

# Prisoners' Legal Services of New York



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*Karen Murtagh, Executive Director*

## **Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights**

### **TESTIMONY OF PRISONERS' LEGAL SERVICES OF NEW YORK**

**February 25, 2014**

#### **INTRODUCTION**

Prisoners' Legal Services of New York (PLS) would like to thank Senator Durbin, Chair of the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, as well as other committee members, for holding this follow-up Congressional hearing on solitary confinement and for the opportunity to submit written testimony on this critically important civil and human rights issue. The continued use of solitary confinement in the United States prisons, jails and detention centers, despite the proven harm it causes, demands serious investigation and we applaud this committee's foresight and courage in continuing a public discussion on this topic.

PLS is a nonprofit legal services organization that was established in 1976 in response to the Attica uprising, a three-day siege that culminated on September 13, 1971, when then-Governor Nelson Rockefeller ordered state law enforcement agents to forcibly retake control of the Attica prison.<sup>1</sup> The events at Attica forced public attention on the inhumane treatment and living conditions of New York State prisoners and the creation of PLS, as a result, many of those conditions improved. We learned a great deal from "Attica," but with respect to the issue of prolonged solitary confinement, we have lost sight of the most important lesson of all: the need for our criminal justice system to continually assess the effects of the conditions of confinement on prisoners and to consider those effects in light of our evolving standards of decency.

PLS provides civil legal services to indigent prisoners in New York State correctional facilities on issues associated with their conditions of confinement. As a state-wide entity, PLS listens and responds to the concerns and grievances of all those incarcerated in New York State

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<sup>1</sup>That day has come to be known as the day when "the bloodiest prison confrontation in U.S. history" occurred. As a result of the uprising, a special state Commission (the McKay Commission) was created to investigate and report on the incident. After dozens of hearings and thousands of pages of testimony, the McKay Commission issued a report chastising New York State prison authorities for: failing to provide adequate programming and education for prisoners; the lack of any procedures for prisoners to air or resolve their grievances; poor conditions in the prisons; and the overall mistreatment of prisoners.

prisons. One might think we have come a long way since Attica, but a review of the more than 10,000 letters PLS receives annually reveals how much there is left to do. PLS responds to every single request we receive. When a prisoner writes to us about a disciplinary disposition that has resulted in a lengthy sentence in solitary confinement or loss of good time, we investigate. If we find a violation of due process or regulatory protections, we file an appeal

In testimony PLS submitted at this committee's initial hearing on solitary confinement in June 2012, we set forth the sordid history of the use of solitary confinement and encouraged this committee to review that history in analyzing how we, as a nation, should address the issue.<sup>2</sup> We asserted then that the history regarding the use of solitary confinement, together with the drum-beat of constant reports from around the world about the effects of prolonged isolation on individual prisoners, required us to examine whether our evolving standards of decency have brought us to a place where we can no longer tolerate such punishment.

In the almost two years since we submitted testimony on this issue, the long-time concerns of corrections experts, medical and psychiatric expert, academic and religious scholars, and advocates regarding the harmful effects of solitary confinement have continued to be reinforced and legitimized.<sup>3</sup> In addition, there have been extensive investigations done and reports written, concerning the use of solitary confinement.<sup>4</sup> Finally, prominent organizations that had yet to weigh in on the issue have now done so.<sup>5</sup>

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<sup>2</sup> See Congressional Testimony of Prisoners' Legal Services of New York, June 19, 2012.

<sup>3</sup> See, for example, Bureau of Prisons: *Improvements Needed in Bureau of Prisons Monitoring and Evaluation of Impact of Segregated Housing*, May 1, 2013, available at: <http://www.gao.gov/products/GAO-13-429>; Berger, et al., *Commentary: Toward an Improved Understanding of Administrative Segregation*, *Psychiatry Law*, vol. 41 no. 1, pp.61-64 (Response to O'Keefe, *A Longitudinal Study of Administrative Segregation*, et al., *J. Am. Acad. Psychiatry Law*, vol. 41 no. 1, pp. 49-60) Mar. 1, 2013; American Academy of Child and Adolescent Psychiatry, *Statement Against Youth in Solitary*, April 2012; American Psychiatric Association, *APA Position Statement on Segregation of Prisoners with Mental Illness* (2012); American Public Health Association, *Addressing Solitary Confinement as a Public Health Issue* (2013, Full Policy Statement Available in Early 2014) ;220<sup>th</sup> General Assembly of the Presbyterian Church (USA), *Commissioner's Resolution on Prolonged Solitary Confinement in US Prisons*, 2012; The National Catholic Review, *We Are One Body*, America July 15 – 22, 2013, available at: <http://americamagazine.org/issue/we-are-one-body>; New York State Council of Churches: Resolution Opposing the Use of Prolonged Solitary Confinement in the Correctional Facilities of New York State and New York City, Sept. 2012; ACLU, Stop Solitary Campaign available at: <https://www.aclu.org/we-can-stop-solitary>. For a complete list of the most up-to-date comments on solitary confinement see: ALCU, *Solitary Confinement Resource Materials*, available at: <https://www.aclu.org/files/assets/Solitary%20Confinement%20Resource%20Materials%202012%2017%2013.pdf#page=14>.

