

## Agenda

February 11, 2014; 9:30 a.m. – Noon State Capitol, Room 4202

### **CDCR'S Proposed New Policies on Inmate Segregation: The Promise and Imperative of Real Reform**

#### **I) Welcome and Introductions**

Assembly Member Tom Ammiano, Chair, Assembly Public Safety Committee  
Senator Loni Hancock, Chair, Senate Public Safety Committee  
Other members of the Committees

#### **II) The New CDCR "Security Threat Group Policy": Presentation by California Department of Corrections and Rehabilitation (40 minutes)**

Department witnesses will describe the difference between CDCR's new "Security Threat Group Policy" and the policy it is replacing. Specifically, witnesses will explain the key differences between the old and new policies, including 1) how inmates are determined to be subject to SHU ("Security Housing Unit") placement; 2) how inmates can be released or "stepped down" from the SHU; 3) how inmates can contest a SHU placement; and 4) the conditions of confinement in the SHU. CDCR also will describe the implementation of the new policies, which were introduced in 2012 as a pilot.

George Giurbino, Chief Deputy Administrator, Special Project Team, Division of Adult Institutions  
Suzan Hubbard, Chief Deputy Administrator, Special Project Team, Division of Adult Institutions

#### **III) The Continuing National Dialogue: Expert Discussion of State and Federal Prison Policies on How, When and If Segregation and Isolation should be Used as a Prison Management Tool (50 minutes)**

National experts will discuss prison segregation and isolation policies in other states and federal prisons, and assist Committee members with understanding California's past and proposed policies in the broader context of effective approaches undertaken in other jurisdictions.

Hope R. Metcalf, Associate Research Scholar in Law; Director, Arthur Liman Program; and Lecturer in Law, Yale Law School

Professor Craig Haney, University of California, Santa Cruz

#### **IV) The CA Inmate Experience Today: Observations and Perspectives of Attorneys Representing Prison Inmates (30 minutes)**

Prisoner rights and civil rights attorneys will provide testimony about their experiences representing inmates under the new Security Threat Group policy and the Step Down Program. The speakers will offer alternatives to the program as well as best practices from other states.

Anne Weills, Esq., Civil Rights Attorney  
Charles Carbone, Esq., Prisoner Rights Attorney

#### **V) Final Remarks Regarding the New Security Threat Group Policy: California Department of Corrections and Rehabilitation (10 minutes)**

#### **VI) Public Comment (20 minutes)**

### **ASSEMBLYMAN TOM AMMIANO (D-San Francisco) Opening remarks on CDCR's proposed new policies on solitary confinement and prison gang or "security threat group" management.**

Good morning, I want to welcome you today to this very important hearing that we're having today. A couple of heads-up: We all have limited time, and we want to assure everybody that this is part of a long conversation. We had a hearing or two, visitations to various prisons, lots of meetings, lots of ideas for legislation. I want to thank Sen. Hancock and her office for co-chairing and co-lifting this event. We want to be sure that when we leave next November that the torch is carried by other members who are gonna be here, some of them for 12 years. So we're not trying to be disrespectful when we say during public comment we only have a minute for each person, and I know some of you have come far – and that may not be the case, there may be a little more time, we are flexible, we also have logistics, people have to come in and use the room by 12:30 or so. We'll do our best to keep presentations brief and to ask the questions that I know you want asked and let you have opportunities. We've had a number of requests can you record this, and can you film this, and as long as you get my good side I don't care. I will turn this over to Sen. Hancock and then we'll continue with the hearing.

## **SEN. LONI HANCOCK (D-Berkeley) opening remarks on CDCR's proposed new policies on solitary confinement**

Good morning and welcome to everybody. You know, nearly six months have passed since the inmate hunger strike that drew the attention of California to the conditions of solitary confinement. Six months later, I, Assemblyman Ammiano, and many others continue to have great concerns about the use and conditions of solitary confinement in California's prisons. While I understand that CDCR is in the process of changing its SHU policy, my initial reading of the new policy left many questions unanswered.

I look forward to a hearing from the department about the effectiveness of its pilot program, what they have learned, and any suggestions about how policy and practice can be made more realistic and effective, meaning - leading to re-socialization and rehabilitation and return to the general population.

I appreciate this opportunity to work with my colleague, Assemblymember Ammiano. I just have to - for the record - say I've got two years after you're termed out. [Laughter...overlapping audio] But our intent is to open these issues for informed public discussion and examinations leading to positive, lasting change.

I also greatly appreciate our panelists today who will help us understand the current conditions of isolation housing in California's prisons and also what is happening across the nation as other states confront challenges of reform similar to those we now face.

I want to thank all of you for coming today and for your commitment to ensure that the conditions of solitary confinement are not hidden from public scrutiny. I look forward to working with you, with the Department of Corrections, with both houses of the legislature to achieve meaningful reform.

**AMMIANO:** Thank you very much, I wanted to begin now, I wanted to know if there are any other members with comments, we have Sen. Anderson and Assemblywoman Melendez, and we may be joined by other Public Safety Committee members.

**SEN. JOEL ANDERSON (El Cajon):** I'd like to make a few remarks ... this issue is exceptionally important, and I'm pleased to be here, I think this is important, and the welfare of the folks in our prisons is important, and we have to balance that against the correctional officers that see them.

**AMMIANO:** As Sen. Hancock mentioned, this is a follow-up to previous hearings about the SHU [Security Housing Units]. We're very, very concerned about practices here in California not meeting Amnesty International's standards. There are other states who have better practices than we do - reduced the need for the SHU to the most minimal and have no recidivism, and there's no reason that the great state of California cannot be embracing these ideas that maybe 100 years ago were enlightened, but now we're very ... this is the way it should be - the way we should be handling our criminal justice problems and particularly emphasis on rehabilitation.

So, CDCR did come up with some pilot program changes to how inmates can end up in the SHU and how they can get out. We're going to be discussing those regulations today. We think that they don't go far enough and it doesn't really address some of the deficiencies in CDCR's gang policy.

And we will also be considering all of us, legislative fixes. And I have some legislation in the hopper. I'm sure Sen. Hancock does. Can't speak for my other colleagues. But there will be legislation introduced around the SHU and some of its practices, including putting a cap on the number of years. So our first panel we will hear from, now that I put them on the spot, is the CDCR representatives, George Giurbino and Suzan Hubbard. And they're going to describe the new security threat group policy, discuss some of the differences between the new policy and the old policy.

Good morning. Welcome to the Olympics. [laughter] You'll get the gold ... [laughter]

## **TESTIMONY OF George Giurbino, Chief Deputy Administrator of the Special Project Team at CDCR's Division of Adult Institutions**

I've prepared an opening statement if that's okay. I want to provide brief introductions and say good morning to the co-chairs, the members of the joint legislative public safety committee today.

My name is George Giurbino. I'm a retired annuitant with the California Department of Corrections and Rehabilitation. I've been assigned to the Special Project Team that's governing the Security Threat Group

the department for about 33 years. Where I've worked – I was in a variety of assignments from rank-and-file custody operations to supervisory to management as well as departmental administration. I've served as a warden at two state correctional facilities – Centinela and Calipatria state prisons.

I've also been assigned within the department's headquarters as an associate director [of] high security, of transitional housing, deputy director, and director of division of adult institutions, which is the final position held until my retirement in December of 2011.

While employed by the department, I continued with my personal education in the field of law enforcement and criminology at the University – Cal State University at Fullerton where I earned a bachelor's degree. In addition to my work as a retired annuitant during the past two years, I've also been enlisted by the National Institute of Corrections as a national instructor and facilitator regarding prison operations, security audits, security threat group management, emergency operations, and security housing operations.

When I was asked if I would be interested in being involved in this project, I provided one conditional request to the Department of Corrections and that was to be allowed to work with retired Director Suzan Hubbard, who is my partner here today, who brings forth with her much department history, practical knowledge, a forward-thinking approach, and sound counsel to our team's daily efforts.

### **TESTIMONY OF Suzan Hubbard, Chief Deputy Administrator of the Special Project Team at CDCR's Division of Adult Institutions**

Thank you. Good morning. I, too, have been part of the department for more than 33 years. I graduated from the University of California Berkeley in social welfare and criminology and did field work with the department, and joining the department as a correctional officer at San Quentin – worked for the next 30 years through various correctional officer counseling series and served as a warden – or acting warden – at several different prisons. Part of activating our state's first mental health program within a Level 4 prison, and have been responsible at two prisons for our female offenders. I eventually became director also and retired in 2009 as the Director of Adult Institutions.

After my retirement, continued to work in prisons, mentoring and guiding wardens, and then joined the Special Project Team in 2011, being part of developing the regulations – new regulations – for our department, and also being part of conducting the reviews of the offenders that have been within our security housing unit. Thank you.

**AMMIANO:** Thank you both very much. I really have a lot of respect for your credentials and your experience, so now we're looking forward to your presenting the "new regulations."

**HANCOCK:** Did you write and develop the new regulations or are you mainly in charge of evaluating whether under the new policies individuals will be returned to the general population?

**GIURBINO:** We've been directly involved in assessing and developing the revised security threat group policy for the Department of Corrections, which includes the writing of it and working with external stakeholders in taking a look at it and taking a look at their feedbacks as well.

**HANCOCK:** OK good, so we can ask you questions going right to that thank you.

**GIURBINO:** And we think as part of the process it's good to understand what the pre-existing policy was for security threat group management or prison gang management within the Department of Corrections.

And for several decades, the Department of Corrections has had a policy where we had a validation process where individuals based upon activities that they may have been involved in within the prison system could be validated as prison gang members. Those prison gangs went through a process in order to be identified as prison gangs, which required certification by the agency secretary. Up until most recently, there were seven prison gangs that were certified in the state of California.

And as part of the validation process, individuals had to be actual members or associates of these particular prison gangs and they had to be validated. They were validated based upon several different types of source items in which an individual could become validated. It could be their own self-admission. It could have been a tattoo that they may have had. It may have been part of their commitment offense. Could have been information that was specifically located in their probation officer's report. Could have been gang symbolism that they had. But there was a variety of sources.

An individual in order to have been validated had to have three of these source items. And in addition to having

associate. And upon completion of that information being attained, one of our investigative services unit agent would provide that individual with a face-to-face discussion in which they would share the information that was going to be used to validate that individual.

That information subsequently would be forwarded off to the Office of Correctional Safety within the Department of Corrections headquarters in which they would do an assessment of that information and based upon their assessment they would affirm that individual or not affirm that individual as a prison gang member or associate.

Based upon those individuals' validations, they would be placed into segregation within the department, and then they would be transferred to an institution by the institution's classification committee based upon their validation. And they would remain within a security housing unit for an indeterminate period of time.

Subsequent to various forms of litigation that had occurred over the years, around 2000, 2011, the department revised those policies and incorporated a six-year review period, which then required the department for each six years at minimum that they do an analysis and review of individuals that were validated as prison gang affiliates that were housed within the SHU. And if those individuals were not involved and didn't demonstrate any type of activity, then those individuals would be considered for release out to a general population facility.

And again, these are pre-existing policies.

Such items that would include an individual being retained beyond that six-year time frame would be one element of activity. And therefore, if an individual was in a security housing unit and they were programming and they'd been there for six years and they had an inactive review period, **and there** was a search done on a cell 200 miles away from that security housing unit and that individual's name was found on a list of other individuals that said "good guys" and "bad guys", that that information – because they were on that list – would be and could be used to retain that individual within a segregated housing unit for six additional years.

And what we've tried to do and in recognition of those policies that were pre-existing, we've kind of done an extended effort and even with the assistance of the legislature in 2007 with special funding that was provided – there was a 2007 expert panel report that actually took into account a lot of other systems throughout the country and provided significant recommendations for change.

And even upon receipt of this information -- and the information itself and the changes and the recommendations that was in the report was good insights and it was somewhat progressive and moving in a direction that was consistent with a lot of national best practices. In our taking a look at it relative to how we were developing the policy, there were several modifications to it that we may have felt may not have been progressive quite enough in our evaluation of it and the development of the policy.

Not only did we take a look at that 2007 report, in addition to that, we worked closely with a lot of individuals and read a lot of other recommendations. We took a look at several reports written by Dr. James Austin and his efforts at Mississippi. We worked with Mr. [Christopher] Epps' staff in Mississippi, Mr. Ken North, who's in charge of their security threat groups in the state of Mississippi. We also spoke with John Aldi out of the state of Connecticut, got copies of their policies. We received copies of policies in working with the Federal Bureau of Prisons from most of the states throughout the country to take a look at their policies.

As probably would be understood, not every state in the country has nearly the security threat group or prison gang issues that the state of California had. But they all – by and large, I would say that about 75% of them -- have local policies that they use to manage segments of their population. Upon receiving that information and speaking with several of these individuals, we ended up working with a select warden's advisory group within the Department of Corrections as well and we began the process of drafting the policy for the Department of Corrections – a revised policy, if you will.

And in doing that, took several efforts. There were some confusion. Even as I read on the Internet, people didn't know which volume of it that they should take into consideration. And in part because this has been a very dynamic process that we've been going through, information that we received not only from internal stakeholders within the California Department of Corrections but from outside the Department of Corrections as well – individuals that are associated with Prison Focus, the PLO, the Inspector General's office, the Attorney General's office, family members who have corresponded with us and sent information – we've taken that information into account. And we've kind of pooled it and used that in developing our security threat group management policy that ultimately has been recently put forward to the Office of Administrative Law for promulgation.

Prior to that, we created what was referred to as an instructional memorandum. This instructional memorandum and the reason why it was developed was we developed the policy – it was a very complex policy as we developed it, and it changed and impacts several different areas of the California Code of Regulations. And because of all these significant changes that were taking place, we felt that the Department of Corrections and the inmates and the staff would be very challenged in implementing this. And in addition, we wanted to move forward, and the agency secretary at that point and time wanted to move forward in a rapid process and being able to start taking effect. The Office of Administrative Law process can often be somewhat a little bit cumbersome or time-consuming in moving through that process. And so we created an instructional memorandum and used the Penal Code statute that authorized us to develop a pilot program.

And for that pilot program, we used this instructional memorandum in order to relate the information on how that process would take place. And the pilot program began on Oct. 18 of 2012 and it would conclude on Oct. 18 of the year 2014.

The department's ongoing efforts at this point and time based upon other activities and litigations taking place is wanting to and having a desire to move forward with those regulations in a time-expedient fashion if at all possible.

