to say Mr. Kernan, I'm concerned, frankly I'm disappointed because my sense is based on your comments that your feeling or belief is the status quo is appropriate, as you talked about the numerous lawsuits that have been settled, the current SHU policies meet constitutional, standards and expectations. My concern is your leadership in the transition into a new system would be compromised in that you feel [it] is appropriate for the kind of inmates currently being serviced. My sense is that constitutional guidelines are the *floor*. I fully appreciate the challenges you experience in terms of the amount of crime that takes place in CDCR institutions today. I get that. My point, as a legislator with oversight responsibility my goal and expectation, that recently [CDC(R)] added R back to your name, is that constitutional guidelines not be our goal, but that our goal be to really look at *human rights* policy, in terms of how we deal in very tense crime ridden environment that poses to public safety to inmates and CO's. As we hear about research that suggests that rather mean-spirited arcane tactics that we're using in SHU don't work in preventing ongoing violence, that a transition may not be successful.

KERNAN: real public safety that I see every day in our systems, and the violence that occurs every day, so I go into it not with status quo at all, we want to evaluate and make good policy that gives due process and is fair to the inmates we're charged with, but not lose focus of real public safety threat perpetuated by gangs in our system. We're gonna ask for input from all involved and hope what comes out of the system is fair more due process system. whether that will reduce terms I don't know that, what pops out with national experts and best practices I don't know but it is not status quo. Policies have been in place for well over a decade. So now Today we're embarked on looking at system with a real eye to making changes to system.

MITCHELL: it's going back – and thanks for the clarification of gang validation – and the new system that really won't incorporate any changes in terms of the sense ... Who makes the decision in terms of how long a gang validated inmate stays in SHU? (I am hypersensitive to this issue) Clearly if I am in the SHU, I am gang-validated, which I could be based on the 3 points you identified ...

KERNAN: [??] based on your threat to public safety ...

MITCHELL: What's check & balance? One individual decides I am a threat to society and I should stay there for 30 years plus?

KERNAN: prison staff development process, comes up through a process including our chief of safety who reviews and makes sure meets that standard, so not just the CO staff at the prison but it is not just ... dept. makes the decision, don't envision there will be a change with this policy.

MITCHELL: Those individuals have greater powers than those on the bench, this body, and yet we have this administrative only process that decides how long someone can stay in the SHU.

SKINNER: Also the case in our DJJ [juvenile justice] system in that our CO's there have the ability to give our youth inmates the time add... so their sentences are indeterminate but they can serve far longer because the judicial system doesn't give a specific time but serve far longer than what the judge might have anticipated or

envisioned due to the time adds. BUT: you made comment that prison in CA gang situation was unique. I haven't seen enough studies to indicate the accuracy or not of that, though am aware there are prison gang situations in many other states. NY IL TX. And that gangs (not a defense) are as an organization structure or unit are sort of a feature of many aspects of different human activity (not in any way supporting the existence of gangs...) but we see that type of organized activity in variety of situations and not so unique to CA. Trying to understand what makes ours so unique and is it possible that different structures we put into place, that perhaps ours are stronger just because of how we have dealt with them by comparison to other states?

KERNAN: One of major contributing factors is just size of Calif, with nearly 172,000, just the amount of offenders in our system makes us somewhat unique, so structures of gangs are very very embedded into the system. An inmate coming into the system from Sacramento, just by virtue of coming into system and not saying a thing but because of what he's wearing, can be stabbed, or because of race, where it's so violent a white would kill a black or vice versa just by virtue of color of skin. Most of experts I've looked at, and can provide additional data, Federal Bureau of Prisons (TX, FL) have unique problems with gangs in prisons.

SKINNER: just the number of people we incarcerate adds to it?

KERNAN: Population of our state, judges send inmates to us, our responsibly to incarcerate them. Size, overcrowding, all contributing factors; and now more than ever we have an opportunity as the population is declining to make some positive substantive changes to our policy.

SKINNER: important for us to look at what if any ways we are adding to this. Clearly we see, sad but true, the type of activity you're describing; just last week there was violence at candlestick park between 49ers and Raiders. One (sociologist) could come up with typical traits with way people identified with their ... and thus it evoked sadly they were prone to violence, one died ... there are human behaviors that are like this and we see the evidence in lots of different contexts, we in state and CDCR need to examine way we handle it and whether we are contributing to those incidents in our own contexts.

KERNAN: [hope 49s/Raiders ...] our system in itself may create the problem; from personal experience can only say, the victims of the gang violences in our system, an offender who wants to do his own time or rehab himself, he cannot. An offender that wants to rehabilitate himself he cannot, an inmate telling him to go stab somebody or HE will be killed. So that is the root of why we have a policy to separate those people who prey on the weaker, why those in SHU, my comments, why we have a SHU in the first place to separate them so those inmates can program.

