

Senate Judiciary Subcommittee on Constitution, Civil Rights and Human Rights Holds Hearing on Reassessing Solitary Confinement, Panel 1

LIST OF PANEL MEMBERS AND WITNESSES

DURBIN:

Good morning, this hearing of the subcommittee on the Constitution Civil Rights and Human Rights will come to order.

Today's hearing is entitled reassessing solitary confinement: The human rights fiscal and public safety consequences. In a moment I'll be joined by Senator Graham, who's running a bit late this morning. He's the subcommittee ranking member, and he'll make an opening statement when he arrives.

First I want to note there's significant interest in today's hearing. Those who haven't been able to get a seat in this hearing room, we have an overflow room with a live video feed. It's next door in the Hart Building, room 216, if you're e-mailing others who are waiting outside, Hart room 216.

America has lead the fight for human rights throughout the world. This subcommittee has tried to play some part in that, holding the first Congressional hearings on issues like rape as a weapon of war and passing legislation like the Genocide Accountability Act.

But we also have an obligation to look in the mirror, to look at our own human rights record. Today in the United States more than 2.3 million people are in prison. This is by far the highest per capita rate for prisoners in the world.

African Americans are incarcerated at nearly six times the rate of white Americans. Hispanics, nearly twice as frequently. These numbers translate into human rights questions, challenges, and issues that we can't ignore.

I held a hearing on mental illness in prison in 2009. I've authored the Fair Sentencing Act which finally reduced dramatically the disparity between crack and pot or cocaine, though I will tell you I believe it should be a strict one to one. We clearly have made improvement, but there's more to be done.

We're here today to consider another critical issue. What do America's prisons say about our nation and its values? What does it say about the number of people we have in prison? What does it say when we consider how we treat the people who are in prison?

This is the first ever Congressional hearing on solitary confinement. It's called many different things. Super-max, Segregation, Isolation, among other names. At this point I'm going to show a brief video clip which is compelling.

(BEGIN VIDEOTAPE)

(UNKNOWN)

My name is (inaudible) from (inaudible) Colorado. My brother was incarcerated (inaudible) 17 (inaudible). (inaudible) for my brother meant solitary confinement for 23 hours a day, a maximum of

(inaudible), he was no longer receiving education, he was taken off suicide watch, and he had little to no access (ph) for his mental health.

My brother will (inaudible) good kid (inaudible). I (inaudible) still waiting to see him (inaudible) last court date. Our family and the football team were there in support for my brother. As we waited to see my brother walk into the court room we were pulled out by a detectives who explained that my brother had been dead for over 24 hours.

That because of what (inaudible) communication break down in jail (inaudible) failed to notify them. So instead of making arrangements for my brother's future, we were now making arrangements for his funeral.

(END VIDEOTAPE)

DURBIN:

Seventeen-year-old James Stewart was held in solitary confinement in an adult prison for two months. His sister Nicole Mary (ph) is here. And she joins us.

Nicole, thank you for sharing your brother's story.

Unfortunately Jimmy Stewart's story is not -- is all too common. Fifty percent of all prison suicides occur in solitary confinement. Jimmy was locked up in a cell like the one to my left. This was prepared as part of a trial, it is a replica of a solitary confinement cell.

And it was sent to us to be here at the hearing. I stepped inside briefly before the hearing started, but there's no way that a brief visit there could give you any feeling for what it must be like to spend extended periods of time, hours, days, weeks, months, years in that confining space for 23 hours a day.

In 1995 a federal district court described similar cells at California's Pelican Bay State Prison as follows: the cells are windowless, the walls are white concrete, the overall effect is one of stark sterility and unremitting monotony. Inmates can spend years without ever seeing any aspect of the outside world except for a small patch of sky. One inmate fairly described it as being like a space capsule, where one is shot into space and left in its isolation.

Imagine, 23 hours a day in one of those cells, with little if any human contact. The United States holds far more prisoners in segregation or solitary confinement than any other democratic nation on Earth. The Bureau of Justice Statistics found that in 2005 U.S. prisons held 81,622 people in some type of restricted housing.

In my home state of Illinois, 56 percent of the prison population has spent time in segregation. If I had one request to my colleagues on this judiciary committee it is to visit a prison. Do it frequently. See what it's like. I've done it, most recently in Pekin (ph) at the federal facility. But I've been to Tams (ph), which is our maximum confinement facility in the state of Illinois.

It is an eye opener to understand what it means when you start talking about the sentencing aspects of Americans criminal justice system. We don't always use solitary confinement at such a high rate, but in the 1980s, things started changing.

We began creating expensive super-max prisons designed to hold people in isolation on a massive scale. These super-max's, just like the crack cocaine sentencing laws were part of a tough on crime policy that many of us thought made sense at the time. But we now know that solitary confinement isn't just used for the worst of the worst.

Instead we're seeing an alarming increase in isolation for those who don't really need to be there and for many, many vulnerable groups like immigrants, children, LGBT inmates, supposedly there for their own protection.

That's why I've advocated for a change in the Justice Department's new prison rape standards to help ensure that sexual assault victims are only placed in solitary when absolutely necessary.

We've heard from Nicole Mary (ph) about the tragic consequences of locking up children in isolation. That's why the American academy of child and adolescent psychology has called for a ban on solitary confinement for all children under the age of 18. That ban might have saved your brother's life.

In January, I visited an immigration detention center in deep southern Illinois and saw segregation units like those found at many county jails. I might remind you the people being held there have not been convicted of any crime. Even for adults convicted of serious crime experts say far too many are in solitary confinement.

Some are already seriously mentally ill before they're confined. They require extensive monitoring and treatment, the exact opposite of isolation. Others who may not have had any psychological problems before isolation can be driven into a psychosis or a suicidal state.

And there's also the more basic question of how prisons treat people in solitary. Their conditions of confinement I think we all agree need to meet basic standards of decency.

As far back as 1890, the 19th century, the supreme court recognized the risk of solitary describing the isolated inmates at one prison with the following words, "a considerable number of prisoners fell after even a short confinement into a semi-fatuous condition from which it was next to impossible to arouse them. Others became violently insane, others still committed suicide." That was written in 1890.

And our colleague and former POW, Senator John McCain of Arizona, who has lived it said, quote, "it's an awful thing, solitary, it crushes your spirit and weakens your resistance more effectively than any form of mistreatment."

This is also a public safety issue. As the Bipartisan Commission on Safety and Abuse in American Prisons found, increasing the use of high security segregation is counterproductive, often causing violence inside facilities contributing to recidivism after release.

We have a responsibility, I will acknowledge, to protect prison guards, men and women who put their lives on the line to protect all of us. But we also must have a clear eyed view of the impact of isolation on the vast majority of prisoners who will one day be released.

Solitary confinement also is extremely costly. In Tams (ph) which I mentioned earlier in Illinois our only super-max prison, it has by far the highest per prisoner cost of any Illinois prison, \$61,522 a year in this last fiscal year for super-max prisoners, compared to \$22,000 for other prisoners.

A number of states are starting to reassess solitary confinement. We'll hear about some things today, which are eye opening. They've implemented reforms and reduced the use of solitary, lowering prison violence, and recidivism rate, and saving millions of dollars.

As a result of the work we've done preparing for this first of its kind hearing, I'm working on legislation to encourage reforms in the use of solitary confinement.

We can no longer slam the cell door and turn our backs on the impact our policies have on those incarcerated and the safety of our nation.

As I mentioned Senator Graham is running a little late at this point, and he would be -- there he is, just in time. Well that was perfect.

I'll give you just a moment to gather if you'd like to make an opening statement, Senator Graham. I've just completed my own, and I know you've walked in.

Do you want to do it now?

GRAHAM:
Very briefly.

DURBIN:
Sure, please.

GRAHAM:
Mr. Chairman, I am -- I'm sorry I'm late. I've got to run to the hearing in the Armed Service Committee about (inaudible)'s nomination, but I just want to say I look forward to hearing the testimony. Senator Durbin has been very outspoken and concerned about the way we run our prisons and how people are treated. And I think that's a compliment to him and we'll see where the information takes us.

GRAHAM:
And I've tried to be balanced in my view toward detention. I think that you know the -- the American values are on display when you have the power to confine someone. It says a lot about who we are as a nation. You know, the individual conduct has to be balanced against who we want to be as a nation. And I understand the need to protect prisons from people who are acting out and doing -- doing things that are disruptive to the prison environment at the same time, I want to make sure our detention policies live within the values that we are and that is try to turn people around, not just protect them, keep them off the streets, but try to be constructive in changing people's behavior and lives.

So thank you for the hearing.

DURBIN:
Thank you, Senator Graham.

And I want to say that Senator Graham and I agreed on the witness list. This is truly a bipartisan effort, and I think -- I hope -- more and more of that is evident here. We sure need it.

I also want to note that we invited the Civil Rights Division of the Justice Department to participate, but they declined. We'll be following up with them to make them aware of the results of today's hearing and to ensure that they're enforcing the federal civil rights law to protect prisoners' health in our prisons across America.

Now, our first witness is Charles Samuels, director of the Federal Bureau of Prisons. Director Samuels will have five minutes for an opening statement, and his complete written statement will be included in the record.

If you would please step forward, Director Samuels? It's the custom of the committee to administer an oath. Please raise your right hand. Do you affirm the testimony you are about to give before the committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Let the record indicate that the witness answered in the affirmative.

Director, we're going to give you five minutes for an opening statement, put your whole written statement in the record, and perhaps ask a few questions. So, would you proceed?

SAMUELS:
Good morning, Chairman Durbin, and Ranking Member Graham. I want to thank you for inviting me to testify today on the important issue of the role of segregated housing in Corrections.

Inmate safety and wellbeing is of the utmost importance to the bureau, as is the safety of our staff and the community at large. As such, we do all that we can to ensure that we provide outstanding

care, treatment and programming to federal inmates, giving them the best opportunity for successful reentry to their communities.

In order to provide these important services, it is critical that we run our institutions in a safe and orderly manner. Prisons must be secure, orderly and safe for our staff to be able to supervise work, provide training, conduct classes, and run treatment sessions. When institutions are not safe, inmates have diminished access to programming opportunities. Further, unsafe institutions place staff and other inmates at risk and pose a danger to the community at large.

