

TESTIMONY OF PROFESSOR CRAIG HANEY

TO CALIFORNIA SENATE AND ASSEMBLY COMMITTEE ON PUBLIC SAFETY,

HEARING ON “CDCR’S NEW POLICIES ON INMATE SEGREGATION:
THE PROMISE AND IMPERATIVE OF REAL REFORM”

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Senator Hancock, Assemblyman Ammiano, and the members of the Committee on Public Safety, my name is Craig Haney. I am a Professor of Psychology and Director of Legal Studies Program at the University of California, Santa Cruz. I want to thank you all for this opportunity to address you and also to thank your respective staffs for working so hard to organize this important hearing.

I have been studying the psychological effects of imprisonment since 1971, when Phillip Zimbardo, Curtis Banks, and I put a group of volunteer college students in a simulated prison environment, randomly assigned some to be prisoners and others to be guards, and watched with shock and dismay at how badly they were affected after six short days in what came to be known as the “Stanford Prison Experiment.”¹ I’ve been studying real and much more powerful prisons ever since. In the last several decades, much of my research has focused on conditions of confinement in isolated, solitary, or “supermax”-type prison settings. It has taken me all over the country, to dozens of isolation units in prison systems in many states as well as the federal Bureau of Prisons, places where I have conducted interviews with prison staff members and officials and,

by now, also have interviewed in the neighborhood of a thousand prisoners living in some form of solitary confinement, attempting to understand how these places work, the unique mentality that is created and operates on both sides of the bars inside, and how prisoners are psychologically changed and affected by the isolation and deprivation to which they are subjected there.

Because I live and work in California, much of my work on these issues has been concentrated on prisons in our state, 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 that pertain directly to today's hearing—beginning with Toussaint v. McCarthy,² where the federal courts in the 1980s first began to look systematically at isolation practices in prisons across the state, continuing to Madrid v. Gomez,³ where Judge Henderson opined in 1995 that conditions at the Pelican Bay SHU “may press against the outer limits of what humans can psychologically tolerate,”⁴ and ending most recently with Brown v. Plata,⁵ addressing the effects of unconstitutionally severe overcrowding in the CDCR.

These and other cases, and especially the Plata-ordered reductions in overcrowding and the historic legislative “Realignment” that has followed, have given us—you—a unique opportunity to get our prison house in order in California. Other problematic aspects of the prison system that severe overcrowding not only helped to cause but also simultaneously made impossible to meaningfully address are now within our grasp to identify and solve. Prison isolation policy is one of them.

With this in mind, I want to make four brief points—1) California is an outlier in the nation and the world in the degree to which it uses long-term isolation to manage its prison population; 2) long-term isolation is painful and dangerous, even worse than previously thought; 3) whatever new CDCR isolation policies are implemented, they can only be truly effective if they offer all prisoners a realistic, objective pathway by which that they can work their way out of isolation, one that does not compromise their safety and well-being; and, finally, 4) no meaningful progress on this issue can be sustained without the Legislature’s continuing involvement in, auditing of, oversight over, and use of tangible and enforceable legal mandates to control the implementation and operation of these new policies.

I. CALIFORNIA IS AN OUTLIER IN ITS USE OF ISOLATION

I begin with the observation that the United States is an outlier in the extent to which it isolates its prisoners and, within the United States, California is an outlier with respect its extreme prison isolation policies and practices. The sheer numbers of prisoners that the United States holds in solitary confinement and the extraordinary lengths of time that we keep them there are shocking and unprecedented by international standards. One can debate—and we probably should at some point in the United States—whether long-term solitary confinement constitutes torture. But that debate has long since been settled in international human rights circles. Juan Mendez, the United Nations Special Rapporteur on Torture has labeled solitary confinement lasting for longer than 15

days as “prolonged” solitary confinement and called for its abolition.⁶ Numerous other international human rights organizations have echoed his sentiments.⁷ There is no question that, measured by these standards, the United States is wildly and unsettlingly out-of-synch with the rest of the world on this issue.