At the same time – and what's become challenging for our efforts in promulgating these policies – is they're prospective in nature, as you've taken a look at them, where they were developed for individuals that may become newly validated. What's become part of the challenge is we have 3,200 individuals within the security housing units and administrative segregation units throughout the state of California that were previously validated. And it was our goal and our intent to be able to take these new policies that would have been revised and pilot as they may, but overlay with those 3,200 inmates that are within our security housing units, and not only overlay them with the inmates that have been previously validated, but also overlay those with those that were tentatively in the process of being validated as well.

So we developed a process similar to what was used in other states like Colorado and Mississippi to conduct an evaluation and review of those in our security housing units. However, in those states, it was primarily a summary review of documents. We felt it was very important and necessary to have interactions with the inmates as well during this process. And so, we began a process of actually scheduling case-by-case reviews with that segment of the population so that we can overlay the new policy and conduct a review and make an assessment and determination if these individuals who were previously validated warranted further retention within the SHU or if they could be released out to the general population.

To date, as part of these reviews that we've been doing, and we've completed 632 reviews of individuals throughout the Department of Corrections to date. Included within that 632 number are individuals that are within security housing units as well as those that are confined within administrative segregation units. The difference between these two types of facilities is security housing units are determined and they're used for long-term segregation whereas administrative segregation units, which exist in nearly every prison in the department in the state, are designed for temporary segregation based upon the processing of an individual who may or may not be ultimately transferred to a security housing unit.

And our goal in this process and conducting these reviews was to review not only those that are currently within the security housing unit but also those that were in the process, that are in administrative segregation units. As we developed a protocol for making decision on prioritization of these individuals to be reviewed, one of the key elements of change within our policy had to do with those individuals and the basis for their placement within the security housing unit.

We separated out the validation process from the segregation process. And in addition to that, the policy -probably one of the most significant changes made was - that individuals previously validated as associates they were placed into a security housing unit based upon their validation alone. The new policy does not have that provision in it. As a matter fact, an individual that is validated as an associate, their housing will be in the general population based upon their validation. Those individuals that are validated as associates would have to commit additional significant behavior in order to be considered for placement within a security housing unit.

And because of that significant change in our policy, and there are several other significant changes, but because of that one as we developed our prioritization on how these reviews will take place, we elevated the associates – the individuals that were previously validated as associates – to review those individuals first primarily because they had a significant liberty interest involved. Recognizing that all of the inmates within SHU have a liberty interest involved, but these particular individuals based upon their validation as an associate had an interest in that they didn't belong in SHU unless they had committed some type of significant behavior.

So we started off in our process of reviewing associates. However, while we initiated this and we began conducting reviews of associates, the secretary, Dr. Beard, asked and had concern as well that we're reviewing associates – and I understand we're prioritizing that based upon their liberty interest as well as the length of time in which they have been validated – he asked if we would also consider, if we could build into it, a review of our members that had been validated.

So, more recently, since October, November of this past year, we began a review and incorporated a review of those inmates that have been validated as security threat group members as part of this process as well. Again, as I stated, there has been about 632 individuals that have been reviewed and received a case-by-case review to date.

Although we can go further into it as you may request, but as we conducted these reviews, another significant component that the new policy has in it is a step-down program that has four steps associated with it with a fifth step that releases an individual out to the general population. As we conducted these individual reviews, what we did as part of that is we set up a method in which if an individual had committed serious ...

**AMMIANO:** Excuse me, sir? I don't mean to interrupt but we do have a member ... and can I say amazing? Can we take a breath? Pretty good man. [Laughter] You do get the gold, really. That's quite a presentation. Miss Melendez has to leave but she does have a question, and we're going to allow that because the more information we [legislators] share, the stronger the legislation will be.

## **Assemblywoman Melissa Melendez's Q&A with CDCR Chief Deputy Administrators George Giurbino and Suzan Hubbard**

**Assemblywoman Melissa Melendez (R-Lake Elsinore):** Thank you Mr. Chairman. George, thank you for your very detailed presentation. There's a lot of information to digest but good information. I just have one question. I'm reading an article here from I think it's the Sac Bee which was dated Jan. 31st specifically talking about how gang members would qualify for being taken off this particular status. And it does say that gang associates would have to steer clear of gang activities for about 10 years to qualify; gang leaders about 14 years. And I'm assuming that that is based on recommendations from CDCR, is that correct?

**GIURBINO:** Correct. Yes, ma'am.

**MELENDEZ:** And so, I'm just – a decade seems like a really long time, and so I'm ...

**GIURBINO:** Let me – let me kind of help because there's two different things that we're talking about here. One of those is individuals that can be released from the security housing unit based upon their validation – it's in a much quicker time frame. Those individuals would be within a security housing unit for three years. [What] you're talking about is something new that was just recently added to the policy and something in doing research on a national perspective, taking a look nationwide, most states and the federal bureau of prisons, and I could find a single one that had a provision for this. And what this is when individuals are validated, they get a label that's associated with that in places inside their central file. Validations throughout the country, that label stays with an individual from cradle to grave. They have that label of that gang their entire life. What we elected to do in this process was to create our policy so we go full-cycle and give the individual the ability to have that label ultimately removed.

**MELENDEZ:** So what you're saying is then it would take them a decade approximately to have that label removed?

**GIURBINO:** It would take three years within a security housing unit and then upon their release, if they're associates six years. Again, this is a provision that no other state that I can find has currently. They retain their label in other states. This is something new that assists an individual so that perhaps when they go to a board hearing that they can say that "No, that's been completely redacted from my file, my history."

**MELENDEZ:** Okay, so let me ask you this then: In other states that you've looked at, are you talking about inmates who have been removed from the SHU and put into the general population that they still maintain their gang status? Is that what you're saying?

**GIURBINO:** Correct. That validation is retained with an individual in ....

**MELENDEZ:** Despite whether or not they're in the SHU?

**GIURBINO:** ...in the SHU or not.

**MELENDEZ:** Okay, so it remains with them. And you're suggesting that that title, if you will, be removed after a period of time?

**GIURBINO:** Correct. And again, taking a look nationwide, could not find another policy that provided that provision. But in working with these inmates in conducting these case-by-case reviews, that was information that was shared with us that the inmates were interested in doing was having some method at some point in their career in their life

where they can have that redacted.

**MELENDEZ:** Can you just explain to me in a very basic way the value in what you're suggesting? Because you've had inmates in other states who have been released into the general populations but still maintain gang status title, and you're suggesting that that is removed. I'm just – where's the value? If you're in the general population, isn't that the ultimate goal aside from being released from prison? But ...

**GIURBINO:** The stigma of an individual having that gang title will affect them. People make perceptions and have prejudices upon individuals. Could potentially impact the hearing the individual may be involved in as well and being able to remove that. There are some assignment in housing occurrences where an individual based upon that validation that may have occurred 20 years ago but because of that validation existing may impact the job assignment that that individual may have.

**MELENDEZ:** OK, thank you.

**AMMIANO:** Thank you very much. We'd like to more or less like to wrap up this part by 10:30ish, so I'll ask you to conclude your very well pronounced presentation and then Ms. Hubbard, and then we'll have some questions for you.

**HUBBARD:** Thank you. We've covered some of the key points through your questions and observations and mentioned something very important as to how we began the reviews of those associates and now members. Our validation process has been changed dramatically. Previous in the validation process, there was a interview with the local investigative staff between the inmate and the investigative staff and then review of the validation and approval or disapproval of the investigation by our office of correctional safety. Now, major change is that the investigative staff at the local level conduct that interaction still. Our Office of Correctional Safety in headquarters reviews that, but the inmate before his validation is finalized goes to a security threat group unit classification committee. So instead of one person or entity reviewing and approving the validation, it is a committee process. The inmate will be assigned an investigative employee that serves to assist him in gathering evidence that may be needed to support or not support the validation. So that alone is a very different part of our new policy.

George has already mentioned the issue about whether an inmate would be housed in segregation or not. For associates, it would only be if they have additional gang-related behavior. We have added for members another level of review that would be done at the warden's level committee. If a member had been validated, instead of just moving directly to the step-down program another level of review would be done by the warden's committee and potentially the Departmental Review Board.

We've talked a bit about the step-down program being a program that can be done within for those inmates that have been retained in segregation or would later be placed in segregation – instead of a six-year review for inmates previously, they can participate and take part in that step-down program a minimum of three years based upon their taking part in the program.

So those are some of the highlights as we continue in the new policy and the reviews that we have done.

We have also increased the privileges for those inmates that are taking part in the step-down program. And George mentioned many stakeholders that we talked to both internal and external, but we also met with inmates, both inmates that have been validated for a number of years that were within our secure housing units and those inmates that have been released. And privileges and their conditions that they live in and property that they have access to is extremely important. So, we have increased the amount of canteen and packages and phone calls and personal photographs.

So, those are major changes within our secure housing unit.

We've also created a disciplinary matrix. The inmates asked that they be held individually accountable for any of their behavior, not just confidential information used or some other low-level documents. So we have built a process for a disciplinary to be issued if there is gang-related behavior. And already existing within our disciplinary system is a great deal of due process both for a staff assistant and investigative employee on behalf of an inmate. Those are major changes that go along with our new policy.

**GIURBINO:** We think that it's important and critical to understand too as we overlay this policy, to understand again about the associates that are being reviewed. Again, we started with 3200 individuals, and based on our new policy, associates won't be placed into segregation unless they've committed some type of new serious behavior with a gang nexus. It's good to know that of that 3200 inmates, 80 percent of that population are validated associates. 80 percent. So as we conduct reviews, that's a significant portion of those individuals that are within a security housing unit that would be eligible for release out to the general population.

**AMMIANO:** OK I think we'll have some questions.

## **Assemblyman Tom Ammiano's Q&A with CDCR Chief Deputy Administrators George Giurbino and Suzan Hubbard**

**AMMIANO:** I was thinking if the members of the Assembly, we'd all be gang members. I don't know how you avoid not associating. [Laughter] A lot of them try not to associate with me [laughter] OK. Here's what we're gonna do, let me preface this by saying the scale of dedication to this project is diluted by this committee, so none of this is

personal, not of this visciates. Think of me as a space alien 'cuz I want to do some probing now. also this is a heads-up, this is a preface, so we'll try to keep the answers brief because there's gonna be more, I want to meet with you more, this is kind of the areas we might do some work on together. So. In and around validation, and then the step down, and then I'm gonna ask about the process itself, and the conditions in the SHU.

So under the draft regulations – this concerns the validation – aren't you using the exact same kinds of evidence or information to validate an inmate as you did under the old rules? For instance, books, tattoos, confidential informants?

**GIURBINO:** Some of that information correct, that was incorporated. We revised some of that information on sources to make it more specific based upon recommendations from external stakeholder groups. But probably the thing that becomes very important as you say that, sir, is that we've separated the validation process from the SHU process – something that didn't exist previously. So an individual validated as a SHU doesn't necessarily go to a security housing unit.

**AMMIANO:** All right. We'll develop that with you. And then I'm also concerned about the vagueness of some of these source items, particularly being in possession of someone else's legal documents to validate an inmate. Should an inmate be punished for helping another inmate to file a legal brief or an appeal? Hypothetically?

**GIURBINO:** Absolutely not, and that's why the policy itself doesn't provide, as it does in many states, only one source item is required to validate an individual. The state of California requires three separate source items and we've incorporated a weighted point structure in addition to that and established that there must be a direct link with an active individual that's validated.

**AMMIANO:** All right. Again, to this eye, there's a vagueness. But we can get that more precise.

And then the draft regulations are supposed to be a move towards punishing behavior, as you've mentioned, rather than mere gang or STG validation. But there is a distinction between how associates and members are placed in the SHU, and why shouldn't everyone with the same behavior-based reason to be placed in the SHU rather than just – ?

**GIURBINO:** Well, not completely, sir. I understand your question, but individuals that are validated as members, if you've done research or kind of done information relative to these individuals, there is a blood-in blood-out philosophy that's associated with it, where individuals that are sworn into a gang as a member, there's only one way to come back out of that gang. Individuals that are associates to that gang don't have that same tie, that same level.

**AMMIANO:** Yeah. I've just – I understand the complexity here and I'm sorry I wasn't clear but it just seems there's a double standard, and again, we can explore that too. In terms of the step-down program, is there any real limitation to how long someone can remain in the SHU during the step-down program? Is there anything codified?

**HUBBARD:** No, there's not because we feel that the individual inmate is going to be making decisions about whether they move forward through the step-down program.

**GIURBINO:** Important to note that the step down program is set up in four different portions. Each one of those portions, although it has 12 months within that step, the individual based upon their behavior and not receiving a Rules Violation Report with a gang nexus can be accelerated in both Steps 1 and 2, reducing the time within the Security Housing Unit to three years. In addition to that, if they complete that first portion of the step down program at Pelican Bay State Prison SHU, that individual then becomes eligible to move forward either to Tehachapi or Corcoran, which is a different environment.

**AMMIANO:** I appreciate that. The question was directed to Ms. Hubbard. Number two, the self-directed journaling is required in the step-down program: What if an inmate decides not to participate in the journaling? Would that be a reason to prevent the inmate from progressing to the next step in the step-down program?

**HUBBARD:** Eventually, it would be, yes.

**AMMIANO:** And then in the third and fourth steps of the step-down program, there is some programming allowed for the inmates. How is the programming administered – alone in their SHU cells or in a limited group setting?

**HUBBARD:** In steps three and four, we move towards being in more of a limited group setting, and we're having very good successes with that. Most of our step three and four inmates are at Tehachapi and they are taking part in small group settings.

**AMMIANO:** And not in cages? Not like they're in therapy?

**HUBBARD:** Therapeutic modules, currently, yes. [Jeers]

**GIURBINO:** That would be one portion of it, sir. But they're also going to come outside ...

**AMMIANO:** Sir, All right, sir. Sir, please. You're over-answering a little bit, given the time limits. Believe me, we'll get to all this. On the process, even though the draft regulations provide additional hearings in order to validate an inmate, is there any independent review of the decisions made at these hearings? In other words, someone outside the CDCR? Yes or no?

**HUBBARD:** No.

**AMMIANO:** What avenues do STG members have to challenge the validation and SHU placement?

**HUBBARD:** The inmates have an appeal process towards their validation in which they can move forward for three different levels of review within our department. And of course, if not pleased with the director's level decision at the third level, they can file a writ to contest the validation.

