

## Report on Prison Interviews about Guard One 30 Minute Cell Checks

### 1. Summary

Recent interviews with 13 prisoners at Pelican Bay SHU, from 13 different SHU sections, reveal widespread sleep disruption due to the institution of cell checks 48 times per day of each SHU prisoner. This practice began on August 3, 2015. For a variety of reasons, the process is loud. As a result, these prisoners are getting much less sleep, persistently interrupted sleep, and a significantly lower quality of sleep than they had enjoyed before these checks started. They are suffering from headaches, fatigue, inability to concentrate, loss of appetite, irritability, depression and other symptoms. The sentiment reported by two of the men reflected the general view: "The method and noise from the checks is torture"; "The every 30-minute checks have to be stopped or people are going to get sick or worse." In addition, they report that regular prison programs have been negatively impacted.

### 2. Physical layout of Pelican Bay SHU

Each housing unit consists of 6 pods of 8 cells each, 4 on the bottom tier and 4 on the top tier. The construction material is primarily concrete: floors, walls and ceilings. The pods are set up like spokes on a wheel radiating from a central elevated guard post. The configuration of the housing is intentionally constructed so that the Correctional Officers have knowledge and control over activity in each of the 6 pods they oversee. They can hear and see much of what is going on in each of the pods in their unit. Noise travels, not only to the control booth, but also to some greater or lesser degree between the pods. The pod and cell doors are made of metal. The pod door is very heavy. All doors are electronically controlled from the control booth. There is a metal staircase inside the pod to access the top tier. To check each cell, the Correctional Officer must enter each pod and check each cell on both tiers.

### 3. Nature of the noises

The prisoners described the various noises associated with these checks:

- (a) Sounds of the metal lock and chain hitting the metal pod door. To open the pod door, a CO must first unlock it manually. There is a metal lock attached to a short chain which is affixed to the pod door. The CO unlocks the lock and then releases it, causing the metal lock and chain to hit the metal door.
- (b) Sounds of the pod door opening electronically. The pod door is operated electronically. The sound of it opening is akin to the sound of an electric gate opening.
- (c) Sounds of keys jangling: COs carry a large number of keys attached to their belt. As they walk or jog through the pod, the keys make a jangling sound as they hit nearby hard objects such as spray canisters.
- (d) Sounds of COs' boots stomping through the pod, and particularly going up and down the metal stairs to the upper tier. The sounds on the stairs can be heard in the adjoining pod.
- (e) Sounds to activate the Guard One device. The CO has to touch the metal pipe to the metal sensor device which is attached to the metal cell door. Performed slowly, deliberately and

respectfully, the touching of the pipe to the sensor makes a click. During the two day shifts (2<sup>nd</sup> and 3<sup>rd</sup> watches, from 6 am to 2pm, and 2 pm to 10 pm), there is also a high-pitched beeping sound each time the sensor is activated. These sounds can be heard throughout the pod. One interviewee reported that guards use their fingers to touch the sensor, so that is quiet.

- (f) Excessive banging of the Guard One pipe: Whether as a matter of protest, speed, carelessness or disrespect, some guards hit or slam the metal pipe on the metal door, which makes a very loud banging. A prisoner's cell door may be banged several times per check. One interviewee estimated that 75-80% of the guards are rude or loud.
- (g) Slamming sounds of the pod door closing. The heavy metal doors make a loud slam when they close shut, which reverberates throughout the unit and can be heard by prisoners in other pods.
- (h) Sounds of metal chain and lock as the lock is refastened.
- (i) COs talking: If two COs per pod are on duty at night, their talking outside of the pod can be heard inside the pod. COs generally do not speak to the prisoners during the checks.
- (j) Flashlight shining on one's face: Several prisoners noted that the COs sometimes shine their flashlight into the prisoners' faces or eyes, to get them to prove that they are alive. In one pod, a particular prisoner is asked to do this regularly (not the interviewee).

The prisoners described the following attributes of these procedures and their environment:

- (a) They are woken up before the CO gets to their cell door, and even before the CO opens their pod door. They can hear other pod doors opening before and after their pod door is opened. One prisoner likened the distant sound to that of an approaching monster, like Frankenstein or Shrek. The COs seem to start with A pod, then go to B pod, C pod, etc. and finishing with F pod, so a prisoner's experience would differ somewhat depending on what pod he is in. Every prisoner may not hear the doors to all 6 pods open, but generally will hear the nearest doors open and close.
- (b) Once they are woken up, they generally stay awake until the cycle for their unit is finished.
- (c) They estimate that it takes about 10-15 minutes for the entire 6-pod unit to be checked. Some officers go more quickly; others take more time.
- (d) Prisoners whose cells are closest to the pod door may hear more than those whose cells are further down the tiers.
- (e) The sounds echo or reverberate in the concrete and metal environment.
- (f) One volunteered that the majority of the guards do not look into the cell at all. A second interviewee made a similar comment and concluded that "the device does not prove what it is supposed to prove."