But within that already out-of-synch U.S. context, California is itself a true outlier. There is simply no other prison system in the country that I know of that places so many prisoners in isolation, and no other state that places remotely as many of them in isolation for so long a time. To give you just one benchmark against which to measure this, the federal supermax prison, the so-called “ADX” in Florence, Colorado, which serves as the end of the line for the entire federal Bureau of Prisons (or “BOP”), houses approximately 400 prisoners; that is less than half the population of the Pelican Bay SHU. Yet there are well over 200,000 federal prisoners, almost twice the number we have in California. In addition, the BOP houses about 12,000 prisoners overall in some form of restrictive or isolated housing, about the same number as we have in California. This, despite their having nearly 100,000 more prisoners than we do. Moreover, notwithstanding these much more favorable ratios, the BOP last year was the focus of a critical Government Accountability Office report, one in which they were told to “consider lessons learned from some state initiatives that reduced the number of inmates held in segregation without significant, adverse impacts on violence or assault rates.”⁸ As I say, California is an outlier by any measure, even measured against a prison system that has been cited for its apparent overuse of isolated or restricted housing.

With these things in mind, whatever reforms are being proposed and implemented in California with respect to prison isolation must be judged in light of how far back we are compared to the rest of the country and world. A little bit of slowly implemented reform is frankly not going to make much of a difference.

II. LONG-TERM SOCIAL ISOLATION AND SOCIAL EXCLUSION ARE NOT JUST PAINFUL BUT DANGEROUS

I am sure it will come as no surprise to any of you if I say that we know that long-term isolation can have terrible consequences for many of the persons subjected to it. This borders on commonsense, it is why harsh prison systems and torture regimes alike regularly and routinely resort to solitary confinement as severe punishment, and why none of us would tolerate having a loved one—a child or parent, say—locked alone in a closet-like space for days or weeks, let alone years or decades. In our studies of prisoners at Pelican Bay and elsewhere, we have documented the multiple ways in which they suffer and are changed by this experience. The list of symptoms is far too long for me to recite or explain in detail in the short time available. But to briefly summarize: prisoners in isolation units suffer chronic and overwhelming feelings of sadness, hopelessness, and depression. 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 any contact with them). Some begin to lose their grasp on their sanity and many others report struggling with it on a daily basis. Many prisoners are certain that they will never be able to live normally among people

again and are consumed by this fear. Too many actually do deteriorate mentally and emotionally, and their capacity to function as remotely effective, feeling, social beings atrophies.⁹

We knew these facts and I testified to many of them at the time Madrid was decided, in 1995, the last time a bright public light was really shined on policies and practices at Pelican Bay. But two things have changed since then to make these concerns more grave. For one, we now know from extensive research done in other contexts that social isolation, loneliness, and social exclusion—which prisoners in solitary confinement experience in abundance—are not just painful but can, as one science writer recently put it, “ravage the body and the brain.”¹⁰ Another prominent scientific review put it more judiciously, noting that “social neuroscience has witnessed an incredible rise in the number of studies demonstrating the effects of perceived social isolation (e.g., loneliness and ostracism)... on mental and physical health.”¹¹ However you express it, we now know that prolonged social deprivation has the capacity to literally change who we are, physically as well as mentally.

The second significant change is that the deprived and punishing environment created at Pelican Bay—which was originally intended for no more than short-term stays of a few years at most—has morphed into something very different and far more dangerous. In a turn of events that would have been regarded as unthinkable at time of the Madrid trial in 1995, 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. Nearly a hundred have been there for 20 years and over 500 for 10 years or more. In the hearing that

Assemblyman Ammiano held on this issue in August, 2011, I called these men “pawns in a failed experiment.” They still are; virtually all of them remain there. I should add that the overwhelming majority of men who have been subjected to these unbelievably harsh conditions of confinement are prisoners of Color. Draw your own conclusions about whether and how their race and ethnicity have played a role in how they have been treated in this way and may account for how long we have looked the other way as this mistreatment has unfolded.