The bureau houses inmates in the least restrictive conditions necessary to ensure the safety and security of staff, inmates and the public. The vast majority of our inmates are housed in general population units, and are able to move freely about the compound during the day and evening.

Inmates at our lower security levels, minimum and low, have greater freedom than those at the higher security institutions, medium and high. Inmates who are disruptive and aggressive towards others endanger the safety and security of our institutions.

Accordingly, removing and segregating them from the general population allows us to continue to operate the institutions with open inmate movement. Fortunately, very few inmates require separation from the general population at any point in time. We only undertake these conditions of confinement when absolutely necessary. This allows us to maximize the use of staff time and space.

As you know, the bureau population continues to increase and limited budgets have prevented us from increasing our capacity. And our staff needs to keep pace with this growth. We face dramatically increasing inmates-to-staff ratios and extreme levels of crowding, about 40 percent overcapacity system-wide, and 51 percent overcapacity in our high security institutions where our most violent offenders are housed.

When inmates are placed in restrictive housing there are varieties of significant safeguards in place to ensure inmates' due process rights are protected. Additionally, inmates' mental health is always a factor in decisions regarding segregated housing. Bureau psychologists are integrally involved in the restrictive housing placement process, and all staff who work in these units receive training and input from psychology services above and beyond our general staff training.

Let me take a moment to address the concept of solitary confinement, or isolation. All inmates in our restrictive housing units have contact with staff, out of cell time for recreation, and an opportunity to program. Accordingly, we do not consider any inmate to be held in isolation, though we are aware that some might use this term to refer to all restrictive housing placement, regardless of the extent of contact with other individuals.

The bureau primarily uses three types of restrictive housing to maintain safety and security: special housing units, special management units, and the administrator's maximum security institution, Florence, Colorado, the ADX. I have discussed the specifics of each of these units in detail in my written statement, with the exception of the ADX, which houses our most violent and dangerous offenders. For example, offenders who have murdered staff members or who have been involved in multiple inmate homicides. Virtually all inmates within our restrictive housing units are housed with other inmates. And all inmates within restrictive housing have access to staff throughout the day.

They are also provided time outside of their cells for indoor and outdoor recreation, almost always with other inmates. And they continue to have access to reentry programs. At the ADX, inmates are housed in single cells and have very limited contact with other inmates,

However, they have individualized contact with staff throughout the day. Extensive safeguards are in place to ensure we continue to provide security and a high level of care for medical and mental health for all inmates, regardless of where they are housed.

Chairman Durbin, this concludes my formal statement. I appreciate you raising an important issue of segregated housing within prisons. The use of any form of restrictive housing, however limited, remains a critical management tool that helps us maintain safety, security, and effective reentry programming for all federal inmates.

Again, I thank you and Mr. Graham for your support for our agency. The mission of the Bureau of Prisons is challenging. By maintaining high levels of security and ensuring inmates are actively participating in evidence-based reentry programs, we serve and protect society.

I would be pleased to answer any questions you or Mr. Graham may have.

DURBIN:

Director Samuels, thank you. I didn't formally introduce you, but I want to thank you as director of the Federal Bureau of Prisons since December 21st of 2011, the eighth director since the bureau's establishment. And you oversee all the Bureau of Prisons institutions and facilities. And I thank you for being here.

Because Senator Graham has a closed session with the Armed Services Committee and has to leave, I have asked him if he would be kind enough to open with questions before I ask.

GRAHAM:

Well, thank you, Mr. Chairman.

And one of the roles that Congress provides in our democracy is oversight. This is an issue that I'm glad that we're talking about, because I want people in your business to know that Congress cares. I want the communities of interest who follow humane treatment of detainees know that we care, and also I want to let family members who may have a loved one in a prison that we're also going to care about them, too.

What percentage -- I know we have a special prison for very disruptive people, for people who have a, as you indicated, a pattern of violence against guards or fellow inmates. But that I understand. But in a normal prison population, what percentage of disruptive behavior that leads to segregation or solitary confinement, whatever you want to use the term, is due to mental illness, versus just people acting up?

SAMUELS:

In the bureau, for our population, three percent of inmates suffer from a serious mental illness. So the majority of the inmates are not within that category. And I would also say that within our population, 92 percent of the inmates are actively and freely moving about within the general population.

GRAHAM:

What's the longest someone can be confined in isolation?

SAMUELS:

It varies. We have individuals from different moments of time, which our overall goal and objective is always to minimize the length of time that the individual is actually placed in restrictive housing.

GRAHAM:

Is it a deterrent to the population as a whole, the fact that you may be segregated? Does the prison population as a whole, does this act as a deterrent to people acting up, the possibility of solitary confinement?

SAMUELS:

We believe solitary confinement for the inmates who pose the most violence and disruption within the facility, that we utilize it as a deterrent to correct the behavior.

GRAHAM:

Do you think it works...

SAMUELS:

Yes.

GRAHAM:

... as a deterrent? What makes you say that?

SAMUELS:

Within our assessment from what we've viewed with inmates who've been placed in restrictive housing, we have seen where the number of assaults throughout our system at various levels have improved. And when I say improved, I would say any assaults against other inmates as well as our staff. And we utilize this tool to ensure the safety and security of our facilities.

And we always work with the inmates by using verbal communication and in different forms of interaction to encourage the inmates to be productive and not be engaged in violence and disorder within the facility, because it makes it better I mean for us to manage them, as well as giving them an opportunity...

GRAHAM:

What kind of oversight do you have in terms of the decision to segregate a person, to put them in a solitary confinement environment? What kind of checks and balances do you have there to make sure it's not just because a particular guard does not like a particular prisoner? And to make sure that there's a sort of a due process way in and a due process way out?

SAMUELS:

All of the requirements for restrictive housing require a due process. And that will start with our special housing unit process, which every facility within the bureau, with the exception of our minimum security camp, has a special housing unit.

If an inmate is charged for violating the rules and they are placed in segregation, they are given notice of the charges and they have an opportunity to appeal the charges. And there is an investigative process that takes place.

And if the inmate requires a staff representative and/or witnesses and any information that could be presented if they believe that it helps them explain their belief that they don't believe the charges are warranted, that process is in place.

We also have procedures in place for the inmates to file an appeal, which they can at the local level, and with our regional offices, all the way up to our headquarters in Washington, D.C.

GRAHAM:

Do you have any information to share with the committee about the mental health effects on a solitary segregated environment?

SAMUELS:

I don't have any written study internal to the bureau regarding the effects. But what I can tell you is that all of our staff who work in the mental health care field are trained, and they're given specialized training to deal with individuals who suffered from serious and/or mental health illnesses. And we go as far as to assure that our staff, throughout the agency, also receive...

GRAHAM:

But there's no study or no academic guidance about how this technique affects people that you're aware of?

SAMUELS:

We have not conducted an internal study within the bureau.

GRAHAM:
What's your view? Is that something you think would be good to do?

SAMUELS:
We will welcome any research or literature regarding concerns relative to that area.

GRAHAM:
And my last question would be, at the state level, how familiar are you with state procedures and are you confident that they have similar checks and balances.

SAMUELS:
I would say in most of the correctional institutions throughout the country, at the state level, that many of the practices are somewhat similar.

GRAHAM:
Thank you, Mr. Chairman.

DURBIN:
Thanks a lot, Senator Graham. I appreciate your coming. As most of you understand, we have competing hearings, overlapping hearings and the fact that Senator Graham was here is appreciated very much and I'm sure his staff will continue to follow this and he'll follow the testimony.

I thank Senator Franken for joining me here.

So, Mr. Samuels, let me ask you a couple of questions. First, it's my understanding that those who are seriously mentally ill are not supposed to be assigned to supermax facilities, like Florence, Colorado. Is that true?

SAMUELS:
You are correct. Our policy prohibits any inmate who suffers from a serious psychiatric illness to be placed in that confinement.

DURBIN:
So, obviously, there must be an evaluation before someone is assigned to a supermax facility and I would like to ask you what that evaluation consists of?

SAMUELS:
When individuals are being reviewed for placement at the ADX for that type of confinement, we have our psychology services staff. They conduct an evaluation which that is a part of the referral process.

DURBIN:
How long would that evaluation process last?

SAMUELS:
Initially, it's part of the process, but once they are actually placed in a facility, if we determine...

DURBIN:
Before. I'm talking about before they are referred to a supermax facility to determine whether or not they are suffering from a serious mental illness. How long would that evaluation last?

SAMUELS:
The in-person evaluation with our staff, I mean, that can take anywhere from a week to two weeks with an assessment of the individual.

DURBIN:
How much time, one-on-one, between a psychologist and the inmate?

SAMUELS:
It varies.

DURBIN:

Can you give me an idea? Is it a matter of minutes, hours?

SAMUELS:

I can give you later, for the record, I mean, an average, but I would say, I mean, because this is being conducted, sir, I mean, throughout, you know, the country, various locations and to give a specific amount of time.

DURBIN:

OK, that's fair, but I would appreciate if you get back. So, now, there are about a population about 450, roughly, at the supermax facility in Florence, Colorado. Is that correct?

SAMUELS:

About 490.

DURBIN:

490 and is there an ongoing evaluation of the mental health of the inmates at Florence?

SAMUELS:

Yes, sir.

DURBIN:

And how many professionals are on staff at Florence to achieve that?

SAMUELS:

The staffing at the facility, we have a ratio, which outside of the medical and psychology staff, the average is more or less around 20 staff there for that, but...

DURBIN:

Excuse me, 20 for physical and mental health evaluation?

SAMUELS:

Yes, but we have a psychiatrist who's on staff and we also have 35 psychiatrists through the bureau and we use telepsychiatry.

DURBIN:

I'm going to zero right in to supermax here and ask you to separate though who would handle routine physical issues and those who are charged with dealing with the psychological/mental health state of the prisoners, the 490. How many at Florence?

SAMUELS:

I have to submit that for the record, sir.

DURBIN:

I understand there are two. Do you know? That's OK. I'm not going to put you on the spot.