<sup>4</sup> See, for example, New York Civil Liberties Union, "*Boxed In – The True Cost of Extreme Isolation in New York's Prisons*" p. 8. (Oct. 3, 2012) available at: <http://www.nyclu.org/publications/report-boxed-true-cost-of-extreme-isolation-new-yorks-prisons-2012>

<sup>5</sup> See, for example, New York State Bar Association Committee on Civil Rights Report to the House of Delegates, *Solitary Confinement in New York State*, Presented to and Approved by the NYS Bar Association House of

We now have even more proof that individuals subjected to solitary confinement are more likely to engage in self-harm.<sup>6</sup> We have more proof that individuals subjected to long term isolation become more, rather than less, violent.<sup>7</sup> We have witnessed individuals who have spent their entire professional lives working in the field of corrections coming to the conclusion that solitary confinement does not rehabilitate.<sup>8</sup> We have learned that, in most cases, severe isolation actually increases, rather than decreases recidivism and thus threatens public safety.<sup>9</sup> We have learned that best practices do not support the use of solitary confinement and that evidence-based policies and treatment practices are what should govern our decision-making in the criminal justice sphere.<sup>10</sup> Finally, with respect to the use of solitary confinement in New York State, we have learned more about the racial disparities and arbitrariness in the imposition of solitary confinement penalties.<sup>11</sup>

Based on what we have learned, we assert that we have now arrived at the time and place where our evolving standards of decency will no longer allow us to tolerate the continued use of long-term solitary confinement.

### **SOLITARY CONFINEMENT IN NEW YORK IN 2014**

Solitary confinement in New York State in 2014 is still confinement 23 hours a day in a cell the size of an elevator for single cells and a parking space for double cells, typically with no commissary, no phone, no package or privileges and no visits.<sup>12</sup> Although given different labels such as administrative segregation, voluntary or involuntary protective custody or disciplinary confinement, the conditions of the confinement are very similar. For most in solitary confinement

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Delegates, January 25, 2013, p. 1 & 6, available at:

<http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26699>.

<sup>6</sup>Associated Press, *Inmates in Solitary Confinement 7 Times More Likely to Harm Themselves: Study*, Feb. 13, 2014, available at: <http://www.cbsnews.com/news/inmates-in-solitary-confinement-7-times-more-likely-to-harm-themselves-study/> citing American Journal of Public Health peer-review study of New York City jail inmates confined to solitary confinement.

<sup>7</sup>Erica Goode, *Rethinking Solitary confinement*, N.Y TIMES, Mar. 11, 2012, at A1. This article is available online under the title, “*Prisons Rethink Isolation, Saving Money lives and Sanity*,” available at <http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=all>.

<sup>8</sup>George H. Bohlinger, III, *The Cruelty of Solitary Confinement*, October 28, 2013, available at: [http://www.washingtonpost.com/opinions/the-cruelty-of-solitary-confinement/2013/10/28/3c3e3ffa-3da6-11e3-b0e7-716179a2c2c7\\_story.html](http://www.washingtonpost.com/opinions/the-cruelty-of-solitary-confinement/2013/10/28/3c3e3ffa-3da6-11e3-b0e7-716179a2c2c7_story.html).

<sup>9</sup>Lovell & Johnson, “*Felony and Violent Recidivism Amount Supermax Prison Inmates in Washington State*,” available at: <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidivism-4-19-04.pdf>.

