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MADNESS IN THE HOLE: SOLITARY CONFINEMENT & MENTAL HEALTH OF PRISON INMATES

by EMILY COFFEY

Before his incarceration at the supermax prison, John Jay Powers did not suffer from mental illness.¹ While serving a sentence for bank robbery, Mr. Powers witnessed the murder of another inmate by members of the Aryan Brotherhood.² After testifying against the accused, he feared for his life and briefly escaped from prison.³ As a result of this infraction, he was sentenced to 60 months in solitary confinement in the federal ADX Florence supermax in Colorado - a sentence that drove him insane.⁴

After his arrival at ADX, Mr. Powers amputated his testicle and scrotum, bit off two fingers, tattooed his entire body, and repeatedly attempted suicide.⁵ Despite this behavior, a supermax psychologist determined that he did not have an active mental disorder and was not in need of treatment or an alternative custody arrangement.⁶

Severe, and often irreversible, psychological damage, like that experienced by Mr. Powers, is common among prisoners held in solitary confinement.⁷ Unfortunately, there are no statistics detailing how many prison inmates are mentally ill, let alone statistics of how many mentally ill inmates are held in solitary confinement.⁸ Prolonged or indefinite solitary confinement - isolation for 23 hours per day - does damage so severe that Juan Mendez, U.N. Special Rapporteur on Torture, has declared it torture.⁹

SOLITARY CONFINEMENT UNITS WIDESPREAD IN THE U.S. PRISON SYSTEM

Yet solitary confinement is standard practice in the U.S. prison system and may be disbursed throughout, and used selectively within, a jail or prison or used exclusively within supermax facilities.¹⁰ Prisoners are placed in solitary confinement for a wide range of infractions.¹¹ These infractions may be as minor as hoarding food or as serious as killing another inmate.¹² Over 80,000 inmates are held in all solitary confinement units on any given day and around 40 U.S. states house 25,000 of those prisoners in supermax prisons, which are exclusively solitary confinement cells.¹³

On June 11, 2012, the Senate Subcommittee on the Constitution, Civil Rights and Human Rights held the first Congressional hearing on solitary confinement.¹⁴ Charles Samuels, the Director of the Federal Bureau of Prisons, testified that federal policy “prohibits any inmate who suffers from a serious psychiatric illness to be placed in that confinement.”¹⁵ In every federal prison, he argued there is a doctoral level chief psychologist who oversees mental health issues because “the well being of these individuals should be something that is routine and ongoing.”¹⁶

Yet a federal lawsuit alleges that ADX, the only federal supermax prison, is violating its own policies.¹⁷ Mr. Powers is a plaintiff in this class action, which alleges that the Bureau regularly assigns mentally ill prisoners to solitary confinement and ignores the mental health problems that arise as a result.¹⁸

HUMAN RIGHTS AND PSYCHOLOGICAL EXPERTS AGREE: SOLITARY CONFINEMENT CAN CAUSE SERIOUS MENTAL ILLNESS

Anthony Graves, an exoneree who spent ten years in solitary confinement while on death row for a crime he did not commit,¹⁹ testified at the Congressional Hearing that he watched men come into prison sane, and after an extended stay in solitary confinement, he watched them lose their mind.²⁰

Solitary confinement, even for relatively short periods of time, can cause serious, and often irreversible, psychological harm.²¹ Professor Craig Haney, an expert on the psychological effects of solitary confinement, argues that “[a]lthough 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 . . . placing prisoners at grave risk of psychological harm.”²²

Dr. Terry Kupers, an expert on the psychological effects of solitary confinement, argues that prisoners with preexisting mental illness are more likely to be selectively consigned to solitary confinement because of their inability to conform to prison rules.²³ This is especially alarming given that 50 percent of inmate suicides are committed by the 2 to 8 percent of inmates held in solitary confinement.²⁴

Human rights experts agree that the use of solitary confinement, especially on those with serious mental illness, violates basic human rights standards.²⁵ It is entirely counterproductive, Bret Grote, an investigator with the Pennsylvania based Human Rights Coalition argues, to attempt to prevent harm or prevent people from acting out because “these units create madness; they’re designed to break people.”²⁶

“These are disposable people,” Grote argues, “and there is no system within the prison, just like there isn’t one outside the prison, to appropriately deal with people whose behavior is ill-suited to adapt to the rigidity of the prison regimen.”²⁷

COURTS AND STATES RECOGNIZE THE DETRIMENTAL EFFECTS OF SOLITARY CONFINEMENT

The U.S. Supreme Court has stated that prison officials must provide adequate care for prisoners' "serious medical needs" and failure to do so violates the prohibition of cruel and unusual punishment under the Eighth Amendment.²⁸ International law also provides that all prisoners should have access to mental health care, including treatment in adequate mental health facilities.²⁹

U.S. courts have also recognized that solitary confinement can have negative effects on those with no pre-existing mental illness and can particularly harm those who already suffer from mental illness.³⁰ For example, a California court found that "many, if not most [inmates in solitary confinement] experience some degree of psychological trauma in reaction to their extreme social isolation."³¹

Lawsuits nationwide continue to allege that the rights of mentally ill inmates in solitary confinement are being violated.³² For example, a class action lawsuit in South Carolina alleges that nearly half of all inmates in the state who suffer from mental illness were held in solitary confinement in South Carolina for an average of two years.³³

As a result of lobbying and court decisions, a growing number of states have begun to exclude the seriously mentally ill from solitary confinement.³⁴ The Congressional hearings have provided legitimacy to many human rights groups fighting against the use of solitary confinement and, Grote argues, have helped "force this human rights crisis into the spotlight and getting it the public attention it deserves."³⁵

NOTES

1 Complaint at 69, *Bacote v. Fed. Bureau of Prisons*, No. 1:12-cv-01570 (U.S.D.C. Colorado 2012).

2 *Id.* at 69, 71.