SAMUELS:

Sir, the numbers that you provided me for the staff that are there and what I wanted to articulate is that, bureau-wide, we utilize the resources for the staff who are spread out and that was one of the references I made with telepsychiatry, but the on-site staff would fall within the number that you referenced.

DURBIN:

Two?

SAMUELS:

Yes, sir.

DURBIN:

So we're dealing with a supermax facility, the highest incidence of segregation and isolation, we want to make certain or, at least, our policy is that those with serious mental illness will not be sent there in the first place and there are 490 persons there and there are two on-site, I'm going to use that until -- we'll have the record corrected if I'm wrong, to evaluate these prisoners once there.

Now, do you believe that isolation, 23-hour isolation, has a negative impact on the mental health of an individual?

SAMUELS:

I believe for those individuals who warrant placement in restrictive housing due to their behavior associated with mental health, for the safety and security of the individual, the facility and staff, in general, that there is a method and a process to ensuring that the inmate receives periodic evaluations and mental health treatment from our mental health providers to determine that we're monitoring these individuals in the manner that we can safely house them in those conditions.

DURBIN:

I will concede the fact that there is a monitoring responsibility and perhaps it's written in to the guidelines for the Federal Bureau of Prisons.

But I'm asking you, as a person who has been in corrections, do you believe you could live in a box like that 23 hours a day, a person who goes in normal and it wouldn't have any negative impact on you?

SAMUELS:

I would say that for individuals who are in that status, that, for any inmate within the bureau prisons, our objective is always to have the individual to freely be in the general population.

And we do everything that we can, with our resource, to ensure that we're working towards -- working to get the individual out into the general population.

DURBIN:

I'm trying to zero in on a specific question. Do you believe that confinement, solitary confinement, 23 hours a day, five hours a week when you're allowed to leave that box or something that size -- do you believe, based on your life experience in this business, that that is going to have a negative impact on an individual?

SAMUELS:

Sir, I would say I don't believe it is the preferred option and that there would be some concerns with prolonged...

DURBIN:

So let me...

SAMUELS:

Confinement.

DURBIN:

OK. I think that's fair. I went to Tamms, a state facility in Illinois where we have isolation and they took me into what was almost an incredible experience. It was a class that was being taught to five men who were in a 23-hour isolation, if you can imagine.

And they were each confined to a plastic holding chamber, fiberglass holding chamber. Think, in your mind of "Silence of the Lambs" for a moment here. And they were each in these isolated boxes, glass -- fiberglass boxes and a teacher was standing in front of them.

I have no idea what she was teaching, but they gave me an opportunity to walk up and speak to each one of them, look them in the eye and talk for just a few moments. I'm not an expert. I'm not a psychologist. I don't know.

Some of them, I would ask them how long their sentence was and such and two or three -- two volunteered that they felt that this was the best thing for them -- this isolation. They felt that. They expressed that.

One man said to me that he'd been sentenced to 25 years, but he received an additional sentence of 50 years since he'd been in prison and I said, "What happened." He said, "They took me out of isolation, put me in a cell with another person and I told them if they did, I'd kill him and I did. I told them leave me alone. I just want to be alone."

He murdered another inmate, sentenced to another 50 years. So what I'm trying to say here is -- I don't want to just put you on the spot about whether that is the right thing to do or a good thing to do, I want to put it in the context of maintaining an institution and the order in the institution and the protection of innocent people who are part of that institution.

I'm trying to strike some balance here. I would say that man who wants to be alone and isolated has proven that's the best place for him, right? I can't go any further in my evaluation.

But the point I'm trying to get to is this, I worry -- I don't think he'll ever come out of prison. I worry about those who end up in isolation for extended periods of time who are subjected to mental stress that none of us can even imagine and then, ultimately, go home out in the general population.

Is it your feeling that once having gone through that experience, it is more likely that a person will have problems when they finally emerge from the correction system?

SAMUELS:

From my experience and I would say that we definitely want to ensure that any inmate within the bureau, at any time during their incarceration that we are doing everything we can to improve their lives and that they're on a path for productive efforts towards reentry.

And if an individual is placed in that status for restrictive house and -- I know earlier a comment was made that many of these individuals, which, in fact, 95 percent of the inmates within the bureau prisons will be released back to society at some point.

And that we're doing everything that we can do provide them the necessary training and skills and so it is productive not only for the inmate, but for the Bureau of Prisons to have these individuals working towards being removed from that status with the appropriate medical care and the psychological investment to ensure that we are proceeding in that manner.

DURBIN:

So let me zero in here. I know that's your goal and I'm glad because that's the right goal. Is your goal served or is there a disservice to your goal by the isolation experience that an inmate might go through?

SAMUELS:

For individuals who have worked their way into restrictive housing for the safety and the good order of the prison population, as I mentioned earlier, many of these individuals at the ADX are there for egregious acts. And when you look at the bureau's population of 218,000, 490 is less than one-third of 1 percent for our entire population.

So these individuals are the most disruptive and the most challenging within the bureau prisons. However, having said that we continue to do everything that we can to work towards getting them out of that status. And many of these individuals are there and will continue to act out.

DURBIN:

Senator Franken.

FRANKEN:

Thank you, Director Samuels.

I understand everything you've been saying, I really do, in response to the chairman's questions. I -- I guess what he was driving at was -- well let me ask you this first.

What percentage of those that have been in solitary confinement end up being released ultimately?

You said 95 percent of all federal prisoners end up being released. What percent of the people who've been in solitary confinement end up being released?

SAMUELS:

The percentage is going to vary because with solitary confinement which we do view as temporary housing that many of these individuals are going to be released and placed back in general population. So I would not be able to give you a specific percentage for an overall turn for inmates who've been placed in restrictive housing. Because it varies.

FRANKEN:

OK, because it seems to be that the question that the Chairman was asking was does this you know what effect does this have on the mental health of people who are placed in solitary. And if they are released do they present more of a danger to society for having been in solitary, but -- but I don't think I'll get a good -- you know, definitive answer for that.

SAMUELS:

If I may, I would respond that with -- brought, you know to my attention that the most recent and most rigorous study that has been done was completed by the Colorado department of corrections as recent as 2009. And with their study, they identified that no negative effect on individuals in restrictive housing has occurred.

FRANKEN:

That no negative effect?

SAMUELS:

Yes.

FRANKEN:

OK.

Mr. Nolan made some policy recommendations in his written testimony. I'd like to hear your views on three of those.

First Mr. Nolan suggests that solitary confinement should be limited to cases of clear danger of violence that cannot be controlled in other settings, that's first.

Second, he -- and I'll repeat these. Second he says that each inmate should be screened for mental illnesses before being placed in solitary confinement. And that they should be evaluated periodically by a psychiatrist who is independent from the corrections department.

And third he says that inmates should have an opportunity to challenge decisions to send them into solitary confinement and that they should have a chance to notify their families that they're being placed in solitary confinement.

Are these the policy -- are these policies that the bureau already has in place, and if not would it consider implementing them?

SAMUELS:

I'll start with the first comment as far as limiting the placement for individuals who show a clear danger to the correctional environment. And I believe that, that is what we're doing, as I've stated. If you look at our population of 218,000 you know inmates and we have you know 7 percent at any given time who are placed in restrictive housing.

And -- and it is temporary in many cases...

FRANKEN:
What percent? I'm sorry.

SAMUELS:
Seven percent?

FRANKEN:
What was that very small percentage that you talked about just a few minutes ago where you said 435 or something?

SAMUELS:
That's at the ADX which is our most restrictive housing for the bureau of prisons. We have less than one-third of one percent of individuals housed. So 490 inmates throughout the country who have been placed in that status for our entire population, out of 218,000.

FRANKEN:
The 7 percent at any one time, or in solitary?

SAMUELS:
It's 7 percent at any given time throughout the bureau of prisons we have individuals who could be placed in SHU which is our special housing unit, and our special management unit.

FRANKEN:
Which is solitary confinement?

SAMUELS:
Yes.

FRANKEN:
OK, I just want to be clear.

And is that limited to cases of clear danger and violence that cannot be controlled in other settings?

SAMUELS:
Yes.

FRANKEN:
OK, so that's in place, already?

SAMUELS:
Yes.

FRANKEN:
OK. He secondly says that each inmate should be screened for mental illnesses before being placed in solitary confinement and they should be evaluated periodically by a psychiatrist who's independent from the corrections department.

Is that in place, or is...

SAMUELS:
Yes. Within our system, we have well over 1300 mental health staff that work for the bureau prisons. And when inmates are placed in restricted conditions or confinement, an assessment is conducted by the staff in conjunction with the correctional services staff, and other key departments within the bureau of prisons.

So there's an evaluation period to ensure that these inmates are being monitored carefully. If any inmate goes beyond a 30 day period, they are also provided an in person assessment by a psychologist within the bureau.

At every facility within the bureau of prisons, we have a doctoral level chief psychologist who oversee these types of issues within any institution. Because we believe that the mental health, you know management, and the well being of these individuals should be something that is routine and ongoing.

FRANKEN:

OK, maybe I didn't say it clearly. I said should be evaluated periodically by a psychiatrist who is independent from the corrections department.

It seems that what you're saying is, and I'm sure that you're doing it as well as you can and for -- for the reasons that you're doing it. But that's not the case right now that they're not evaluated by someone who's independent of the agency, right?

SAMUELS:

I would say that the majority of inmates in restrictive housing are not being evaluated by an external mental health professional, whoever, we when needed we utilize those resources to assist our staff.

FRANKEN:

OK, all I'm saying is his recommendation is that they be screened periodically by someone independent from the corrections, so that isn't in place.

Third, he says that inmates should have the opportunity to challenge decisions that send them into solitary confinement and that they should have a chance to notify their families that they are being placed in solitary confinement.

Is that the policy now of...

SAMUELS:

Yes, when inmates are placed in restrictive confinement, they're given due process and an opportunity to challenge their placement in restrictive confinement. And that is in place.

FRANKEN:

And are they allowed to tell their families?

SAMUELS:

The individuals are given an opportunity to make a phone call to their family members and they're also provided access to utilize mail as well as participate in visiting.

FRANKEN:

Thank you.

Thank you, Mr. Chairman.

DURBIN:

Thank you, Senator.