**GIURBINO:** And probably just as important, sir, is that they now have a rules violation report as part of their validation process that provides a more elevated level of appeal as well, in addition to their classification by the classification committee.



presenter is doing them with you. Do you have any discretion in that process?

**GIURBINO:** Discretion, yes, but the policies are pretty much our guiding principles. We take a look at it. But both Ms. Hubbard and myself have been doing those reviews. Yes, sir.

**AMMIANO:** And then what kind of surety can we have that the people who come in after you will make the appropriate decisions on validation?

**GIURBINO:** I think what becomes important is what we're doing is case-by-case reviews for those individuals that were previously validated. That group was 3,200. Prospectively moving forward, that case-by-case review will no longer become necessary. The review itself will incorporate three additional levels of review – the rules violation report, security threat group classification, and an institution's classification committee that will provide three levels of review plus appeal process that goes along with that.

**AMMIANO:** All right. Thank you very much. Just to end up my questioning just briefly. Conditions in the SHU and public safety. The regulations concerning the conditions do not specify how many non-contact visits an inmate can get in each of the step-down program. So who decides that?

And then on public safety, under the old policy, there were concerns that people who were in the SHU for many years who are then paroled directly into the general public. And are we doing anything about that so they're allowed some period of time with other inmates before just direct release to the public?

Either of you [answer] ...

**HUBBARD:** If I'm understanding, the first comment was that in the new regulations, you don't see that there's a ...

**AMMIANO:** Yeah, you're not specifying the ...

**HUBBARD:** Number of visits. And that may be an oversight, but the intent – and this is that time period while we're in this public comment period to tighten up those regulations – is that they would have the, they would be guided by the same regulations as other inmates that are in segregation so that that's generally visits on the weekend.

**AMMIANO:** I think the concern here is retaliation, that it's not used in a retaliatory manner. Uh ...

**HUBBARD:** I'm not understanding that.

**AMMIANO:** Well, if you're denied visits or the number of visits, that if you want to do something punitive or retaliatory to the inmate, you can restrict those. And we're wondering in this process how does one prevent that and identify. But that's for later.

**HUBBARD:** All right. We'll work on that.

**AMMIANO:** And just the public safety in general, the direct expulsion of the SHU inmate right into the general public. Are we looking at ways to buffer that?

[Hubbard nods yes]

**GIURBINO:** Absolutely. I think it's important to understand within the step-down program that we've built elements into it which are also being expanded to include academic testing, vocational CASAS testing. In addition to that, it provides academic programming education now with educational facilitators within each of the SHU facilities. Also the inmates can continue to be provided with college class programs within the security housing units as well. And we're looking towards introducing and working with a group in providing alternatives to violence program, which is an interactive program with individuals of diverse backgrounds to become more accustomed to each other in going either back out to the general population ...

**AMMIANO:** Just a practical question. What if your time is up and you've only done step 1? Then you don't get all of the "benefits" et cetera. I mean, you're still ...

**GIURBINO:** Correct. That's why it's important for that journaling program that we discussed. That journaling program helps the individual to learn about their behaviors in advance of being able to parole.

**AMMIANO:** Yeah, but I don't really see it as a solution to what I'm talking about... OK Listen I want to thank you both, and Committee members didn't mean to take up all the time, but these were burning questions and we need the answers. Senator Hancock.

## **Sen. Loni Hancock's Q&A w/ CDCR administrators George Giurbino & Suzan Hubbard**

**HANCOCK:** Thank you very much. First of all, I want to thank you for your very hard work. I know you guys have been doing this for many, many months. I think that it's very good that we're giving people an opportunity to be removed completely from the validated list. I am concerned about a number of things because I had some of the same questions as Assemblyman Ammiano.

I think we need to define "serious behavior" so that it does not include things like photos and drawings and other things that are not in fact behavior, but other things.

I was interested, in my reading of this about the point system. I noticed there are 14 criteria for designating people as being validated or in opposition to the step-down program. Some of them have as many as six points attached to them, and it only takes 12 points to set you back in the process. That seems to me to be a very difficult hurdle for individuals who have been in isolation for a long time and they have trouble planning ahead or other things. Was that taken into account? It seemed actually almost impossible to me, given some of the things ...

**GIURBINO:** I think –I apologize. I think what the policy has done is, in prior policy all it took was one activity. If an individual's name was found underneath an inmate's pillow 200 miles away, that would bring him back to a security housing unit. What the new policy does is it creates serious behavior definitions where it would take two dis-

process hearings where an individual was found guilty of an administrative behavior or one serious one. But the more important component is, they have to be related to gang activities – gang behaviors. And if they don't have that, if they receive a rules violation report and there's not a gang nexus, then that individual stays out in the general population.

In the validation component you mentioned about six points for those validation source items, in checking across the country, we found states that used one item worth 10 points and they were putting them into their segregation units based upon just one item alone.

**HANCOCK:** Yeah, I think it's good that we're not using one-item alone. [laughter] I think what we're looking at today is – I am sure it is better --Is it enough better? Okay, I mean, we could say Mississippi did away with solitary confinement so why aren't we doing that. You know? [Applause] I mean, we're trying to – no, no, no, actually we don't allow that and we're going to have to clear the chamber if it happens, so please don't do that. So I'm, I really feel the need for a conversation about how this does not become an impossible hurdle, and, because some of these things are fairly technical – the 12, the 14 different ways a person could be sent back. Now, if they are, let's say, on step 4, and they achieved 12 points or something, do they get sent back to step 1? Do they stay in step 4 longer? What happens?

**HUBBARD:** Perhaps on the point issue, we refer to those as source items that have a different point value. And we're looking at those items more at offender's initial – when they're first validated. So the way we gave different point value was, such as probation officer's report, that there would be information within a probation officer's report, the time of sentencing, that may have to do with gangs. And if we use that, then we felt that the inmate out in community court – in superior court – had had an attorney and had been able to contest that information in the probation officer's report. So we felt that if information was in that probation officer's report, we gave it a higher value. So there were different point items given towards initial validation. Once an inmate is initially validated as an associate or a member, he or she may change their level of membership within the gang, but they're validated other than the new process that we've developed.

Separate is, inmates if they are in the step-down program and some new offense comes up, it's not so much that we're going to give new points or new source items towards validation, because they're already validated. We're going to look at what that behavior is and is it gang-related or not or STG-related, and we have that disciplinary matrix which defines what is gang-related behavior. So an inmate might receive a 115, and if it were a gang-related behavior, that is where going through his or her hearing with a lot of due process, the conclusion of – if he were found guilty --then a classification committee within the secure housing unit would determine based upon the serious – would he move from step 4, would he move to the beginning of step 4. He might not move at all. Or depending upon the seriousness of the offense, such as we have – if it were a stabbing assault or something at that extreme of seriousness -- yes the inmate could be moved from step 4 all the way back to step 1, again, if that were a gang-related offense.

**HANCOCK:** I think that we all understand that if somebody assaults somebody, we're dealing with a different thing.

**HUBBARD:** Yes.

**HANCOCK:** You know, because here I notice that informants and other things are given points in the initial valuation. So it seems like we haven't stopped the business of indicating that people need to name other people in order to be considered ...

**HUBBARD:** We continue to use confidential information within our new policy.

**HANCOCK:** Do you see personally any problem with using informant information when it could so easily be a trade-off for getting out yourself to name other people? I mean, that seems to me to be having been documented in a variety of studies that informant information is intrinsically untrustworthy.

**HUBBARD:** George and I before we began this project, we had done a number of classification reviews over the years. But in focused on this project for the past 18 months, Senator, we have learned a tremendous amount. So, of course, at one hand there may always be a concern about the reliability of that information. But in conducting our reviews that we have done, more than 600 cases, we're looking at information for the past four years, and we are sharing in great detail that confidential information with the inmates that we are seeing. Greater detail than they have ever been given before. And in many, many cases, the inmates, are atoning or agreeing that yes they were taking part in that information – “That letter that you have, Ms. Hubbard. Yes, that is my handwriting.”

At the other end of the scale, we during our reviews have proven that information was inaccurate. We may have had a wrong nickname or a wrong street gang that an inmate had grown up in, and we are moving to correct that information either through deleting the validation; we have been part of totally doing away of validations of offenders because of errors that we have found, or considering the information and moving the inmate to the general population because the information was so old and so dated.

**GIURBINO:** But I think it's also important to realize, Senator, that you do not have to debrief, you do not have to give confidential information to move through the step-down program. This is a whole new process. The debrief process is there because there are some inmates that want to exercise it. The step-down program doesn't require anybody to provide any information at all.

**HANCOCK:** Okay. Let me say I appreciate very much the fact that the last time I looked the number of reviews you have conducted sent 62% of the people back to the general population, indicating that perhaps they did not need to be in SHU in the first place.

**HANCOCK:** I'm wondering is there any re-socialization programming that goes on? Because if a person under the new criteria doesn't fit but if they've been in isolation for a couple of years ...

**HUBBARD:** Yes, that's a concern of ours too and also in talking to inmates that we've done reviews on. So first thing that we've done – and it's just a beginning – is that we ensure that mental health staff at the new facility or the facility that they're being released at are meeting with the inmate. We also in part of our reviews, we have gone and met – we have gone to institutions where inmates have been released and met with a group of inmates to see what we could have done to better prepare them to return from a segregation setting to a general population, and they've given us a number of very, very good ideas as to how they could help integrate better within that general population. So that's part of the development of our program right now. Very important.

**HANCOCK:** Good. Thank you. And I look forward to following that. It is now 10:30 and I think we need to move on. But There are some information I'm going to ask you for and I just want to tell you why. I would like to know the education level and the training of the correctional officers in the SHU and in the investigative units. And also the number of times – the number of third level director's reviews that have been requested and what the outcome of those reviews was?

**HUBBARD:** Reviews of validations or what?

**HANCOCK:** Well, you said that, you know, if the committee reviews and you get validated, and then in the end it can go to the third level director. I'm not actually sure who that might be – if that's the secretary, if it's the warden, if it's somebody else. But who it is and how many times the decision has changed as a result of that?

I will tell you I'm very concerned about the lack of outside personnel involved at all and especially in terms of someone outside the institution to be an advocate or a helper for the inmate. And also, my reading of the policy was that people are still only allowed things like one photograph or one phone call during the step-down period? Okay, well, I'm glad to be wrong and I'm going to ask you to point that out to me or think about ways it could change if I'm accurate about that. It's a, as you know, a fairly long and complicated document.

**HUBBARD:** Yes, yes.

**HANCOCK:** Finally, what I really am interested in is this great emphasis on gang affiliation and membership. We've been doing this in California for many years. I'm still told that gangs are the reason that nothing can change in CDCR. Do you think this ... our SHU policy has been effective?

**GIURBINO:** Are you referring to the pre-existing SHU policy for gang affiliates [laughter] or are you talking about the submitted policy?

**HANCOCK:** Okay. Let's say the pre-existing policy. Because I have to tell you what we've set up here is something that's more complicated than the existing policy. It changes some names. Security threat group and street gangs and prison gangs. It's gotten more subdivisions. I am not sure it changes the general thrust of what's happening, and I don't know if we might not need something stronger. That's why I asked if you thought that this general approach had been useful in stopping or containing gang activity.

**HUBBARD:** It served its purpose at the time. I consider that while I was an adult as I joined the Department of Corrections, I spent my first 10 years at San Quentin, which was a very violent time, and I worked within what was known then as the management control unit, and that is how in 1980s that we managed our gang population. With new design of prisons, we came to have a new policy. So it served its purpose at the time.

But we, through these changes and recommendations, we think that there's farther to go and consideration to be given to for credit-earning status. That would be a Penal Code change. For us, our recommendation would be within those steps 3 and 4, as those inmates are really beginning to interact with others, that there should be some consideration for credit-earning status. Many, many people think that it's only lifers that are within our secure housing units, but that is not accurate, and many, many inmates – that was one of the very first questions of a young man I saw at Pelican Bay when we began our reviews was the credit earning status. So we would seek your support in credit earning status penal code change and our recommendation would be within steps 3 and 4 for our step-down program. So there's many opportunities for furtherance.

**HANCOCK:** I look forward to working with you on those and we'll definitely continue the discussion. Thank you both very very much, I think we need to move on to our second panel. And we're asking you to stay and perhaps comment at the end. I do want to say to the audience, please don't respond to things, clap or make noise. We respect and appreciate your attendance so much, but this is not a rally, and disruption actually hurts our efforts to move forward on these issues. So please, we just need to move forward listen to the testimony, and Assemblyman Ammiano and I have many many questions to ask. So we have two – this is the continuing national dialogue, a discussion of state and federal policies, when and indeed if segregation and isolation are effective prison management techniques.

We have with with us today Hope Metcalf, a research scholar in law at Yale Law School, and Professor Craig Haney, professor at the University of California at Santa Cruz. Thank you both for being here, and welcome to the committee.

## **TESTIMONY OF Dr. Craig Haney, Professor at UC Santa Cruz**

Sen Hancock Assemblyman Ammiano members of the public safety committee my name is Craig Haney I'm a

professor of psychology, director of the legal studies program at the University of California Santa Cruz. I want to thank you for this opportunity to address you and also to thank your staffs for working so hard to organize this important hearing. I've been studying the effects – the psychological effects -- of imprisonment since 1971 when Philip Zimbardo and 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. I've been studying real and much more powerful prisons ever since, and in the last several decades, much of my research has focused on conditions of confinement in isolated, solitary or supermax type prisons. (47m)

My research has taken me all over the country, to dozens of isolation units, prison systems in many states as well as the federal bureau of prisons – places where I've conducted interviews with prison staff members and officials and by now also have interviewed in the neighborhood of thousands of prisoners living in some form solitary confinement while 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're 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, and I've testified as an expert witness in most of the major prison conditions lawsuits that have occurred in California, including Toussaint v. McCarthy, which looked at lock-up units in the 1980s; Madrid v. Gomez, when Judge Henderson shown a light on conditions inside Pelican Bay; and Brown v. Plata, which addressed unconstitutionally severe conditions of overcrowded confinement.

These and other cases – especially the Plata -- ordered reduction in overcrowding and the historic legislative realignment that's followed – have given us – you [legislators]– the 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 hopefully to solve.

Prison isolation policy is one of them.

I want to 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 to its extreme 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 debate -- whether long-term solitary confinement constitutes torture. But that debate has long since been settled in the international human rights community.

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. Numerous other international human rights organizations have echoed his sentiments. There is no question that measured by these standards, the United States is wildly and unsettlingly out of sync with the rest of the world on this issue.

