

INQUIRING MINDS... MAY 1, 2015

THE AMERICAN CRIMINAL JUSTICE SYSTEM

Moderator : Al Kaplan

At a recent Congressional Hearing, ostensibly to discuss the upcoming Supreme Court Budget, much was said by Justices Kennedy and Breyer about what they saw as failures in our correctional System.

Both expressed much concern with our System, comparing problems as compared to other systems across the world.

1. Our system is much too costly. The cost-effectiveness of our system is very poor.
2. Our institutional population greatly overshadows the numbers per unit of population in virtually all other countries.
3. Our recidivism rate exceeds that in most other countries.
4. Our mandatory years per crime exceeds those in virtually all other counties.
5. Much too little emphasis is paid to rehabilitation, as against punishment per se, again as compared to most other countries.
6. As a result of many of the problems mentioned, overcrowding of our facilities violated the 8th Amendment in many cases.

WSJ, March 24, 2015 - WASHINGTON—Two Supreme Court justices told a House subcommittee Monday that the American criminal-justice system is too harsh, locks up too many people for too long and does so at an ultimate cost to public safety.

“This idea of total incarceration just isn’t working,” Justice [Anthony Kennedy](#) said, speaking at a House Appropriations Committee hearing to discuss the Supreme Court’s annual budget request. In many instances, he said, it would be wiser to assign offenders to probation and other supervised release programs.

“This is cost-effective,” he said, even “without reference to the human factor” involved in incarceration. “We have a very low recidivism rate for those who are on release.”

Justice [Stephen Breyer](#), seated alongside Justice Kennedy, added that setting mandatory minimum sentences for specific crimes was “a terrible idea.” He called on Congress to “prioritize” improvements to the criminal-justice system.

The three Republicans and one Democrat who attended the hearing used the occasion to ask the justices questions far afield from the court’s \$88 million fiscal 2016 budget request.

“At the risk of getting into a philosophical discussion,” Rep. Steve Womack (R., Ark.) said he wanted the justices’ views on “prison and local jail overcrowding.” Having spoken to local officials in his district, Mr. Womack said he had concluded that “you just can’t build enough incarcerating facilities” to hold the number of criminals being sentenced to prison.

Justice Kennedy agreed. “The corrections system is one of the most overlooked, misunderstood institutions, functions, that we have in our entire government,” he said.

Justice Kennedy usually sides with law enforcement in criminal procedure cases, but he has joined the court’s liberals to hold that prison overcrowding can grow so severe that it violates the Eighth Amendment prohibition of “cruel and unusual punishments.”

“California, my home state, had 187,000 people in jail, at a cost of over \$30,000 a prisoner, compared to the amount they gave to schoolchildren, that’s about \$3,500 a year,” Justice Kennedy said, noting the comparison wasn’t completely fair as prisoner costs reflect round-the-clock incarceration.

Justice Kennedy added that he was particularly troubled by the use of solitary confinement.

“Solitary confinement literally drives men mad,” he said. “Even Doctor Manette, although he had his workbench and his cobbler’s tools, even he lost his mind,” Justice Kennedy said, referring to the character in Charles Dickens’ novel “A Tale of Two Cities” who spends nearly two decades in the Bastille in France.

In contrast to the American practice of solitary confinement, European justice systems will confine inmates in groups of three or four, with apparently better results, Justice Kennedy said.

He called for additional research into effective correctional methods. “We haven’t given it nearly enough study, nearly enough thought,” Justice Kennedy said.

[Nicole Flatow](#)..Thinkprogress Posted on March 24, 2015 at 8:42 am Updated: March 24, 2015 at 11:12 am -

Justices Stephen Breyer and Anthony Kennedy during a congressional hearing Monday, March 23:

The prisons are one of the most misunderstood institutions of government. Solitary confinement drives individuals insane. And mandatory minimum sentences are a bad idea. These were the assertions of U.S. Supreme Court Justices Anthony Kennedy and Stephen Breyer in [testimony](#) before a House Appropriations subcommittee Monday afternoon.