In any event, it is hard to describe the magnitude or depth of this kind of long-term isolation, one in which the prisoners have grown from young men to old, alone— fundamentally and profoundly alone. Some of these men came into Pelican Bay barely out of their teenage years and now have grandchildren whom they have never seen in person and certainly have never touched. Many of them at a remote location like Pelican Bay go for years or even decades without visits from the outside. Even those who do get an occasional visit—and there are very few who get more than a social visit every couple of years—must settle for having it mediated through a thick glass partition and conducted over a telephone. They have gone for years and even decades without ever touching another human being with affection, and lacking any direct physical connectedness to others. Many have been locked inside the SHU when loved ones have passed away, and are therefore denied the opportunity to be consoled through touch or embrace. They grieve the way they do virtually everything else—alone. In a place like Pelican Bay, where they are denied the opportunity even to make a phone call, they talk about the pain of not being able to remember what their family members—their mothers, their wives, their children—even sound like.

All of this amounts to a painfully long form of social death. These are people consigned to living in suspended animation, not really part of this world, not really removed from it, and not really part of any other world that is tangibly and fully human. Human beings need frequent and meaningful and close social contact to function, to be fully alive, to be fully human, and we have robbed them of that.

I say all of this to remind you of what is at stake here. The decision to place and to retain prisoners in this kind of environment imposes something infinitely worse than what the courts call an “ordinary incident of prison life,” going beyond even the legal definition of an “atypical and significant hardship.”¹² The decision imposes something that is not only extremely painful and harmful but, from a psychological perspective, arguably at least as profound and life-altering as the decision whether to incarcerate someone in the first place.

With this in mind, I want to close by making two very brief, but important points.

III. THE NEW POLICIES ARE A STEP IN THE RIGHT DIRECTION BUT MUST GO FARTHER

There are two inter-related things that we know can add to the already destructive aspects of solitary confinement: its long and uncertain duration and the sense among prisoners that they lack any realistic means with which they can end their isolation. For this reason, from a psychological—rather than a legal—perspective, the newly proposed and implemented isolation CDCR policies are a modest step in the right direction, but they do not go nearly far enough. I say this

because they fail to offer all prisoners a realistic, objective pathway by which they can work their way out of isolation in a reasonable amount of time, a pathway that does not continue to vest significant discretion in the hands of correctional decision-makers who are, for all intents and purposes, beyond challenge or meaningful redress or appeal. Moreover, a four-year normative time frame for a “step-down program” is considerably longer than most prisoners in most prison systems ever spend in isolation, and in this case it comes on top of what already may be a decade or more of such confinement. There need to be humane time limits to the length of this kind of confinement. Thus, there need to be presumptive release dates that are met on the basis of objective criteria that focus on the absence of overt, objective behavioral infractions (not a subjective judgment about what an otherwise innocent act—such as the possession of a book or piece of art—actually “means”). We need system in which release is made contingent on a record of compliant behavior for a certain amount of time—a release that cannot be invalidated by a set of wholly subjective judgments that, in most instances, are neither provable nor disprovable, and in which prisoners virtually never get the benefit of the doubt. We have to do better, otherwise the sense of helplessness and hopelessness will remain and many of these prisoners, including many already entering old age—who often have had literally no violent disciplinary infractions for years or even decades—will continue to languish, and end their lives in isolation.

IV. CONSISTENT AND PERSISTENT LEGISLATIVE MONITORING, OVERSIGHT, AND LEGAL MANDATES ARE ESSENTIAL

Finally, as a veteran observer of and sometimes participant in several decades of efforts to improve prison conditions and practices in California, I cannot overemphasize or overstate how important it is for legislative involvement and oversight of this issue to be consistent and persistent and long-standing. That involvement needs to include not just providing the stimulus for the implementation of these new policies, as you have, but also in the drafting of tangible and enforceable legal mandates to control the manner in which the policies operate and are judged, and the long-term auditing of how well they are working. There need to be measurable and objective outcomes that are written into law rather than discretionary promises to act wisely or humanely now and in the future. I have too often watched the process of prison reform founder again and again on such promises, irrespective of earnestness and good will of the participants. Personnel come and go, institutional memories fade, and good intentions invariably dissipate over time. We cannot continue to depend on hunger strikes, grassroots mobilization, and high visibility legislative hearings to bring critical scrutiny and change to policies and practices that have gone substantially unexamined and unrevised for decades.