But within our already out of sync U.S. context, California is itself an 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 them remotely for as long as we do. To give you just one benchmark – and it's difficult not to compare apples with oranges – 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 that we have in California. Moreover, notwithstanding this much more favorable ratio, 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 reduce the number of inmates held in segregation without significant adverse impacts on violence or assault rates.”

As I say, California is an outlier by any measure, even measured against the 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 the world.

A little bit of slowly implemented reform is frankly not going to make much of a difference.

I'm 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 common sense. 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 a parent 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 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 sanity and many others report struggling with this on a daily basis. Many

fear. Too many do actually deteriorate mentally and emotionally and their capacity to function as remotely effective feeling social beings atrophies.

We knew these facts and I testified to many of them at the time the Madrid case was decided in 1995, the last time a very bright light, public light, was really shined on policies and practices at Pelican Bay notwithstanding the current hearings which have taken place.

But two things have changed since then to make these concerns more grave. For one, we now know from extensive research from other context that social isolation, loneliness, and social exclusion, which prisoners in solitary confinement experience in abundance, are not just painful but can, as one social science writer recently put it, “ravage the body and the brain.” 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 isolation on mental and physical health.” 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 that was created at Pelican Bay, which was originally intended for no more than a short-term stay 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 the time of Madrid, in 1995, some of stark and barren place in the late 1980s are still there, never having left.

Nearly 100 have been there, as you know, for 20 years; over 500 for 10 years or more. In the hearing that Assemblyman Ammiano ..

**HANCOCK:** Professor Haney? You know, we heard at our last hearing how detrimental isolation can be for people and some of the issues at Pelican Bay. We’re hoping that you can help us a little bit with what you think should change in this policy based on maybe what’s done in other places and any examples of that that you might have.

**HANEY:** There are two interrelated things that make the already-destructive aspects of solitary confinement even worse – its 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, I regard the newly proposed and implemented isolation policies as a modest step in the right direction but a step that does not go nearly far enough.

I say this because they failed 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 invest significant discretion in the hands of correctional decision-makers who, for intents and purposes are beyond challenge or meaningful redress or appeal.

Moreover, a four year normative timeframe for a step-down program is longer than most prisoners in most prison systems ever spend in isolation, and here it comes on top of what already may be a decade or more of such confinement. There need to be more humane time limits, ones that are realistic and potentially achievable by all prisoners, with presumptive release dates that are met on the basis of objective criteria that focus on overt behavioral infractions. A system which makes release contingent on a record of compliant behavior for a certain amount of time is preferable to one that can be invalidated by a set of wholly subjective judgments that in most instances are neither provable nor disprovable and in which the 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 have no violent disciplinary infractions for years or even decades will continue to languish and end their lives in isolation.

The only additional thing I would add to that, Senator, is that as a veteran observer of decades of efforts to improve prison conditions and practices in California, I can’t over-emphasize or over-state how important it is for legislative involvement and oversight of this issue to be consistent and persistent and longstanding. 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 they operate and are judged, and the long-term auditing of how well they are working or not. There need to be measurable objective outcomes that are written into law rather than discretionary promises to act wisely or humanely now and in the future.

I’ve watched the process of prison reform founder again and again when such promises – irrespective of the earnestness and good will of the participants – personnel come and go, institutional memories fade, and good intentions invariably dissipate over time. We cannot depend on hunger strikes, grassroots mobilization, and high visibility hearings from time to time to bring critical scrutiny and change to policies and practices that have gone substantially unexamined and unrevised for decades.

**AMMIANO:** I have a comment. I thought it was a very astute observation you made. The two words I think of are “political will,” and that means us, and it means them, and it means the governor. But that can be made to happen but it ain’t going to happen in this room. But I really appreciate your perspective on this.

**HANCOCK:** Thank you. Professor Metcalf.

## **TESTIMONY OF Hope R. Metcalf, Associate Research Scholar in Law; Director, Arthur Liman Program; and lecturer in law, Yale Law School**

(50m) Good morning. It's my great pleasure to be here. I really appreciate that you, Senator Hancock, and

Assemblyman Ammiano and the public safety committee have convened not just this hearing but a series of hearings and hard work that I know is ongoing regarding this important topic, which as you know is attracting national attention and interest across the country. And I think it's important to say that given California's national stature, the size of its system, as well as its history, it is especially good to see attention paid to this issue by this body. So, it's both timely and important.

I teach at Yale Law School. I direct the Liman Public Interest Program there, and I co-teach the Lowenstein International Human Rights Clinic. My comments today do not necessarily represent those institutions, but they are drawn from my experiences both as a lawyer as well as an academic. Over the last four years – I do not have the decades of experience that Professor Haney does – I come to this issue with about four years of experience, first working with inmates through my law school clinic. And we've represented individuals in Connecticut who are at the supermax there and have been lucky to engage in very productive discussions with that department of ongoing reforms. And then in my capacity through the Liman program, I joined a team of students as well as my colleague, Judith Resnik, in producing the report that I believe you have in the materials, where we tried to take a first cut to analyze the written policies of 48 jurisdictions, which are the 47 states and the Federal Bureau of Prisons. And I'm happy to talk more about that report. I want to acknowledge that the findings there are necessarily limited because, of course, practice and policy do not always match up. We did try to come to some general findings, which I'm happy to discuss.

The other thing I'd like to say about the report right off the bat is that we did not study gang programs specifically. So I noted that in the prior testimony by Mr. [George] Giurbino. He did appear to do a particularized review of gang programs, and I think that that would be useful to do. And the report that I have, unfortunately, for you today does not do that.

Nonetheless, I do think that there are some general lessons that could be derived from understanding how administrative segregation is used more generally in the United States and how efforts in particular to decrease reliance on isolation might be captured in written policies. And then finally, I serve as co-chair of the ABA's [American Bar Association] subcommittee on solitary confinement.

My basic conclusion echoes much of what Professor Haney has already said, which is that the proposed changes, I think, are notable. They are moving in the right direction. But I don't believe that they address the fundamental issues that has resulted in the situation that currently exists at Pelican Bay, not to mention the use of isolation, whether through disciplinary punishment or administrative segregation elsewhere in California's system.

And that might be something that this committee wishes to take up in addition, which is that, of course, decades of isolation is noteworthy but there is good reason to think that even six months, a year, two years, in fact, could be detrimental and counter-productive to the corrections goals.

So, the bottom line for me and the way I've come to look at this based on my own work and through conversations with inmates as well as corrections professionals in my review of the available social science literature is that long-term isolation essentially just postpones but does not solve safety issues. So, everyone agrees that safety in prison is paramount. It's the only way that the institutions can function, and everyone who works and lives in prisons has a right to feel safe. Period. Full stop.

However, the go-to response that was developed first at USP Marion and later at Pelican Bay and the supermaxes across this country take a one size fits all solution that really does not end up addressing the problems that it seeks or purports to solve. And I think that that's the challenge. And to really do that, we need data. We need creative thinking. And we need long-term commitments by people in the corrections profession, by the many stakeholders, including inmates as well as their families, the legal community, and of course the medical and social science communities.

So, this is a problem of our own making. It's serious. It's widespread. But it's also something that many people, you know, we're in a relatively good political moment in the country generally to attack these issues, and it's exciting to see the energy and attention that's being paid to this. So, I'm both here to underscore the seriousness and also hopefully to provide some sense of optimism about things that can actually be done.

So, as a quick starting point, I just want to point you to some sources for principles that might be useful to this committee as you're considering whether and how to measure any proposed reforms. So, one start would be the American Bar Association revised its standards on the treatment of prisoners in 2010. Those standards, which were promulgated by a sort of multi-disciplinary team that included current and former corrections officials as well as obviously lawyers and other professionals., they set forth in some detail what they would consider to be best practices and might be a useful benchmark.

And they center around a core ideal which is that segregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner. So, in yeoman's terms, they should be as least isolating as possible and they should also serve the purpose – they should actually be accomplishing something. So in other words, we know that segregation costs far, far more than an average maximum security prison, for example. And so to the extent this scarce resource is going to be used, we should know that it's actually producing results that are beneficial to everyone – the inmate, staff, and the system overall.

And the standards that require individual placement – hearings, continuing review with neutral parties – they echo

I would also point to principles that were recently promulgated on August 2013 by the Association of State Corrections Administrators regarding the use of segregation. These principles are less – and I should note the association or ASCA consists of the heads of corrections for each of the states as well as the Federal Bureau of Prisons. It's the professional association. And they have a subcommittee that is looking into this issue, and as a first step, they created some principles that might also be useful. And they have, I think, a slightly – understandably a slightly different perspective on the issue of segregation than the ABA or certainly the U.N. Special Rapporteur.

So they do say that segregation is a necessary tool; however, they echoed the ABA's standards in saying that it should be targeted and designed to change behavior, not merely just a warehouse for people you don't know what to do with, which is the fear and what we see in sort of the more extreme examples, for example, at Pelican Bay. They called for independent and regular reviews, rehabilitative programming, and mental health treatment as well – and I think this is really important to emphasize – ongoing assessment of the effects and the outcomes.

And I think as Professor Haney was saying towards the end of his comments, I think this is going to be really an ongoing process, and those external reports, benchmarks, performance measures are going to be useful, and I'm happy to share with you some ideas that I've developed that of what those performance measures might look like. I did want to echo everything that Professor Haney said in terms of the United States being an outlier. And coming from my background with international human rights, I feel it's important to say that. So while my focus today is on trying to give you a sense of the national landscape, I do recognize that it's still a pretty constricted landscape.

If I may just turn to some general observations in hopes that they might be helpful for your work. So as I mentioned: basic bottom line is that staff and inmates must feel safe, and prisons do need tools to shape behavior. I don't think that there's much dispute about that. And in fact, some forms of short-term segregation may be necessary, and there may indeed be some portions of the population for whom placement in the general population is not appropriate. However, that does not translate in any sense to the fact that long-term isolation of the ilk that we see at Pelican Bay is in fact serving sound public policy.

So, given the over-reliance on isolation, many prisons are at best delaying problems and, in fact, may be aggravating them. So I do not wish to say that most people released from long-term isolation are dangerous. I have many, many clients who have left isolation and they have gone on to do well. However, I do think that if we're talking about public safety, thinking about outcomes, including recidivism, is important. Equally important, of course, in terms of outcomes is not just whether or not someone is violent, but whether they are able to flourish and become independent once they leave.

So the fear is – one fear I've had -- is even where outcomes don't show, for example, violence, is that person able to hold a job or are they now so debilitated that they are reduced to relying on state support once they leave prison. Those are the sorts of indicators that I would hope that you would look at.

**AMMIANO:** Well ... They get the double whammy because the way the system is now for any prisoner, there's no housing, there's no health care, et cetera. And then the SHU experience, of course ...

**METCALF:** Right. Of course, I was thinking there of the federal Social Security disability, which at least I've had some clients able to enter. But of course, absolutely.

So I'm unaware of evidence that isolation succeeds in changing behavior for the better, and there is some reason to think that it might make it worse, and here I would point you to studies out of Washington state by a professor, a social scientist there – David Lovell. And this is fairly common sense given what we know that isolation does one's own self of well-being, anger, et cetera.

Another interesting area of research that might be useful is something called procedural justice, which is an area of social science that has emerged over the last couple of decades. It's led by a professor named Tom Tyler at Yale Law School. And he and many other psychologists have studied why it is that people actually obey rules, and .... because the idea that punishment and deterrence is obviously one theory about why people are going to behave the way that we want them to.

But what they've found is in fact people are far more likely to obey rules if they believe that the system is legitimate. And they have tested this theory in courts, in policing, and now they're starting to do that in corrections. There's a number of studies that are out from the United Kingdom that might be worth looking at. And what they find is that everything from the processes – like we were hearing about today – to interactions with corrections staff, where prisoners believe that they are being respected and they believe that the process and the system is not rigged against them, they are far more likely to obey the rules, and that has all kinds of good effects – for example, decreased violence.

So, I take this available social science research and I look at it and to me, it suggests a few things.

One is, as has already been mentioned, to the extent segregation is going to be used, the standard should be clear and fair. The process should be credible, and that means really that it should turn on objective observable actions, not suspicions. And I will say that as is noted in the report, that many state systems currently in their standards, this is an area I think that needs improvement kind of across-the-board. You see nationally very broad standards. There are some systems, like Virginia, that are starting to turn towards more objective standards.

I will also note that in Connecticut in the SRG – we call it the Secure Risk Group – SRG program, which is our equivalent of the STG here in California, rather than relying on membership, it's membership plus a specific set of actions that would include things like assault. So the committee may wish to look to examples like that when thinking about the proposed revisions.

And obviously, the sanction must be proportionate to the offense. To give you a quick example of this matters so much is that, if the standards – it's one thing to do case-by-case analysis and reviews like has just happened here in California. That is terrific, and every state that has done it – and I can give you a whole list – they've had similar results, where anywhere from about 58% upwards of 90% have found to no longer – either they never needed to be in seg or that they no longer needed to be in seg. That's terrific news.

The downside of that is that there were 58% to 90% of people who were in seg who didn't need to be there. And that suggests to me as a lawyer that whatever that standard is that should be performing that gatekeeping function, it's not working. So that needs real thought and careful review. And I'm hoping that that will be an area that systems across the board will not rely just simply on ad hoc reviews but undertake broader reforms.

And the other thing I'll just point to you, that's happening elsewhere – so the other thing I would just say about the process is that it needs to be independent. I'm deeply skeptical of any process that happens at the unit level. I don't think that's the place where these hearings should be happening. And if you look at states that have undertaken serious revisions to their processes, they are happening at the first instance at the central office, not at the unit level.

And then I guess just lastly, I would say there's no reason I don't think that programming can't and shouldn't happen earlier. So fewer people should be in isolation to begin with. And isolation – we shouldn't even be calling it that anymore. To the extent they're separated from general population, it need not be so isolating. And in fact, I can point you to, for example, Washington state that has recently introduced programming far earlier into its process and has developed a classroom setting that's available where inmates can receive programming that focuses on various sorts of behaviors. Maybe I'll leave it there, I imagine you have questions, and I thank you for your time.

## **Sen. Loni Hancock's Q&A with Professor Metcalf and Dr. Craig Haney**

**HANCOCK:** Thank you, I do have a few questions, maybe Assemblyman Ammiano does too. Do you have any examples of what outside – either outside independent conducting of these investigations looks like in some states? Or, you know, how it might be done?

