

## Comments by Dr. Terry Kupers to the February 25, 2014 Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights: Reassessing Solitary Confinement - The Human Rights, Fiscal, and Public Safety Consequences

Greetings Hon. Senators:

Again, as when I submitted written testimony for the June 19, 2012 Subcommittee Hearing, I regret that because of the shortness of notice and professional commitments I will not be able to testify in person at this important subcommittee meeting. I would be happy to meet with the Subcommittee or staff in the future. And again, thank you for taking on this timely and important topic. I am a forensic psychiatrist with extensive experience investigating supermaximum security units in many states and testifying in litigation about the psychiatric damage caused by long-term solitary confinement. I am Institute Professor at The Wright Institute, Distinguished Life Fellow of the American Psychiatric Association and among books I have authored is Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It. I attach my written comments from June 19, 2012, which contain a summary of my qualifications and a discussion of the harmful effects of long-term solitary confinement.

I believe long-term penal isolation is a very bad idea. It does not accomplish any good “penological objective,” as I spelled out in my previous comments to this Subcommittee, it causes immeasurable harm to the significant proportion of the prison population who are prone to mental illness as well as to the rest, and it constitutes a human rights abuse that violates the U.S. Constitution and is tantamount to torture. I have published extensively on this

topic, so I will not provide here another summary of the known damage.<sup>1</sup> The shift in the 1980s in the USA toward increasing isolative confinement, especially in supermax prisons, constitutes a historic wrong turn in penology. It was a response to the unprecedented violence and mental breakdown in corrections in the 1980s, but that violence and madness were clearly the result of the wholesale consignment of people with serious mental illness to correctional settings as well as massive crowding of the prisons. A more effective and humane response would have been to alleviate the crowding with more rational sentencing guidelines, to divert individuals with mental illness into treatment settings and bring correctional mental health care up to the standard in the community, and to re-instate the rehabilitation programs that were being dismantled at the time because of accusations that rehabilitation constitutes “coddling criminals.”

Of course there are some dangerous individuals in prison, and the safety and smooth operation of the institutions must be a major priority. But most of the prisoners I meet in solitary confinement units around the country are actually not very dangerous. Though they are required to wear handcuffs, leg irons and a belly chain when they exit their cell, and though they must be accompanied by two or more officers, I find that a very large majority of the prisoners I meet in solitary confinement settings do not pose much of a threat

of violence. In other words, they are being excessively demonized and the relatively exceptional very dangerous individuals among them are presented as “poster boys” for solitary, proof that Departments of Correction need to continue to consign an inappropriately high proportion of prisoners to almost total isolation and idleness.

The very large number of individuals confined in solitary circumstances, or segregation, for very long periods do not actually pose much of a threat to the security of the institutions. They are being retained in segregation because of outdated and foolhardy policies, because many departments of correction are incapable of correcting a wrong decision to place one or another prisoner in solitary, because mental health services are inadequate and prisoners with mental illness are being punished with segregation for inappropriate behaviors that flow from their psychiatric disability, because a self-fulfilling prophecy is set in motion whereby an individual placed in segregation is led by the harsh conditions to act out in unacceptable ways and thereby to draw ever longer sentences to segregation, and because a culture of punishment in the prisons is played out by designating certain prisoners “the worst of the worst” and then visiting increasingly abusive punishments upon them.

In the Mississippi Department of Correction (DOC), as a result of the Presley v. Epps litigation, proper classification procedures were finally enacted

and the majority of prisoners serving long sentences in the supermax Unit 32 at Mississippi State Penitentiary were returned to general population. Contrary to the logic that informs the rush to build supermaxes - i.e. they are needed to control wanton violence - the violence rate in the entire DOC diminished, and the rate of disciplinary infractions on the part of prisoners released from Unit 32 also declined precipitously. DOC Commissioner Christopher Epps testified at this Sub-Committee's June 19, 2012 hearing about this phenomenon.<sup>2</sup>

I simply do not understand how depriving an individual with a violent record of any view of the outside world and any contact with nature (i.e. there are often no windows in the cells and the individual never gets to an outdoor recreation area), making him sleep on an uncomfortable concrete slab, condemning him to loud noises every night and severely restricting his visits with loved ones can have any positive effect on his behavior. There is no rational reason to make the prisoner miserable in these and many other ways, yet these harsh conditions are fairly typical in today's prison isolation units. The absence of logic here is a big part of the reason I have concluded that the main thing to notice is an irrational culture of punishment. These are presumed to be "bad actors," and consequently the staff feels they need to punish them harshly. All too often the harsh isolative conditions cause psychiatric breakdown or suicide in previously mentally stable individuals.

