

# ***Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences***

Hearing Before the Senate Judiciary Subcommittee on the Constitution,  
Civil Rights, and Human Rights

The Honorable Dick Durbin, Chair

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## **Introductory Remarks**

In a compelling and undeniable way, the June 19, 2012 hearing entitled, “*Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences*” exposed the ills and abuses associated with solitary confinement.<sup>1</sup> In addition to providing a great teachable moment, the hearing also served as a call for introspection for states and officials wishing to balance legitimate penological concerns with human rights guarantees and constitutional protections. Many jurisdictions genuinely considered the testimony and swiftly undertook corrective action.<sup>2</sup> Reforms ranged from studies to assessments to hearings to actual policy

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<sup>1</sup> The June 19, 2012 hearing is hereinafter referred to as “*Reassessing Solitary Confinement I.*”

<sup>2</sup> California (October 2013 hearings regarding conditions and use of solitary confinement); Colorado (reduction in solitary confinement population and closure of supermax facility); Illinois (closed Tamms Maximum Security Correctional Center in 2013 due to excessive use of solitary confinement); Indiana (federal ruling saying isolation of the mentally ill is a 8<sup>th</sup> Amendment violation/reforms underway); Maine (started reforms in 2010/send less people/spend less time there); Mississippi (reduced solitary population by 90%, saw 70% decrease in violence & \$8

changes. Subsequent to “*Reassessing Solitary Confinement I*,” another major development took place. Juan E. Mendez, Special Rapporteur on Torture, urged the United States to adopt concrete measures to eliminate the use of prolonged or indefinite solitary confinement under all circumstances.<sup>3</sup> Special Rapporteur Mendez, using the Louisiana case of the Angola 3 (men believed to be held in solitary confinement longer than anyone else in the nation), expressed: <sup>4</sup>

This is a sad case and it is not over....The co-accused, Mr. Woodfox, remains in solitary confinement pending an appeal to the federal court and has been kept in isolation in a 8-foot-by-12 foot...cell for up to 23 hours per day, with just one hour of exercise or solitary recreation. Keeping Albert Woodfox in solitary confinement for more than four decades clearly amounts to torture and it should be lifted immediately....The circumstances of the incarceration of the so-called

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million annual savings); Nevada (recently enacted legislation that places restrictions on isolation of youth); New York (agreed to new guidelines for the maximum length prisoners can be placed in solitary confinement and agreed to reforms concerning vulnerable groups); Virginia (recently implemented an incentive-based step down program that allows prisoners in solitary confinement to earn their way out of solitary confinement based on good behavior); State of Washington (newly created Reintegration & Progression Program using behavioral modification classes to transition inmates out of solitary confinement); and, Texas (passed a bill requiring data collection relative to solitary confinement). Additionally, in February 2013, the Federal Bureau of Prisons agreed to an assessment of its solitary confinement policies. Also, in April 2013, the Homeland Security Department, asked federal immigration officials to provide more information about immigrants being held in solitary confinement at federal facilities. In September 2013, U.S. Immigration and Customs Enforcement (ICE) released a new directive regulating the use of solitary confinement in immigration detention. And, in October 2013, Juan E. Méndez called for revisions to the United Nations Standard Minimum Rules for the Treatment of Prisoners (to reflect an absolute ban on indefinite or prolonged durations, and prohibiting any use of solitary confinement against juveniles, persons with mental disabilities or women who were pregnant or nursing).

<sup>3</sup> See Juan E. Mendez, Special Rapporteur on Torture, Four Decades in Solitary Confinement Can Only be Described as Torture, United Nations (Oct. 7, 2013), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13832&LangID=E> (accessed Feb. 24, 2014).

<sup>4</sup> Robert King Wilkerson, Albert Woodfox and the late Herman Wallace are hereinafter referred to as “the Angola 3.” Robert King Wilkerson was released in 2001. Herman Wallace was released in 2013. **Albert Woodfox remains in custody and in solitary confinement where he has been held since 1972, a total of 42 years. Albert Woodfox is 68-years-old.** The case that sent Mr. Woodfox to solitary confinement was overturned in state post-conviction proceedings, but the State re-indicted him and he was convicted again after a second trial in 1998. After this conviction was affirmed on direct appeal and Woodfox exhausted state post-conviction remedies, Woodfox filed a petition for habeas corpus in federal court, which was granted. An appellate panel subsequently vacated the district court's judgment and remanded Woodfox's case for further proceedings. Following an evidentiary hearing, the district court again granted Woodfox's petition on the ground that his 1993 indictment by a West Feliciana Parish grand jury was tainted by grand jury foreperson discrimination. See *Woodfox v. Cain*, 926 F.Supp.2d 841 (M.D.La., Feb 26, 2013). The State's appeal of this ruling is pending before the Fifth Circuit Court of Appeals.