<sup>10</sup>American Public Health Association Policy Statement 201310 Addressing Solitary Confinement as a Public Health Issue, Nov. 5, 2013, available at: <http://www.apha.org/about/news/pressreleases/2013/2013adoptedpolicystatements.htm>.

<sup>11</sup>NYCLU “*Boxed In*” *supra* note 4, pp. 23-25.

<sup>12</sup>New York State Bar Association Committee on Civil Rights Report to the House of Delegates, *Solitary Confinement in New York State*, Presented to and Approved by the NYS Bar Association House of Delegates, January 25, 2013, p. 1 & 6, available at: <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26699>. See also NYCLU, “*Boxed In*” *supra* note 4, p.5 & 35.

there is little to no human contact, often for years at a time. The one hour of exercise that is allotted to those confined to solitary is done, for most, in a small cage attached to the back of the cell. As noted in our 2012 testimony, in New York State there is still no limit to the length of time a prisoner can be placed in solitary confinement.<sup>13</sup>

Over the past 30 years there has been a steady increase in the length of solitary confinement time that is imposed on prisoners in New York State for alleged misbehavior. Because of this, prisoners, who in the 1980's, were given 30 days in solitary confinement, are now often given years of solitary confinement time without any regard to whether such prolonged isolation will have any positive effect on prison security or the individual's future conduct.

In 2012, with a population of approximately 56,700, over 4,300 prisoners, or 7.6% of the prison population, were held in solitary confinement. In 2014 those numbers have decreased somewhat with a prison population of 53,959 and little over 7% of the population or, 3,804 currently being held in solitary confinement.

When citizens of the United States are facing a loss of liberty in the criminal context, they are provided, not only significant due process rights, but legal counsel to protect those rights. However, once a person is convicted and sent to prison, at least in New York State, those protections disappear. If a prisoner is the subject of an administrative segregation, protective custody or disciplinary hearing, his due process rights are minimal and he is not entitled to counsel either at the hearing or on appeal, even though he is facing a loss of liberty equal to, or arguably greater than that which we, as Americans, so highly protect on the outside.

#### **A. Due Process & Regulatory Violations Result in Illegally Imposed Solitary Confinement**

In 2013 PLS received 1,236 requests for assistance from prisoners sentenced to disciplinary solitary confinement, hundreds of who had been sentenced to years in isolation. PLS does not have the staff to investigate all of these requests but we do at least respond to every request. For the cases we reject, we either advise prisoners that they do not have a claim or we provide counsel and advice as to how they can proceed on their own. PLS provided counsel and advice in 857 of the 1,236 requests we received and accepted 220 cases for investigation. Upon full investigation, which involves reviewing all of the documents associated with the disciplinary hearing, listening to the tape of the hearing and often interviewing the accused and his witnesses, PLS found that 111 cases warranted further administrative advocacy; of those 111 cases, PLS prevailed, either administratively or in the courts, in 75 (68%) of them. The result was that over 89 years of solitary confinement time was expunged from prisoners' records and prisoners were, in turn, released from solitary

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<sup>13</sup> Congressional Testimony of PLS *supra* note 2 at p. 2.

confinement and allowed to participate in the rehabilitative and educational programs that have been proven crucial to successful reentry.

While solitary confinement itself causes grave concerns, these statistics heighten those concerns by demonstrating that there are individuals being wrongfully held in solitary confinement as a result of due process violations. While PLS does what it can to accept as many cases as possible, there is a huge unmet need due to PLS' limited resources. As a result, it is more likely than not that there are thousands of New Yorkers currently wrongfully being held in solitary confinement as a result of due process violations.

### **B. Sentencing at Initial Hearings and Modifications on Appeal Are Often Arbitrary and Irrational**

Although we welcome the administrative modifications or reversals of disciplinary hearings, they are insufficient to remedy the irreparable harm that has already occurred as a result of the solitary confinement time – often more than three months – that prisoners have been forced to serve prior to the modification or reversal. Moreover, the length of the penalties and the arbitrariness with which they are imposed and, in many instances, modified is cause for serious concern.

