Solitary Confinement and Supermax Cases

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Program Overview

• *Cunningham v. BOP* - quick case summary
• What is solitary confinement?
• ADX Florence overview
• How did the BOP’s crown jewel become a madhouse?
• Does solitary cause mental illness?
• Current BOP policy and practice for inmates with mental illness
• Questions?
• Cunningham v. BOP - quick case summary
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Quick Case Summary

• Class action filed on behalf of prisoners with mental illness housed in solitary confinement at ADX Florence
• Lawsuit filed in June 2012 in federal court in Colorado
• 8th Amendment claim for injunction overhauling systems for mental health evaluation and treatment
• Settlement approved in January 2017, providing for sweeping new policies, court-appointed monitoring and vigorous court enforcement
Five Litigation Objectives

- Improved pre- and post- admission screening and diagnosis
- Exclusion of prisoners who require a level of care unavailable at ADX
- Improved access to care for prisoners who remain at ADX
- Operational changes to reduce damage caused by isolation
- Court-supervised monitoring and enforcement
Cunningham v. BOP - quick case summary

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Current BOP policy and practice for inmates with mental illness

Questions?
What Is Solitary Confinement?

• Different labels ("solitary," "ad seg," "close confinement" and "restrictive housing")

• All mean more or less the same thing:
  • Inmates confined to ~ 84 s.f. single cells except for recreation and specific out-of-cell services (e.g. medical services, visitation, showers)
  • Limited communication and interactions with staff members or other inmates
  • Recreation typically no more than 2 hours, several days a week
  • Inmates rarely know how long segregation will last or what they can do to change circumstances
Types of Segregation

- Disciplinary Segregation
  - Based what the inmate did
  - Typically ordered as punishment for an institutional infraction
  - Often of relatively short duration (weeks or a few months)

- Administrative Segregation
  - Typically imposed based on what the inmate might do
  - Prospective in nature
  - Designed to protect staff members and other inmates from a danger the inmate is believed to pose
  - Often of longer duration (sometimes years)
Types of Segregation

• Pre-Hearing Detention
• Non-Disciplinary Segregation
  • Protective custody
  • Especially vulnerable inmates (e.g. transgendered persons)
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“The Alcatraz of the Rockies”
“A clean version of hell”
“One of the most psychologically debilitating places on Earth”
ADX prisoner population

- About 425 inmates whom BOP believes require the highest security available
- Five main groups:
  - Terrorism or national-security convictions
  - Leadership of drug cartels, mafia families, and gangs
  - State prisoners considered unmanageable by state DOCs
  - Prisoners with history of escape or in-custody violence
  - Extreme protective custody issues
“How big is a cell?”
“How big is a cell?”
“How big is a cell?”
“How big is a cell?”

“A cell is six by four.”
Standard ADX cell
Standard parking space
Shower
Concrete desk and stool
Concrete bed
Toilet and sink

12’ 3”
7’ 5”

Standard ADX cell
Cell interior

ADX Florence
Cell door

ADX Florence
Inside recreation
ADX Florence
Outside recreation
ADX Florence
Control Unit bed with rings for four pointing

ADX Florence
Control Unit
bed with rings for four pointing
ADX Florence
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We imprison vast numbers of people with mental illness
“Deinstitutionalization” reduced the asylum population

NUMBER
PER 100,000
ADULTS

MENTAL
HOSPITAL

0 100 200 300 400 500 600 700
But many of the deinstitutionalized ended up in prison
We reinstitutionalized the same population in a different setting.
Many prisoners with mental illness struggle in open prison populations. To “control” their behavior and/or protect them, they often are moved to higher security settings. Restrictive housing units focus on control and discipline and often lack expertise and resources to deal with mental illness. As prisoners’ access to treatment declines, behavior problems follow, eventually leading to solitary confinement, which is fundamentally incompatible with mental illness.
BOP policy has long barred solitary for the mentally ill

Inmates currently diagnosed as suffering from serious psychiatric illnesses should not be referred for placement at either USP Marion or ADX Florence.