**METCALF:** So, when you say investigations, do you mean that case-by-case ...

**HANCOCK:** For validating, the case-by-case reviews. Yeah.

**METCALF:** Sure. So, Professor Haney may be able to answer this as well. So as an initial matter, I think these reviews often undertaken by outside experts such as James Austin, who was mentioned earlier during the hearing. And that's where it's a one-time review to see who's there and who should be leaving or staying. And I think on a prospective basis though, you also want to consider what the process looks like. And that's where my comments about the unit level review were directed.

**HANCOCK:** OK. I'd be more interested in knowing more about what Washington state does too, because I understand that they do focus cost-benefit analyses of many of their public policies but definitely in regard to public safety and have really found out some pretty remarkable things. So, you know, if you have any information on exactly what they do, now is the time for us to have that focused information because we're going into budget time and we're also, as the Assemblyman said, looking at what might need to be placed in statute that could change the parameters of this, so either one of you have any thoughts on that?

**HANEY:** Well, just to say Senator that James Austin and Angela Browne and others at the Vera Institute have a protocol that they use and that they've used in states around the country, where they have successfully reduced the SHU or isolation unit housing numbers and also helped states to devise policies to keep those numbers at those reduced levels. So that would be a good place to look, and I'm sure we can provide you with references and information about what they do and how they do it.

**METCALF:** One thing I can say about – on Washington state, if it's not too late, I'd be happy to provide some additional information that's publicly available on Washington state if it would be helpful to this committee that would kind of – for example, there's a chart that maps out the various programs and what they look like.

**HANCOCK:** Yes, I've seen that, and it's amazing that there are some programs that don't save you any money at all. There are other programs even if they may, require upfront investments that pay back significantly, and most of those are the kinds of policies you've been talking about that make a more humane situation as opposed to a more punitive situation.

**METCALF:** Right. Just two quick points about Washington without getting into too much detail. One is that they really undertook an effort with the help of the Vera Institute and in collaboration with Disability Rights Washington to come up with very targeted programs, and so they did not take a one-size fits all. So people with cognitive disabilities are different than people with personality disorders, are different than probably than gang members, although gang members may or may not have mental health or other issues as well. So I think that that focus is really important, and that's something that Colorado is also doing.



The other thing that they did, as I mentioned, is that they did not, they do no longer envision this sort of, they do have a step-down phased program but no longer are you just simply left to your own devices and just getting a workbook for the first one or two phases of that step-down program. And they have figured out ways to deliver effective programming safely and I think that that's worth looking at.

**HANCOCK:** I'm also wondering if either of you know any instances where there's specific training for prison personnel – prison guards – in how to defuse violence, recognize mental health problems or – you know, in California, you can have a GED and be a prison guard. And it troubles me that we may not be giving the in-service education to them, so that they know something other than what has seemed to be a rather punitive culture.

**METCALF:** So, I think staff culture is absolutely essential to this working, because you can have terrific things written on paper, you can have wonderful sounding procedures, but what really matters is once the person is at the facility. So, Virginia, to answer your question, Virginia has invested very heavily in completely re-tooling its training for corrections officers who are serving at their supermax. And they are also doing a rotation of staff so that staff are no longer at a supermax facility there – it's Red Onion -- for longer than, I believe, two years at a time.

**HANCOCK:** Oh, that's interesting.

**METCALF:** And they've also mixed the population. Connecticut is also doing this as well. So Connecticut was able to so drastically reduce their population in administrative segregation that there was space – they actually have converted some of the units to house high-bond pre-trial detainees. And the idea is that staff then are able – even if they're at the supermax, they are not just working with the people who some describe as the worst of the worst. Rather, they are in an environment where they are going in and out of the unit, and I think it's probably a healthier environment. They see more family members coming to visit the inmates. I just think it disrupts the supermax culture that can be very corrosive for staff and inmates alike.

**HANCOCK:** Thank you. Thank you. That's very helpful. At some point, I think one of you – someone had mentioned transferring gang members out of state? Does that have to do with when they leave prison and return if they don't want to go back to the neighborhood?

**METCALF:** No, I mean, that's a solution that many states will do. So if they have a person who they believe is going to be dangerous so long as he is in connection with fellow gang members, perhaps he's in a position of authority, based on my conversations with other corrections officials, I understand that it can be a very effective tool to negotiate for a transfer of that person to where that person no longer has a power base. It costs nothing. Although it usually means obviously taking a prisoner in exchange. But I think that's a very common tool.

Something else I would mention that might be worth looking at is that Washington state is now looking at front end solutions for violence control. And they have, I believe it's called Operation Safety if I'm not mistaken, but it's modeled on the Chicago Cease Fire Project, and they're starting to implement that at the front end to try to decrease incidents of violent gang activity.

**HANEY:** Just to quickly add to that, Washington state has come up a number of times, and I would endorse our referencing it. Because one of the things they do, as Sen. Hancock mentioned earlier, is they premise many of their practices and procedures on evidence-based approaches, and I think we do well to emulate that. We've heard a lot about validation procedures. We've heard a lot about a step-down program, but not a whole lot about whether those validation procedures themselves have been validated and whether or not that step-down procedure itself is based on sound psychological science.

Washington has really led the way in making sure that they do things that are based on evidence.

**HANCOCK:** Thank you, and I thank you very much for pointing that out, because we're going to be looking at the program issues concerned with the step down. And also thank you for reminding me, we did pass out of the state Senate, and it will be coming to a committee near you, Assemblyman Ammiano, to develop something like the Washington Institute for Public Policy here in California. And because we also find that policymakers like ourselves really need data that will inform the decisions we know we have to make, and sometimes that isn't always data that gets collected in other places or analyzed in a way that's helpful to us. So I hope that we can pick up on some of the good things that have been done there.

**AMMIANO:** I echo that and I have a few comments you've answered, most of the questions I would have had. I'm going to suggest a couple of things. There are ... the members of the African American Caucus could not be here today, there's three of them, because of a previous commitment, but I know that they would have added a lot of content and experience to this issue. So I'm thinking of working with the Chair of just having a hearing on just these programs – Washington, Mississippi – because we're getting fragmented things, and some of them are feel good, and the frustrating thing is some of them are so common sense. In fact who knows, maybe we'll visit some, maybe we'll go to Washington State, even though they have the Seahawks, I do commend them [laughter] or Mississippi – if you could see Loni and I in Mississippi – (1h27m) to see firsthand some of these programs. So that would be my suggestion.

There is a select committee that I chair on restorative justice, and we've heard a lot of programs that reduce recidivism and so forth, and that was very helpful to other members on this select committee, so maybe we can have that kind of hearing, this is what Washington state does, this is what Mississippi has done, and some of the other

idea if that influences prison policy but if it does to the benefit of the people, why the hell not. [laughter] So I thank you very, very much.

**HANCOCK:** OK we are now moving on to our next panel, "The inmate experience today," and we're going to have the observations, perspectives and I hope suggestions from some of the attorneys who have represented prisoners in our corrections system. And then we're gonna ask if the folks from CDCR can comment back on what they've heard so we can set some ways to move forward together.

**AMMIANO:** If I may just jump in, in terms of housekeeping, after this portion and to see the response if they have one, we want to get to public comment. The way the sergeants would like to do it is by level, so people who want to speak who are sitting on the lower level will be allowed to do that, and then people from the upper level, the logistics will be directed by our staff sergeants, so if you could accommodate them, we're looking at a noontime termination, we may be able to go over a little, we have to talk to the people who are coming in, but I'm hoping that you will all be heard even if it's just briefly, I wanted to give you a heads-up on that.

## **TESTIMONY OF Charles Carbone, Esq., prisoner rights attorney**

Good morning, and thank you for the opportunity to present before this committee. I believe that Dr. Haney talked about the necessity of the legislature to be "consistent, persistent, and long-standing". And having personally participated in some of the other legislative hearings, I'm proud to say that the legislature at this juncture has done just that, and the consistency of these hearings is of vital importance, and to both look at the issues from a very specific and detailed standpoint and also be very detailed summarily in the legislative relief that may be available here.

My name is Charles Carbone. I'm a prisoner rights attorney. I've been dealing with these issues for about 15 years now. I've interviewed probably about a thousand or so men and women living in isolation, and I have arguably represented in a legal capacity more people living in solitary than any attorney in the United States.

The focus of my testimony will be the meat of the criticisms and a critique of the programs that have been offered. And I wanted to offer that in a non-acrimonious way, shall we say, because I am actually genuinely enjoying the spirit of the dialogue between all of the stakeholders here.

I have sort of a baker's dozen in front of you in terms of the major criticisms, and I'll try to be brief in walking through them.

The **first** one is that there are three major deprivations that remain under the proposed so-called reforms. I think everyone has said that they're modest; they don't go far enough. But let's be specific what they don't change.

\*The default term for validated inmates in California is "indefinite." It's an indeterminate SHU term. That has not changed.

\*Secondly, the underlying conditions in the security housing units, and the deprivations – the inability to have direct sunlight, the lack of phone calls, et cetera, et cetera – that too has not changed.

\*And then specific to Madam Chairwoman, your concern about the debriefing policy, that too has not changed. The coercive qualities of that debriefing policy have not changed, and the unreliability of that evidence has also not changed.

**Secondly:** Behavior modification, if you will, is now the only way out of the SHU. The department did not tell you today that they've done away with what was a previous avenue out of solitary confinement or isolation, which was the six-year inactive review process. That process was important because, albeit we argued over the length of time, the prisoner didn't have to do anything; they just had to prove a negative – "Hey, I haven't participated in gang activity" for six years. That is gone. In its place are really only two avenues other than paroling out of the SHU, which is a rarity. One avenue is to participate in the step-down program, and there are certain coercive qualities to that – the journaling and et cetera. And then the other is the debriefing program. That's it.

And so, there are very serious questions about whether we want to limit the avenues out of the SHU to these behavior modification programs.

**Third,** the department said – and I was listening carefully to Mr. Giurbino's testimony -- he said that this one positive change of associates now not automatically being sent to the security housing unit, that that has never existed before. That's actually wrong. It did exist up until the 1990s, because there was for a very long time a two-step process similar to the one that they're proposing now of first validating the prisoner and then deciding whether that validation warrants SHU confinement. Ironically, that past policy that existed up until the 1990s applied to both associates and members. So what is being offered supposedly for the very first time is actually harkening back to a worse version of what existed up until the mid-1990s.

**Fourth** point: We haven't really talked about changing who could be capable of a validation from simply the seven prison gangs to now this model of anybody who qualifies as a security threat group member. I'm very sorry to report that under this security threat group measure, the people living in isolation in California will grow -- significantly. There is no question – if our goal here is to limit people in solitary confinement or segregated housing both in terms of the numbers and the duration – that these policies, as promulgated and promoted, will do just the opposite. More people will be eligible for confinement in solitary or SHU-like facilities.

**Fifth:** These reforms are largely based on what is being done in the Bureau of Prisons. We may remember that that entire set of policies was the subject of hearings in 2012 before the U.S. Congress and was the subject of great

consternation. So I don't exactly know why we are modeling California after the federal system, which is right now under a great deal of scrutiny and criticism.

And number **six**, which also goes to your issue, Madame Chairwoman, about whether or not the same source items can still be used. The department here is really disingenuous and a bit tricky in this capacity, because when they say "Now, we don't use mere associations, like talking in the law library or having a greeting card or having an address in an address book," they're actually wrong. What they're doing now is they're taking that same old association-based source item, and they're now saying, "Well, that's possession of gang contraband." So not only are we going to validate you for that, but we're also going to issue you a rules violation for possessing that item, which is really just evidence of association, not evidence of having done anything wrong.

I would submit that under these new rules then, it's actually worse for people because it maintains the pure association-based validation but also adds another layer of the prisoner being given a rules violation.

The professor from Yale talked about number **seven** a bit, which is at the time of the records that I had it, it was almost 70% of these audits that were being done -- almost 70% of them -- resulted in the prisoners going back to the mainline. Although that's a good thing clearly, it does raise some very serious concerns about the "trustworthiness," if you will, of the department when they are left to their own devices and not subject to independent review. Because for decades now 70% -- by their own admission -- 70% of the inmates should have been on a general population yard.

**Eight:** They've talked about "Well, there has to be a nexus between the gang activity or association and the gang." Well, the only nexus I've seen thus far that's been implemented is if the correctional officer looks at the conduct at issue and sees the presence of one or more member of a gang -- street gang, security threat group -- then they automatically assume "Well, that activity is gang-related." It's not the standard in the legal community, and I would submit that that nexus standard as it's currently articulated is very arbitrary and will be prone to great abuse.

**Number nine:** We learned at the last legislative hearing that inmates' participation in the hunger strikes and ironically in efforts to end hostilities among prison gangs that both of those efforts are actually being used to validate inmates, and for those inmates to have serious rules violations tendered as a consequence of them. That is extremely counterproductive to the peaceful efforts to resolve these issues.

Again, I have to comment on your comments, Madame Chairwoman, because there was another issue that you astutely raised, which was the **(10) incentives** in the step-down program. This is the carrot that they're offering inmates who've been in isolation for 10 or more years, and I would submit that those carrots are all too weak. Having a phone call per year, a photograph, or slightly greater access to the canteen is not a sufficient incentive for a prisoner to disavow their gang association nor to feel, as the professor from Yale said, that they were being treated fairly.

**Number eleven:** All of the information that's being collected in the step-down program, much of which is incriminating information, none of that -- there are no rules or procedural safeguards as the present regulations stand -- to decide how that information will be collected or used. And that is of particular concern to inmates who will later go before parole boards or different classification committees and et cetera.

And I should note -- this is interesting. The department has contracted with a company called The Change Company to provide these workbooks. It's astonishing to me when I look at these books, because there's not a single workbook or single paragraph in the books that is devoted to gang diversion. So if the goal here is to step down these inmates away from the gangs, why does the rehabilitative programming in these workbooks fail to include a single specific mention to gangs?

**Twelve:** Yes this is the last -- in fact, I'll just make this the last one. The last one is that the department has told the legislature and the courts for many years that the purpose of the security housing unit is not for punishment; the purpose is actually for segregation. The rules as they're presently designed will dramatically change that because if you're saying to prisoners in step 1 or step 2 by statute we're going to deny you access to rehabilitative programming, then that immediately becomes for the purposes of punishment, not solely for the purposes of segregation.

And on that I would end my comments and turn your attention to my astute colleague.