The interviewees had differing views on whether these 30 minute checks could be done quietly enough that their sleep would not be interrupted. They recognized that a lot of changes would have to occur, and they had ideas about each.

#### 4. Impact on prisoners

##### (a) Impact on sleep:

For almost every prisoner, these checks are having a dramatic, negative impact on their ability to sleep. Each described the quality of his sleep in the past month to be “very poor.” Most of the interviewees wake up every time, or almost every time. They report staying awake until the COs complete their circuit and the noises stop. A few have difficulty falling back to sleep after being awakened by the noise. One red-eyed man, who reports getting only one hour of sleep per night, was anxious and agitated during the interview. He appeared to the interviewer to be on the verge of physical and mental collapse. Two other prisoners had sleep issues before the checks started: one had previously had a sleep study and was formerly on the mental health caseload; the other had interrupted sleep from a traumatic experience. Their sleep has been made worse by these checks.

A typical report was to get 20 good minutes of sleep *at most* at a time; one prisoner counted himself lucky if he was able to sleep through one or two cycles, which he could only do once or twice a week. They have tried different strategies to aid sleeping: standing up all day, trying to do more exercise, staying up very late in the hopes of crashing out, trying to nap during the day, and using earplugs. By and large, these strategies have not helped. Only two prisoners reported that they were able to nap during the day. The interviewees report sleeping 1 hour per night, 1 ½ hours, 2 ½ to 3 hours, 3 hours at most, 3 – 3.5 hours, up to 5 or 6 hours per night. Only one prisoner reported that his sleep was “pretty normal” and that the checks did not have much impact on him.<sup>1</sup>

##### (b) Impact on ability to function:

All but one report low energy, exhaustion and fatigue. Five prisoners reported having headaches and one reported having migraine headaches every morning. One prisoner (age 33) reported that he has developed a rapid heart beat. SHU prisoners often have a regular exercise regime. These men are finding that they are unable to complete their usual exercise regime. One man described a 20 pound weight gain, which he linked to his lack of exercise. One stated that he had become weak and was afraid he would faint in the yard. Another described a loss of balance, including running sideways into the yard wall. Some say they are “light-headed”, “in a stupor”, “reckless” or “clumsy.” One reported “slurred speech.” Three described a loss of appetite, and weight losses of 5 pounds and 10 pounds.

Most state that they have trouble concentrating. They try to read, but they nod off and/or can’t remember what they have read. Their writing is much slower (“I can’t think to write”). The three prisoners enrolled in GED or other courses are now struggling to keep up.

One prisoner reported that there is “more sickness in the pod,” including himself. Many are “coughing, sneezing, clearing your throat.”

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<sup>1</sup> This man got 5 or 6 hours of sleep a night.

Four of these men sought medical attention. Two were given Tylenol or aspirin. One was told, "That's all we can do. Get used to it." One was told, "There's nothing we can do, it's a policy issue." One was told to get more exercise and drink less coffee.

**(c) Impact on mental state:**

All but one prisoner reported a negative impact on their mental state. They reported irritability, crankiness, moodiness, being "on edge", feeling depressed, experiencing heavy anxiety and fierce agitation, being less social, feeling frustrated and annoyed, being "quick to anger," and "stressed". One reported deteriorating relationships between people in the pod. Two prisoners remarked that they were disturbed by the reduction in personal privacy, particularly with respect to their toilet and bathing activities, with a guard coming to their cell door 48 times a day.

One man, who at age 31 has spent six years in segregated housing, said, "This is the worse I have ever felt since being in SHU."

**(d) Impact on other prisoners in their pod:**

No one is unaffected, stated one man. He reported hearing things drop, like cups, when he had never heard that sound there before. He expressed concern for someone in another pod who has noise sensitivity – "I don't know how he is faring." However, he noted that the ear plugs had provided some benefit.

One reported, "No one is falling apart or losing his mind, but it could happen. People do have their pride. They don't want to be seen as crazy." One man gave us the name of the prisoner in his pod who is having the most difficulty – that prisoner can't sleep at all and is up all night. Another man reported that a few people in his pod mentioned feeling delirious and were "thinking of fictional things" – which may be a form of hallucination. He states that the group mood is no longer one of camaraderie, but rather they no longer give each other help or talk to each other. Another interviewee reported that a man in his pod could not speak clearly at his ICC hearing, and thinks that this is documented. When that other man told the mental health guy that he should do something about the checks, the mental health guy ignored him.