AMMIANO: I appreciate the comments made by panel members. I do respect you [addressed to S.Kernan] getting up here, and feel you've been very candid in many ways. Like a lot of us, you would like improvement but sometimes we can't see the forest for the trees, I'd like to work with you on that. I think there is some basic concern here about human rights and in that case, sir, we wouldn't let cost get in the way. There's been some stonewalling, that's to be expected, but I think it's a new day here in the legislature, particularly with court rulings, changes in administration, etc. We are gonna pit-bull this issue. I know we will be seeing a lot more of each other.

KERNAN: I know that Sec. Cate will look forward to working with you in the future.

AMMIANO: we're *going to* have more hearings on more specific issues.

#### **PUBLIC COMMENT:**

Luis Garcia: Thank you on behalf of prisoners to look at torturous conditions they're living under. Member of PB prisoners support group, group of friends and family members, name is the senate select community committee on the California correctional system, member of Santa Monica group Dolores mission/ministries; 2 questions for purpose of policy review: 1) please review the HSers want to know how long it's gonna take to 5 demands be put in writing, and 2) disingenuous behavior of negotiators, including Kernan, when tells prisoners only take a 2-3 weeks to institutionalize the 5 demands apparently the DC (agreed).

Jen Lasko: fed of teachers, represent over 120,000 teachers, counselors psychologists across the state... believe a real reason for gang issues is poverty; spending 56K per year for inmate, 6K for K-12 students exasperates the problem among other things; it's public policy, misallocation of resources to expensive guard contracts and prison bureaucracy is also a cause of the increased violence; present a letter signed by 1100 teachers counselors letter supports expanded educational program in SHU, we believe public cuts exasperates

the school to prison pipeline, you have teachers union, CFA, anything we can do to support. Thank you for having this hearing.

Julie Tackett: 16 years in short corridor PB. Bryan was willing to go to lengths of peaceful protest to shine light on conditions in PB SHU. (quotes how he got into sol conf) I take full personal responsibility ... it has to be recognized that my validation as a gang member was based solely on confidential debriefing of inmates who.. could no longer suffer under these conditions of perpetual isolation in solitary confinement; .. is no individual accountability under CDC policies ... I have now been in sol conf for over in a decade not based on CDC rules violation, but rather on a false label by inmate informant broken by SHU conditions." Ask for meaningful way to program out of the SHU, a fair shake to prove I'm no longer a 25 year old but a 38-year-old man who is far wiser and more mature. We are at the mercy of CDCR's closed system.

Virginia Mackerras? Brown: husband in PB SHU since 1989, 22 years, and all of them in the SHU. That Should be unheard of in USofA but unfortunately it's not. He hasn't been Not allowed to get any sunlight, walk outside, take a picture in those 22 years. No wall calendar or drawing paper ...those were taken away and the answer is always for the safety and security of prison. Our Visits are only 2 hours long, but far away. Can't hold hands during visits like other inmates and their wives as our visits are behind glass. All of this excessive punishment because he has been labeled associate of a gang, labeled without any evidence as such, only speculation and accusations of unknown informants. no right to confront any accusers, and is judged solely by prison staff, prison staff can do this as they are not held accountable in a court of law and are free to condemn inmates to an indeterminate sentence the SHU at will

James Harris, LA: Socialist Workers Party. It's obvious SHU is unusual and cruel punishment, should be abolished, almost absurd to argue about that fact when you can see the conditions people are kept under. I want to stress the SHU is not primarily or ostensibly about gang activity; no more than the war on drugs is about a war on drugs. These are fakeries, it's about the same thing: attacks on the working class in this country as a whole and they are meant to terrorize us;that's what's behind their bizarre and arbitrary application; out of activity and put fear into our hearts. I applaud people here today standing up to a system that will carry out what people are doing like what they're doing to people in the SHU... these prisoners are not just victims but capable of organizing themselves to fight.

Gail Brown, life support alliance, talk about timely parole for lifer inmates, Mr. Carbone these inmates in the SHU really have trouble being able to meet criteria that the board puts in front of them to be eligible for parole, like you look at that; like to see that stakeholders include many those that are in the groups who came to talk to you today.