Some states are -- we're going to hear from Mississippi. Some states like Mississippi, Ohio, and Maine are undergoing significant reforms in their prison systems in reducing or eliminating the use of supermax facility segregated housing and special housing units.

Mississippi's been able to reduce their segregated population and prison safety has improved. They've also reported significant reduction in cost as a result.

Are you familiar with the state initiatives?

And what is the federal bureau of prisons doing to either study that or follow that model?

SAMUELS:

I'm very familiar with the initiatives that you stated. And I would reiterate again within the bureau of prisons, I believe with our classification system in how we review these inmates on an individual

case for the behavior that has lead them to be placed that our numbers are relatively small, because we're looking at small number of inmates out of our entire population that are actually placed in restrictive housing. And it's for a temporary placement. And it is not something that we look at for long term.

So we believe that with the numbers, if you look at the information some point provided you'll see that are numbers are not that very high when you compare it to the state system.

DURBIN:

I don't want to draw the wrong conclusion from that but I think your answer was the states can do what they wish, but our numbers are so small we're not going to get into this business of reform.

SAMUELS:

No. What -- what I'm saying is that if you look at the before and after of their numbers then compare the classification tools that are used on the determination of whether or not an individual should be placed in restrictive housing based on the safety and security and order of you know the prison environment.

If you have individuals who have the propensity to harm others and in many cases who have killed other individuals, that these are individuals who have proven that they're going to require a restrictive form of confinement until it's proven otherwise with their behavior over a period of time that we are comfortable to ensure the safety of the facility putting them back into general population.

So I am saying, sir, that a majority of the inmates that we have within the conditions of confinement that through our review process and our monitoring of the status of these individuals that we believe that we are doing what we can and at our best to maintain (inaudible) order of the facility.

DURBIN:

So let's look at the numbers. We asked bureau prisons how much time people spend in isolation. Here's what they said. "The average amount of time an inmate spends at supermax, ADX facilities, 531 days in isolation." Roughly a year and a half that we're talking about here. "The average amount of time in special management units," which I assume would be in other prisons where people are put in a segregated or isolated circumstance, 223 days, which would be over seven months, seven and a half months, the average amount of time in special housing units, 40 days.

So has the Bureau of Prisons studied whether these time periods could be reduced? And do you think that's a possibility of reducing these time periods without compromising the safety of the institution?

SAMUELS:

I think the possibility of evaluating further what we can do to ensure that inmates are not staying any longer than necessary, which is something that we definitely as an agency will always strive to do, because it is, again, not good for the individual to be in prolonged...

DURBIN:

Let me be more specific. Is there a study underway? I mean, are people actually looking at this and thinking we may want to change policy? That's what I'm driving at in terms of how many people are in segregation, isolation, how long they stay? Are you studying this?

SAMUELS:

This is something that we are looking at internally within the bureau regarding the timeframes and inmates' placement is what we can do internally with the resources we have to manage these type of inmates.

DURBIN:

Since 2006 there have been 116 suicides in the Federal Bureau of Prisons, 53 of the 116 were in segregated housing, ADX SMUs and SHUs. That does not include attempted suicides. So do you

consider this to be an indication that the stress level for an inmate is higher if they are put in segregation?

SAMUELS:

We would say that individuals placed in restricted housing, I would say the stress level is obviously higher. And as a result, we have done everything we can internally to increase our staffing and the resources that are required to manage that type of population.

It is costly, and that is why I believe -- and to your point -- anything that we can internally within the bureau to ensure that we're not increasing costs and/or placing individuals unnecessarily, we want to do that. Because it is to the individual's benefit to be in the general population, as well as for our management abilities to effectively have control in an appropriate manner for the facility to have those individuals out freely moving about the general population, as opposed to catering...

DURBIN:

Well, let me get down to some of the more graphic -- and I won't go into more detail here in the hearing, but it's there on the record. I've read stories about federal inmates and inmates at safe facilities in isolation who have clearly reached a point where they are self-destructive. They are maiming themselves, mutilating themselves, doing horrible things to themselves. They are creating an environment within that cell which is awful by any human standard. What happens next in the Federal Bureau of Prisons when someone has reached that extreme in their personal conduct?

SAMUELS:

If an individual is exhibiting that type of behavior due to suffering from serious psychiatric illness, those individuals are not, within our policy, individuals that we would keep at the ADX or in a restrictive housing. These individuals are referred to our psychiatric medical centers for care. And we believe that that's important. And we would never under any situation believe that those individuals should be continued to be housed in that type of setting.

DURBIN:

Because this is a matter of pending litigation, I'm going to go ahead with any more specificity into it. I still go back to the possibility that, of the 490 inmates, you have two professionals who are monitoring the psychological health of those inmates and the impact of solitary -- or the impact of any prison policy on them. And it strikes me that, and raises a serious question. How many people work at the ADX facility that might have prisoner contact?

SAMUELS:

We have, on average, anywhere from 360 staff for our staffing complement for the ADX. But back to the number of psychologists. At the site for ADX, in total we have nine psychologists that work at the complex.

DURBIN:

Nine?

SAMUELS:

Nine.

DURBIN:

OK. Is there a person who has the responsibility of hearing inmate complaints about treatment at the ADX facility?

SAMUELS:

Yes.

DURBIN:

What is that title or designation?

SAMUELS:

If an individual is raising complaints against the facility, it's more of an internal review process where they can raise complaints to the correctional services supervisor, the associate warden or warden. And with our procedures, it can go to the regional director for that region and all the way to our headquarters in Washington.

DURBIN:

Is that person designated a special investigative agent?

SAMUELS:

Yes, if there are allegations brought against staff or issues within the facility, that would be the position.

DURBIN:

Do you know who that person is at the ADX facility?

SAMUELS:

I know the position, not the individual..

DURBIN:

Well, once again, this is a matter that's been raised as part of pending litigation. I won't get into it. But there have been questions raised as to the kind of possible conflict of interest of this individual. who is married to one of the corrections officers at the Supermax facility, and this supposedly watchdog or whistleblower on behalf of prisoners who would protest treatment by the corrections officers. Do you think that, on its face, is a conflict?

SAMUELS:

I would say due to the pending litigation and in the interest of the bureau, I cannot respond to that question, sir.

DURBIN:

I understand.

Mr. Samuels, commissioner of the Maine Department of Corrections, Joseph Ponte, has implemented a number of reforms in his state by working side-by-side with mental health workers, corrections officers and advocacy groups. These reforms led to more than a 50 percent reduction of Maine's administrative segregation population.

In written testimony for this hearing, Commissioner Ponte wrote that the first step in evaluating corrections in the system is to be aware of what the current body of research tells us about changing prisoner behavior.

Do you share the commissioner's belief about the importance of understanding current research?

SAMUELS:

Yes.

DURBIN:

I hope that that will lead to an honest evaluation of how we can continue to make for a safe prison system, one that is fair and humane. One that anticipates, as you said, that the vast majority of those inmates will one day be back on the street, and the condition in which they will be in when they return to society.

There will be written questions I think along the way here, but I appreciate your testimony today. Thank you very much for joining us.

SAMUELS:

Thank you.

CQ Transcriptions, June 19, 2012

List of Panel Members and Witnesses

PANEL MEMBERS:

SEN. RICHARD J. DURBIN, D-ILL. CHAIRMAN

SEN. AL FRANKEN, D-MINN.

SEN. PATRICK J. LEAHY, D-VT.

SEN. RICHARD BLUMENTHAL, D-CONN.

SEN. CHRIS COONS, D-DEL.

SEN. SHELDON WHITEHOUSE, D-R.I.

SEN. LINDSEY GRAHAM, R-S.C. RANKING MEMBER

SEN. TOM COBURN, R-OKLA.

SEN. JON KYL, R-ARIZ.

SEN. JOHN CORNYN, R-TEXAS

SEN. MIKE LEE, R-UTAH

SEN. CHARLES E. GRASSLEY, R-IOWA EX OFFICIO

WITNESSES:

CHARLES SAMUELS, DIRECTOR, FEDERAL BUREAU OF PRISONS

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Senate Judiciary Subcommittee on Constitution, Civil Rights and Human Rights Holds Hearing on Reassessing Solitary Confinement, Panel 2

LIST OF PANEL MEMBERS AND WITNESSES

DURBIN:

I'd like to call the second panel.

I want to ask consent that Senator Leahy's statement be placed in the record. And since there's no one else here at the moment, that consent is given unanimously.

So before you all get comfortable I will ask you to please stand and raise your right hand.

Do you solemnly swear the testimony you give will be the truth, the whole truth, and nothing but the truth, so help you God?

WITNESSES:

(OFF-MIKE)

DURBIN:

Thank you.

Let the record reflect that all four of the witnesses answered in the affirmative.

One of the witnesses who had planned on being on this panel, Pat Nolen of the Justice Fellowship, could not attend due to illness. He was very upset that he couldn't, because he wanted to be here. We wish him a speedy recovery.

Christopher Epps, first appointed commissioner of the Mississippi Department of Corrections in 2002 by then-Governor Ronny Musgrove, who is a Democrat. Since then he's been reappointed by two different Republican governors, former Governor Haley Barbour, current Governor Phil Bryant. Commissioner Epps is the longest serving commissioner in the history of the agency.

As the president-elect of the American Correctional Association, Commissioner Epps will begin serving his term in 2013. He's also previously served as the president of the Southern States Correctional Association. He sits on a number of boards and committees, and received a long list of awards and honors.

Received his Masters degree in Guidance and Counseling from Liberty University in Lynchburg, Virginia. Bachelor of Science in Elementary Education from Mississippi Valley State University.

Commissioner Epps, thank you for joining us today and please proceed with your testimony.

EPPS:

Thank you, Senator, and I appreciate the invite.

And let me just say good morning to everyone.

I began my career as a corrections officer and I have held 10 positions up to commissioner back in 1982 when I started. And back then solitary confinement was sparsely utilized for the most incorrigible and dangerous offenders. There was very limited space. We only had 56 cells at a place called Mississippi State Penitentiary, known as Parchman.

A tragic murder of a correction officer occurred in 1989, and it prompted construction of a unit called Unit 32 at the Mississippi State Penitentiary at Parchman. Unit 32 was a 1,000 bed maximum security unit where all inmates were in lockdown in single cell housing for 23 or 24 hours a day, seven days a week. The unit was opened in 1990 and it was all single cell.