3 Mr. Powers witnessed the murder in a medium-security federal prison in Atlanta. Once he agreed to testify, he was placed in protective custody throughout the trials. Four years after testifying, and after being diagnosed with post-traumatic stress disorder, he learned that he

would be placed in the general population, where he was likely to encounter members of the Aryan Brotherhood. *Id.* at 69–71.

4 *Id.* at 71.

5 *Id.* 72–3.

6 *Id.* at 73.

7 Craig Haney, Professor of Psychology at University of California Santa Cruz, Testifying at Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights, Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences, at 84:45–85:02 (June 19, 2012) [hereinafter “SJC”]

8 Rema Rahman, *Mentally Ill Inmate Sues to Get Out of Solitary Confinement*, HUFFINGTON POST (May 17, 2012), http://www.huffingtonpost.com/2012/05/17/mentally-ill-inmates-sue-0_n_1523709.html.

9 Amnesty International, *Cruel Isolation in Arizona Maximum Security Prisons*, 1 and 8 (2012) available at <http://www.amnestyusa.org/research/reports/cruel-isolation-amnesty-international-s-concerns-about-conditions-in-arizona-maximum-security-prison>; United Nations Human Rights Office of the High Commissioner for Human Rights, UN Special Rapporteur on Torture Calls for the Prohibition of Solitary Confinement (2011) available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11506&LangID=E>.

10 Telephone interview with Bret Grote, investigator with the Human Rights Coalition, to author (Oct. 21, 2012).

11 *Id.*

12 *Id.*

13 Angela Browne, Alissa Cambier, Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 FEDERAL SENTENCING REPORTER 46, 1 (2011).

14 Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights, Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences (June 19, 2012) available at <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=6517e7d97c06eac4ce9f60b09625ebe8>.

15 Charles Samuels, Director of the Federal Bureau of Prisons, Testifying at SJC, at 42:10–42:23.

16 *Id.* at 59:06–59:25.

17 Bacote, *supra* note 1, at 4–5.

18 *Id.* at 5.

19 Richard Durbin, Senator, Presiding over the SJC at 94:15–9:50.

20 Anthony Graves, Founder of Anthony Believes, Testifying at SJC, at 98:27–98:33.

21 Amnesty International, *supra* note 9, at 8 (citing Dr. Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 JOURNAL OF LAW AND POLICY 325, 333 and 349 (2006)).

22 Haney, *supra* note 7, at 84:45–85:02.

23 Terry Kupers, *Cruel and Unusual Treatment of WikiLeaks Suspect*, CNN (Mar. 16, 2011), <http://www.cnn.com/2011/OPINION/03/16/kupers.bradley.manning.prison/index.html>.

24 *Id.*

25 Jeffrey L. Metzner and Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 THE JOURNAL OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW 104, 105 (2010).

26 Telephone interview with Bret Grote, investigator with the Human Rights Coalition, to author (Oct. 21, 2012).

27 *Id.*

28 *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

29 Amnesty International, *supra* note 9, at 15 (Treaties include the International Covenant on Civil and Political Rights, the Convention against Torture). The respective monitoring bodies, the UN Human Rights Committee and the UN Committee Against Torture, have criticized the use of solitary confinement in U.S. prisons. *Id.*

30 *Madrid v. Gomez* 889 F. Supp. 1146, 1235 (N.D. Cal. 1995); Grassian, *supra* note 21, at 327 and 349.

31 *Madrid*, 889 F. Supp. at 1235.

32 Current lawsuits not mentioned elsewhere in this article are occurring in: Arizona, Kevin Canfield, *Attorneys of Inmate who died in Tulsa Jail seek video of his last hours*, Tulsa World (Oct. 31, 2012) available at http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20121031_16_A1_CUTLIN319060); Colorado's state prison, Jean Casella, *After Years in Solitary, a Mentally Ill Prisoner's Day in Court*, MOTHER JONES (Apr. 30, 2012), <http://www.motherjones.com/politics/2012/04/solitary-confinement-mental-illness-troy-anderson-trial>); and Missouri, Jessica Mayerer, *For the mentally ill behind bars in Montana, life goes from bad to worse*, MISSOULA INDEPENDENT (Mar. 22, 2012), <http://missoulanews.bigskypress.com/missoula/is-prison-making-colton-wilson-sicker/Content?oid=1542953>).

33 Stuart M. Andrews, Jr., Partner at Nelson Mullins Riley & Scarborough LLP, Testifying at SJC, at 88:48–89:00; testifying about the Fifth Amended Complaint in *T.R., et. al. v. South Carolina Dept. of Corrections* 2005-CP-40-02925 (5d S.C. 2005).

34 Amnesty International, *supra* note 9, at 8, 18 (these states include California, Connecticut, Illinois, Maine, Mississippi, New York, Ohio and Wisconsin).

35 Grote, *supra* note 10.