Harriet: brother in law has been in SHU for 25 years, he was at SQ and often had family visits, then he was moved to Folsom, when he was moved he was in the hole, not sure, some piece of contraband, he was wrong, punished was fine; then sent to PB been there for over 20 years in the SHU: if he is a gang member or was a gang member, what can he do in the SHU, he's 65 years old, what could he possibly be continuing to do in gang activity when locked up 24 hours a day? How can he possibly still be a gang member, people that were in the gang or alleged to be, these people are gone? What can a 65-year-old man still be doing? So the people who said he was a gang member, because he won't debrief, what chance does he have to get out? His Mother is dead, his children are grown, what can he do to just be a part of his family? Just a chance? What can he do to be paroled?

Manuel La Fontaine: former prisoner; CDC has been framing this gang the "worst of the worst" and what they're framing is justification, they're framing a smokescreen just to get away with inhumanity. Heard a report speaking to media, someone said the SHU is like a 5star hotel. The Reality is HSU is not a 5 star hotel; something that helped me change my destructive manner inside when behavior, one thing they told me: "We are the gang. north and south not gonna play in our house, we are the gang and you are gonna follow our rules." That helped make me conscious of what's going inside. Just because we label somebody, does that mean we *allow* torture people to be placed under inhumane conditions in a 6 x 10 chamber with no access to sunlight?? If we believe CDC wants R, how does rehabilitation play into CDCR?

Amber: brother been in PB SHU for last 10 years. These inmates were prepared to lose their lives to expose the injustice that goes on behind our prison walls. The Solitary confinement was not created for entire sentence! Majority of housed in SHU have gone over a decade without human contact, religious services below par medical attention. CDC wants to house in SHU because like it or not, because they are moneymaking machines. SHU double the cost to house from regular prison population; inmates require 3-4 guards per inmate, creating job security for largest union in CA. Demand change occur. Words from Maria Robinson: nobody can go back and start a new beginning, but anyone can start today and make a new ending.

G2 Sadiki: Mr. kernan, the things he talked about, there is a huge disconnect between what he said and what actually occurs in the SHU program. I am a former SHU prisoner spent 4 years in SHU, in 1970s, I would still be there without (current) governor.. I've experienced extraction from the cell, where you have 6-7 guards lined up behind, beat you down. These men don't have an opportunity to speak for themselves, these men have been dehumanized, they need opportunity to come home and do some of the things I've done. I've raised my children; I have had an opportunity to raise my 3 children, single father, I was classified as a prison gang member; I've been subjected to, paramilitary force, that works in conjunction with CDC. I've had guns put to my head as part of a parole search and had my mother watch me while I could have my head blown off... the sum total of crime I was charged with was being in sister's house defined as clandestine residence and arrested for ... {{HE IS CRYING}} The things he talked about ... apologize ... I know these things first hand. A lot of men in SHU now they have consistently been in SHU for over 30 years. I know these things first hand. A lot of men started with me in the 1970s. Unless you have courage to really look at them when you talk about gang members, don't talk to individuals and say they are prison gang members.

Carol Travis: chair of MT Diablo peace and justice center in WC ... last week interview 7 prisoners in SHU. Emotional experience was profound and surprising to me. these individuals were incredible people who taught me a lot about humanity and dignity and suffering. I support the 5 demands; they make sense. It is barbaric to keep people for years for indeterminate sentences in isolation. These people don't often see people's faces. One of the people I visited had not had a visit since 1989, an elegant graceful warm human being ... I bring to you a couple of things that are different kind of demand that are very simple: want picture taken once a year and sent to either a friend or relative, many relatives have not seen what they look like for more than a decade... Would like more than one box a year of things they can buy through a special vendor of more than 30 pounds. That's a Ridiculous limit. They want Vendors that have some fresh nutritious food not just junk. They Need the proctors so they can take the exams off the courses they're taking by TV. They would like some Mental health videos on TV including ways to meditate or something to help them. They need More serious mental health people there. LUCIFER EFFECT/Stanford professor, has some frightening conclusions about incarceration and the importance of outside oversight.

Dolores: son in SHU in 10 years. I know that Unless changes take place he'll be there for 10 or 20 more years, Kernan said they're the generals, and they're the ones that have all the guards stabbed and all the inmates stabbed ...if that's they're way of thinking then why they just conduct HS, willing to risk their own lives, where they were only ones suffering hunger in a nonviolent demonstration that spread across thousands of men involved in a peaceful demonstrations crossing racial lines: thousands and thousands . It's because they are human beings and they do have dignity and they want to be heard as human beings *not as generals* (crying!)

Lisa: 2 brothers in PB SHU. One was validated by working with someone labeled as a gang member (day to day activities) – I don't see how that's legal.