PROGRAM STATEMENT

Federal Bureau of Prisons
BOP policy has long barred solitary for the mentally ill

• But until 2013 BOP did not have a single residential treatment unit for high security inmates with mental illness
BOP policy has long barred solitary for the mentally ill

• But until 2013 BOP did not have a single residential treatment unit for high security inmates with mental illness
• As a result, they pooled in BOP’s SMUs and at the ADX, which readily accepted them, but from which few prisoners with mental illness could leave through normal channels
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Solitary confinement is hard on even sound minds
Solitary confinement is hard on even sound minds

- Author Charles Dickens
- Visited Eastern State Penitentiary in 1842
- Recorded impressions in *American Notes for General Circulation*
Solitary confinement is hard on even sound minds

“I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers.... its wounds are not upon the surface, and it extorts few cries that human ears can hear.”
One inmate’s conception of living in solitary confinement

Tom Silverstein drawing
2015
Does solitary cause mental illness?

- Stuart Grassian, Terry Kupers, Craig Haney and others passionately believe in “SHU Syndrome”
Does solitary cause mental illness?

• Stuart Grassian, Terry Kupers, Craig Haney and others passionately believe in “SHU Syndrome”

• Commonly described symptoms:
  • Anxiety
  • Hyperresponsiveness to external stimuli
  • Perceptual distortions and hallucinations
  • A feeling of unreality
  • Difficulty with concentration and memory
  • Acute confusional states
  • The emergence of primitive aggressive fantasies
  • Persecutory ideation
  • Motor excitement,
  • Violent destructive or self-mutilatory outbursts
Some sobering statistics
Two thirds of BOP suicides occur in segregation units

Federal Bureau of Prisons Study (1983-1997)
Even though segregation accounts for less than 10% of bop beds

Federal Bureau of Prisons Study (1983-1997)
Many Inmates Spend Years in Segregation

BOP: ADX Florence reported length of stay as of Fall 2014

- More than 3 years: 58%
- 1-3 years: 25%
- 6 months-1 year: 7%
- Less than 6 months: 10%

The ASCA-Liman 2014 National Survey of Administrative Segregation
Many Inmates Spend Years in Segregation

Texas system wide reported length of stay as of Fall 2014

- 33% Less than 6 months
- 12% 6 months-1 year
- 10% 1-3 years
- 44% More than 3 years

The ASCA-Liman 2014 National Survey of Administrative Segregation
Inmates Released Directly from Segregation Into The Community

- In 2014 TDCJ released 1,174 inmates directly from administrative segregation

The ASCA-Liman 2014 National Survey of Administrative Segregation
Inmates Released Directly from Segregation Into The Community

- In 2014 TDCJ released 1,174 inmates directly from administrative segregation
- “[I]n 30 jurisdictions tracking the numbers in 2013, a total of 4,400 prisoners went from administrative segregation directly to the community.”

The ASCA-Liman 2014 National Survey of Administrative Segregation
Does solitary cause mental illness?

• Very few comprehensive studies of effect of extended isolation on mental health
• So-called “Colorado Study” published 10/31/2010
  • Very controversial
  • Main hypotheses:
    1. Inmates in AS would develop symptoms of SHU syndrome
    2. Inmates with and without mental illness would all deteriorate over time, but inmates with mental illness would deteriorate more quickly
    3. Inmates in AS would experience greater psychological deterioration over time than comparison groups
Colorado Study Conclusions

- Results largely inconsistent with hypotheses
  1. Data showed initial improvement in psychological well-being during early months in segregation, which followed by leveling
  2. Inmates with mental illness did not deteriorate at a greater rate than inmates without mental illness
  3. AS inmates did not develop SHU syndrome traits that were not also present in non-AS control groups
So, what can we say about impact of isolation on mental health?

- Hard data inconclusive
- Many inmates report changes
- Very high rates of suicide and self harm
- Studies suggest higher recidivism among inmates released directly from segregation
- Almost no one says segregation makes inmates healthier or less dangerous
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Selected BOP Mental Health Policies

- BOP Program Statement 5310.16, Treatment and Care of Inmates with Mental Illness (5/1/2014)
- BOP Program Statement P6340.04 Psychiatric Services (1/15/2005)
- BOP Program Statement 6010.03 Psychiatric Evaluation and Treatment (8/12/2011)
- BOP Program Statement P5324.08, Suicide Prevention Program (3/15/2007)
- BOP Program Statement P5100.08, Inmate Security Designation and Custody Classification (9/12/2006)
- Institution Supplements and post orders for mental health units
BOP Program Statement 5310.16, Treatment and Care of Inmates with Mental Illness

• Definition of “serious mental illness”
Classification of an inmate as seriously mentally ill requires consideration of his/her diagnoses; the severity and duration of his/her symptoms; the degree of functional impairment associated with the illness; and his/her treatment history and current treatment needs. Mental illnesses not listed below may be classified as seriously mentally ill on a case-by-case basis if they result in significant functional impairment.
The following diagnoses are *generally* classified as serious mental illnesses:

- Schizophrenia Spectrum and Other Psychotic Disorders.
- Bipolar and Related Disorders.
- Major Depressive Disorder.

