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Solitary Confinement: New York's Hidden Problem

Michael B. Mushlin

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At a time of record and rising prison populations, New York has taken a different path, showing that crime rates and prison populations can decline simultaneously. Over the past decade, while the nation's prison population has increased, New York's has dropped from 67,171 to 55,918, a drop of 16.75 percent. The drop in prison population has not caused crime rates to rise. To the contrary, over the past decade, New York State's crime rate has decreased.

This impressive development is a model for the nation. However, largely overlooked in this positive assessment is the stark reality that New York prisons have one of the highest rates of solitary confinement in the United States. Today in New York almost 4,500 inmates are confined into small prison cells for up to 23 hours a day with almost no stimulation or human interaction. This is a rate of solitary confinement that is 37 percent higher than the national average. It represents a 46 percent increase in 10 years of prisoners placed in solitary confinement in New York.

I first confronted conditions in solitary confinement units over 30 years ago when I served as trial counsel in a federal civil rights case involving Unit 14, Clinton prison's solitary confinement unit in upstate New York. What I saw was deeply disturbing. Inmates were locked for 23 hours each day into small windowless cages for months and years on end. No programs or activities were provided. Without access to any meaningful activity, they were separated from one another, spending almost all of their time entirely by themselves. During that one precious hour per day when a Unit 14 inmate could leave his cell there was only one place to go: a small space directly behind his cell called a "tiger cage." The tiger cage was an empty space with a barren floor surrounded on all sides by high concrete walls that were not covered by a roof. An inmate could walk only a few steps in one direction before turning. If he looked up he could glimpse a bit of the sky but nothing else of the outside world.

Working on that case I witnessed firsthand the awful consequences of subjecting human beings to solitary confinement. I will never forget looking into the eyes of those inmates struggling to maintain a foothold on reality and sanity. Afterwards, when visiting other solitary confinement units, no matter where, I see that same pained, desperate stare. I have seen it so often, and in so many different places, that I have come to recognize it instantly as the gaze of a tortured person.

Many inmates placed in solitary are mentally ill. In 2003 the Correctional Association of New York reported that inmates diagnosed with mental illness comprise nearly a quarter of inmates in solitary confinement. But solitary confinement only exacerbates mental illness. Despite a bill passed in 2008 by the Legislature that limits the placement of diagnosed mentally ill inmates in special housing units to "exceptional circumstances," (N.Y. Correct. Law §137.6(d)(i)), according to observers, including the Correctional Association, many mentally ill people continue to be housed in solitary confinement.¹

Those who are not insane when they are placed in solitary confinement can easily be driven insane by the conditions. The

suicide rate in solitary confinement is unacceptably high. According to data submitted to the U.S. Congress in June by the Correctional Association of New York, the suicide rate in New York's prisons in 2010 was more than double the national average, and was the highest rate for the past 28 years.² Even teenagers have been thrown into solitary. Not long ago I was shocked to read a Justice Department Report on Conditions at Westchester County Jail describing how 16 year olds were isolated in an adult jail for up to a year.³ Human rights violations such as these are not an anomaly; the Justice Department went on to report that half of the inmates placed in the jail's isolation unit are between 16 and 18 years of age.

Most inmates, even those who are in solitary confinement, will someday return to our communities. It is a serious mistake, therefore, to ignore these severe conditions thinking that they do not directly affect us. A conversation with a correction officer several years ago during a visit to Southport prison in upstate New York near Elmira drove home the horrible consequences of solitary not only for the inmate but society. At the time of my visit Southport prison housed hundreds of men, all in solitary. The officer told me of his concern for law-abiding people whenever a Southport prisoner is released from solitary directly back onto the streets. He recalled the times he saw inmates, most of whom are from the New York City metropolitan area and have been in solitary confinement for months or even years, released from the prison front gate with a suit of clothes, \$40 and a bus ticket to the Port Authority Bus Station in midtown Manhattan.

Isolation of inmates can be justified when there is a serious threat of violence. But these circumstances do not describe the situation of most of the people held in solitary, many of whom are there not because of a threat of imminent violence but because of a rules infraction which might not even be violent, or because they are felt to be in need of protection. Even in cases in which isolation is necessary, there is no justification for the severe deprivations on inmates.

New York's prisons can be safe without being inhumane. There are alternatives to solitary confinement as practiced in our state. In the last two years, talented corrections officials and prison reformers in Colorado, Maine and Mississippi have dramatically decreased the use of solitary confinement in those states to a fraction of the percentages of inmates in solitary in New York. Implementing alternatives, such as secure psychiatric facilities, drug-treatment programs and improving conditions in isolation units would reduce the number of people in isolation to a tiny fraction of those currently held, improve the conditions in which those who are isolated are held, and make prisons safer for prison staff, the public and prisoners. Another reason to implement these reforms is that they are necessary if New York is to comply with the American Bar Association Criminal Justice Section Standards on Treatment of Prisoners adopted in 2010. The standards prohibit isolation of the mentally ill or juveniles, and even for those who must be isolated the standards absolutely prohibit "[c]onditions of extreme isolation...regardless of the reasons for a prisoner's separation from the general population." ABA, "Criminal Justice Standards, Standards on Treatment of Prisoners §23-3.8 (2010)."

Brian Fischer, the commissioner of the New York Corrections Department, in discussing solitary confinement, recently told the New York State Bar Association that "I'll be the first to admit—we overuse it..."⁴ But he said excessive reliance on solitary confinement cannot end unless there is a "change in culture" and even then "we can't make changes without funding, without the legislature and the public."

Fischer is right. We are responsible for our prisons and what happens in them. The New York legal community, which has an important role to play in the operation of our criminal justice system, should send a strong message that says, "Stop the widespread use of solitary confinement." When that message is sent and received we will have a prison system more worthy of our state; one in which there are no longer hidden in it men and women suffering silently and unnecessarily in those dark, oppressive solitary confinement cells.

Michael B. Mushlin is a professor of law at Pace Law School and visiting professor at Brooklyn Law School. He is the author of 'Rights of Prisoners' (4th ed.), and a member of the ABA's Task Force on the Legal Status of Prisoners. Edward Teyber, a second year student at Pace Law School, assisted in the research for this article.

Endnotes:

1. Reassessing Solitary Confinement: Hearing Before the Subcomm. on the Constitution, Civil Rights & Human Rights of the S. Comm. on the Judiciary, 112th Cong. at 7-8 (2012) (statement of The Correctional Association of New York).
2. Statement of Correctional Association, *supra* note 1, at 10.
3. CRIPA Investigation of Conditions at Westchester County Jail (Dept. of Justice, Civil Rights Division, Nov. 19, 2009) available at http://www.justice.gov/crt/about/spl/documents/Westchester_findlet_11-19-09.pdf (reporting that one 16 year old was placed in solitary for 360 days for an infraction).
4. Jean Casella & James Ridgeway, "New York's Black Sites," *Nation* (July 11, 2012) <http://www.thenation.com/article/168839/new-yorks-black-sites#> (last visited Aug. 13, 2012).