Angola Three clearly show that the use of solitary confinement in the US penitentiary system goes far beyond what is acceptable under international human rights law.<sup>5</sup>

My “*Reassessing Solitary Confinement I*” statement was written with the sole hope of offering insights that might address a national problem. I now write burdened by the dual pressures of national and international complexities. The work of this committee, when viewed against this backdrop, is arguably one of the most important undertakings at this moment in history. At a time where the United States outpaces most of the civilized world by the rate we incarcerate and sentence, we are also approaching the embarrassing distinction of being the forerunner where abuses and ills associated with solitary confinement are concerned. If successful, reforms initiated by this committee could improve conditions for over 82,000 humans on American soil,<sup>6</sup> as well as rehabilitate the reputation of a nation that has been tarnished in the eyes of our global family. To those who care about justice, corrections, respect for law, human rights and the greater good of the nation, you are so much more than public servants and this is so much more than just a hearing. You are, in fact, ministers of justice, stewards of change and stalwarts of reform. I graciously thank you for your willingness to tread the turbulent pathway to progress.

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<sup>5</sup> *Supra* n. 3.

<sup>6</sup> Joseph Stromberg, *The Science of Solitary Confinement*, Smithsonian.com, <http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/> (accessed Feb. 22, 2014) (“Picture MetLife Stadium, the New Jersey venue that hosted the Super Bowl earlier this month. It seats 82,556 people in total, making it the largest stadium in the NFL. Imagine the crowd it takes to fill that enormous stadium. That, give or take a thousand, is the number of men and women held in solitary confinement in prisons across the U.S.”).

## **Substantive Remarks**

I write concerning three areas where attention would be most beneficial, the first of which is the need to affix a uniform meaning to the term solitary confinement. There are two immediate benefits to be derived from this. Primarily, this would end linguistic stalemates that have delayed needed reforms. A uniform definition would also advance state and federal legislative initiatives since the nomenclature used to describe the various forms of isolation varies between jurisdictions.<sup>7</sup> By way of example, one might consider the state of Louisiana, home to the previously referenced Angola 3 case. A Louisiana federal court offered this glimpse into the prison world imposed upon the Angola 3:

Extended lockdown, also known as closed cell restrictions or administrative segregation, is a form of incarceration...that is similar to solitary confinement. The prisoners thereto assigned remain alone in cells approximately 23 hours each day. During the other hour, a prisoner may shower and walk along the tier in which his cell is located. Three times a week, the prisoner may use this hour to exercise alone in a fenced yard, if the weather permits. The prisoners in extended lockdown also face additional restrictions on privileges generally available to inmates such as personal property, reading materials, access to legal resources, work, and visitation rights. In contrast, inmates in the general prison population live in a dormitory setting where they can interact with one another, attend religious ceremonies and take advantage of educational opportunities, training, and other privileges denied to those in extended lockdown.<sup>8</sup>

It is important to note that these present-day conditions are actually upgrades on what awaited the Angola 3 when they were initially placed in solitary confinement.

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<sup>7</sup> While the practice of isolation has been longstanding, nomenclature used to describe the practice has been ever changing. Today, many correctional facilities reject the use the term solitary confinement in favor of administrative segregation, punitive segregation, disciplinary segregation, extended lockdown, closed cell restriction, special housing unit, special management unit or intensive management unit.

<sup>8</sup> *Wilkerson v. Stalder*, 2013 WL 6665452, n.5 (M.D.La., Dec 17, 2013).

As told by the late Herman Wallace, there was “no hot water, no televisions, no fans, no review board, no outside exercise periods, no contact visits, a limit of six books per inmate” and “food was served under the door by sliding a tray on the floor as one would feed an animal.”<sup>9</sup>

It is noteworthy that Special Rapporteur Mendez, in his remarks about the Angola 3 case, ascribed the above-referenced conditions as solitary confinement. Louisiana officials have taken a difference course. Louisiana officials have chosen to simply deny the existence of solitary confinement.<sup>10</sup> This method has been tested

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<sup>9</sup> See Letter from the late Herman Wallace, Angola 3 member, to Angela A. Allen-Bell (Jan. 10, 2013) (on file with the author).

<sup>10</sup> In 2013, the following email was sent by the state’s attorney general to a number of persons who signed a petition in support of the Angola 3:

**Contrary to popular lore, Woodfox and Wallace have never been held in solitary confinement** while in the Louisiana penal system. They have been held in protective cell units known as CCR. These units were designed to protect inmates as well as correctional officers. They have always been able to communicate freely with other inmates and prison staff as frequently as they want. They have televisions on the tiers which they watch through their cell doors. In their cells they can have radios and headsets, reading and writing materials, stamps, newspapers, magazines and books. They also can shop at the canteen store a couple of times per week where they can purchase grocery and personal hygiene items which they keep in their cells.