In addition, the following diagnoses are *often* classified as serious mental illnesses, especially if the condition is sufficiently severe, persistent, and disabling:

- Anxiety Disorders.
- Obsessive-Compulsive and Related Disorders.
- Trauma and Stressor-Related Disorders.
- Intellectual Disabilities and Autism Spectrum Disorders.
- Major Neurocognitive Disorders.
- Personality Disorders.
BOP Program Statement 5310.16, Treatment and Care of Inmates with Mental Illness

- Definition of “serious mental illness”
- Inmate care levels
  - CARE1-MH: No significant mental health care
  - CARE2-MH: Routine outpatient mental health care or crisis oriented mental health care
  - CARE3-MH: Enhanced outpatient or residential care
  - CARE4-MH: Inpatient psychiatric care
- Treatment standards that correspond to care levels
- Standards for changing care levels
July 12, 2017 DOJ Inspector General Report
July 12, 2017 DOJ Inspector General Report

- BOP policies do not adequately address confinement of inmates with mental illness in restrictive housing
- BOP does not adequately track or monitor inmates with mental illness held in restrictive housing
- BOP mental health staff do not always document inmates’ mental disorders
- Since 2014 Program Statement revision, the percentage of BOP inmates who receive regular mental health care has declined by 30%
Figure 3
Number of MHCL 2–4 Inmates, September 2010 – May 2015

Source: OIG analysis of BOP data
Cunningham v. BOP By The Numbers

- **450+** ADX inmates now have access to constitutionally adequate mental health care
- BOP has created **3** new high security mental health units
- **100+** seriously mentally ill inmates removed from ADX
- **100,000** inmates living in solitary confinement in the United States have the benefit of new baseline established by *Cunningham*
- New BOP mental health policy negotiated by APKS covers **188,000** BOP inmates
Cunningham v. BOP By The Numbers

- **1.6 million** readers of New York Times Magazine read the cover story about this case and learned about solitary and its effects
- Settlement includes **$3 million** in funding for legal services initiatives
Mental Health Care at ADX after Cunningham
Mental Health Care at ADX after Cunningham

• ADX still houses some inmates with mental illness and other psychological issues or symptoms
  • Mental Illness that is not “Serious Mental Illness”
  • Inmates with SMI who have extraordinary security concerns
  • Inmates with SMI who are awaiting transfer
  • Inmates who engage in self harm or suicidal gestures
Mental Health Care at ADX after Cunningham

- More staff
  - 4 psychologists
  - 2 psychiatrists
Mental Health Care at ADX after Cunningham

- More staff
  - 4 psychologists
  - 2 psychiatrists
- Private and group therapy facilities
Individual therapy room
ADX Florence
Group therapy modules
ADX Florence
Mental Health Care at ADX after Cunningham

- More staff
  - 4 psychologists
  - 2 psychiatrists
- Private and group therapy facilities
- Other new programming
  - Prerelease unit
  - AARP unit
- More aggressive staff effort to move inmate through the ADX and into a stepdown program
Selected BOP Mental Health Facilities
Selected BOP Mental Health Facilities
Inside
Recreation
USP Florence
STAGES Unit
Inside Recreation
USP Florence
STAGES Unit
Outside Recreation
USP Florence
STAGES Unit
Selected BOP Mental Health Facilities

USP Allenwood Secure Mental Health-Step Down Program
Selected BOP Mental Health Facilities

USP Atlanta Secure Mental Health-Step Down Program
Selected BOP Mental Health Facilities

FMC Rochester
Selected BOP Mental Health Facilities

FMC Butner
Selected BOP Mental Health Facilities
Selected BOP Mental Health Facilities

FCC Terre Haute
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