To illustrate the arbitrary and capricious nature of the disciplinary process in New York State, attached, as Exhibit A, is a chart showing the results of 18 disciplinary cases PLS handled this past year. As you can see, the imposed penalties are extraordinarily long, ranging from six months for “smuggling” – our client had a piece of candy in his pocket – to five years for participating in a disturbance in a prison yard and striking another prisoner and an officer. Equally as disturbing, however, is the arbitrariness and randomness of penalties. The chart shows an instance where three prisoners were given identical charges, but two of the prisoners were given three years in solitary while the third was given one. The chart also shows that a prisoner found in possession of an amount of marijuana that was so small it could not be weighed, and some gang materials, received the same one year penalty given to the prisoner who was involved in a disturbance in the yard throwing punches at an officer.

However, it is the bizarre nature of the modifications that occur during the administrative review process that really highlight the randomness of the imposition of disciplinary penalties in New York State. When it came to reviewing the penalties for the three prisoners who were accused of being involved in the disturbance in the yard, the prison administration modified the penalties for the two prisoners who were given three years in solitary by reducing one penalty to two years and the other to 18 months, but then refused to modify the one year penalty for the third prisoner. The result

was that three prisoners who were accused of engaging in the exact same misbehavior received solitary confinement times of two years, one year and six months, and one year, respectively.

Moreover, we should not lose site of the randomness of the initial penalties that are imposed. Where is the rationale for issuing a punishment of five years in solitary confinement for being involved in a yard disturbance and then cutting that penalty in half on appeal? Where did the five years come from? Where did the modified two and ½ year penalty come from? What is there to prevent a penalty of 20 years and then a reduction to 10? There is no rhyme or reason to the imposition of such penalties. There is no rational purpose being served, but there is great harm being done.

A poignant example of this is set forth in the administrative appeal (attached as Exhibit B) by a PLS attorney for the client identified as J.T. in Exhibit A. As the appeal demonstrates, the client was deteriorating in solitary confinement. For the first four years of his incarceration, the client had few disciplinary problems and had never been sentenced to solitary confinement. However, in 2012 he was found guilty of violent conduct, fighting, weapon possession, creating a disturbance and refusing a direct order and was given a penalty of 13 months in solitary. From that point on, his life seemed to spiral out of control. While serving the 13 months in solitary he accumulated an additional 28 months of solitary time resulting in his maximum release date being six months after his solitary confinement sentence expired. Although we presented clear and cogent arguments on the issue, citing not only the science surrounding the long-term effects of solitary confinement on one's mental health but also the public safety issue involved in releasing an individual from solitary directly into the community, our pleas were ignored.

### **C. Prisoners Suffering from Mental Illness are Still Being Subjected to Solitary Confinement**

Pursuant to extensive litigation and the passage of what is referred to as the 2008 SHU Exclusion Law, there have been significant improvements in the area of the treatment of prisoners suffering from mental illness in New York State.<sup>14</sup> The 2008 SHU Exclusion Law prohibits the confinement of seriously mentally ill prisoners in solitary confinement. However, for some clients,

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<sup>14</sup> In 2002, PLS, together with PRP, Disabilities Advocates, Inc. (DAI) and the law firm of Davis Polk, filed the case of Disability Advocates, Inc. v. New York State Office of Mental Health, S.D.N.Y. 02-CV-4002 (Lynch, J.), on behalf of prisoners with mental illness in New York. The lawsuit alleged that such prisoners are denied adequate mental health care, harshly punished for the symptoms of their mental illnesses and frequently confined under conditions amounting to cruel and unusual punishment. As a result, the suit charged, the mental health of mentally ill prisoners routinely deteriorates, sometimes to the point that the prisoners engage in self-mutilation or suicide. A private settlement agreement was reached in this case that included, *inter alia*, using diagnostic criteria to define serious mental illness (SMI), adding hundreds of treatment beds, offering the possibility of time cuts to SMI prisoners in long-term SHU or keeplock, and placing limits on the types of misconduct for which SMI prisoners may be punished.

the SHU Exclusion Law has become meaningless because, despite the fact that they were diagnosed with a serious mental illness when they came into prison, they were re-diagnosed while in prison and thus no longer benefit from the Exclusion Law. For others, although they suffer from mental illness, because their condition does not fall within the definition of “serious mental illness,” they are not exempt from solitary confinement.

Below are examples of four cases that demonstrate the irrational, arbitrary and very arguably unconstitutional way in which solitary confinement sentences are presently being imposed on prisoners in New York State who suffer from mental illness or intellectual capacity issues:

**Case No. 1**

Our client received six months solitary confinement for fighting, creating a disturbance, assault on staff, unhygienic act and refusing a direct order. He failed to file a timely appeal due to extremely limited literacy skills. During our interview with him we learned that he was in the Special Needs Unit (SNU)<sup>15</sup> prior to receiving the misbehavior report at issue. We also learned that he was scheduled to be released from prison on February 14, 2014.