Mr. Chairman, for this hearing today I'd like to use the American Correctional Association term for administrative solitary confinement, and that is a form of generation or separation from general population administered by a classification committee or other authorized group when the continued presence of an inmate in general population will pose a threat, a serious threat, to life, property, self, staff or other inmates, or to the security to orderly running of the institution.

I was convinced after operating Unit 32 that the culture at Parchman, that inmates should remain in administrative segregation until they demonstrated over time that his behavior had changed and he was no longer a threat to staff, other offenders and public safety. And in this case it could be for many years.

And then for some, it was not until they was released from prison or they died in Unit 32. And the prison was easier to enter, but it was almost impossible to be released without exemplary behavior.

EPPS:

Along came mandatory (ph) sentencing in 1995, where inmates had to do 85 percent of their sentence regardless of their behavior, and the increased incarceration of mentally ill individuals

compounded the situation of hopelessness at the prison. Young offenders involved in gangs with long sentences became a large percentage of the population.

Again, Unit 32 is not our condition of (inaudible) single cell. One inmate told me as I was touring the facility (inaudible), said commissioner, you have taken all hope and we have nothing to lose.

Unit 32 condition of confinement was increasing litigated with a 2003 consent decree regarding deferral (ph) (inaudible) in Russel v. Mississippi Department of Correction and a second consent decree in 2007 for (inaudible) offenders (inaudible) v. MDOC.

And May, 2007 violence began to erupt in 32 and continued throughout the summer. We had three homicides and many serious disruptive incident. And we had a suicide.

I finally realized that there was a time for a change. And so we began to reform Unit 32 by thinking outside the box. And we go together with the National Institute of Correction as well as the ACLU and we collaborated with Dr. James Austin (ph) and we came up with a valuable classification system.

And what came out of that was we had many inmates that was over classified. In addition to that we hand picked staff and we gave staff a 20 percent increase in pay for working in the max unit.

We also implemented multiple disciplinary routines to make decision regarding the (inaudible). We was also able to develop programs for those who was in (inaudible). Programs such as group counseling, alcohol and drug, life skills, anger management, they was all started for offenders.

We was able to use all of these tools and put them in our tool bag and the Mississippi Department of Corrections administrator said reforms resulted in a 75.6 reduction in the AGSIG (ph) population, from over 1,300 in 2007 to 316 by June 2012.

Because Mississippi told (inaudible) populations, 21,982 right now, that means that 1.4 percent are currently in AGSIG (ph), and out of that number, 188 are participating in program.

To me, it's real simple as it relates to AGSIG (ph). One, you have to have in place a genuine documented classification system. Two, you have to have programs in place. Three, you have to have a visit in place to make sure that only the right people can go to AGSIG (ph). It has to be myself, my deputy commissioner of the institution, or the director of classification to put you in there to approve (ph).

And in addition to that, over time we was able to save \$5.6 million by all this reclassification and tool (ph). Correction is no different than any thing else in our nation. These cells have to be used as high cost river (ph) state in Mississippi to house inmate on AGSIG (ph) cost \$102.27 a day, where as a medium security inmate it cost \$43.72 a day.

Correction, I think, we as correctional leaders must realize that we have to be -- to be successful we have to always be willing to change and listen to all the stake holders involved in the criminal justice system. We cannot take a one side approach.

And I have been most successful when I've made decisions that was in the best interest of all. Corrections is like climbing a mount (ph), we never get to the top we ought to continue the climb and do the very best we can.

Mr. Chairman, I thank you for the opportunity to appear before you today, sir.

DURBIN:

Thanks for that testimony.

I have a few questions for you.

Craig Haney is a professor of psychology at the University of California, Santa Cruz. And he's director of their legal studies program. Since the late 1970s, professor Haney has been one of the leading experts on the psychological effects of prison isolation and solitary confinement.

He's conducted systematic in depth assessments of hundreds of solitary or supermax prisoners in different states. He's also testified as an expert witness about the psychological impact of solitary confinement in several land mark federal cases.

He was recently appointed to the National Academy of Sciences Committee in studying prison conditions and prison policy. He served as consultant to the U.S. Department of Justice, California State Legislature and many others.

He received his Ph.D. in psychology and a J.D. from Stanford University. Professor Haney the floor is yours.

HANEY:

Senator Durbin, thank you for the opportunity to participate in this historic hearing.

I am someone who has probably spent almost as much time inside our nation's prisons and jails over the past 30 years as I have inside the classroom as my beautiful home university.

This has included inspecting dozens of solitary confinement units across the country, and interviewing as you said many hundreds of men and women who were confined in their cells on average 23 hours a day. Many for years, even decades.

I brought some photographs to illustrate what solitary confinement looks like and how it is practiced now in the United States that your staff has kindly agreed to show.

Many isolation prisons are stark and foreboding structures. The cell blocks are typically small and are sometimes overseen by armed correctional officers.

The cells themselves are often scarcely larger than the size of a king sized bed. Prisoners thus eat, sleep, and defecate each day in areas just a few feet apart from one another.

It's hard to describe in words what such a small space begins to look like, feel like, and smell like when someone is required to live virtually their entire life in it.

Because contact visiting is prohibited in solitary confinement, prisoners never touch another human being with affection. Their only regular so called interactions occur when corrections officers place food trays on the slots at their doors. The same slots where prisoners are first handcuffed any time their cell doors are open.

Indeed the only time they are physically touched is when being placed in mechanical restraints. Leg irons, belly chains, and the like. They are escorted by no fewer than two and sometimes as many as five correctional officers any time they are taken out of their unit.

The one hour a day outside of their cells is termed yard time. But it occurs in a place that barely resembles a yard. It consists instead of an exercise pen or cage or a concrete enclosed area that prevents any view of the outside world.

There is a disturbingly high concentration of mentally ill prisoners in solitary confinement as you've heard. If they are fortunate enough to be in a unit that provides them with treatment they are usually unfortunate enough to receive it in a treatment cage or in several of them in a unique form of group therapy.

As you mentioned earlier, Senator, your colleague, Senator McCain has characterized solitary confinement as an awful thing. Correctly noting that quote, "it crushes your spirit, and weakens your resistance more effectively than any other form of mistreatment."

I agree and know that for some prisoners less resilient than he, solitary confinement precipitates a descent into madness. Some isolate prisoners smear themselves with feces, sit catatonic in puddles of their own urine, or streak wildly and bang their fists or heads against the walls that contain them.

In some cases the reactions are even more tragic and bizarre including -- including grotesque forms of self harm and mutilation. Prisoners have amputated parts of their own bodies or inserted tubes and other objects into their penises.

An accident can unfortunately be met with an institutional matter of factness that is equally disturbing. Less extreme and much more common reactions include panic attacks, hyper vigilance and paranoia, cognitive dysfunction, hopelessness, and depression, and anger, and rage.

Although solitary confinement certainly does not drive everyone who experiences it crazy, we do know that time spent in these places is often more than merely painful. Moving beyond suffering to placing prisoners at grave risk of psychological harm.

In addition isolated prisoners frequently develop forms of social pathology, ways of being that are functional to surviving the asocial world of solitary confinement, but profoundly dysfunctional when these prisoners are returned to a main line prison or released as most of them are into the free world where they now must interact effectively with others or risk permanent marginalization.

Indeed this enforced asociality and the virtually total lack of training or meaningful programming that isolated prisoners typically receive, can significantly impede their post-prison adjustment, raising important concerns about the affect of solitary confinement on recidivism and public safety.

As prison populations continue to gradually decline in the United States and the nation's correction system rededicates itself to program oriented approaches designed to produce positive prisoner change, our use of solitary confinement should be radically rethought and restricted. And the resources now expended on it redirected to more humane, cost effective, and productive strategies of prison management.

It is my sincere hope that this committee will help lead the way.

DURBIN:

Professor Haney thank you. I read your testimony carefully, and I know that you spent a lifetime focusing on this. And I thank you for coming here today.

Stuart Andrews is partner at the law firm of Nelson Mullins Riley and Scarborough in Columbia, South Carolina. He's the head of his firms South Carolina health care group and former chair person of the firm's pro bono program.

He serves on a number of statewide task force on health care policy in South Carolina. And among his previous posts, he was director of the South Carolina Legal Services Association, Chairman of the South Carolina Legal Services, Chairman of the South Carolina State Board of Education.

He received his bachelors degree from Erskin (ph) College, his J.D. from the University of South Carolina School of Law.

Senator Graham asked that he be part of this panel and I'm more than happy that you've joined us today.

Mr. Andrews, please proceed.

ANDREWS:

Thank you.

Than you, Mr. Chairman. Thank you particularly for your interest in this subject of enormous significance to men and women incarcerated in our prisons and jails throughout our nation.

I'm grateful for the opportunity to provide the committee with information concerning the use of solitary confinement in South Carolina prisons, particularly the use to inmates diagnosed with mental illness have been subjected.

The Nelson Mullins law firm represents a class of inmates with serious mental illness in South Carolina prisons, many of whom have spent significant time in solitary confinement.

I am appearing today on behalf of that class and its guardian ad litem Joy C. Jay (ph) as well as on behalf of protection and advocacy for people with disabilities, the South Carolina non profit organization charged by federal and state law to protect and advocate for the right of people with disabilities.

ANDREWS:

After years of investigations, reports, and negotiations the inmate class and PNA (ph) filed suit in South Carolina state court in June, 2005 against the South Carolina Department of Corrections alleging violations of the South Carolina constitution's prohibition against cruel and unusual punishment and seeking injunctive relief to require the provision of adequate mental health services to our class inmates.

After more than six years of litigation a bench trial was held in March and February of this past year although no ruling has been entered to date.

A major issue in the trial was the extensive reliance by the Department of Corrections on solitary confinement as a means of managing inmate conduct, particularly inmates with mental illness.

During their imprisonment, nearly half of the 3,00 men and women with mental illnesses on the department's case load had been held in solitary confinement for periods cumulatively averaging almost two years.