Azadeh Zohrabi: brother is not a gang member; he was validated for a book written by George Jackson, which is XXX; another source item was an article he had written regarding black culture; and another book on black culture that had a validated gang member name on it. nobody who is validated knows who they can and cannot associate with (cannot challenge). The source items they used to validate him are Items would not be uncommon for me to have in my bag at any day, I'm a third year law student ...it doesn't take anyone well versed in law to know off reviewing the validation packages that there is fundamental violations of first amend, due process, equal protection. Solely because he's a black man and he has Items related to black culture and

ideology, he's being validated and put in the SHU indeterminately, respectfully look at validation packages, I'm sure if you review some of them I'm sure you will be appalled.

Man: how can there not be an appeal process for gang validate, especially when some of them are still there for years and years, this is like their only way of xxx. How easily you can be placed into gang validation database (3 points), similar for the attire like hip hop, short , hair, live in a gang-infested community, you can imagine how many young people fly into that gang database category. He explained the outside point is one used to put people in the SHU. So now there is a way to get out but process is hectic, but the fact it's hard to get out but so easy to get in, why isn't there an appeal process? Should have been hand in hand.

Delphine Brody: policy director of mental health clients. 1900 members in SF People with mental health challenges Often find ourselves in criminal justice system, and in SHU and units so deleterious to our mental health, that many more people experience mental health issues during incarceration and in the community during their release. Calif network believes in wellness recovery and rehabilitation and supports 5 demands.

Deborah Mendoza: former alameda county probation officer 10 years, Ventura youth facility where we had a protest this Sunday asking for same demands end of sol confinement and use of food as punishment; parallel demands here today. So want to echo that. ... if you're not compelled by the stories today I don't know what would move you, because you are our representatives. Were hearing of people in sol conf for two decades and labeled gang members and having an indeterminate sentence ... I don't know what would compel you to act. you are our link, I am here for those who have no voice, I feel it is your duty to do something about this immediately. And demand the release of PJ today.

Woman: Oakland, organizer with Critical Resistance. Issue of conditions of torture at the SHU. Seems clear this is a concrete indicator of conditions throughout the system (how HS spread t throughout the prison system) center of international xxx because of overcrowding and health care ... it is imperative the CA legislators take broad based action. Threat of shifting torture from PB to the jails ... We the people and residents of CA , public opinion polls after poll, we are making it really clear WE WANT changes to the prison system. We want our loved ones and our family members to come home and we want services to support them.

Carol Strickman, staff attorney for LSPC [Legal Services for Prisoners with Children] and part of the coalition to support the HS. Health care: We've heard many reports from prisoners in PB who've told us they are told by HC providers if you want good medical care, debrief. Withholding of medical care is part of the coercion that is attempting to get these guys to debrief. This is wrong and has to stop. I've brought Brought letters of support and concern about health care issues from prison health committee, American health association, petition with signatures of individuals, and international health workers. 7 copies to give to committee members. We're hoping that this hearing will encourage legislators and staff to go up to PB Corcoran other prisons where there are SHUS and interview not just the debriefers the CDCR would have you talk to but talk to a wider cross section including people who were on the HS and people in there long term and short corridor.

Karen Shain, Policy Director for Legal Services for Prisoners with Children: biggest changes I've seen as happen as quickly as they did in CDCR was in this last period with 6600 people in these CA prisons stopped eating in order to get your attention. We are so proud of them and so thankful to them because finally we are at a point where we are having hearings and are deeply committed to making something happen, so I will be seeing you at this next legislative session.

Woman: My son was out and validated not even there, has been out for 17 months, validated when he was not even there; he had a job, was taking college courses that I was paying for and providing; was a MAC rep, his captain said all the other officers knew his rep there, he was called the peace keeper and now he's facing a SHU sentence. I have no idea now, what the SHU, what my son, Now I don't know what my family has to look forward to. I'm broken hearted. If you don't help us to correct some of these things; my son said another person in the cell next to him had gotten a book off a cart that had been distributed to him and it had a validated name in it and they validated that young man... so things they say about not validating on general



principles, has to be colors; he gave a list of 16 CO's, captains sergeants, and they said they were going to have an investigator get statements [vouching] for him. They never did it. They never did it.

Jack Price [?]: ...Oscar Grant movement. Pleading with you: please do not believe what that man said: 2 biggest gangs in CA are police union and correctional office unions. They go around with guns. It's a shame these young men, all over the US and CA, what they're going through to be in the SHU. Me going to visit him in Death row, a nightmare, just going in his cell I get a panic attack, Kevin Cooper, what I take for granted is the sun, the stars, and the sea. Whenever Kevin, he's an artist, he draws, "because I've been in this death row for 24 years, I've never seen the sun in the last 24 years, the stars, and the moon things" we take for granted. I ask you please look into this, this really has to be addressed.