There is too little attention to the long-term effects of solitary confinement. Consider the bad-acting prisoner who has a 20 year prison sentence, beginning when he is around 20 years of age. He is released at 40, having spent the entire 20 years idle and in isolation. Do we seriously expect him to be more capable of conforming his behavior to the acceptable norms in the community after he is released? Why not provide him with pro-social and productive activities during his prison term, albeit in a safe setting, so there is more likelihood he will be able to succeed at going straight when he is released?

One of the strongest correlations in criminology is that between prisoners maintaining quality contact with loved ones during their prison tenure and their success at “going straight” after they are released. When I admit a patient to a psychiatric hospital and he acts out and becomes assaultive, unless there is a highly dysfunctional family I invite and encourage the family to come and visit him because we know that contact with loved ones tends to ameliorate bad behavior. What sense does it make to keep the prisoners who are presumably the worst-behaving in solitary confinement and, as further punishment, denying them meaningful contact with their loved ones?

Of course there are a small proportion of prisoners who will merely take advantage of the freedoms of general population to victimize other prisoners and continue criminal pursuits. There is no credible evidence that long-term

solitary confinement prevents this relatively small group from pursuing their criminal objectives. Meanwhile, the vast majority of prisoners spending inordinate time in solitary confinement today would be much better prepared for a productive life after release were they to be provided with congregate rehabilitative programs during their time behind bars.

Prohibitions against cruel and unusual punishment and protocols on torture are written precisely to protect human beings who the authorities believe are bad enough actors to seemingly deserve very harsh treatment. But no matter how bad the actor, eighth amendment violations and torture are not permissible. There is a need for enhanced security in relation to a certain number of prisoners with proven records of assaultive behavior or worse. But separating them from potential victims does not require that they be consigned to very harsh isolative conditions. On average, a long stint in solitary makes them more dangerous after they are released to the prison yard or the community.

In order to explain this point, let us skip to prisoners who are consigned to protection and placed in solitary confinement units. This is not an acceptable correctional practice, but it occurs in all too many prisons. (The Prison Rape Elimination Commission took the precaution of forbidding this kind of protective isolation in the case of women prisoners who allege sexual assault by staff.)

According to standards and a reigning consensus on acceptable practices in the field of corrections, individuals who require protection must be housed in units that are separated from their potential enemies, but those protection units must contain all the programs and amenities the protected prisoners are entitled to, consistent with their security level. Likewise, I believe that to the extent possible, while maintaining safety in the facilities, individual prisoners deemed especially dangerous should be separated from the places and prisoners where they pose a grave danger, but should be provided the programs and amenities that they are entitled to as human beings – i.e. a certain amount of meaningful social interaction and productive activities as well as visits with loved ones.

I will not enter here into a discussion of the proper measures to control violence and criminal activity in the relatively small subpopulation of prisoners who are not amenable to rehabilitation, except to say that there are such measures and they need to be carefully planned and enacted. Toch and Adams wisely counsel that the more difficult it is to manage a particular prisoner's unacceptable behaviors, the more time is required for meetings and interventions on the part of custody and mental health staff.<sup>3</sup> Too often, instead of committing that kind of concentrated staff energy, the troublesome prisoner is merely warehoused in an isolation cell, where the previously stable

prisoner is driven by the conditions to become stark raving mad. Since this is the expectable outcome of extreme isolative measures, the practice would seem to be prohibited by the U.S. Constitution and international agreements prohibiting torture.

There is actually no credible evidence that isolation increases safety in the prisons. Rather, it gives the culture of punishment a *raison d'être*. It has long been a basic tenet of psychology that positive rewards are much more effective in attaining desired behavior change than are harsh punishments. That lesson from psychology could inform a very successful effort at rehabilitation in corrections. Incremental rewards could be designed to help previously law-breaking and rule-violating prisoners become peaceful, productive citizens. For a very small fraction of the cost of supermaximum security units, intensive substance abuse programs could be installed in the prisons (in recent decades, the proportion of prisoners benefitting from substance abuse treatment has declined) that make it possible for a significant number of prisoners to stay “clean and sober” and succeed at “going straight” after they are released from prison. Likewise, if this society is intent on locking up the population suffering from serious mental illness instead of providing an adequate public mental health system and affordable housing, an adequate correctional mental health program would have much more beneficial outcomes than long-term solitary

confinement. Instead, today a very large number of prisoners who are not especially dangerous are warehoused in isolation for much of their prison tenure, they are severely damaged by the forced isolation and idleness, and predictably, the parole revocation and recidivism rates have been rising precipitously during the same two or three recent decades that have witnessed the widespread use of solitary confinement in our prisons.

In conclusion, once again, I urge the Subcommittee to promote legislation that will reduce reliance on supermaximum security facilities, reduce the abuses that have accompanied the trend toward long-term prisoner isolation, and require reasonable sentences and effective rehabilitation programs for prisoners.

Thank you for considering these comments.

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## References

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