The effects of the conditions in solitary confinement can be harmful for anyone, but they particularly expose individuals with mental illness to substantial risk of future serious harm. The applicable 8th Amendment standard applied in systems -- systemic conditions cases like ours.

To illustrate some of what we've learned about the operation of solitary confinement in our state's prisons, I would like to call your attention to two individuals who've been members of our class.

The first is Theodore Robinson, who was a 50-year-old man with paranoid schizophrenia serving a life sentence. Mr. Robinson's speech is highly disorganized and he has a history of bizarre behaviors such as drinking his own urine.

Like many people with schizophrenia, he suffers hallucinations and delusions. For example, he believes that, at night, while he sleeps, doctors secretly enter his cell and perform surgery on him. From 1993 through 2005, a period of 12 consecutive years, Mr. Robinson was kept in solitary confinement.

Fifteen days after our lawsuit was filed, however, the department removed Mr. Robinson from solitary and placed him in its psychiatric residential program. Other inmates with serious mental illness have not been so lucky.

In South Carolina, mentally ill inmates are twice as likely as those without it to be in solitary confinement, 2 1/2 times as likely to receive a sentence in solitary that exceeds their projected release date from prison and over three times as likely to be assigned to an indefinite period of time in solitary.

Mentally inmates placed in solitary are not limited to those with mental disorders. Like Theodore Robinson, many are diagnosed with schizophrenia or other serious mental illnesses such as bipolar disorder, schizoaffective disorder or major depression.

A Department of Corrections psychiatrist at Lee Correctional Institution, for example, estimated that 40 to 50 percent of her case load, who were in solitary confinement, were actively psychotic.

Perhaps the single most deplorable solitary confinement unit in the South Carolina Prison system is the cell block in Lee Correctional Institution known as Lee Supermax. On February 18, 2008, an inmate named Jerome Laudman was found in a Lee Supermax cell laying naked without a blanket or mattress, face-down on a concrete floor in his own vomit and feces.

He died later that day in a nearby hospital. The cause of death was reported as a heart attack, but hospital records noted hypothermia with a body temperature upon arrival at the hospital of only 80.6 degrees.

Mr. Laudman suffered from schizophrenia, mental retardation and a speech impediment. According to his mental health counselor, he had never acted in an aggressive or threatening manner.

On February 7, 2008, 11 days before his death, Mr. Laudman was moved to Lee Supermax reportedly for hygiene reasons because he refused to take a shower although no one later admitted to ordering the move.

On February 11th, one week before Mr. Laudman's death, a correctional officer saw him stooped over like he was real sick or weak. The officer noted Styrofoam trays piled up inside his door that had not been collected. He considered notifying a unit captain or administrator, but was discouraged by his supervisor.

On the afternoon of Mr. Laudman's death, two nurses were called to Mr. Laudman's cell. They observed him lying face-down in his own waste and vomit, but still alive. The Styrofoam trays were still there with rotted food. The conditions were so foul that the nurses and the correctional officers, whom they summoned, refused to enter the cell to remove Laudman, who was still alive at that point.

So, instead, they called for two inmate hospice workers who took 30 minutes to get there, at which point they removed the body and, later, that day in the hospital, Mr. Laudman died.

In South Carolina, a disproportionate number of mentally ill inmates are placed in solitary confinement. Many are actively psychotic, conditions are atrocious, mental health services inadequate, stays are inhumanely long.

Theodore Robinson was fortunate. After 12 consecutive years in solitary, he was transferred to a psychiatric residential program, but, coincidentally, two weeks after we filed lawsuit against the department. Jerome Laudman was not so fortunate. After 11 days in Lee Supermax, he died of neglect in a cold, filthy cell.

For other inmates with mental illness in solitary confinement in South Carolina, the story is ongoing. Will they receive adequate mental health treatment to stabilize their mental illness? How well will the solitary prepare them to handle the transition back to the community?

These questions and their implications to the Constitutional rights of all mentally ill inmates in South Carolina remain unanswered today and we thank you and this committee for undertaking them to try to improve and correct them.

DURBIN:

Thank you for your testimony. I think your dedication as an attorney in private practice really is an indication of why they call it a profession and not just a job.

ANDREWS:

Thank you, sir.

DURBIN:

Thank you.

Anthony Graves is the next witness. He was imprisoned for 18 years on death row in Texas. A Federal Appeals Court overturned his conviction in 2006. He was completely exonerated in 2010. The Burt County District Attorney deemed Mr. Graves, "An innocent man." Texas Governor Rick Perry described Mr. Graves's case as "a great miscarriage of justice."

Since his release, Mr. Graves has had the courage to speak out about our criminal justice system. He founded anthonybelieves.com which is dedicated to criminal justice reform. It took courage for you to come here today and we appreciate your testimony. The floor is yours.

GRAVES:

Thank you, Mr. Chairman. My name is Anthony Graves and I am death row exoneree, number 138. I was wrongfully convicted and sentenced to death in Texas back in 1992.

Like all death row inmates, I was kept in solitary confinement under some of the worst conditions imaginable with the (inaudible), the food, the total disrespect of human dignity. I lived under the rules of a system that is literally driving men out of their minds.

I survived the torture, but those 18 years was no way to live. I lived in a small, 8 x 12 foot cage. I had a steel bunk bed with a very thin, plastic mattress and pillow that you could only trade out once a year. I have back problems as a result.

I had a steel toilet and sink that were connected together and it was positioned in the sight of male and female officers, degrading. I had a small shelf that I was able to use as a desk to write on and eat one. There was a very small window up at the top of the back wall.

In order to see the sky, you would have to roll your plastic mattress up to stand on. I had concrete walls that were always peeling with old paint. I lived behind a steel door that had two small slits in it. The space replaced with iron mesh wire which was dirty and filthy.

Those slits were cut out to communicate with the officers that were right outside your door. There was a slot that's called a pinhole and that's how you would receive your food. I had to sit on my steel bunk like a trained dog while the officers would play the trays in my slot. This is no different from the way we train our pets.

The food lacks the proper nutrition because it's either dehydrated when served to you or perhaps you'll find things like rat feces or a small piece of broken glass.

When I was escorted to the infirmary one day, I was walking past where they fix the food and I watched a guy fix his food and was sweating in it. That was the food they was going to bring me.

There's no real medical care. I had no television, no telephone, and, most importantly, I had no physical contact with another human being for 10 of the 18 years I was incarcerated.

Today, I have a hard time being around a group of people for long periods of time without feeling too crowded. No one can begin to imagine the psychological effects isolation has on another human being. I was subjected to sleep deprivation.

I would hear the clanging of metal doors throughout the night or an inmate kicking and screaming because he's lost his mind. Guys become paranoid, schizophrenic and can't sleep because they're hearing voices.

I was there when guys would attempt suicide by cutting themselves, trying to tie a sheet around their necks, overdosing on their medication. Then, there were the guys that actually committed suicide.

I will have to live with these vivid memories for the rest of my life. I would watch guys come to prison totally sane and, in three years, they don't live in the real world anymore.

I know a guy who would sit in the middle of his floor, rip his sheet up, wrap it around himself and light it on fire. Another guy, who would go out on the recreation yard, get naked, lie down and urinate all over himself. He would take his feces and smear it on himself as though he was in combat.

They ruled he was competent to be executed. I knew guys who dropped their appeals not because they gave up hope on their legal claims, but because the conditions were just intolerable. They would rather die than to continue against under such inhumane conditions.

Solitary confinement, it breaks a man's will to live and he deteriorates right in front of your eyes. He's never the same person again. Then, his mother comes to see him. She can't touch him. She hasn't touched him in years and she watches as her son sits right there and deteriorates in front of her eyes.

This thing has a ripple effect, OK. It don't just affect the inmate. It affects his family, his siblings, his children and, most importantly, it affects his mother. I have been free for almost two years and I still cry at night because no one out here can relate to what I've gone through.

GRAVES:

I battle with these feelings of loneliness. I've tried therapy, but it didn't work. The therapist was crying more than me. She could not imagine how inhumane our system was treating people. I haven't had a good night's sleep since I've been out.

I only sleep about 2 1/2 to three hours at night. And then I'm up. My body has not made the adjustment. I have mood swings that just causes emotional break downs. I don't know where they come from. They just come out of nowhere.

Solitary confinement makes our criminal justice system criminal. Criminal. It is inhumane and by its design, it is driving men insane. I am living amongst millions of people out here, but I still feel alone. And I cry at night because of these feelings.

I want them to stop. But they won't. I watch men literally self mutilate themselves. They have to be put on razor restrictions, because if they are given a razor they would cut their own throat -- they own neck, wherever they can cut at on their body. They just stand there in front of you and cut themselves.

And this one man in particular that I watched do this, they took him over to what they call the psychiatric ward. A few days later, he hung himself. It's all because of the conditions.

There's a man right there sitting on Texas death row right now who's housed in solitary confinement pulled his eye out and swallowed it. All because of the conditions.

Solitary confinement dehumanizes us all. Thank you, Chairman.

DURBIN:

No, thank you.

A few years ago, there was a man sitting in that chair told the story of his sister who was in -- sentenced to 23 years in prison for possessing crack cocaine. He was from Alton, Illinois (ph), he was raising his sister's kids, and a few of us sitting here listening to his story said we got to do something about this. And we did. Not as much as we should have, but we did.

He didn't know when he made his trip out here and sat at that table that talking into that microphone would change anything, but it did. And you got to feel the same way. There's real value in your life that you're here today telling this story on behalf of a lot of people that can't speak for themselves.

If you weren't here, and your voice wasn't heard they would have no one. So your courage in telling this story, as tough as it must have been, ought to tell you about the value you have still in life and what you can still bring.

So thank you. Thank you for that.

GRAVES:

Thank you, sir.

DURBIN:

I'm going to ask a few questions of the panel.

First, Professor Haney. You heard the testimony from the bureau of prisons about super max, 490 inmates. I tried to get on the record, in fairness to the bureau, I want them to give me the best information it can about screening before someone goes to super max. And once in super max how prisoners are monitored, how many professionals are there to do the job, and once someone is in that isolated circumstance, if they start exhibiting things that should be carefully monitored, who would do it?

You've been through this. You've been through federal prisons, state prisons and others.

What can you tell us about the conditions at our federal super max prison?