Marta: I have a brother, afraid to say his name for what CDC can make to them ... my mother died 2 years ago he was 14 years in PB and they only gave us 10 minutes in PB to tell him that our mother was dead. One of the demands is a phone call. I haven't talked to my brother in xxx years. I haven't seen my brother's face in 14 years. My kids love him because we talk about him, but we really need connection between family and prison so they can have another chance. Thank you to xxx because I'm sorry but I enjoy to see Mr. Kernan's face in front of people that are above him.

Meredith Rennan: Son in SHU at PB haven't seen in 5 years, I've tried they come up with strange reasons why I don't qualify for a visit, things I've witnessed that I know to be true ... but what I'm looking to is not as politicians but as just human beings to look into your heart and see that what is happening in our country and in this state is so beyond belief that the public needs to understand that this is really happening. You can be the vanguards for change and social consciousness so we can have a state we can say we're proud of ...at least as far as law making capacity.

Marie Levin: sister to PB SHU person. My brother has been incarcerated for some time but has been, in SHU for 19 years, only by the grace of god he is not insane. Tried to get approval for leave to give his kidney but they didn't let him because he was in the SHU. She died last year. He holds onto the memories of us, his family, my mom now has ... dementia caused by stress; he being for 30 years locked up has been a longtime stress of hers wanting him to come home. So I'm pleading for the injustices of the SHU to be taken care of so that my brother can one day come home. He should have been home. Other two people were there, they got out. He's still locked up; It wasn't gang related. He sent literature to us to read and he's locked up because of a book?

Marilyn Smith: I am a proud member of All of Us Or None; I am a formerly incarcerated person. What CDC is saying is to cover themselves; because to be inside and then to be a productive citizen, you really know how unjust things are when you've done that time.... I'm asking you to please not just look at what we do here but what we do here in CA will make a world impact, to stop the torture, because that's what it is throughout the country. President said he would start change and basically work on torture, then we need to work right here in this Legislature to change in the SHU, and how they treat us like we are not human beings. What about the women's prisons as well? You gotta look at it, not just California has done the HS, but HS throughout the US. Des Moines IA only 6% black in the state. If these other people putting lives on the line to know we are dying in here anyway so why not just do it by our own hands. That's something to really look at. No one wants to be incarcerated and then think about the guards ...

Willie Tate: Hugo pinell, only surviving member of SQ6 still in prison; every one of us got out, except for him. why they keeping him in the SHU, locked up since 1969; our trial ended in 1976. Hugo was convicted of assault; he's still in there, he's still in there, and he's in the SHU of all places. He hasn't had a write-up for over 30 years. He's 66 years old, why are they holding him? I mean, this brother ... We became political while inside we changed our life. We dedicated ourselves to serving the people. Hugo Pinell deserve to have a real chance at freedom and deserve to be taken out of the SHU. That's no way to force a man to live his life, that's inhumane. Free Hugo Pinell.

Elizabeth: my loved one just got validated this April; literature, cultural drawing, an informant who didn't want to

be in the SHU. I don't want him to be in the SHU 30+ years. Make it right for those who have been, and so he doesn't have to go through that because of a drawing or another inmate doesn't want to be in the SHU.

Michelle ...: the answer coalition, we support the 5 demands of the HS, because it's a human rights situation. their rights are being violated as you've seen. I'm concerned with 2 of the points the CDCR put forth today: 1, they need to house inmates in the SHUs separate from general populace to prevent gang violence, but left out the role of prison guards actively play in increasing gang violence in the system, whether it be housing gang members with others helping to give gang affiliation status, or put rival gang members in the same cell knowing they have a fight To kill others. 2) They don't want to let media in to provide prisoners with a way to sensationalize their case: if there's any unfair proceeding to get them in there they should have full access to media to get their case to the public, secondly officer Meserle who killed Oscar grant was given FULL ACCESS to the media during his trial and sentencing, never seen any inmate having that especially inmate of color ever having that.