**AMMIANO:** Thank you very much Mr. Carbone, you are very enlightening and I always enjoy hearing your presentations. We are a bit under the time constraint, so just a caveat to our next speaker, no disrespect, but we'd like to get their response and also get to public comments.

## **TESTIMONY OF ANNE WEILLS, civil rights attorney**

My name is Anne Weills. I'm a civil rights lawyer. Prior to working on our -- with my co-counsel -- the Ashker v. Brown -- the litigation where we're trying to basically stop solitary confinement in the SHU -- I litigated for over 20 years against the University of California, Stanford, and other academic institutions in terms of discrimination in tenure and other matters.

But before we start, I would like to read a statement from the prisoners at Pelican Bay who are not allowed to be here, either audio or by video. And along with myself, they want to send their high regards to both of you -- both Assemblyman Ammiano and Sen. Hance -- for your role, your very committed and very honorable role in terms of

ending the hunger strike in September this year. We were promised these hearings and obviously this ongoing process is extraordinary. And I think we are in 2014 in an amazing kind of synergy between the litigation that we're involved in, your work trying to change the conditions of the SHU and solitary in California, as well as all the ideas and the movement we have in California – family members, activists, and the prisoners themselves. So, we are very much appreciative and we really want to be part of that process and appreciate you involving us in that. So these words were sent to me by Sitawa Jamaa, Todd Ashker, Arturo Castellanos, and Antonio Guillen, who are the four main prisoner hunger strike representatives at Pelican Bay who with others called for the last peaceful protest and starved until the end. That was almost 60 days.

“We are prisoners at Pelican Bay State Prison who have all lived for over 15 years locked 23 hours a day in small windowless cells without ever being able to hug or touch our families, without ever seeing birds, trees or the outside world, with no programs or chance for parole.

California keeps us in these torturous conditions not because of any violence we have committed but because it believes we are affiliated with a gang often based on art work or photos we possessed, tattoos we have, literature we read, who we talk to, or anonymous informants and their statements we have no way of challenging. We are put in Pelican Bay not for any specific terms of months or years for misconduct we have committed but indefinitely, which in practice means forever, unless we become informants. Last summer, we went on hunger strike. As you know, over 30,000 people went out. We were willing to starve ourselves to death rather than continue to endure these de-humanizing conditions forever. We ended this strike because several compassionate legislators promised to call the hearings that are taking place today.

Yet, today the legislators will hear from psychologists, lawyers, other experts, corrections officials, but not from us, who have the most experience with the conditions we face because California CDCR prison officials refused to let us testify even remotely via video or audio, which they could easily do. So this is our banned testimony.

CDCR claims to have now instituted a reform program. It is a sham, just like the so-called reform they instituted a decade ago after a court settlement which resulted in no real change. This new reform effort still maintains the basic conditions at Pelican Bay and will continue to keep prisoners in isolation for vague gang affiliation based on art work, literature, communications, or informants' testimony that does not meet California's judicial standards for reliability in criminal trials.

California's still unwilling to move to a real behavior-based system where prisoners are given determinate terms in solitary after due process hearings at which they are found guilty of some serious misconduct, such as an assault, murder, rape, or drug dealing. Instead, these new policies widen the net of prisoners who can be labeled as gang affiliates and isolated based on that label. These unjust and ineffective policies are very expensive and have already cost our state millions of tax dollars which could be put to better use. Moreover, even those prisoners who need to be isolated from the general population because of the violence they have committed in prison ought to be treated humanely.

There is no reason California can't run very high-security prisons that allow prisoners held in segregation to have contact visits with family, phone calls to family and friends, educational rehabilitation programs, more out of cell times, cells with windows, recreational yards that allow for small groups to recreate together and see the outside world. In short, segregation from the general population but not torture or de-humanization.

We have written letters and petitions to the governor, filed a class action federal lawsuit, and gone on hunger strikes seeking real reform, not the bogus reform California officials now propose. It's time for California to do the right thing. It's time for the legislature to enact meaningful reforms.”

And because of the time limits and given – I don't want to be redundant given what Charles and some of the speakers have said, so I do want to talk though about rehabilitation, because I think that is where we are in terms of how to make any kind of transitional program from people being isolated in the SHU for decades into civil society. And in the step-down program, there's no consistent rehabilitation or education integrated into this program despite CDCR's statement of commitment.

Recently, two older men at Pelican Bay were transferred directly to the main line after decades in the SHU with no orientation or transitional programming. They did not fare well. One block at Pelican Bay reported their GED had been on hold for six months. Most prisoners cannot afford college courses even if there is a proctor to monitor. We do know of other states that have best practices, for example. The model Connecticut's step-down program offers anger management, life skills, and ethics education plus an interactive approach over a year through service providers who are dedicated – and this is really critical – to bringing a prisoner back from long-term solitary to their humanness. I mean, you've heard already today Professor Haney and others talk about how people are fundamentally changed both psychologically and physically as a result of being in the SHU. And at least Connecticut recognizes that and attempts to begin that process of bringing them back to being in civil society.

Yet in CDCR's pilot program, there's nothing intended for the first two steps and “this idle warehousing is a numbing violence against the human spirit.” (This is quoted from “Cruel and Unusual,” a book by Colin Dayan.)

We know that many prisoners are refusing to do the self-directed journals because they consider them a self-incriminating shame and blame curriculum. The information they provide will go into their central files and can be used against them.

In fact, CDCR has offered contradictory positions as to whether participating in this self-directed journals portion of the step-down program is mandatory. Well, actually, you know, Ms. Hubbard said it was mandatory this morning.

assumption of guilt, self-loathing, and character invalidation. Prisoners are labeled failures if they do not program the way staff wants them to. This is not rehabilitation, which requires bringing in social workers, psychologists, teachers, and vocational counselors to help transition these men.

As one prisoner says, "In order to successfully complete this aspect of their step-down program, you must be willing to accept and believe all of the absolute worst things that the state has said about us all and continues to say and invalidate yourself completely. There is no set of circumstances in which any principled person would agree to aid the state in carrying out such an insidious, vile, and patently evil process."

The culture of those who control SHU placement and living conditions has not changed in the new regulations. CDCR has not revealed the training that officers are receiving for the new step-down program, so it is feared they will continue to see inmates as animals and unworthy of dignity or rehabilitation. Then why should inmates trust this new program?

Again, using Connecticut as a best practices example, the culture was changed before the new step-down program was initiated – a program that has seen the end of their super max, a substantive and substantial drop in violence, and great cost savings to the state. And employees who were asked if they wanted to participate in this new culture and you know, basically sensitizing them, and educating them as to how to inspire these prisoners into the step-down program, the officers who were not amenable to being part of that interaction with the step-down program were transferred to other jobs, but no jobs were lost to personnel in Connecticut.

Now, Norway – and I have in my notes a longer discussion of Norway. Norway is a state, albeit not a state of the United States. But they wrestled with this issue many, many decades ago, and Norway, you know, in a very conscious, organized way moved from a vengeance model to a philosophy where they had a stake in advancing the development of the human beings that they had in their custody, even their so-called "worst of the worst." They have a whole long developed program where they basically put them in a natural human setting where they have ... anyway I don't have time to go into it. But Norway is an extraordinary example where – and the philosophy is not just being nice guys; it's they think that if they improve the opportunities for the prisoners to them personally, that would help them contribute to the society because once they come out, they're fuller human beings and able to cope and respond, you know, in civilized society, become good parents, fathers, et cetera.

We destroy people in this system right now, and they don't come out whole. And so I would look to Norway – although that's probably too far advanced for the United States but it's something to look at for California.

[Laughter]

**AMMIANO:** Follow the caribou.

**WEILLS:** The Virginia Department of Corrections has developed a specific model for prison culture change, applying the principles of evidence-based practices, and you heard about that with a former speaker. One of the most compelling aspects about this program and that of Connecticut is that they see their success as tied to a real internal culture change in raising staff consciousness toward a more positive and nurturing attitude, gaining trust – and that's an essential aspect, of course – and inspiring inmates to succeed.

Without humane reframing, California's SHU prisoners will continue to suffer the constitutional tortures endemic to a corrections culture that violates human dignity and self-worth because there is no outside oversight, little accountability or transparency.

And although I had it in my formal remarks, I absolutely think there has to be an independent neutral person outside CDCR – and you know, an administrative law judge, somebody where there's evidence produced, where people have a right to defend themselves against the charges, the secrets they have held against them all these years – so that it is a fair hearing process. So I highly recommend that.

**AMMIANO:** Thank you.

**WEILLS:** I'll stop.

## **Assemblyman Tom Ammiano's Q&A with Attorneys Charles Carbone and Anne Weills**

Thank you. I really respect and appreciate your accommodation and all your hard work. All your hard work. For both of you, it's just kind of a softball question but – devil advocate kind of question. I think that within this attempt from the CDCR, there might be some good direction -- occasionally. And if there's anything that's you think that is – and we could amplify with them – maybe you could tell us now.

I'll tell you full disclosure – I do think that some of the things are, a lot of it is lip service. There may be a trajectory or two that we would – might embrace. But I still think the regulations miss the point of the context of what we're talking about, you know, which is the whole existence of the SHU in the first place. Regulations then presume that entity, and what if that entity isn't there, particularly in the form that it is now. So, it's kind of counterintuitive to me to come up with regulations based on something in and of itself that is highly questionable.

**WEILLS:** I would agree. I mean, it's so highly flawed – the whole system of how people are validated and how they come to be in the SHU forever, and obviously the evidences that a number of them – 60, how many percent – should have never been in there in the first place.

**AMMIANO:** 65.

**WEILLS:** I do think there is – I, you know, having litigated against the University of California, these bureaucracies are very hard to change. You know, these are big systems. There is a lot about jobs, you know. I think that's been a

huge thing with CDCR over the years. It', build more prisons, you know, create more jobs, and I think that's still a problem. What Charles said – some of these new regs that now CDCR has jurisdiction beyond, you know, CDCR. They can go into any community, like Oakland, where I'm from and say, "X64th Avenue gang, over three people do X, Y, Z, sell dope in the corner. They can be brought into the SHUs of California." You're talking about 1,500 new organizations. So I mean, what is this but a huge jobs effort?

**AMMIANO:** Thank you. And Mr. Carbone, any ...

**CARBONE:** Yeah, I would just say – I don't often compliment the department. But I will say there are probably two elements that are salvageable here.

One is the two-step process between the label of the validation and then whether or not the second step of to send them to the security housing unit. That I think is a good point. I mean, it should apply to both members and associates.

And the second issue is just the step-down model as a whole. It's helpful for the transitioning back into the community. It's helpful for transitioning back into general population. So I think a step-down program or model is the appropriate model. It's just how it's formulated and fashioned right now has serious problems.

**AMMIANO:** I want to thank both of you, and if Sen. Hancock has any questions then we'll move on to CDCR.

**HANCOCK:** I appreciate very much your specific suggestions for what we need to do, and pointing us in the direction of some of these other states and some of these evidence-based practices. The more you can give our great staff the length the whatever we need to follow up, I think will be very very helpful. I'm interested to see how CDCR responds to some of the ideas that you've raised. So thank you very very much. (1h56m)

## **TESTIMONY OF Martin Hoshino, CDCR's Undersecretary of Operations**

Good morning, members. I'm Martin Hoshino, the undersecretary for operations from CDCR. I'm joined by Director Mike Stainer, also from the operations division of CDCR. I do appreciate the opportunity to come here and be invited as well as to provide some observations of what we've seen and heard this morning, and certainly take some of your questions. I know it's unusual for us to have this venue to be able to do that so I've written down some notes.

I want to also begin by thanking the committee, the members for their focus and attention in this area as well as the CDCR staff that have been so diligently implementing the early parts of this particular reform and they continue to do so as well as the big turnout you hear in public comment.

Obviously, we are not prepared nor can we respond to every detail that has been provided to including Mr. Carbone's "baker's dozen," but we do have some observations to share more globally on how is it that we will respond, and perhaps some of our response to today will be measured by our subsequent activities, actions, and events over the course of time here.

But I will start, at least, by thanking Mr. Carbone. It's the first time I've heard two "salvageable" comments from him. [smile] He has been a welcomed colleague as well as adversary during my tenure and course there, and I always appreciate his opinions and his objectivity.

I think I'll begin by making a bit of an observation that, of course, what we're talking about here is something that has been 30 or 40 years in the making. The SHUs themselves, as well as the overcrowded conditions of the prison system, did not occur overnight. So, efforts and change to rectify or make alterations, I don't think, will actually occur overnight. They will take some measurable pace and time; and more about that in a minute.

I do want to focus on what I believe have been the areas of agreement that had been occurring here this morning and over the course of time. I believe some of the principles and comments from Mr. Haney as well as Miss Metcalf as well as other participants here have already been woven into some of the things that we're attempting to do. I also believe that some of the earlier hearings and attentions and questions both in a public setting and in private settings have also shaped the course of what we are doing. And I think that it has had a measurable impact not only on what we're doing at the department at large, but also on this particular issue with respect to segregated housing units and the like.

I would harken back to the genesis of this kind of reform, which actually began in 2011 in a chapter of what we had called the "Blueprint," which was passed by this legislative body as proposed by the administration in 2011. And that begin actually the work after the department had had some conclusions and reached some conclusions or some findings that perhaps there was an over-reliance on SHU. And we really needed to get the department position for what it would do and what it would look like after realignment and, more importantly, after the high tide of overcrowding began to recede.

You members will recall that we had a population of 172,000 inmates, now residing at 117,000 inmates. The work began with some oversight from this legislature of "What will you do now in your prison system?" And the security threat group / gang management policies – the genesis – actually began there and that work continues

In terms of the agreement of principles today but also the principles that were in that document and in that change remain alive today. And with respect – and I would encourage that we continue to organize around these principles as we go forward. (2h)

The first one related to SHU, as I think we all agree, that it was far too easy to get in and too hard to get out and that the stays in this environment were certainly too long.

I think we all agree that SHUs – to the extent that they are used – should always be the exception and not the rule.

I think that we all agree now that the state of overcrowding in the prison system makes everything harder, including managing gangs and including managing this area.

I think we all agree now that gang management can't just be suppression, by itself, that it also has to include elements of rehabilitation but, more importantly, prevention, which is a very important theme that I think started to emerge breaking late in this particular hearing.

And I think that we all agree that the policies have to be behavior-based, that they can't simply be strictly based on affiliation.