Due to our client’s limited literacy and intellectual skills, we requested permission to file a late appeal, but our request was denied. We then sought a discretionary modification of the penalty asking for time served, noting that our client had already served nearly four months in solitary and would otherwise be forced to “max out” directly from solitary into the community. We stressed the benefit to both our client and the community of allowing our client to transition back to the SNU prior to release, rather than face release to the streets immediately following six months in solitary. Our request was denied. Our client maxed out on 2/14/14 as scheduled.

**Case No. 2**

Our client had multiple suicide attempts and a former diagnosis of schizophrenia but had been re-diagnosed to mood disorder NOS by DOCCS. He had been placed in solitary confinement three times over the past year. His letters when he was in solitary were deeply disturbing and often included suicidal ideation.

**Case No. 3**

Our client, who read at a second grade level and had a history of mental illness, was accused

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<sup>15</sup> SNU provides “programs and housing areas for offenders who have intellectual and adaptive behavioral deficits and, as a result, may have significant difficulty adjusting to the prison environment. These units are therapeutic communities that provide short and long-term habilitative and rehabilitative services to offenders who have been identified as developmentally disabled or who possess significant intellectual and adaptive behavior deficits. These offenders generally present with an IQ below 70 and have adaptive behavior deficits that impair independent functioning in the general prison population. *See*: Department of Corrections and Community Supervision Report Pursuant to Chapters 130 and 132 of the Laws of 2010, October 6, 2011, available at: <http://www.op.nysed.gov/surveys/mhpsw/doccsrpt.pdf>.

of throwing a bar of soap at a corrections officer. He was found guilty at his hearing and sentenced to eight months in solitary. Despite the fact that our client was clearly not capable of communicating in English, the hearing was conducted in English and he was not offered a translator. Our client struggled to understand basic concepts throughout the hearing and the hearing officer was not able to understand many of our client's own words. Furthermore, although our client did not have a current mental health diagnosis at the time of the hearing, he has a long history of mental health problems. We submitted a supplemental appeal and the hearing was ultimately reversed, but not before our client served over five months in solitary.

#### **Case No. 4**

Our client was charged with smuggling, unhygienic act, refusing a direct order, weapon possession, altered item and two counts each of violent conduct and assault on staff. He was being transferred to the mental health unit when this incident took place. On appeal, his six year solitary confinement sentence resulted in a reduction to five years.

#### **D. Juveniles and Other Vulnerable Populations, Including Sensorially Disabled and the Elderly, Are Not Exempt From Solitary Confinement**

In our June 2012 testimony we set forth the position of the U.S. Supreme Court regarding the limited culpability of juveniles as well as the extensive scientific research that suggests that juveniles should not be held culpable for their conduct to the same degree that adults are because juveniles lack fully developed frontal lobes required for impulse control and because their brain structure is fundamentally and significantly different from that of adults.<sup>16</sup>

On February 19, 2014, the New York Civil Liberties Union and New York State DOCCS announced an historic settlement regarding the use of solitary confinement that, *inter alia*, will have some impact on 16 and 17 year old juveniles.<sup>17</sup> The agreement provides for the implementation of new comprehensive and prospective guidelines concerning solitary confinement penalties for all prisoners. However, those guidelines will still permit the imposition of solitary confinement penalties of months and, in many cases, years – penalties that significantly exceed the 15 day maximum suggested by the United Nations Special Rapporteur on torture, Juan E. Méndez.<sup>18</sup> The agreement also stays the pending litigation for two years while experts analyze the use of solitary confinement in New York State.

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<sup>16</sup> See Congressional Testimony of Prisoners' Legal Services of New York, pp. 5-7, June 19, 2012.

<sup>17</sup> *Peoples, et. al v. Fischer, et. al, Stipulation For a State With Conditions*, Docket Number 11-CV-2694, S.D.N.Y. (Scheidlin, J.) Feb. 19, 2014 available at: <http://www.nyclu.org/news/nyclu-lawsuit-secures-historic-reforms-solitary-confinement>.

<sup>18</sup> Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, *Interim Rep. of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011pdf>.