Anne Weills: civil rights attorney, Oakland. OPD gang injunction impose on our young people: Now trying to validate people who are 12 years old, so now a pipeline to a SHU. This IS A CRISIS IN CALIFORNIA> I've been through a lot of struggles, this is the most inhumane system I've ever seen. You all have a tremendous responsibility, we will support you, we will organize, figure out how to stop this debriefing policy, the most unbelievable secret system of stereotyping, it has no meaning it has to do with stereotyping. with carol Travis went up to PB interviewed 8 prisoners – these people in the SHU are some of the best and the brightest not the worst of the worst. As a lawyer you think of but for ... that person ... But for their class their ethnicity, growing up in poverty-stricken areas, not having access to good lawyers, you don't see many rich white people in our prison .. this SHU thing is so bizarre. You guys are going to have a huge problem getting down to what's going on. There is such tremendous secrecy, even with legislation and good recommendations, who is going to enforce it \_? 2007 recommendations, nobody has enforced this. You guys carry a big burden. This is an opportunity We have to trust our legislature, judiciary, we will struggle with Jerry brown, a HS will come again if you guys don't get with get CDCR and leadership in order. this is a crisis in California. This is the most inhumane system I've ever seen. You all have a tremendous responsibility, we will organize and ...

Linda Evans: LSPC in SF and All of Us or None: hope this has touched your hearts; if not we are confronted with a steadily deteriorating situation where people like us are forced to demand to be human beings. What does this say about our country to put forward that people in prison are human beings? Take very very seriously your responsibility for oversight. 2 specific things: look at the Cal Gang database and look how that influences goes to the SHU, how young people are being put into data with no exit strategy and no opt out opportunities from lies and deception. For them to be labeled and racially profiled as teens or younger is cheating crisis in SHU. Find input into database with no exit strategy; one of the fundamental reasons people are validated when put into the prison system, profiled as teenagers; urge you to find an independent review process so that all the men & women in the SHUs have an opportunity for a true review, where a panel actually reviews the validation packets, so locking them up and makes sure these kinds of ridiculous reasons for validating people and locking them up for decades in a cage are defeated and refuted.

Urszula: no one believes this validation is working. It is broken. I hope we can start rather than paying CDC for violence, letting them increase their budgets because there is so much violence, but we hold them accountable and raises based on how much people are no longer committing crimes. Had a perfect record; on day of 6-year anniversary, had a final inspection. During that the guard conducted inspection, says completely out of the blue say oh I just heard you say you are still a member of the gang. Turns to guard in the watchtower did you hear it? Yes I did ... and he gets 6 more years. That is a joke. No one believes this validation process is working' it is broken. Rather than paying CDC for violence, letting them increase their budgets because there is so much violence, that we hold them accountable for this violence. Their raises should be based solely on how such people are no longer committing crime.

Ron Ahnen: California Prison Focus. We get dozens of letters every week, Hundreds of letters every month that complain about these types of things. It's true there's an ombudsman and inspector general. *They do not work.* If you listen to story after story after story, and I read dozens of letters a month and I can't believe this is

going on. One prisoner said ... if they put me into a cell next to a gang member...[if I tried to escape I would get] at least a warning shot from tower...and no warning shot [with regard to associating with a gang member]. now I'm six years in isolation, there's no sociological study that says that 6 years is a good amount of time. None whatsoever. The system is totally being abused, but there is a reason: guys getting false validations are the ones who stand up for themselves, the ones who stand up for other prisoners and who put in those 602s and the ones that help sue the systems. Those are the guys who are falsely validated so they can control the systems for themselves. You need to have transparency and you need to create a whole new oversight.

Joe Partansky: war on poverty, counselor ... for 2.5 years going as member of public to California council of xxx Offender (assembly) never seen more than 1 or more members (yourselves) held every other month. Stpt 5 at headquarters of corrections. One of the advocacy groups. No single mention of SHU but theoretically advise the legislature and the governor.

Deandre: [I want to] speak to the heroic and courageous actions of the prison HSers who quite frankly...this hearing would not even have happened if not for their actions, and the fact they were able to win support from thousands of people around this country. You have in your files letters from people like Susan Sarandon, who actually are putting a spotlight on California. I'm a distributor of Revolution newspaper. Proud of this struggle. Dozens of letters in your file from (celeb and intellectuals) who are putting a spotlight on CA. A country that goes around the world that proclaims itself a leader of freedom but is actually, a leader of torture. A liberal governor in CA (a liberal) has not even commented on the just demands of the HS. A word of advice: if CA is going to maintain any credibility as being a place where human rights are even considered, (rev communist party), something better be done. We honor the strikers because—as a member of Revolution distributors--the HSers have actually united many different groups, which before had not come together, and were working together very well just like the HSers went across racial and national lines and organized themselves. Gives hope to people who look at the world who say nothing can be done. Look what the hunger strikers did in the most isolated and draconian situations. They organized themselves, and presented a whole goal of the way of doing that for the rest of society and the world.

Valerie: 3 pt. sys: 20 year old son whose father is in the SHU< has tattoo and started when he was 12; when he hits prison he will automatically go to the SHU. Somebody needs to check on that; all the gang members can go to jail for what a regular person ... automatically 10 years more, they have no chance.