And there are other areas of agreement, but I focus on those five as ones that I think we must continue to organize whatever change, reform we take in this particular reform, and the director and myself look forward to working with everybody on a lot of those elements, in particularly with the programming and the prevention components of this.

I get that there is disagreement over how far and how fast and what the dimension of these changes should be. But I don't see that there is disagreement over at least the direction, and the results today suggests this. And I do appreciate and respect that we will debate those very questions about how far, how fast, and how much more is needed.

For our part in the Department of Corrections, pace of change is very important to us and very, very key. We are obviously on the more cautious side of the equation given the fact that there are enormous changes going on in our system, and I won't catalogue all of them. But there is a long, long list of changes that are occurring largely owing to the fact that we have a less crowded system, and we are making investments and reinvestments in changing in programs and changing missions and trying to bring up re-entry hubs and the like, and housing units and functions and roles and responsibilities are changing throughout this particular system.

But I would like at least everybody to be encouraged by a couple of facts as we strive to increase the successes of our programs, which is that 97% of the folks that have been reviewed today under this policy are in fact either out of the SHU or making their way out of the SHU. And again, we can debate, discuss, and argue over the words and the early formation of the reforms and the policies that we're embarking upon, but that simple fact, I think, speaks for itself. It is not something that we are planning to do or talking about doing; it is something that has actually happened and it is happening as we sit here and as we speak.

In addition to which I think last year at this hearing and others had highlighted the longest serving SHU person in our system. Now that person is now out of the SHU and in the step-down program and shortly visiting family members, is my understanding.

So I think there are things to point to that certainly that suggest that we're heading in the right direction, and we welcome the coming discussion about, again, the pace, the dimension elements in there.

And that concludes, at least, comments on my behalf. Director Stainer and I will of course stay here for any questions you have but more importantly knowing that you have a clock to manage, we do want to hear the public's comments.

## **ASSEMBLYMAN TOM AMMIANO Q&A with CDCR Undersecretary Martin Hoshino and Director Michael Stainer**

**AMMIANO:** Thank you very much, go to Chair if I may.

**HANCOCK:** I come after.

**AMMIANO:** I see. So, here's the deal. We've heard a lot from the other side, particularly about other programs. And so just briefly, are you acquainted with Washington state and Mississippi? Have you visited there? Are you willing – have you seen practices that you feel that California could adopt that we do not have now?

**HOSHINO:** I think we both might have answer to that. The first thing is yes, we're familiar with Washington. We actually sent a team of our folks to Washington. And in the methodology at least for this particular set of reforms, there was a fair amount of research that occurred through other states. So this was not done in a vacuum.

Again, there are still things to work on, but this department started to move in this direction knowing that it didn't have a perfect plan for tomorrow began to implement these reforms and a lot of that was predicated on best practices that were identified in those other states and in those other programs.

**AMMIANO:** All right. But, you know, there's still a miss here somehow, because it seems to me that those programs are working. Yet, it seems to me that we're shying away from them. But that's something to be developed. The other thing I'd like – I have three specific questions about the ... don't you think independent oversight of the process would be beneficial?

**HOSHINO:** Do you mean the entire – I'm not sure, specific – I'm wondering if you mean on the actual validation or – ?

**AMMIANO:** All that, yeah.

**HOSHINO:** the entire process? Some measure?

**AMMIANO:** Yeah. So, it's not the hen and the foxes and that, you know, there's truly an independent assessment, which I think would be to the benefit of CDCR. See, right now that's not there. It's all in-house. So, anyway, I'll let you ruminate on that. [Laughter]

Why can't you treat STG members the same as the associates? That's been brought up. By requiring the validation plus behavior. You heard the point that was made.

And why did CDCR decide to add street gangs to the definition of the STG? Doesn't that widen the net? So those are the three points that I heard made and if you have responses to them now, that would be great.

**STAINER:** I'd like to first start off, again. Michael Stainer. I'm the Director of the Division of Adult Institutions. I'd like to first start off with your comments with regard to Mississippi and Washington. We actually have sent just this fall an associate director along with several wardens up to go visit, and they actually spent a week in Washington where they toured the different various institutions with the directorate of Washington. And I'm going to tell you we brought back a lot of good ideas, programs. We looked very earnestly at what they had to offer. I believe in a lot of what Miss Metcalf said and Mr. Haney as well with regard to the types of programs. We are exploring those and seeing how can we, you know, take something that's already been invented and how can that apply with our system here.

I believe the STG reforms are just the first part of the reforms of our security housing unit systems and the processes that are in place. I think we have a long way to go.

With regard to the independent oversight of our processes, I believe we do have a system in place and that's the Office of the Inspector General. They do provide the oversight. I just had a conversation with the chief deputy inspector general and Mr. [Roy] Wesley is asking for the schedule of the case-by-case review so they can go and they can observe that process and then provide feedback not just to the public as well as us, as how we can apply that process a little bit better.

With regard to the STG members, again, the members themselves have been proven and it's our belief and the evidence has shown that they carry a different amount of influence with the population. Therefore, we believe just simply the matter of being a member in and of itself, we do necessitate that we would treat them a little bit differently than the associates. I have heard the comments, and we'll take those comments into consideration as well and we'd like to work with you with regard to that.



place to validate street gang members and associates. If you look through many, many, many of our files today, you'll find that members of street gangs are validated, whether they'd be an associate or a member of those street gangs. The most of our focus has always been upon on the prison gangs or STG I's today just based upon the different levels of influence that they've had within our system. But again, this is not a new policy with regard to the validation of the street gangs.

**AMMIANO:** I appreciate your answers. I mean, I do have some dispute with them. Very happy to hear that you would like to work with us – you know, there's this ping pong that gets established. We step forward – I have some legislation I'm going to introduce after this hearing today about restoring the credits, which I think Miss Hubbard talked about, and also a cap on the SHU. But the ping pong is we introduce the legislation, then you go, "Okay, we're going to respond to that. Here, we respond to that; we don't need the legislation."

Gentlemen, I tell you it's time for something bold. We're little mice nibbling at a big cheese here. I get it. We're all part of the same universe. But we really need an aggressive strategy here. Hopefully, it will be with you and not against you.

You know as well as I do that this is a question of political will. Out there, the populist sentiment is that we do need reform and we do need change and hopefully that will impact the legislators here as heavily as the CDCR does on how they vote and what should go into legislation.

So those are my comments. I want to thank you again for stepping up to the plate.

**HANCOCK:** I have some comments and a couple of questions as well. Thank you both very much for being here. I would like to see us work together to strengthen this program.

I think the challenge for Pelican Bay is converting it – not converting it but moving it more towards a more conducive programming type of institution given what its particular mission is and that will always be the challenge. Some of its limitations are just by design, where it doesn't lend itself structurally and physically to the kind of environment. But that doesn't mean that that challenge can't be taken on in some respects. And I know that Pelican Bay has come a ways. Judge Henderson knows that institution very, very well. He essentially supervised of that through Madrid for many, many years before finding that it had met constitutional minimal standards and dismissing his case.

But that doesn't necessarily mean that that's where the discussion ends. And certainly Pelican Bay and every institution should be undergoing some discussion. In fact, that's what we've been doing as I keep calling it the "post-realigned world" where you've got 44,000, 45,000, 50,000 less inmates. Certainly, there are mission changes within that, and Pelican Bay enters that discussion.

**HANCOCK:** Thank you. I will note that Judge Henderson says it presses against the limits of what is humanly tolerable in his ruling. So it was not, you know, in any way saying that this was a good thing to do.

## **SEN. LONI HANCOCK's Q&A with with CDCR Undersecretary Martin Hoshino and Director Michael Stainer**

**HANCOCK:** I have a couple of questions and some comments as well. Thank you both very much for being here. I would like to see us work together to strengthen this program in some of the ways that have been suggested today. And I really think that it's great that you went up to see Washington. It is really a good thing because we've got to get more flexibility in turning around a very big ship and I know you guys know that. But you're in the process of codifying this or implementing a new series of regulations. How do members of the legislature impact that process to get the changes we want to see? Who in state government is going to finally say to you: "Yes, these are now the new regulations?" Can we come with a series of things to write in there? Do we have to do legislation? What do you suggest?

**HOSHINO:** Well, my recommendation, because you know, we're in the public commenting period, but this is a period where we will take everything under consideration. And I don't want to reduce the stature of a third branch of government, but there is a way for us to get your comments to us. It doesn't have to be through that process, which will be lengthy. There's no reason why we can't continue to do the things that we're doing, which is either appearing at this particular hearing to take it in but also to work with you and the members of your staff as we ...

**AMMIANO:** Will you put me on your speed dial? [Laughter]

**HOSHINO:** You know, along the way. I mean, the regulatory process is obviously subservient to the legislative process. But again it is how, we're trying to make a demonstration in a forceful way that it is just not by memo; it's just not by a training curriculum; it's not just by this. That there actually is something that codifies what we're doing and that's why you see us moving aggressively into the regulation piece. It's not enough to have the concept and the blueprint to have, again, memos and policies and things that we're doing. We're trying to find that sweet spot

provide more clarity by people who are actually impacted by that, that's one of the objectives behind the regulations.

**HANCOCK:** OK it does seem, when you look at the flow charts, and everything, that it's extremely difficult, the addition of new terms, and different definitions is difficult. And you know, I had the opportunity over the weekend to listen to some of the hearings that were conducted in 2004. You were there then too, Martin. The Romero-Speier hearings. And statements were made at that time about the problem is, CDCR changes the names, rearranges the pieces in the process, but the fundamental thing doesn't change. And I think I don't want to be in the position 10 years from now to have somebody having these same hearings again. I really don't. [emotional?]

And I'm wondering if anybody has given any thought to what would happen if we tried to re-purpose Pelican Bay in some way. I believe it opened in 1990 or 1989. So it's been around for about 25 years. It was part of a historic rush to solitary confinement as the answer to security problems in the country. And unfortunately, it was placed in an area of high unemployment, which makes the two-year transferring out that I think was mentioned for Virginia a difficult thing to do, although I can see why that would be necessary. I've heard a lot actually anecdotally and from other people about the toll on people doing this work in the culture that has existed there in terms of narrowing their humanity, their stress, how it impacts their families, and their sense of who they are.

And I think Mr. Haney's original experiment – the Stanford University experiment where the students that were selected to be prison guards acted in a way that caused them to end the experiment early – shows what can happen to people just like it dehumanizes prisoners. I don't think it's healthy for the people that do the work.

So I've been struck recently in some of the other issues that have arisen around CDCR with a statement that I read in the press that CDCR estimates there are 30,000 seriously mentally ill inmates in the institution. Now, would it be possible to re-purpose, if we decided to do that, Pelican Bay and put in a few more mentally healthy amenities for that population? Or is there something like that that we can do? It would require a great deal more training and education on the part of the people working there. But have any thought be given to that by CDCR?

**HOSHINO:** I would say only in a general sense. The specificity that you're bringing – I'll give you thoughts right here and now. It would be very difficult for Pelican Bay for much of the reasons that you've all catalogued, and I know you and many of the members have actually visited that particular institution. And you've noted some of the difficulties operating there in terms of being able to recruit and retain staff at all levels. So I think it would be a pretty high bar to get over to try and convert Pelican Bay into a more mental health institution and try and recruit folks. In fact, that's why I think a lot of that population is housed in places like CSP Sacramento and other locations in the state where they are able to provide the treatment and services and the like, not that there aren't any going on at Pelican Bay. But it does pose its unique challenges.

I think the challenge for Pelican Bay is converting it – not converting it but moving it more toward a more conducive programming type of institution given what its particular mission is, and that will always be the challenge. Some of its limitations are just by design, where it doesn't lend itself structurally and physically to the kind of environment. But that doesn't mean that that challenge can't be taken on in some respects. And I know that Pelican Bay has come a ways. Judge Henderson knows that institution very, very well. He essentially supervised that through Madrid for many, many, many years before finding that it had met constitutional minimal standards in dismissing his case.

But that doesn't necessarily mean that that's where the discussion ends. And certainly Pelican Bay and every institution should be undergoing some discussion. In fact, that's what we've been doing, as I keep calling it the "post-realigned world," where you've got 44,000, 45,000, 50,000 less inmates. Certainly, there are mission changes within that, and Pelican Bay enters that discussion.

**HANCOCK:** Thank you. I will note that Judge Henderson says "it presses against the limits of what is humanly tolerable" in his ruling. So it was not, you know, in any way saying that this was a good thing to do.

And I wondered if – I was very interested in the agreement to end hostilities that came out of the hunger strike last August, and which basically was some of the leaders of the hunger strike talking about the need to end racial hostilities in prisons because it was really just a way of perpetuating the old culture; and trying to change it. And I wondered if the department was taking them up on that in any way. And the reason I ask is that if it could happen in Northern Ireland, where they have had a tenuous but lasting peace for about 12 years, it seems to me that it would be worth a try here and perhaps could lead to a more interactive process with designing a step-down program that would actually work and not humiliate people, and some other things. Has the department had any reaction to that agreement to end hostilities?

**STAINER:** I think I can say simply we definitely endorse and support an end of hostilities amongst inmate population and an end to the violence – inmate on inmate or inmate on staff violence. Absolutely. [Comments from audience off-camera]

at some fixes that go beyond rearranging the boxes on the flow chart and, in fact, adding to the boxes, which is what in a way makes people nervous I think that the net is going to get cast higher. So I think we're going to be working on actual benchmarks and goals and specific things. And we can submit those as comments, but I think we may have to go beyond that. We need to really be looking at some new ways.

Because I just want to see if we're all on the same page here and ask you the same question that I asked somebody else – I can't remember – during this hearing. If this was to make safer prisons and to deal with a gang problem in prisons – and we've been doing this for 25 years, and I still get told all the time that prison gangs are the reason why other improvements can't happen – do you think that the SHU is productive thing to do?

Did it work?

**HOSHINO:** So I know many have tried to answer that. I can tell you my answer is, if you look at the beginning of SHUs and gang management policy and what happened in California's experience as well as the nation's, certainly in California the level of inmate-on-inmate assaults – and I'm talking about not numbers but also the degree of assaults – the actual murders and deaths that were occurring in the 1970s, early '80s that gave rise to SHU as well as deaths of staff members -- then yes. If that's the standard, it worked.

But over the course of time – and again, in California's experience, a crowded system – was that then an over-reaction that then morphed into a regular practice that now needs to be re-examined? I think the answer to that question is yes and we're looking at that and doing that.