This is an opportune time to address a long-standing and very serious problem in the CDCR. I suspect that the Plata and Realignment-created window of opportunity will not remain open for long. If you can put in place a truly meaningful, durable framework for revising these draconian policies, it will be a legacy as important as Realignment itself.

¹ For example, see Craig Haney, Curtis Banks & Philip Zimbardo, Interpersonal Dynamics in a Simulated Prison, International Journal of Criminology and Penology, 1, 69 (1973); Craig Haney & Philip Zimbardo, The Socialization into Criminality: On Becoming a Prisoner and a Guard, in Law, Justice, and the Individual in Society: Psychological and Legal Issues. (J. Tapp and F. Levine, eds., 1977); Craig Haney & Philip Zimbardo, The Past and Future of U.S. Prison Policy: Twenty-five Years After the Stanford Prison Experiment, 53 American Psychologist 709-727 (1998); Craig Haney, Reflections on the Stanford Prison Experiment: Genesis Transformations, Consequences (“The SPE and the Analysis of Institutions”), In Thomas Blass (Ed.), Obedience to Authority: Current Perspectives on the Milgram Paradigm (pp. 221-237). Hillsdale, NJ: Erlbaum (1999); Craig Haney, “The Stanford Prison Experiment,” in J. Bennett & Y. Jewkes (Eds.), Dictionary of Prisons (pp. 278-280). Devon, UK: Willan Publishers (2008); and Craig Haney & Philip Zimbardo, Persistent Dispositionalism in Interactionist Clothing: Fundamental Attribution Error in Explaining Prison Abuse, Personality and Social Psychology Bulletin, 35, 807-814 (2009).

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

³ Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995).

⁴ Madrid at 1268.

⁵ Brown v. Plata, 131 S.Ct. 1910 (2011).

⁶ “In the opinion of the Special Rapporteur, prolonged solitary confinement, in excess of 15 days, should be subject to an absolute prohibition.” Juan Mendez, Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, United Nations General Assembly, August 5, 2011, p. 23.

⁷ For example, see: International Psychological Trauma Symposium, Istanbul Statement on the Use and Effects of Solitary Confinement. Istanbul, Turkey (December 9, 2006).

⁸ Government Accountability Office, Improvements Needed in Bureau of Prisons’ Monitoring and Evaluation of Impact of Segregated Housing. Report to Congressional Requestors, May, 2013, p. 42.

⁹ 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.]

¹⁰ Judith Shulevitz, The Lethality of Loneliness: We Now Know How It Can Ravage Our Body and Brain,” The New Republic, May 13, 2013. [available at:

<http://www.newrepublic.com/article/113176/science-loneliness-how-isolation-can-kill-you>] This literature is large and growing. For example, see: Brock Bastian & Nick Haslam, *Excluded from Humanity: The Dehumanizing Effects of Social Ostracism*, *Journal of Experimental Social Psychology*, 46, 107-113 (2010); Stephanie Cacioppo & John Cacioppo, Decoding the Invisible Forces of Social Connections, *Frontiers in Integrative Neuroscience*, 6, 51 (2012); DeWall, et al., Belongingness as a Core Personality Trait: How Social Exclusion Influences Social Functioning and Personality Expression, *Journal of Personality*, 79, 979-1012 (2011); Damiano Fiorillo & Fabio Sabatini, Quality and Quantity: The Role of Social Interactions in Self-Reported Individual Health, *Social Science & Medicine*, 73, 1644-1652 (2011); S. Hafner et al., Association Between Social Isolation and Inflammatory Markers in Depressed and Non-depressed Individuals: Results from the MONICA/KORA Study, *Brain, Behavior, and Immunity*, 25, 1701-1707 (2011); Johan Karremans, et al., Secure Attachment Partners Attenuate Neural Responses to Social Exclusion: An fMRI Investigation, *International Journal of Psychophysiology*, 81, 44-50 (2011); Graham Thornicroft, Social Deprivation and Rates of Treated Mental Disorder: Developing Statistical Models to Predict Psychiatric Service Utilisation, *British Journal of Psychiatry*, 158, 475-484 (1991).

¹¹ Cacioppo & Cacioppo, *supra* note 10, at p. 51.

¹² Sandin v. Conner, 525 U.S. 472, 484 (1995).