And how the issue of mental illness is handled there?

HANEY:

Well, Senator I have been through the ADX facility many times. I've toured and inspected it on five or six different occasions and I'm familiar with many of the prisoners who were there. And my -- my understanding and analysis of that facility bares almost no relationship to -- to what you heard.

Unfortunately the federal bureau of prisons in my opinion does the same inadequate job as the state systems that we have been talking about do. Those inadequacies extend to the evaluations of the people who go into the system in the first place. We put far too many people inside solitary confinement. People who should be categorically excluded, juveniles and the mentally ill for example. They still show up in systems.

And in the federal system there are mentally ill prisoners in my opinion who are in ADX, people with long mental health histories, documented by the bureau of prisons itself.

We keep them in far too long. There are prisoners who are in solitary confinement for decades in this country. In the system that I know best, California, in the notorious Pelican Bay security housing unit, there are about 500 men who've been in solitary confinement for 10 years or longer, nearly 100 who've been in solitary confinement for 20 years, essentially since the facility opened in 1989.

There are prisoners at the ADX who've been in solitary confinement not necessary in ADX, but elsewhere for decades. We keep them far too long and the bureau of prisons keeps them far too long as well.

We fail in terms of the kinds of programs that we provide for people while they're there, what are the conditions of confinement. They are far too severe to serve any rational penological purpose. And then we do precious little in terms of providing transitional services for them when they're released.

There are state systems around the country that have literally no transitional services, so they are -- they currently release people directly out of solitary confinement, sometimes prisoners who've been there many years even decades, come directly out of that environment onto the streets of free society.

DURBIN:

It's a mistake I know, but I'm going to do it anyway to take anecdotal evidence try to turn it into some profound revelation.

But, my trip to Tams (ph), my brief encounter with people facing this. And two very violent criminals who said they felt better now in this circumstance than they'd ever felt in their lives.

So, have you run into that phenomenon?

HANEY:

Yes, and I think -- first of all I want to commend you for being one of the few senators who knows directly about which we speak, because you visit these places. And I think it's hard to understand and grasp the reality of these institutions unless you go there, and so I would endorse your earlier recommendation to your fellow senators to visit these institutions and talk to the people who are there.

But let me say a couple things about the anecdote that you shared. One is that it is I think it's important to separate solitary confinement from being single celled, or single housed.

There are many prisoners who prefer to be alone in their cells, but not alone in their cells under solitary confinement type conditions. So many people who say they would prefer being in isolation are talking about isolation versus being double celled or more or worse in very crowded prison conditions which some people simply cannot psychologically tolerate.

In the old days before prison overcrowding became the norm in the United States, most prisoners were single celled. Now as I'm sure you know prisoners are double celled or housed in crowded dormitories.

There are some prisoners that simply cannot handle the confinement in a cell not much bigger than the one you've constructed in the court room that they have to share with another person. They simply can't manage that psychologically.

And nowadays, unfortunately, they're given the hobson's choice of either trying to tolerate that kind of enforced confinement with another person or committing a disciplinary infraction because that's the only way that they can attain single cell housing by being placed in solitary confinement. So that's one issue.

The other issue is that one of the very serious psychological consequences of placing people in solitary confinement for long periods of time is that it renders many people incapable of living anywhere else.

In other words they have to transform themselves, their habits of being, their ways of acting and thinking and relating to themselves as well as the world premised on -- premised on the assumption that they will not be around other human beings.

And they actually get to the point where they find that it is frightening to be around other people. Many of the people that I work with that come out of solitary confinement and go either into mainline prisons or come out into free society talk about being anxious, overcome, overwhelmed with anxiety when they're around other human beings because they become accustomed to being isolate or being alone.

DURBIN:

Let me ask you about the double celling. Because that's what I found in Pekin (ph). Pekin (ph) Illinois Federal Correctional Facility. And I asked them to take me to the segregated unit, and they did, and we walked through it briefly. And looked at the exercise area, which look exactly like the cages that you showed in your photographs here.

And I spoke to the guards afterwards, correctional officers, because I want to hear from their perspective too. It's their lives that are on the line here. So I mean we've got to be sensitive to that.

HANEY:

Absolutely.

DURBIN:

And they said -- one of them said in candor, I don't think this makes the situation any better. Some of them are stuck in a cell with somebody who's worse off than they are. A threat to them. You know, sharing that cell.

He said, so you know we kind of look at the prison overcrowding and putting two people in that kind of space is making the situation much worse. He wasn't arguing the mental illness part of it. He was arguing institutional order as part of it.

What has been your experience?

HANEY:

Well, I -- I unfortunately I think that prisoners who are living under the kinds of conditions you just described have the worst of both worlds.

They are simultaneously segregated from the normal prison population, and the activities and programming that they might engage in. And simultaneously isolated and overcrowded.

They -- they really can't relate in any meaningful way with whom they're celled, and so they basically develop a kind of within cell isolation of their own. And it adds to the tension, and the tensions then can get acted out on each other.

It creates hazards for the people who are forced to live that way. It creates hazards for the correctional officers who have to deal with prisoners who are living under those kinds of pressures.

DURBIN:

I'm going to ask just a couple more questions while Senator Franken prepares his notes.

I thank him for returning here. I know, as I said, my colleagues are loaded with assignments here.

Thank you, Senator Franken, for coming back here.

Commissioner Epps. What a story. You know I was trying to remember where I'd heard (inaudible) prison it was in the song somewhere, so it's got sort of a legendary reputation...

EPPS:

Yes sir.

DURBIN:

... of being a pretty tough place. And that the state of Mississippi, which many folks up North may not look to for leadership, but clearly is a leader when it comes to this issue.

Tell me, I mean how did -- how did -- how did you pull this off politically. In a state that's get tough, law and order, what you're saying is don't be so darn mean to these inmates. It ain't helping things and it's costing a lot of money. We can -- we can punish them as they should be punished, we can keep order in these prisons, we can save some money in the process and be a little more humane.

How did you pull that off politically?

Were you forced to it by court order or something?

EPPS:

Well, actually we were -- we were being sued, Mr. Chairman, but we sit down with ACLU, we sit down with our classification experts...

DURBIN:

And I'm trying to get that together in my mind.

(LAUGHTER)

EPPS:

We did. And we -- we -- and what happened was, you know we did what we felt was right. And today I still feel like we made the right decision.

Mississippi's a very conservative state. They tough on crime. We tough on crime in Mississippi. And we was looking at the situation and that we learned very quickly that what we was doing wasn't working.

And we just had...

DURBIN:

In what way was it not working? What did you say to the average person on the street, here's why we got to change it?

EPPS:

Well, from May in 2007 to August 2007, three homicides. Highly unusual. One suicide. And -- and that period -- in that period of time that's highly unusual in any prison environment -- environment.

In addition to that, the assaults of violence was high you know on staff. Inmates was throwing urine and feces on staff. They was hurting themselves.

And so we had to look at the entire situation as it relates to what we were doing and we looked at it and we found that based on doing a -- giving inmates privileges, based on allowing inmates what we call a progressive step down unit; you go from one level to another one with privileges.

Also, for the mentally ill, group counseling. And training all our staff to include the correction officers. And giving them an incentive [sic] and getting their buy in. And what came off of that was it started working, and even the inmates told me so, we -- commissioner we told you we could do it.

And so I -- I feel real good about it. And we -- we did that back in '08 and here we are four years later, it's still working.

DURBIN:

You're president elect of the American Correctional Association, and when you take over next year what are you going to take away from your experience in Mississippi in terms of talking to other folks who are running state correctional associations?

EPPS:

We -- well, one there's no one here I don't believe want an inmate living next them that's just got out of maximum security. So what we got to decide is who we mad with and who we afraid of.

I take to them that since we changed Unit 32 and we closed it because we don't need it anymore, violence reduced by 50 percent. I take to them that secondly you got to have accountability in place.

When I started you did one piece of paper called a detention notice, and you just put it on the other inmate is interfering with the (inaudible) run institution, and they went to solitary confinement.

That's too easy. You got to have a check and balance. Today it has to come up to my desk.

In addition to that, we got to make sure that -- that we realize that 95 percent of all the individuals that's incarcerated in Mississippi is coming back to our neighborhood whether we like it or not.

And so, to me as a commissioner for the Mississippi Department of Corrections or any agency here or any state, that's our responsibility, and that's on our report cards to make sure that we do that.

DURBIN:

Senator Franken.

FRANKEN:

Thank you, Mr. Chairman.

I want to thank all the witnesses. I read your testimony. I'm sorry I had to miss your oral testimonies, as I said I did read your written testimony last night.

And especially Mr. Graves, thank you. What you described is just heartbreaking. I really admire your courage to come here and tell your story. I know that can't be easy. And I wish nothing -- I wish you peace and that you can eventually come to grips with this. I don't know how you can. Eighteen and a half years of this.

But thank you. And thank you for your strength. I think it takes real strength and courage to tell your story, so.

As Chairman Durbin mentioned in his opening remarks, American -- America incarcerates more people per capita than any of the world's democracy. We have 5 percent of the world's population and yet 25 percent of the world's inmates. And I think we need to take a really hard look at our criminal justice system. I thank you Commissioner Epps for your work.

And we need to make serious reforms, and that's why I support the Criminal Justice Commission Act which Senator Webb has been working on for years now.

And the bill would convene a commission of experts to make policy recommendations that would help make the criminal justice fairer and less costly.

Do each of you agree with this top to bottom review of the criminal justice system, that it would be useful?

And what issues should that commission consider in making its recommendations?

This is wide open to anyone.

Mr. Haney, I see you're turning on your mike.

HANEY:

I enthusiastically support these recommendations. I think this is a -- an evaluation that is long overdue. We've been in this country mired in a series of policies that have led to mass incarceration. The topic of today's hearing is I think an outgrowth of that mass incarceration movement.

I think the kinds of reforms that many of us have testified about today both in our oral and written testimony with respect to solitary confinement can and should be done in conjunction with reforms of the entire system. They're interconnected, obviously.

And I think that part of the way in which the system as a whole has deteriorated is what's led to the kind of extremes in outrages that have occurred inside solitary confinement units.

