

## A Walk in the Dark

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I learned to juggle in a psychiatric hospital, at the age of nine. The doors to the rooms in the ward I was on remained opened at night, and one morning I'd been lying awake at maybe two or three when a teenage boy sauntered into my room and began talking. About what, I no longer recall, but I do remember that he began the conversation as though it were a continuation of a previous one, that rather than being strangers, we were old friends who made a practice of talking with one another in the wee hours of the night. The kid had a charm about him that made his intrusion seem perfectly natural, and I remember enjoying his company from the beginning. At one point during his visit he grabbed a paperback from the nightstand, ripped out three pages, crumpling each into a compact ball, and began juggling. This, too, he made seem perfectly natural. I imagine he went on to become a salesman, for he convinced me without even trying that I needed to learn how to juggle. Which I did.

I have often thought back to that morning, and have watched in my mind's eye my young self standing in a room in a nuthouse juggling paper balls as another kid cheered me on. And I am always reminded, when I think of this episode, of the power of the human imagination and spirit, and their ability to bring light to places that would otherwise be very dark.

I have also thought over the years how ironic it is that the place I learned of the power of the imagination and spirit is also the place where I would be introduced to the very conditions in which I would most need them.

I do not recall what compelled the staff to place me in the room—perhaps I had talked back, refused a directive, or done any number of other things which nine-year-old boys routinely do—but I certainly remember the time I spent there. The padding on the walls remains in my mind the same vivid blue, and I still hear the sound the door made as it closed behind me. And the awful stench emanating from the stainless steel toilet, which held the waste of several previous inhabitants. Mostly, though, I just remember the overwhelming feeling of being alone, completely cut off from everyone and everything. I panicked, and began pounding on the door, calling for staff to let me out, or to at least slide back the metal panel covering the door's window so I could see and talk with them, if only through a door. My calls went unanswered, and after a time the panic subsided and I began to pace. And pace, and think, and pace, and cry, and hate the world for this room and its stench and bright lights, and the awful, complete, utter loneliness of the place.

I do not know how long I spent in that room, only that I went in on a bright, sunny, southern California morning and came out to a sky that had grown dark.

In the late 19th century, in *In re Medley*, 134 U.S. 160, the Supreme Court of the United States granted habeas relief to a condemned man so that he would not be subjected to a maximum of 25 days solitary confinement prior to being hanged. To be clear, the basis for the Court's decision was that the statute calling for condemned

prisoners to spend their final days in solitary was an ex post facto law, and therefore unconstitutional. But the Court left no room for misinterpretation where its view of solitary confinement was concerned: "This matter of solitary confinement is not...a mere unimportant regulation as to the safekeeping of the prisoner...", the court stated, before going on to comment on some of the effects of such confinement, noting that "[a] considerable number of the prisoners fell, even after 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..." (In re Medley, at 167–68).

The Court in *Medley* went on to note that the preamble to an early English law (Act 25 Geo. II. c. 37) refers to solitary confinement as "some further terror and peculiar mark of infamy."

The Court found this punishment so repugnant that, rather than subject a death-sentenced man to solitary confinement for not more than 25 days, it ordered his release from custody entirely. This is especially remarkable when one considers that, at the time, slavery had been abolished just three decades prior, and women were still disenfranchised. Yet even in such an atmosphere, the highest court in America recognized solitary confinement for what it was, and condemned it with great conviction.

How the world forgets itself. How it repeats its follies and its sins against itself. And, oh, how it hides its dark secrets in dark, desperate places where they may not be seen.

It's been well over a century since *Medley*, and America condemns countless souls to the horrors of life in solitary. And it does so routinely, as a matter of course, with great bureaucratic indifference. Hans Christian Andersen referred to the institution as a "well-built machine, a nightmare for the spirit," and he was right to do so. For a big part of why the practice is so prevalent is that it is convenient. Prison officials have this well-built machine in place for dealing with "problem" inmates. Yes, it is shortsighted, and creates far more problems than it solves; and yes, those who look at the practice objectively must recognize it for what it is: torture; but, at the end of it all, it's convenient for prison bureaucrats. That is the single greatest obstacle to ending this abhorrent practice—its convenience.