While we are pleased that New York State is making steps toward addressing this issue and we commend NYCLU and NYS DOCCS on their efforts, there is still much to be done. The relief in the agreement, which will not be implemented for at least nine months, will allow for juveniles to be let out of their cells for up to five hours per day during the week for exercise, education and programming. But juveniles will still be held in solitary throughout the weekends and they will still be limited to only one hour of exercise per day, an amount we know is insufficient for their prospects of healthy development. In addition, they will still be subject to the imposition of years of 19 to 23 hour a day confinement which typically carries with it loss of packages, commissary and phone privileges and even sometimes visitation privileges. Such harsh penalties have been proven to cause serious medical and psychological harm and significantly interfere with a juvenile's ability to stay connected with his/her family – a connection that has been found to be instrumental to rehabilitation and successful reintegration into society upon release.

The above referenced settlement agreement also does not provide any immediate relief for youth between 18 and 21, sensorially disabled prisoners or elderly prisoners – all of whom continue to be harmed when subjected to long-term solitary confinement.

### **EVOLVING STANDARDS OF DECENCY**

In our June 2012 testimony we wrote at length about how our evolving standards of decency were bringing us to a place where we could no longer tolerate the use of solitary confinement in our country.<sup>19</sup> Since that time, the New York State Bar House of Delegates has adopted a resolution calling upon all governmental officials charged with the operation of prisons and jails throughout New York State to profoundly restrict the use of long-term solitary confinement and urging that the imposition of long-term solitary confinement on persons in custody beyond 15 days be proscribed.<sup>20</sup> There has been legislation introduced in at least 12 states to reduce or eliminate the use of solitary confinement.<sup>21</sup> There has also been an extensive investigation into the use and abuse of solitary confinement in New York.<sup>22</sup> In light of this, we urge this committee to recognize that our evolving standards of decency can no longer tolerate the wide-spread use of long-term solitary confinement in our prisons and jails.

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<sup>19</sup> See Congressional Testimony of Prisoners' Legal Services of New York, pp. 7-10, June 19, 2012.

<sup>20</sup> New York State Bar Association Committee on Civil Rights Report to the House of Delegates, *Solitary Confinement in New York State*, *supra* note 12, p. 2.

<sup>21</sup> America Civil Liberties Union, *Solitary Confinement Resource Materials*, pp. 14-15, available at: <https://www.aclu.org/files/assets/Solitary%20Confinement%20Resource%20Materials%2012%2017%2013.pdf#page=14>

<sup>22</sup> NYCLU "Boxed In" *supra* note 4.

## RECOMMENDATION

Our evolving standards of decency mandate Congressional reform in the area of solitary confinement. That reform should do the following:

1. Fundamentally transform how our public institutions respond to incarcerated people's needs and alleged behaviors/threats, from inhumane and counterproductive isolation and deprivation to alternative therapeutic and rehabilitative units that provide additional support, programs, and treatment together with meaningful out-of-cell time and human interaction;
2. Drastically restrict the criteria that can result in separation from the general prison population to the most egregious conduct;
3. End long term isolation beyond 15 days as called for by the UN Special Rapporteur;
4. Ban any length of time of solitary confinement for people who are more vulnerable either to the effects of isolation itself or additional abuses while in isolation, including young people, elderly people, people with physical disabilities, people with mental health or addiction needs, pregnant women, and members of the LGBTI community;
5. Better equip and train staff to effectively work with incarcerated persons;
6. Make the processes resulting in solitary fairer, including legal representation at hearings and upon appeal; and
7. Make the entire process involving the implementation of solitary confinement or separation more transparent, including mandatory reporting requirements with more accountability through independent outside oversight.

Dated: February 25, 2014

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OVERVIEW OF SELECTED DISCIPLINARY HEARINGS HELD IN NEW YORK STATE PRISONS JANUARY 2013 – FEBRUARY 2014