The truth is we won't know some of the answers until we complete the reforms. And I talked earlier about us being the – everybody has their role in the system – and we, on the cautious side. The reason we tend to go slow on this stuff is because of not only the experience and the information that we have, but we also worry about moving too quick and having an over-reaction where we go back the other direction because suddenly there are high notoriety events or things that occur.

It goes back to Chair Ammiano's comments about political will and being able to maintain that, sustain that. And so that's what we try to manage.

As we are doing these reforms today, there is a voice out there in the inmate population that is saying to us, "Whoa, why is that individual back in the general population with us? I'm little bit worried. Can I go back into more protective housing?" So there's full sides to this particular story and equation to that, Senator.

And so to some extent long answer to your question, it did work for that particular standard that you look at. But then overall what is the utility of SHU and the practices that we're deploying today in our battle to prevent and contain or sustain gang management, which gets us back to a point that it can no longer just be suppression; it's also got to be programming, intervention, and prevention rather than just suppression.

**AMMIANO:** Thank you, I really need to step in here because the room is gonna be occupied by another group and we haven't started public comment yet. I want to thank you all for that, and sergeant ... can I see basically how many people want to speak, realistically I don't know if we can do it all, but we'll try. If you can follow the directions of the sergeants please ... if you want to come to the mike ... I don't want you to get angry with me or feel frustrated with me, but I'm gonna keep on top of you, you gotta be very short. OK? You'll be heard. Go ahead, first speaker ... we'll try a minute but we may have to reduce that as well. Who's number one?

## **PUBLIC COMMENTS [partial transcript of more than 50 commenters]**

**COMMENTER #1:** Good morning. My name is Tessa Murphy, and I'm here representing Amnesty International. In 2011, Amnesty was given unprecedented access to three of California's SHUs, including Pelican Bay. We documented our findings into a report along with a set of recommendations that we have pushed for the past year for CDCR to incorporate into the reforms discussed today. I would urge the committee to study these recommendations or at least three pages of them when considering where to legislate on this issue. In less than a minute, these reforms fail to bring California into compliance with requirements under international law and standards for the humane treatment of prisoners and their right to be free.

**#2:** Thank you. My name is Dolores Canales. I'm a founding member of California Families to Abolish Solitary Confinement and I have to tell you that these hearings and even the processes with the step-down programs give the family much hope. But I do have here with me articles from 1990, 1992, '93 – "High Tech Facility Ushers in New Era of State Prisons."

**AMMIANO:** All right I'm gonna ask you to submit those articles. And we appreciate that very much.

**#2:** I just want to say if there's not change now there won't be any.

**#3:** My name is Virginia Gutierrez Brown. My husband Paul Brown was in solitary confinement at Pelican Bay for 28 years. He's now at Corcoran in the main line and doing very well – working. I saw him blossom from a shell of what he was to a more happy human being. And I urge the committee to continue its work to abolish solitary confinement.

**#4:** My name is Beth and my husband's been in the Bay SHU for 19 years. What I want to say is you cannot overlay a new program on the same old culture and that's been discussed. You also cannot lay a program on men who do not trust the system because they have not been considered -- their whole psychology. A lot of men are refusing to program. It's not because they don't want to cooperate. They would love to cooperate with a truly effective and meaningful program; they're not being obstinate; they want respect. Thank you.

**#5:** Thank you so much committee for having this hearings. My brother was previously housed in Pelican Bay for 23 years. He was validated for a art magazine and for another inmate having his name in his cell. He went up to his DRB board and they told him that he should have never been validated the last 11 years. My point is there are men sitting back there in solitary confinement with CDC with bogus charges. There's human real estate. What they're doing is human real estate on all of these SHU members. So please, please keep having these hearings. And CDC, stop making bogus claims on our loved ones.

**#6:** What is negative about the step-down program? Everything. Because the same as IGI who condone them to be in solitary confinement is the same people who are ruling the step-down program, so they're not going to get out of the SHU because the same people who are fabricating the lies to put them in the SHU are the same people in charge of the step-down program. Last week, two days without hot water in Pelican Bay. Not even hot because it's warm. So not even a coffee they can drink. My brother is 14 years in the solitary confinement and still going.

**#7:** Hi. After 11 years of being in prison, my son has now been placed in the SHU. After 13 months, he has developed severe mental issues. We're still appealing his case. You have 30,000 estimated mentally ill inmates. How many more have to become mentally ill before you change these rules?

**#8:** My name is Marie Levin. My brother's been housed in the security housing unit for 30 years now. Locked up 33 years and now 30 years in the SHU for a crime he didn't even commit. What I'm here to say is that abolish the SHU. It is inhumane. It is torturous. And I'm tired of my brother having to go through this for decades – decades. I hope you guys are really listening. Decades!

**#9:** First of all, I want to thank you so much for finally, you know, hearing our hearts and...the cries of our incarcerated ones. And I just want to say that, you know, CDCR says that – they are taking credit for like all these wonderful events that are happening, that our loved ones are coming out. No, I believe it was because of the hunger strike, because of these courageous men who put their lives at stake. And so they're the ones that deserve the credit and I thank them so much. And thank you.

**#10:** As a child of someone who's been subjected to these conditions – the weight of these boxes of dehumanization – I ask you how would you feel if it was your family member or close friend or even yourself being subjected to the conditions of solitary confinement. Would you still allow it? Let us gain back our humanity and cease this pointless inhumane treatment of our fellow man and eradicate solitary confinement for ourselves and future generations. Surely we can find better alternatives.

**#13:** The SHU program violates the Fifth Amendment inhumane rights. Problem easily solved. Coordinate CDCR implement intense therapy programs instead of 23-hours lockdown and step-down program. Can't do it? Contract a

consultant to implement the strategies. AB 109 needs to be implemented in LA County because they're just implementing in 9% of the cases. In Orange County, it's a success in 60% of the cases...Instead of building jails, we should be sending that money for education and rehabilitation.

**#14:** Right after the hunger strike, the Supreme Court and other courts here in California told that they should immediately start releasing prisoners from the largest industrial prison complex in the world, which also is a Wall Street and world stock enterprise. So, on Feb. 10th, which was yesterday, I read on my tablet that they went against the legislature of the Supreme Court [sic] and other courts here to say that it would be two more years. And you can look and find this on the websites. That it'll be two more years before any more prisoners will be released and this program will be put into effect, and that's been said to us, in the future. And we wonder how more two more years that we have to go. And my son's been at Pelican Bay for eight years because someone else validated and put his name and said he did something when he was Tehachapi. And the person didn't even know my son.

**#17:** Kim McGill of the Youth Justice Coalition. We wanted to remind you that the majority of the people in the SHU in Pelican, throughout the California system and at the county level in our juvenile hall and camps are young people under the age of 25. So we have several young people here who have experienced solitary confinement to talk about the impact it has on even days or weeks in solitary confinement, let alone ridiculous three years as being proposed by the California Department of Corrections and Rehabilitation.

**#18:** Hi I'm Jesus [last name not audible]. I would like to thank you for the opportunity to hear my voice and I want to share a little experience of what I went through. I started feeling lonely. I had short visits. Shower less than three times a week. I'd fall asleep, hungry, freezing to crickets on me. No restroom. Have to use restroom on their time. Even though I'm a human being, I felt like a dog just sitting there hopelessly, waiting for the Lord to answer my prayers. No one's perfect. Everyone makes mistakes. There's always a solution for a problem. Thank you.

**#22:** I am a person who has been previously incarcerated...I am now a member of the Youth Justice Coalition. During the time of my incarceration, I was put into solitary confinement for about two weeks. I was put into there because of health reasons that I have no control over. I have epilepsy and I've had a seizure. The guards were called by my cellmates and officers thought I was playing and put me into solitary confinement. From the moment I was put into the hole, I felt isolated and depressed. The room was freezing. It was dirty. And there wasn't a bed, only a hard concrete seat attached to the wall that you were to use as a bed. The room was very small. I felt trapped. There was a small tiny window and a door that I would peak out of just to get out of the claustrophobic making of the cell. One day, the guard caught me looking out there and put something over it so I can no longer see anything. I just felt hopeless and trapped. They hadn't let me shower for about three or four days. I was smelling myself and felt disgusted. After a few days in solitary confinement, I started to feel like I was going crazy. I started to make up stories, started talking to myself, and imagination was blasting. I look back now to see how creative but dangerous the mind can be. If a person wasn't already insane or had mental health problems before coming into solitary confinement, spending enough time in there you would lose your sanity. Solitary confinement only creates more problems, not fixes them. It is cruel punishment to be treated like a caged animal. I never received a change of clothes but only about two times during those two weeks. I was ignored like I did not exist. I even had several seizures because sometimes they did not bring my medicine on time or not at all, and stress is one of the main triggers of my seizures. I kept knocking on the door after having passing out from having seizures a few times, but I was still ignored. I couldn't do anything about it. This was one of the worst experiences of my life, and I wish this on nobody. The cruel punishment of solitary confinement must be eliminated. I had no books, no paper, no nothing to write or nothing to address the complete boredom in the hole. Being in there felt traumatizing. Only three or two days would feel like I'd been in there a week. I would never know whether it was day or night. Everybody deserves to keep their sanity and not be forced to become insane from lengthy times in solitary confinement. Last thing I just want to get across is people who have experienced this should be given the opportunity to present our observations and solutions for those such as myself and families who have been most experienced in solitary confinement.

**#24:** I'm with Project What, and I'm 17 years old. I guess basically when I think of the segregation method in jail I'm thinking of it to rehabilitate the person but really it's just dehumanizing. And when you're isolated by yourself, you look for ways to cope with where you're at, adapt to an environment. And I just feel like it really socially destroys the person and dehumanizes the person, and it doesn't give them a chance to rehabilitate. So I guess I'm saying I oppose this. Thank you.

**#31:** Issuing and supporting the agreement to end hostilities should be identified as positive behaviors and included as ways to step down and get out of solitary, not retaliated against with rules violations. In order to refrain from STG behavior, the prisoners are forced to give up their political, social, cultural beliefs and materials. This is brainwashing, does not allow fully voluntary and free informed consent without force or coercion violates Article I of the Nuremberg Code on human experimentation and is a human rights abuse. Stop retaliation against the hunger strikers and those who issued and supported the agreement to end hostilities. At Pelican Bay SHU, food's been decreased to bite size or child size portions, not enough for male adults, frequently served on top of wet cardboard and some spoiled or not completely cooked. Adequate food is a human right and is one of the prisoners' five core demands - provide adequate and nutritious food.

**#42:** I'm a member of the Prisoner Hunger Strike Support Coalition, but today I'm representing an organization that I'm

on the steering committee of – international psychological and other mental health providers professionals organization called Psychologists for Social Responsibility. I have a letter for you and I just want to read the beginning and the end. We quote Craig Haney, who can speak for himself. We quote Juan Mendez who says that very clearly that solitary confinement is a harsh measure contrary to rehabilitation, which is the aim of the penitentiary system and the U.N. Committee on Torture that says very clearly that the purpose with solitary confinement is retribution in which case it constitutes, cruel, inhuman, and degrading treatment or punishment. But I want to read the final paragraph in our letter. “Decades of psychological research have established the severe psychological effects of solitary confinement. Thus, Psychologists for Social Responsibility, which is an international organization, believe that solitary confinement should only be used as a rare last resort for periods of short enough to not cause psychological harm. We join the United Nations Committee Against Torture and the United Nations Special Rapporteur in calling for a total ban on prolonged solitary confinement.” My organization is committed to staying with this as long as necessary to have solitary confinement abolished.

**#46** (from Youth Justice Coalition): I want to share my experience when I first got detained. I got detained at the age of 16 and I went to East Lake Juvenile Hall. And the moment when I was there, they put me in a unit there that was always in lockdown. Each time I woke up, all I got to see was just out through my window. They brought me my breakfast, my lunch, and my dinner. And I only went to school. After school we came back and we’re back on lockdown, back in our rooms. And half of the time when we went to go take a shower, we took a shower of cold waters. They made us sleep in our boxers, made us sleep in our cold room. And each time I would try to work out, I would look at the floor and the floor was very dirty and so I said to myself, “What do I have to do?” I don’t have no books, no papers, no pencils, nothing I could write to my family. No one else should go through this experience right here. So what we should do is to not let nobody ever go through this because it actually affects people and their minds mentally and it’s something that when they actually tried to do something fine, they actually end up screwing it up because of all the things that have been missing out because they have no human contact with nobody else. Thank you.

## **CLOSING COMMENTS – AMMIANO AND HANCOCK**

**AMMIANO:** I don’t want to trivialize or dehumanize anything you have to say, you are walking the walk. And it’s us that have the tremendous responsibility of really responding. It is frustrating as hell to know all this has been said three or four years ago and there is nothing new. But we’re hoping to be bolder about what we can do, we want to have another hearing in regard to programs that DO work, and again your presence here means a lot, so thank you very much. I want to thank my co-chair and committee member Nancy Skinner, and if you have anything to say before we adjourn ...

**HANCOCK:** Just to thank you also, and let you now we are going to try very hard, working with CDCR if possible, and I hope it’s possible to change the dialogue, the culture and the outcomes – the outcomes is what’s very very important. I had the opportunity to watch the tapes and listen to the DVD of the Speier-Romero hearings of 2004 this weekend. It was stunning to me, and I have to say profoundly depressing, if I was a person who could be depressed, because the same things were said over and over again. Ten years ago people were saying, for ten years nothing has ever changed.

Something has to change now. The three-judge panel has given us a two-year reprieve; the hunger strike has brought these issues to the forefront; the recent death of a person who was mentally ill and pepper-sprayed has brought these issues to the forefront – and it cannot be business as usual anymore.

And we will all benefit: CDCR will benefit, the inmates will benefit, the state of California will benefit because we can redirect our money into positive things – if we decide we’re gonna step out of our boxes and work together to do the evidence-based practices that we know exist, that have been tried in other places, and really solve this dilemma and this revolving door that we’ve all been involved in for far too long.

So thank you all so much for coming, the people from CDCR, the people who’ve been experiencing the fallout of a system of a system that really doesn’t work very well for anyone, together we can change it, and we can make it better. And we’ve begun, with some of the things in the new policy; we really need to make it stronger.

I think we’ll have very positive recommendations that can do that, and I hope we can have a dialogue and see them written in to what happens, and if there’s legislative statute change that is needed, we can try to do that, and we can – I hope this is just the beginning of a time when we’re gonna look back ten years from now and say: Isn’t it great that now we’re the system that people look to for how to do it right.

But thank you all. (3h16m)