Another stated that the majority in his pod had gone to the clinic and received Tylenol. Another said, "They all complain to each other. They all hate it." One prisoner reports, "Some are adjusting; some are not." Another prisoner expressed concern for the new arrivals to Pelican Bay SHU. He states that they are already having a really hard time adjusting to the confines of the SHU, and on top of that, they are now being subjected to these checks, which causes even more suffering.

Some pod mates of one interviewee are complaining of constipation because of the very stressful interruption of their routine, and the absence of sleep, and how that affects digestion. Another stated that his peers are "already super sensitive to sound" and the extreme sleep deprivation exacerbates this.

## 5. Impact on programs:

While this survey was specifically focusing on sleep deprivation and its effects, some prisoners volunteered information about the negative impact on programs of these frequent checks.

Yard policy and practice has changed. Yard is 1.5 hours a day. Since the checks began, the normal schedule is backed up and delayed. Two men reported that previously, the “yard call” procedure was for men who want to return to their cell to alert the guard, and the door would be opened for him to re-enter the pod. Now, there is no assurance that you can leave the yard in a timely manner; some have had to wait for an hour or more. This can be distressing, especially if they have to use the toilet. Previously, if you chose less time, they would release yard to the next guy. Now, they won’t, because of the checks. Often, when they want to go to yard, they are told to “Stand by.” Although the yard is open for longer hours (until 7:30 at night), it is too cold then, so the men don’t use it. Men don’t go to yard because their normal programming schedule has been totally upset.

Access to showers has apparently been reduced. One man used to shower around four times a week, but now is limited to fewer days. One man reported that the showers are not being cleaned according to the regulations. They are supposed to be washed six times a week, and now it is just two times a week. Men are increasingly getting Athlete’s Foot as a result.

Programs are being delayed – the officers don’t want to start visits until food trays are picked up. Meals have been delayed. One man reported delays of over two months in giving property back to prisoners transferred into Pelican Bay from other prisons. He himself has been waiting over a month for a television he ordered. There was a group 602 about program delays.

## 6. Conclusion

Sleep is a basic human need protected by the Eighth Amendment’s prohibition against cruel and unusual punishment. Conditions having the mutually reinforcing effect of depriving a prisoner of a single basic need, such as sleep, may violate the Eighth Amendment. See *Wilson v. Seiter*, 501 U.S. 294, 304–05, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991). In *Harper v. Showers*, 174 F.3d 716 (5th Cir. 1999), the Fifth Circuit held that sleep deprivation could constitute cruel and unusual punishment (“[S]leep undoubtedly counts as one of life's basic needs.”). In *Walker v. Schult*, 717 F.3d 119 (2d Cir. 2013), the Second Circuit made a similar finding. See also, *Shepherd v. Ault*, 982 F.Supp. 643, 648 (N.D.Iowa 1997) (“Constant illumination can undoubtedly cause sleep deprivation . . . -- and sleep is certainly an ‘identifiable human need.’”).

The “wellness” checks as currently practiced at the Pelican Bay SHU have caused widespread and serious sleep deprivation for almost three months. While the underlying purpose of these checks is commendable, their current implementation must be condemned as a constitutional violation. At this juncture, the only reasonable course of action is for the current practice of 48 wellness checks a day to be temporarily suspended, pending a thorough investigation as to whether they can be reinstated at the Pelican Bay SHU consistent with the prisoners’ physical and mental well-being.

Dated: October 22, 2015.

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### **Addendum: Survey Method**

On October 13 and 14, 2015, attorneys Anne Weills and Carol Strickman conducted confidential in-person interviews with 13 Pelican Bay SHU prisoners about the 30 minute checks and completed survey questionnaires for each.<sup>2</sup> All of our interviewees are members of our 8<sup>th</sup> Amendment or Due Process classes. They were selected to represent 13 different SHU units: C1, C5, C7, C9, C10, C11, D1, D3, D4, D5, D8, D9, and D10. We wrote them in advance that we were coming for this purpose. Because CDCR does not make public prisoners' cell numbers, and has refused in the past to provide us with cell numbers of our class members, we selected prisoners who had written to the litigation team (which gave us their cell addresses). However, only one of these men had written to us about this issue. We developed and used the identical survey form for each interview. Some prisoners brought us written statements or related documents which we have incorporated into this report.

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<sup>2</sup> We visited a total of 16 prisoners, representing 15 pods. However, we were not able to complete the survey questionnaire with three of these individuals, due to time constraints and the importance of discussing other matters with them.