EXHIBIT A - Congressional Testimony of PLS - February 2014

CLIENT	DESCRIPTION OF CHARGES &/OR INCIDENT	ORIGINAL PENALTY	MODIFIED	TIME SAVED
		Solitary Confinement/Loss of Good Time in months		
J. B.	Disturbance in yard. Group of 25 inmates allegedly throwing closed fist punches at officers.	36/36	18/18	18/18
T. S.	Disturbance - same as above	36/36	18/18	18/18
O.M.	Disturbance - same as above	36/36	24/24	12/12
G. J.	Disturbance - same as above	12/12	No mod.	
I. S.	Disturbance – same as above but accused observed striking inmate and an officer	60/24	30/24	30/0
L. S.	Disturbance – same as above but observed striking an officer	48/24	24/24	24/0
C. W.	Disturbance – same as above but allegedly started the riot	36/24	24/24	12/0
J. J.	Disturbance – same as above but allegedly ran from officer and then assaulted him	18/18	12/6	6/12
S. A.	Yard Disturbance - no specific misconduct alleged	36/36	18/18	18/18
L. R.	Disciplined for smuggling. Had piece of candy in his pocket	6/3	3/3	3/0
D. L.	Possession of a razor, tattoo gun, ink and needles and a broom handle	24/24	9/9	15/15
T. A.	Possession of a weapon, assault on staff, violent conduct and interference	7/9	No	
K. S.	Contraband, marijuana (so little it couldn't be weighed), gang materials	15/15	Reversed	15/15
K. A.	Inmate in RMHU at time of incident. Charged with violent conduct, assault on staff creating a disturbance and altered item in connection with a cell extraction due to threats of self harm. Was placed in OBS cell after incident	12/36	Reversed	12/36
J. S.	Assault on another inmate	18/18	No	
W. W.	Possession of 2 match heads, two match strikers (from match books) a piece of electrical tape and a gang related note written by another inmate	12/12	No	
A. L.	Unsigned note attributed to AL which threatened and harassed a social worker.	4/1	2/1	2/0
J. T.	Appears to suffer from mental illness and was deteriorating in SHU. Requested recognition of this and reversal of recent 2 hearings. Denied	37 (8 hearings)	No	

# Prisoners' Legal Services of New York

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Executive Director

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December 9, 2013

Exhibit B

PLS- Congressional Testimony Feb. 25, 2014

Albert Prack, Director of Inmate Discipline  
New York State Department of Corrections  
and Community Supervision  
Building #2, State Campus  
Albany, New York 12226

Re: **Tier III Hearings**

Dear Mr. Prack:

I am writing to ask that you significantly reduce the penalties imposed at Tier III hearings of [redacted] and [redacted] due to what appears to be a significant deterioration in in [redacted] mental state during his incarceration at Southport C.F.

[redacted] came into DOCCS custody in September 2008. Between his arrival at DOCCS and April 2012, [redacted] conduct, while not exemplary, never resulted in a sanction of over 30 days keeplock. He had never been sent to disciplinary SHU.

In April 2012, while at Attica C.F., [redacted] was found guilty of violent conduct, fighting, weapon, creating a disturbance and refusing a direct order; a penalty of 13 months SHU was imposed and [redacted] was transferred to Southport.

[redacted] adjustment to Southport C.F. has been poor. Since arriving there, he has been found guilty of unhygienic acts on three occasions (one act was the subject of the [redacted] hearing), most recently on [redacted] and was found guilty of creating a disturbance while on a trip to a community hospital. The factual basis for the charge of creating a disturbance while on the medical trip was that [redacted], among other statements, threatened to blow up Southport C.F. and have a shoot-out with the officers.

In the approximately 1 year that [redacted] has been at Southport, he has accumulated an additional 2 years and 4 months of SHU time. His SHU release date is 5/10/15, 6 months after his sentence expires.

Albert Prack  
December 9, 2013  
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It appears that [REDACTED] has developed mental health issues that are likely related to and exacerbated by his long term isolated confinement at Southport C.F. See Argument in Support of Reducing SHU Sanction and supporting documents, attached. His conduct, as documented by the misbehavior reports, is both atypical of his behavior before he was placed in SHU and typical of an individual suffering from "SHU syndrome." In my experience, few inmates who are not mentally ill engage in repeated unhygienic acts or threaten far-fetched conduct such as blowing up a correctional facility and having a "shoot-out" with staff.

[REDACTED] is scheduled to be released from DOCCS custody in November 2014. Unless you reduce the SHU sanctions of these two hearings, he is likely to be released from Southport C.F. For both [REDACTED] and the sake of public safety, I urge you to reduce the penalties of these two hearings so that [REDACTED] can spend some time in general population before his release. I also urge you to have [REDACTED] transferred from Southport C.F. to a therapeutic setting where he can be assessed and treated.

