

**Written Statement of Martin F. Horn and Michael B. Mushlin
Before the United States Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
Hearing on
**Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences**
Tuesday, February 25, 2014
*at 2:30 pm***

**Chairman: The Honorable Dick Durbin
Ranking Member: The Honorable Lindsey Graham**

February 24, 2014

Thank you for holding this important hearing and inviting us to submit written testimony. We have approached the issue of Solitary Confinement or extreme isolation from widely different perspectives. Yet through dialogue and discussion we have found that we share common views on this critical topic. One of us, (Martin F. Horn) has had a long and distinguished career in prison administration having served as the head of the Pennsylvania Prison system for five years and for over eight years as Commissioner of Correction and Probation for the City of New York City. In addition, Mr. Horn earlier served as executive director and chief operating officer for the New York State Division of Parole. The other of us (Michael B. Mushlin) is a law professor at Pace Law School, past project director of the New York City Legal Aid Society Prisoners' Rights Project, and author of

"Rights of Prisoners," a four volume legal treatise published by West Publishing Company.

Despite the different vantage points from which we view the corrections system in the United States, we both agree that extreme isolation as it is currently practiced, often called solitary confinement, is an inhumane practice that must end.¹ We, therefore, applaud this Subcommittee for holding this hearing and for creating a national platform from which to focus on this critical issue. We write to describe our view of how isolation can and cannot work.

An estimated 80,000 prisoners in this country are living close to 23 hours a day alone in their cells, many deprived of meaningful stimulation. These extreme conditions cause such suffering they have been called "torture." For the young, the mentally ill, and other vulnerable prisoners, extreme isolation is especially dangerous, often leaving permanent psychological damage.

The California and New York correction systems provide two paradigms of how solitary confinement is used in the United States. In California, officials resort to isolation to keep large groups of prisoners, such as gangs, from assembling, and from harming one another and staff. Historically, California placed prisoners

¹ We have recently expressed these views in an Op-Ed that we authored entitled "*Reform Prison Isolation*" (Albany Times Union, October 29, 2013).

affiliated with gangs in isolation until they disavowed their gang allegiance. Twice in the last year, California prisoners have engaged in a hunger strike to protest the worst abuses; more than 10,000 prisoners are believed to be in isolation.

New York uses extreme isolation to punish people for violating rules — some minor. According to the New York Civil Liberties Union, hundreds of prisoners were sent to isolation for having an "untidy cell or person," "littering," and hundreds more for "unreported illness." Approximately 4,300 New York prisoners are being punished this way.

The system can be reformed through a drastic cutback by prison officials in their dependence on isolation—no more applying it to minor, nonviolent offenses, no more using it for crowd control—with an acknowledgement by prisoners' rights advocates that some of the officials' safety concerns are legitimate, that certain violent prisoners must be isolated when they pose a serious danger. Even when isolation is needed, however we propose that prison administrators set new conditions for isolation without excessive deprivations. With these conditions, while isolated, prisoners should be allowed to read, receive visits, make phone calls, and have other forms of genuine human contact and stimulation. Time spent in isolation need not stretch into months or years. Periodic reviews to determine

whether danger persists would lead to far shorter periods of isolation for most prisoners.

To address gangs such as exist in California's prisons, we recommend continuation of efforts to reduce overcrowding and reconsider the isolation of gang members, as well as providing sufficient staff, properly trained and equipped to keep prisoners safe. In places like New York where prisoners are sentenced to extreme isolation for prison rule violations, prison administrators should use other punishments for breaking the rules in nonviolent ways, including greater use of alternative sanctions for nonviolent offenses like monetary penalties, restricted privileges, and the use of "conditional discharges" for first-time nonviolent offenders, offering them an opportunity to "cleanse" their record through continued good behavior.

The recent settlement reached between the State of New York and the New York Civil Liberties Union in *Peoples v Fischer* (11-CV-2694) (Stipulation for Stay with Conditions) (S.D.N.Y. February 19, 2014) is an example of how corrections officials and advocates with foresight and thoughtfulness can begin to achieve these reforms.

Recommendation

Congress can play an important role in the reform of solitary confinement. A law addressed to solitary confinement requiring a study and survey of existing levels of

extreme isolation of prisoners, combined with the establishment of the basic conditions we have described above and the requirement of oversight, would lay the foundation for essential reform. We believe that these reforms will benefit our nation and when implemented will show the world that America has a prison system worthy of its values.