These convicted murderers have an hour outside of their cells each day where they can exercise in the hall, talk on the phone, shower, and visit with the other 10 to 14 inmates on the tier. At least three times per week they can go outside on the yard and exercise and enjoy the sun if they want. This is all in addition to the couple of days set aside for visitations each week.

These inmates are frequently visited by spiritual advisors, medical personnel and social workers. They have had frequent and extensive contact with numerous individuals from all over the world, by telephone, mail, and face-to-face personal visits. They even now have email capability. Contrary to numerous reports, this is not solitary confinement.

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[T]hese convicted murderers filed a civil lawsuit alleging they have been denied due process and have been mistreated. It is important to know that if they win this civil case they could possibly receive money and a change in their housing assignments. This lawsuit **WILL NOT** result in their release from prison.

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Let me be clear, **Woodfox and Wallace...have NEVER been held in solitary confinement...**

Sincerely,

James D. “Buddy” Caldwell

Louisiana Attorney General

before. People have reacted with denial when confronted with the unexpected death of a loved one or after being informed of an unfavorable prognosis. What these people soon learned is that denial served but a momentary purpose; it does nothing for the long term. Once denial ceases, the problem just stares you in the face. And this is where we are—the truth about solitary confinement is just staring us in the face. This is but one reason a uniform definition is needed. It is needed to catapult this discussion of reforms to a long overdue starting point, not just in Louisiana, but in any jurisdiction where linguistic stalemates or vernacular has obliterated conversations about needed policy changes on this subject.

As a definition of solitary confinement, I propose:

The various forms of segregation practices used in penal institutions where inmates are housed separately from the general population and involuntarily confined to their cells in excess of twenty-two hours a day and where meaningful interaction with other humans is nonexistent or severely limited and meaningful programming is removed as a result of disciplinary or administrative action.

This definition is consistent with credible research and scholarship on this topic.<sup>11</sup>

This is not to suggest that arriving at a definition will equate with unveiling a

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E-mail from The Louisiana Department of Justice (March 21, 2013, 11:02 a.m. CST) (on file with author) (emphasis added); See also Bill Lodge, *Louisiana Inmates Attract World Attention*, The Advocate, <http://theadvocate.com/csp/mediapool/sites/Advocate/assets/templates/FullStoryPrint.csp?cid=5535507&preview=y> (accessed Feb. 24, 2014).

<sup>11</sup> See Sharon Shalev, *A Sourcebook on Solitary Confinement 2* (Mannheim Centre for Criminology 2008), available at [http://solitaryconfinement.org/uploads/sourcebook\\_web.pdf](http://solitaryconfinement.org/uploads/sourcebook_web.pdf) (accessed Feb. 24, 2014) (“[S]olitary confinement is defined as a form of confinement where prisoners spend 22 to 24 hours a day alone in their cell in separation from each other.”); Solitary Watch, available at <http://solitarywatch.com/facts/faq/> (“Solitary confinement is the practice of isolating inmates in closed cells for 22-24 hours a day, virtually free of human contact, for periods of time ranging from days to decades.”) (accessed Feb. 24, 2014); *Growing Up Locked Down Youth in Solitary Confinement in Jails and Prisons Across the United States*, Human Rights Watch, 1 n.1 <http://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf> (accessed Feb. 24, 2014) (uses solitary confinement to “describe physical and social isolation for 22 to 24 hours per day and for one or more days, regardless of the purpose for which it is imposed.”); *Black Law's Dictionary* (Bryan A. Garner ed., 9th ed., West 2009) (Defines solitary confinement as “Separate confinement that gives a prisoner extremely limited access to other people; esp., the complete isolation of a prisoner.”)

solution. That is far from the case. There are numerous other ills to be remedied, which leads me to my next area of concern.

Secondly, I write to again urge awareness of and attention to a multitude of constitutional and human rights violations, as well as procedural shortcomings associated with current solitary confinement practices. There are problems with the arbitrary selection of people for placement into solitary confinement. There are concerns with the review process used to decide if one should be released from solitary confinement. There are adverse medical, psychological and fiscal concerns. There are constitutional shortcomings (including, but not limited to the 8<sup>th</sup> and 14<sup>th</sup> Amendment violations) and human rights implications and violations (including but not limited to violations of treaties, as well as the use of torture). Many of these things are discussed in a detailed way in my article, *“Perception Profiling & Prolonged Solitary Confinement Viewed Through The Lens of The Angola 3 Case: When Prison Officials Become Judges, Judges Become Visually Challenged and Justice Becomes Legally Blind.”* It is my hope that the committee will review my article in its entirety.<sup>12</sup>

My final concern is a legislative remedy. This is desperately needed since courts have failed to offer necessary protections.<sup>13</sup> In short, such legislation should end the practice of institutions having sole authority over decisions regarding an inmate’s exodus from solitary confinement. As an alternative, a tiered approach is

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<sup>12</sup> See Angela A. Allen-Bell, *Perception Profiling & Prolonged Solitary Confinement Viewed Through The Lens of The Angola 3 Case: When Prison Officials Become Judges, Judges Become Visually Challenged and Justice Becomes Legally Blind*, 39 Hastings Const. L.Q. 763 (Spring 2012), available at <http://angola3news.blogspot.com/2012/06/hastings-constitutional-law-quarterly.html> (accessed Feb. 24, 2014).