Deirdre Wilson: California Coalition of Women Prisoners and a former prisoner myself: start to look under the rock...people who were willing to give their lives. Will take a lot of chipping away and a lot of light ... a closed system can get away with a lot of abuse. It's a huge thing to deal with but if we can just look at these 5 demands, they make sense. If we can't bring a little bit of humanity to 6000 people willing to lay down their lives for, then I really wonder what hope we have.

Jay: Critical Resistance: Kupers pointed out that some of the demands, particularly around gang valid and long term soli, have been addressed in other states so no reason CA cannot ... Many community members drove long distances to come to this hearing because feel maybe it's the only one chance for their loved one inside, talk to someone that actually matters. I notice that when Mr. Kernan was done speaking with you he didn't stick around to hear the members [of the public], shows where his priorities are.

Edward: Homies Unidos; I been to the SHU, and I see that people put their xxx down on gang members, I was 30 years on 18<sup>th</sup> St, Today I'm not from nowhere, but I believe in helping people ... should put down a person's character and not judge him ... SHU experience one of worst I ever had; lost my father and wouldn't let me go to the funeral because it was max sec Corcoran. I'm not a gang member no more, I'm a Mexican Jew.

Steve: former prisoner from Folsom, never been to the SHU, but I can imagine how it is. In SQ first 30 days you don't get no mail, nothing I went crazy even in (general) population. It's insane. But they org themselves to get this xx going on, what you people hear, to be heard, and now I'm trying to help, UVPR trying to help. If You put a dog behind bars, behind cage, he will go mad. What does that say to a human being brain...in the case of the PB SHU and other SHUs in CA gang valid is being used to justify torture conditions. What CDCR says

that it's someone is found to be a gang member it's OK to keep him in 6 x 10 cell for years, on end. is it ok to feed them substantial food? Is it ok to not let them see the light of day, is it OK to deprive them the touch of their family? Where does the R part of CDCR come in ? since when does any act justify torture of a human being?

Cynthia: Prison Activist Resource Center and LGBT: the only time a prisoner has a voice is with a pen, paper ... PB built to break people using It solitary conditions ... 23.5 hours a day for years at a time. I'm Urging you the legislature, the rep people of California, to hold CDCR accountable and make substantial and lasting changes to the SHU conditions. Lot of victims of sexual deviant people.

AMMIANO: we did have a bill vetoed by last governor around transgender issues in prison; some fed guidelines coming down.

Kamala: youth worker, critical resistance, coalition of CA united for responsible budget ... challenge you to see what actually comes from this, have heard throughout this hearing policies and suggestions made on how to change the conditions and those have not been acted on, and beyond going to informational hearings and developing these proposals, what are we actually going to do? We as citizens have done what we know how to do; we have lobbied, we have rallied, Julie has been camped out at Crescent City camped out the entire time during the HS, family member driving up and down the state, people from NY and MI, here to make sure the voice of the prisoners have been heard and their humanity xxx. CDC, not going to put the R in there because that is completely ridiculous to suggest they have any means or idea or intention of R the people they have put in these cages for 23 hours a day... you know they are not following through and upholding their end of the bargain and not doing what they are supposed to do. So the question is, *what are you going to do?*

Winsey Witt?: with critical resistance: changes to the gang valid and xx are not unprecedented, Mississippi changes have reduced violence in prison and more successful upon release ... urging you to review changes made by other states and hold CDC accountable and make similar changes in CA.

Alejandro, Homies Unidos LA: we have people that actually can bomb the twin towers kill a lot of people but yet a lot of them they at least at Gitbay get to walk out of their cells, from where this mike is to that wall for whatever reason. Solitary confinement in the SHU has an effect on your spirit and when you do get out it affects you. And it really affects you in so many ways, that your family, your wife, you know, they see something different about you . Like the soldiers that go to war and come back a whole different person. We have to take it out.

Marilyn McMahon, CPF: anecdotes: some SHU prisoners can be dying of cancer, they come back from major surgery and they're given no pain relievers greater than ibuprofen; medical staff have said to prisoners in the SHU "if you want better medical care, get out of the SHU." [Only ways to get out:] Parole, snitch or die, and many of them can't get paroled, so that basically means you're gonna not get out of there unless you debrief (well, they can go insane and then they will be removed). One prisoner during HS had a very serious heart problem, he was rushed to an outside hospital. When he regained consciousness he surrounded by guards trying to get him to debrief (virtually on his death bed!). He was almost dying and all they cared about was getting him to debrief. Another prisoner has end stage liver disease, was in outside hospitals, bounces between those and prison clinics, and some months ago he was told he had 6 months to live. Estranged from his family. The outside doctors talked to him about that and said it was time to talk to his family. "You don't have long." He thought about it and decided it was right and wanted to talk with his family before he died., so requested a phone call. Now, in SHU they don't get phone calls. So he made a special request: let me talk to my family once before I die. The request was granted. On the day the phone call was set up for, the guard came to his cell, held a piece of paper up and it said "DEBRIEF." He refused, and he didn't get that phone call.