Prison bureaucrats are comfortable doing what they know, which generally means continuing practices and policies which have been in place for centuries. This is true of all bureaucracies, but trebly so where prison bureaucracies are concerned. There seems to exist within them an inertia not found elsewhere in the world, a resistance to change that at times can be maddening. And so the folly is perpetuated anew with each generation, the dark secrets remain hidden from most of the world. It continues to be accepted as a useful management tool, it is given legitimacy—as have so many other awful things in this world—by its prevalence, its use by official institutions, states, and governments.

Were countless men and women across America being subjected to the rack, or stoned, society would not sit quietly; yet every day countless souls are having their minds drawn and quartered by prison officials who remain either ignorant of, or indifferent to the terrible price they are exacting. The real cost of which few of us understand.

I have spent over fifteen years of my life in solitary confinement, including stretches of several years' duration (hardly uncommon here in the American gulag archipelago), and though I have countless memories from those years, some of the most vivid are the earlier ones.

I was arrested for a string of robberies at the age of sixteen, and placed in the Marion County Jail in Salem, Oregon. It wasn't long before I found myself in further trouble, and was escorted to a cell in the disciplinary wing of the jail. It was the padded room in the psychiatric ward all over again, except this time I would not be released for several days. And I had a copy of the Bible to keep me company—consolation or further torment, depending upon one's perspective. What I remember most from this early experience with solitary is the awful din—the screaming and banging of the other inmates on the unit, the clicking of the handcuffs as the guards walked the tier, the knocking of my knuckles against the door as I marked each "lap" I'd pace with a sharp rap...But, loudest of all, the silence at night when the other inmates would tire of their yelling and their banging and fall into a fitful sleep. It was a silence that confronted you, made you see everything very clearly, brought home the stark reality that you were stuck in a concrete box, alone, and that four paces and a turn were all you had to keep the demons at bay.

That is life in solitary. As is creating fantastical animals out of the cracks and crevices on the ceiling you stare at because the guards are temperamental jackasses and will not give you reading material; being taken to a room slightly larger than your cell that is supposed to pass as a "recreation area"; missing meals because you were not standing in a precise spot in your cell when the guard rushed by unannounced with the food; waiting on mail that never comes and telling yourself you don't need shit from anybody anyway as you continue pacing; being prompted by every little noise you hear to go to your door and see what you might see, just so you do not miss some new stimuli; lying awake deep in the night because you are lacking exercise; extreme hunger from far too much exercise, which you feel compelled to do in order to keep the thoughts from racing; fantasizing about harming those who put you there; but, most of all, solitary confinement is wandering about in an endless circle in a living tomb, not yet dead, but very far from being alive, each day bleeding into the next with no end in sight. In short, hopelessness and despair as only those who've endured life in solitary can know this particular brand of hopelessness and despair.

And where have the courts been these past several decades? Here, there, and just about everywhere else, all over the road, tying themselves in linguistic knots in pitiful attempts to justify their abject failure to prevent prison officials from torturing an entire segment of our population.

In his dissent from the Court's opinion in *Wolff v. McDonnell*, 418 U.S. 539 (1974), Associate Justice Marshall wrote at length of the undue deference afforded prison officials by the courts:

...Every person's liberty is, of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him is then only the more substantial. Conviction of a crime does not render one a nonperson whose rights are subject to the whim of the prison administration, and therefore the imposition of any serious punishment within the prison system requires procedural safeguards. Of course, a hearing need not be held before a prisoner is subjected to some minor deprivation...Placement in solitary confinement, however, is not in that category. Prisoners are sometimes placed in solitary or punitive segregation for months or even years...The lesson to be learned is that courts cannot blithely defer to the supposed expertise of prison officials when it comes to the constitutional rights of inmates. 'Prisoners often have their privileges revoked, are denied the right of access to counsel, sit in solitary or maximum security or lose accrued good time on the basis of a single, unreviewed report of a guard. When the courts defer to administrative discretion, it is this guard to whom they delegate the final word on reasonable prison practices. This is the central evil in prison...the unreviewed administrative discretion granted to the poorly trained personnel who deal directly with prisoners.' Hirschkop and Millemann, *The Unconstitutionality of Prison Life*, 55 Va.L.Rev. 795, 811-12(1969)...We should no more place the inmate's constitutional rights in the hands of the prison administration's discretion than we should place the defendant's rights in the hands of the prosecutor.

Those are wise words from the deceased Justice, words unheeded by the courts in the decades since they were written. Indeed, in the very year *Wolff* was decided, the Supreme Court in *Procunier v. Martinez*, 416 U.S. 396 (1974), stated that the judiciary is "ill equipped" to deal with the "problems of prison management," presupposing that prison officials possess a level of "expertise" beyond the grasp of learned jurists. So much for judicial oversight. One might as well feed the constitution to a pack of hyenas, and throw in the better part of our humanity along with it.

It is possible—though with the present political climate not likely—that at some point the judiciary will fulfill its duty in upholding the constitution, protecting those most in need of its guarantees. More likely is the possibility that greater numbers of prison administrators will become enlightened as to the terrible effects of solitary confinement, and cease using long-term segregation as a management tool. There are many good, well-meaning prison officials who do seek to improve the lives of those of us affected by imprisonment. And while they may be surrounded by bureaucrats quite content with the status quo, still, they are not powerless to create change from within. It has been done in many different places, to varying degrees, and it can be done again.

It is important that we recognize solitary confinement for what it is—psychological torture that breaks the minds and spirits of countless men and women every day.

This must be the starting point for the kinds of meaningful changes which are necessary, for anything less than such a recognition is likely to result only in half-hearted, superficial changes, rather than the systemic overhaul required for the task at hand.

How might such an overhaul be effectuated? In his 2011 report to the United Nations General Assembly, Special Rapporteur of the Human Rights Council Juan Mendez made the following recommendations:

The Special Rapporteur urges States to prohibit the imposition of solitary confinement as punishment—either as a part of a judicially imposed sentence or a disciplinary measure. He recommends that States develop and implement alternative disciplinary sanctions to avoid the use of solitary confinement. (Id., p. 22)

Indefinite solitary confinement should be abolished...In the opinion of the Special Rapporteur, prolonged solitary confinement, in excess of 15 days, should be subject to an absolute prohibition. (Id., p. 23)

The Special Rapporteur refers to the Standard Minimum Rules for the Treatment of Prisoners and recommends that States increase the level of psychological, meaningful social contact for detainees while in solitary confinement. (Id., p. 22)

Here in the Washington Department of Corrections, staff have the option of employing numerous methods of alternative punishments for rule infractions. These punishments include, among other things, loss of commissary privileges, loss of recreation, and general confinement to quarters. These alternatives to solitary should be promoted. Not only do they keep individuals out of solitary confinement, but they are effective means of deterring future poor behavior. It is illustrative of the arbitrary nature of prison officials in general that one prisoner might be placed in solitary for a rule infraction, while another prisoner may simply be confined to his or her cell in general population for the same infraction. Clear, consistent policies are needed, policies which forbid the imposition of solitary confinement except as a last resort.