<sup>13</sup> I have authored a legislative proposal. It is contained in the above-referenced article.

advocated whereby prison officials make the initial decision to place a prisoner in isolation and retain authority over the first periodic review; thereafter, other eyes begin to watch, other ears begin to listen, and other minds begin to ponder the fate of the isolated inmate. The legislative proposal would also require institutions to inform an inmate being placed in solitary confinement of the reason for the placement and the duration of their sentence to solitary confinement, and said inmate would be provided with a case plan enumerating exactly what must be done to earn their exodus. Placement in solitary confinement as a result of perceptions that are not incident to actual actions or specific, actual, and legitimate security or penological concerns would be prohibited. Continued placement in solitary confinement based on dated security concerns would not be allowed. The proposed legislation I envision would also institute burdens of proof during review hearings.

### **Concluding Remarks**

The late Herman Wallace (Angola 3 member) was full of hope about the prospects for progress and change that “*Reassessing Solitary Confinement I*” promised. His 41 years in solitary confinement came to an end in October 2013 when a Louisiana court invalidated the conviction that sent him to solitary confinement. He died two days later, never seeing a change to the system that he suffered in and under for 41 horrific years. After his death, there was a national tribute:

[W]e...commemorate and celebrate the life and contributions of Herman Wallace, one of the bravest champions for justice and human rights whom we have ever met...On behalf of all who believe in fundamental fairness and justice, we commend Mr. Wallace's courage and determination to keep fighting through 41 long years of solitary confinement. He is an

inspiration to all of us...Because of Mr. Wallace's work, those of us in Congress who have called for his freedom will dedicate our future efforts to ensuring that no one anywhere in the United States is subjected to the unjust and inhumane treatment that he has endured...[I] ask my colleagues to join me in honoring Mr. Wallace for his many-decades-long fight for the humane treatment of prisoners. We, and all of us, owe Mr. Wallace a debt of gratitude.<sup>14</sup>

Poignant—no doubt—but Herman Wallace never wanted recognition. Herman Wallace wanted far-reaching change and meaningful reforms to a system riddled with frailties. In short, Herman Wallace wanted a modern day revolution within detention centers and penal and corrections systems. Martin Luther King warned that there are fitting times for such. As he reflected on the 1963 Birmingham, Alabama civil rights campaign, Dr. King said: “This Revolution is genuine because it was born from the same womb that always gives birth to massive social upheavals the womb of intolerable conditions and unendurable situations.”<sup>15</sup>

In one of his final letters to me, 72-year-old, cancer-stricken Herman Wallace wrote: “I am a soldier...a servant of the people and if I am taken down any time soon, my only wish is that the struggle does not end with me.”<sup>16</sup> An elderly, frail man, who a court said should have never been held in prison for the larger part of his stay, locked in a prison within a prison for 41 years, instead of being concerned with self in his last days, expressed concern about conditions for the rest of humanity? A lesson awaits. And it behooves us not to miss it. As we embark upon

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<sup>14</sup> See *Celebrating The Life of Herman Wallace*, 159 Cong. Rec. E1439-03, (Oct. 4, 2013) (speech by John Conyers), available at 2013 WL 5502164.

<sup>15</sup> Martin Luther King, Jr., *Why We Can't Wait* 156 (Beacon Press 1963).

<sup>16</sup> See Letter from the late Herman Wallace, Angola 3 member to Angela A. Allen-Bell (April 4, 2013) (on file with the author).

this ever important journey, may Herman Wallace's words amplify with such intensity that they mute the voices of those who wish to impede progress and awaken those who can navigate the pathway to revolutionary change within detention centers and penal and corrections systems.

As a people, we have, by omission and inaction, been silent signatories to a grave "human wrong." Inmates have done all they can to advocate for change—some have sued, some have held hunger strikes and some have even stitched their lips in protest. Others have paid the ultimate price. This, while free people, actively engage in disengagement. At the very least, may we be collectively called to raise our voices in order that those locked away without a voice—in the womb of intolerable conditions and unendurable situations—may finally be heard. The world has now become our audience.

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