We can reform solitary confinement and we should. But it's part of a larger system that needs to be evaluated and understood as flawed in many of the same ways. We put far too many people in prison. We pay far too little attention to what happens to them while they're there. We keep them there for far too long and then we disregard what happens to them when they try to make the difficult transition to come out into the free world.

These kinds of problems are exacerbated with respect to solitary confinement, but they're not unique to solitary confinement. So looking at the system as a whole I think is an extraordinarily important goal.

(UNKNOWN)

Senator if I may, while it's certainly critical to examine the entire system, it would be a mistake in my view if the analysis were limited to the criminal justice system.

I think as everyone in this room is aware, that with particularly with regard to inmates with mental illness, that the increase in the number of inmates with mental illness who've been incarcerated directly correlates to the decision by the state and federal government to de-institutionalize and reduce funding for programs for the mentally ill throughout the country.

And that occurred, it's directly related to the increase in the incarceration rates and -- and to the degree that this committee's work is done in isolation from community based mental health services that will be missing a large part of the remedy in our (inaudible).

FRANKEN:

I'm in total agreement with that. And we've had testimony about you know the criminal justice system being a substitute for a real mental health policy in our -- in our society.

One of the federal solutions to this problem is the Mentally Ill Offender Treatment and Crime Reduction Act or MIOTCRA which provides courts police and prisons the resources they need to address the special needs of people with mental health problems, but that bill is scheduled to expire next -- next year unless Congress acts.

Do you all agree that this law should be extended?

And what recommendations do you have for Congress as we revisit that law?

In other words what recommendations do you have to address the over-incarceration of people with mental health problems?

HANEY (?):

Well I would -- I would like to address the issue concerning of the failure of any independent review of right to access to council by these individuals.

From the public defender's point of view throughout the state systems, there is an underfunding of those positions while all states including South Carolina are attempting to address that. The recent economic problems, and the budgetary limitations have imposed greater stresses on those systems would make it difficult for individuals to properly raise the mental illness issues that directly relates to crimes for which they are charged.

There's a secondary issue that has -- has been raised by your previous questions related to the three particular recommendations that you asked of -- of Commissioner Samuels. And that has to do with the -- the due process that's available for inmates particularly with mental illness to be able to challenge determinations concerning solitary confinement.

Without the capability of providing an independent ambudsmen (ph), an independent council for those individuals, it's a system just reviewing itself. And it's the fox guarding the hen house in a way that repeatedly in hundreds of cases that we examine rarely if ever results in any true due process or fairness for the inmates themselves.

FRANKEN:

Yeah, you -- I -- you talk about having an independent psychiatrist...

HANEY (?):

Independent psychiatrist, counselor, and evaluation. That's right. And -- and frankly access to council who can represent the interest of these individuals who are rarely in a position of ever effectively representing themselves.

FRANKEN:

Sure.

EPPS (?):

Sir, what I -- what I find and as I travel throughout our great country is that we incarcerate so many people until the problem is once we get them incarcerated we don't have moneys to do what need to be done.

I'd like to start more on the front end in that you take Mississippi, I'm housing 15 percent of mentally ill today. And a lot of them have been housed mentally ill in the county jails.

You know more support is needed on the front end for the mentally ill person before they get into the incarceration system. And therefore we won't be having these conversations or as much conversation about you know the treatment and the due process.

FRANKEN:

Yeah, yeah, it's again always being pennywise and pound foolish in terms of not investing this money on the -- the upstream side, and so that we don't have all these costs downstream.

Thank you, Mr. Chairman.

DURBIN:

Thank you, Senator Franken.

Mr. Graves, we've talked about isolation and segregation and so forth. But from your testimony it sounds as if you were sharing a cell at least some part of the time. Is that a fact?

GRAVES:

No, sir. At one point we were sort of like in a group setting. They moved us from one death row to another death row. We went from Max to Supermax. So we had a program that if you were a -- it was an incentive program -- that if you was a model prisoner, that you could actually be a part of this work program. And as a result, you could get a little time out of your cell, you could play basketball and all that in a group setting.

And then, there was an attempted escape and the politicians got involved. See, because the escapes they were always there. But the politicians got involved in this escape. And because the politicians got involved, they decided that, well, we need to move them to a Supermax to show that we are really tough on crime.

And not only did they move us to a Supermax, but they took all away, everything that we consider a privilege. You could no longer piddle. Why guys were piddling and making little toys for homeless children. That was taken away from us. You no longer had group rec, where guys could go out with one another, whether they're talking about the law or talking about their family. Something that helped them maintain their sanity. That was taken from us. Everything that they could take from us that was called a privilege, they did.

And they put us in Supermax and they said, "Well, you're going to stay here 22 to 24 hours a day until you're executed." And so, therefore, they moved us to their Supermax and we stayed in there 22 to 23 hours a day, 24 hours a day from Friday to Monday.

DURBIN:

By yourself?

GRAVES:

By yourself, you know. Some guys who go into solitary, they'll come back and they'll place them in a cell with some other guy. This was before we went to the Supermax.

And I remember this one guy who was in solitary, when they brought him back he'd become so paranoid they put him in a cell with someone, he woke up screaming. He had taken some cans, put it in his pillow sack, and was beating his cellmate, because he started thinking that the guy was stealing his addresses off of his letters. He'd become schizophrenic, become paranoid.

And he just woke this guy up beating him and screaming and hollering, you know? And he was just taken out of solitary and put in the cell with another person. And he ended up almost taking that person's life.

So this is the effect of solitary confinement. That guy was fine before he went there, okay? This whole notion of -- I was listening to what the gentleman was talking about solitary confinement and the limited time they spent. I spent 10 years. And I know guys who have spent 20 and 30 years. And they're not in touch with the real world any more.

So for someone to sit up there and say that it does not have an effect, an impact, on a person's life, I say to that same person, go live there for 30 days and then I will listen to you, because right now you are just basing everything on theory, or you're a scholar. But you go live there 30 days, and then when you come back I'll listen to everything that you have to say, because I know what you're going to say. That's hell. That is hell. And it's driving me insane.

And we can sit here and we can talk back and forth about it intelligently, but the bottom line is we as American citizens are driving other American citizens out of their minds and we act like it's okay.

DURBIN:

Can I ask you a personal question?

GRAVES:

Yes, sir.

DURBIN:

You've told us so much about what you've been through. Was there anything that kept you going spiritually through this?

GRAVES:

Yes, I kept my eyes on god, because I said to myself I know who I am. I'm not going to let a label define me. I'm innocent. I'm a son, I'm a father, and I'm a brother. And what they can't take from me I'm not going to give to them. They couldn't take my dignity and I refused to give it to them. That's what kept me sane, my defiance and my naivete, because I was naive in thinking that they just couldn't execute a man who didn't do something.

DURBIN:

Good for you. Thank you.

Again, thank you to all of you.

Mr. Andrews, thank you so much. And as I said before, the fact that an attorney in private practice would have such public sensitivity and consciousness is so important.

Professor Haney, we couldn't have done this without you. I mean, you've done such amazing research in this area.

And Commissioner Epps, you've set a standard now.

EPPS:

Thank you. Thank you, Senator.

DURBIN:

You've set a standard now. Mississippi's leading us...

EPPS:

Thank you.

DURBIN:

... in terms of where we need to be thinking about where we're going.

EPPS:
Yes, sir.

DURBIN:

What a hearing. I've been through a lot of them. I can't remember another one quite like this one about an issue which we all kind of knew in the back of our minds was there. But we don't like to look at it. It makes us feel bad. You think about the victims of crime, facing them. And they're saying, "Wait a minute. It may be tough in that cell, but my daughter's not alive today." You've heard that one, haven't you? We all have, over and over again. And you think about the correctional officers who want to come home at night to their family, too. That's one of these elements.

But basically, when you step back and look at what happened in Mississippi you really come to the conclusion we can have a just society and we can be humane in the process. We can punish wrongdoers, and they should be punished under our system of justice, but we don't have to cross that line. And we all kind of know where that line is, or we've stepped over it. We're no longer just ourselves in the way we're acting. It means taking a look at some things that we don't like to look at or talk about.

Mr. Graves, you made a point. Politicians get elected and re-elected by being tougher and tougher sometimes, and maybe it's time for us to step back and say let's be smart, let's be thoughtful. When it's all over let's write a record that we can be proud to tell our children about in terms of who we are and what we've done.

Well, we have a better chance to do that most here in the United States Senate. This is just a sample of the testimony that's been submitted of all of the groups that wanted to be here today and wanted to testify. It's an indication, I think, of the fact that the time is due for us to have this conversation about where we're going.

I want to thank everybody who did attend the hearing today, including those in the overflow rooms, by 80 people in this room, and 180 in the overflow room. And it's important for members of Congress that there is this level of public interest in the issue. There's a lot of work that goes on behind the scenes before we can come together for two hours and talk about something that affects so many people. So many innocent people and those who are not innocent, but need to be treated fairly.

I want to thank Han Yu (ph), a detailee from the Federal Public Defender's Office, subcommittee counsel Morris Silver (ph), Mick Demle (ph), the subcommittee staff assistant, legal interns Lindsay Dubin (ph) and Joseph Spielberger (ph). And of course, my chief attorney, Joe Zachney (ph), who time and again has led us into some very interesting hearings, and I hope productive.

From the committee staff, chief clerk Rosalyn Turner (ph), hearing clerk Haley Ross (ph), and the following individuals from the Architect of the Capitol who put that together so we could see it: assistant superintendent Marvin Simpson (ph), James Atkins (ph), Alvin Corlet (ph) and Paul Biasch (ph).

Supreme Court Justice Anthony Kennedy once wrote, "When the door is locked against the prisoner, we don't think about what's behind it. We have a greater responsibility. As a profession, as a people, we should know what happens after the prisoner is taken away."

I hope today's hearing is an important first step toward ensuring that all prisoners are treated with justice and dignity when the door is locked against them.

My staff just reminded me to make a motion to put these statements in the record. If there's no objection? And there is none.

If there are no further comments from Senator Franken, I want to thank the witnesses, all of you, for attending and being part of this hearing. And this hearing will stand adjourned.

CQ Transcriptions, June 19, 2012

List of Panel Members and Witnesses

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