As for Mr. Mendez' recommendations concerning indefinite and prolonged solitary confinement, these are perhaps those areas wherein there exists the greatest disconnect on the part of American prison bureaucrats. For one thing, few prison officials here in America would even consider 15 days "prolonged." In a hellish system where countless souls are consigned to the solitary abyss for years and even decades on end, 15 days must seem very much like a walk in the park to prison administrators who've never been subjected to life alone in a glorified closet. This is a testament to just how "normal" this peculiar punishment has become. But it's a terribly mistaken viewpoint, for whatever desirous effects the imposition of solitary confinement may have on an individual, assuming there can be any such effects, it is terribly naïve to think they can be produced at all if they have not already appeared after two weeks. No one who has spent lengthy stretches in solitary confinement was struck of a sudden with the realization that their months or years spent in segregation have "reformed" them, or somehow improved their character. Men and women are not so improved by such torture, only broken.

If this is the end goal—to break the minds and spirits of countless men and women, to render highly unlikely and even impossible any positive contributions to society from these individuals—then we should continue oiling and feeding the machine

as we've been doing. But, if we are better than that—if we want to hang on to the better part of our humanity—we need to follow the recommendations made by Mr. Mendez.

When should solitary be used? It is my opinion, which is informed by a good deal of research and years of bitter experience, that solitary confinement should never be used, that there exists no need for it.

If prisoners get into a fight, of course it makes sense to separate them, and perhaps they should even be punished so as to deter them from future such behavior. But there are ways of doing this short of solitary confinement, as mentioned above.

The only strong argument that might be made in support of solitary confinement is that those so-called “incurable” prisoners who repeatedly assault staff need to be removed from the general population for lengthy periods of time. This is an understandable concern on the part of prison officials, but even here there exists quite a bit of room for improvement on the existing model. It is possible to create units specifically for such individuals, controlled environments in which the prisoner is released from his cell at certain times throughout the day for exercise and recreation with at least a few other prisoners. Numerous such units already exist in various federal and state prisons. Indeed, this writer spent several years in one such unit, at the Snake River Correctional Institution in Ontario, Oregon. Inmates were let out of their cells every day for exercise, recreation, and showers, their doors being opened remotely from a secure control booth. They were never around staff while out of their cells, but they were permitted to interact with other prisoners. They could lift weights, read books, watch television, paint, play musical instruments, and enjoy many other productive pastimes available to the inmates housed in general population, all while the legitimate security concerns of staff were taken into consideration.

If solitary confinement must be used at all, it should be employed as humanely as possible. Here in the Washington Department of Corrections, an inmate taken to segregation is placed in a cell with no writing utensils and no reading material. Just the jumpsuit he wears and a thin plastic mattress hardly worthy of the name. It usually takes several days before he is issued a book (not of his choosing). Paper is limited considerably, preventing the prisoner from fully exercising his supposed rights to free speech and access to the courts. At some facilities, the Washington State Penitentiary among them, inmates in segregation are not provided access to outdoor exercise, in contravention of federal law. Changing these “minor details” would be as good a place to start as any.

I have not been subjected to solitary confinement for several years now, but never does a day go by where I am not reminded, in myriad little ways, of the years I've spent under such confinement. It will never not be with me, and it is probable I've been affected by it in ways of which I'm wholly unaware.

After visiting the Cherry Hill Prison in Philadelphia, in 1842, Charles Dickens wrote the following about solitary confinement:

I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers; and in guessing

at it myself, and in reasoning from what I have seen written upon their faces, and what to my certain knowledge they feel within, I am only the more convinced that there is a depth of terrible endurance in it which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow creature. I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body, and because its ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the flesh, because its wounds are not upon the surface, and it exhorts few cries that human ears can hear, therefore I the more denounce it, as a secret punishment which slumbering humanity is not roused up to stay.

Sometimes, as I stroll the yard here at the Washington State Penitentiary, watching the heavens turn from one soft pastel shade to the next as the sun falls beneath the rim of the sky, I look over at the segregation units and think to myself that, though I am but a couple hundred yards away from them physically, the reality is that entire worlds exist between myself and the several hundred men entombed in those psychological torture chambers. Men hidden away from the world, which loves to forget its sins.