Thank you for your attention to these concerns.

Sincerely,

Betsy Hutchings  
Managing Attorney

# ARGUMENT IN SUPPORT OF REDUCING THE SHU SANCTION OF THE SUBJECT HEARING

In further support of the request that you reduce the sentence at issue in this appeal, I refer you to the testimony of Craig Haney, professor of Psychology at University of California, Santa Cruz; the Statement from the Physicians for Human Rights;<sup>1</sup> and the decision in Peoples v. Fischer, 898 F.Supp.2d 618 (S.D.N.Y. 2012), disposing of the defendants' motion to reconsider the court's ruling on qualified immunity and other pre-trial issues. (Materials attached).

These materials, and the sources referenced in them, describe the psychological and physical consequences of long term isolated confinement. I ask that in light of the conclusions drawn by the enclosed testimony, you reduce the SHU sanction imposed to time served.

The statement from Physicians for Human Rights notes that individuals held in solitary confinement for even a short period of time commonly experience sleep disturbances, headaches, lethargy, heart palpitations, dizziness, diaphoresis (excessive sweating, such as that experienced by people in shock), back and joint pain, deterioration of eyesight, shaking, feeling cold and aggravation of pre-existing medical problems.<sup>2</sup>

Craig Haney writes that the level of suffering in the nation's solitary confinement units is palpable and profound.<sup>3</sup> The federal judge who heard the testimony about the conditions of solitary confinement at Pelican Bay Security Housing Unit concluded that the severe deprivation and oppressive control existing in such places "may press the outer bounds of what most humans can psychologically tolerate."<sup>4</sup> According to Mr. Haney, serious forms of mental illness can result from long term isolation. The symptoms of these illnesses include:

- self-mutilation and suicide;
- significantly increased negative attitudes and affect, irritability, anger, aggression and rage; and
- fear of impending emotional breakdowns, a loss of control and panic attacks.

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<sup>1</sup> Craig Haney's testimony and the Statement of the Physicians for Human rights were made and submitted, respectively, to the Senate Judiciary Committee on the Constitution, Civil Rights and Human Rights Hearing on Solitary Confinement, June 19, 2012.

<sup>2</sup> See Statement of Physicians for Human Rights, pg. 5.

<sup>3</sup> Haney Testimony, pg. 9.

<sup>4</sup> See Haney Testimony, fn. 11, referencing Madrid v. Gomez, 889 F.Supp. 1146, 1267 (N.D. Cal. 1995).

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Three quarters of the inmates in one of the studies that Mr. Haney conducted reported most of the following symptoms:

- severe and paralyzing discomfort around other people,
- self-imposed social withdrawal,
- extreme paranoia,
- hypersensitivity to noises, lights and smells,
- various forms of cognitive dysfunction,
- deep depression, and signs and symptoms of psychosis, including visual and auditory hallucinations.<sup>5</sup>

Judge Scheindlin's opinion in Leroy Peoples' Section 1983 challenge to long term isolated confinement imposed for violating the rules governing possession and use of U.C.C. materials, finds that long term segregated housing should be used sparingly after finding that a prisoner has committed a *very severe* disciplinary infraction, in which *safety or security was seriously threatened* and cites with approval the American Bar Association's Criminal Justice Standards for Prisoners (2010). The ABA standard concluded that only the most severe disciplinary offenses, in which safety and security are seriously threatened, ordinarily warrant a sanction that exceeds 30 days placement in disciplinary housing, and **no placement in disciplinary housing should exceed 1 year**.<sup>6</sup> According to Judge Sheindlin, the ABA standards "are not radical or fringe views: on the contrary the standards' unique contribution is to address all aspects of long term segregation by presenting solutions that embody a consensus view of representatives of all segments of the criminal justice community who worked on them together . . . ." (internal quotes omitted).<sup>7</sup>

The acts that this inmate was found guilty of committing, while serious, did not result in serious injuries or death. Applying the ABA standards would likely lead to an imposition of a SHU sanction far less severe than 12 months. Under the circumstances, I ask that if you do not reverse the subject hearing that you reduce the SHU sanction imposed at that hearing to time served and eliminate the recommended loss of good time.

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<sup>5</sup> Haney Testimony, pg. 10-11.

<sup>6</sup> See Peoples v. Fischer, 2012 WL 2402593 \*1.

<sup>7</sup> Id.