Amanda Perez, LA : if this doesn't change here I really feel it has to go to the UN. Surprised Kernan didn't have his numbers together when asked how many staff killed or injured; priors to SHUs being built, and since built, how many have been injured or killed since it's safety and security? 77K per inmate, multiplied by thousands, is it profit vs. people? Hopeful in next hearing there are some numbers to be shown, and hopeful this legislature will do something different otherwise

Angelica, UCR : AB900 granted billions for new prisons construction; meanwhile education and social services are being cut; PB alone to keep it open is \$180 million (?) not the other 32 prisons. If shut down PB, would have been enough to avoid fee increase in UC and avoid loss of a lot of jobs, so reconsider, what really IS a threat to our public safety?

Teresa Amen: my son in the SHU for 8 years, his daughter is graduating next year, she is preparing a year in advance, she would love to be able to talk to her daddy when she graduates (on the phone) or would like a picture of her daddy. Was supposed to possibly get out of the SHU this month and has had 2 falsified reports that just happened, and he can tell already they will do everything in their power, he will not get out of the SHU. Meantime my granddaughter was 3 years old when she got to play with her daddy in the main line, now it's behind glass and take turns to talk because we only get to use the one telephone and only have an hour and a half and Drive 14.5 hours to have sat/sun visit, 1.5 hours. Please start helping these men and women in the SHSU and Stop this nonsense, because there are some innocent families and children and all of us loved ones who would like to see things right, less prisons and more programs.

Chico, San Diego: to watch Kiernan decide, it's up to CDC how long these guys are going to get in the SHU, sad someone like me, all tatted up, can be ...

[?] Ortiz: loved one in Tehachapi SHU. I was studying to be CO and now I don't want to be a part of it, looked into law school now, many men in there wrongly accused of things they didn't do. It's on CDC how long

MITCHELL: [Though Mr. Kernan had to leave, several CDCR staff are still here, and they took notes. I want you to know you have been heard by the department.]

AMMIANO: Meeting adjourned.

i Toussaint v. McCarthy, 553 F. Supp. 1365 (1983); 722 F.2d 1490 (9<sup>th</sup> Cir. 1984) 711 F. Supp. 536 (1989).

ii Coleman v. Gomez, 912 F. Supp. 1282 (1995).

iii Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995).

iv Brown v. Plata, 131 S.Ct. 1910 (2011).

v In re Medley, 134 U.S. 160, 168 (1890).

vi Madrid at 1268.

vii Ibid.

viii In my own study of a representative sample of prisoners in the Pelican Bay SHU, for example, every symptom of psychological distress that I measured but one (fainting spells) was suffered by more than half of the prisoners. Many of the symptoms were reported by two-thirds or more of the prisoners in this isolated housing unit, and some were suffered by nearly everyone. Well over half of the Pelican Bay SHU prisoners reported a constellation of symptoms—headaches, trembling, sweaty palms, and heart palpitations—that is commonly associated with hypertension. I also found that almost all of the prisoners evaluated reported ruminations or intrusive thoughts, an oversensitivity to external stimuli, irrational anger and irritability, difficulties with attention and often with memory, and a tendency to socially withdraw. Almost as many prisoners reported a constellation of symptoms indicative of mood or emotional disorders—concerns over emotional flatness or losing the ability to feel, swings in emotional responding, and feelings of depression or sadness that did not go away. Finally, sizable minorities of the prisoners reported symptoms that are typically only associated with more extreme forms of psychopathology—hallucinations, perceptual distortions, and thoughts of suicide. See Craig Haney, Mental Health Issues in Long-Term Solitary and “Supermax” Confinement, Crime & Delinquency, 49, 124-156 (2003). [Previously provided to Committee staff.]

ix Specifically, only 53.6% of the more than 150,000 California prisoners were employed in any type of work assignment at the end of the year 2002. California Department of Corrections, CDC Facts, January, 2003 (<http://www.cdc.state.ca.us/cdcfacts.htm>).

x California Department of Corrections and Rehabilitation Expert Panel on Adult Offender Reentry and Recidivism Reduction Programs, Report to the California State Legislature: A Roadmap for Effective Offender Programming in California (2007), at p. 7.