Asked by Rep. Steve Womack (R-AR) about United States “capacity to deal with people with our current prison and jail overcrowding,” each justice gave an impassioned response in turn, calling on Congress to make things better.

“In many respects, I think it’s broken,” Kennedy said of the corrections system. He lamented lawyer ignorance on this phase of the justice system:

I think, Mr. Chairman, that the corrections system is one of the most overlooked, misunderstood institutions we have in our entire government. In law school, I never heard about corrections. Lawyers are fascinated with the guilt/innocence adjudication process. Once the adjudication process is over, we have no interest in corrections. Doctors know more about the corrections system and psychiatrists than we do. Nobody looks at it. California, my home state, had 187,000 people in jail at a cost of over \$30,000 a prisoner. compare the amount they gave to school children, it was about \$3,500 a year. Now, this is 24-hour care and so this is apples and oranges in a way. And this idea of total incarceration just isn't working. and it's not humane.

Kennedy, traditionally considered the swing vote among the current set of justices, recalled a recent case before the U.S. Supreme Court in which the defendant had been in solitary confinement for 25 years, and “lost his mind.”

“Solitary confinement literally drives men mad,” he said. He pointed out that European countries group difficult prisoners in cells of three or four where they have human contact, which “seems to work much better.” He added that “we haven’t given nearly the study, nearly enough thought, nearly enough investigative resources to looking at our correction system.”

Kennedy’s comments come just weeks after a federal review of U.S. solitary confinement policy also [found that](#) the United States holds more inmates in solitary confinement than any other developed nation. Confinement typically involves isolation in an often windowless cell with a steel door for 23 hours a day, with almost no human contact. The treatment has been found to have a [psychological impact](#) in as many as a few days, though, as Justice Kennedy pointed out, many are held for decades. In the wake of the new report, Sen. Dick Durbin (D-IL) [called upon](#) the Federal Bureau of Prisons to alter its practices.

In his response, Breyer honed in on Womack’s use of the word “priorities” to suggest that prioritizing long prison sentences was not the best use of resources.

“Do you want to have mandatory minimums? I’ve said publicly many times that i think that’s a terrible idea,” Breyer said. “And I’ve given reasons, which I’ll spare you.”

“Is it worth your time on earth, or mine, to try to work out ways of prioritizing? I think it is,” Breyer said. “I think it is a big problem for the country. and so I can’t do anything more in the next minute or 30 seconds other than say i like the word prioritize. I hope you follow it up. And i hope do you examine the variety of ways that there of trying to prioritize and then work out one that’s pretty good.”

As far back as 1998, Breyer has [called for](#) the abolition of mandatory minimum sentences, which [mandate minimum prison terms](#) by law according to the crime, amount of drugs, or other factors, and give judges no discretion to lower those sentences. He has said they “set back the cause of justice” because they [don’t allow for exceptions](#) depending on the circumstances of a given case. Particularly for drug crimes, they have sent low-level drug offenders to prison for sentences that start at 5 or 10 years and quickly ratchet up from there.

Kennedy has also been a longtime opponent of mandatory minimum sentences, although he didn’t raise that specific issue during the hearing Monday. He blamed them for prison overcrowding in 2003. Since that time, federal prison populations continued to balloon, with U.S. incarceration rates remaining the [highest of any country in the world](#). In his 2003 testimony before the same congressional committee, Kennedy [provided an example](#) of a hypothetical 18-year-old who might be subject to mandatory minimum sentences:

You’ll have a young man, and he shouldn’t be doing this, but he’s raising marijuana in the woods. That makes him a distributor. And he’s got his dad’s hunting rifle in the car, he forgot about it and he wants to do target practice, that makes him armed. He’s looking at 15 years.

Reform of criminal justice issues has become an [increasingly bipartisan issue](#), since U.S. Attorney General Eric Holder declared in the spring of 2013 that “Too many people go to too many prisons for far too long for no good law enforcement reason.”

And there are several bipartisan proposals in Congress to [reform criminal justice](#) policies, including [rolling back mandatory minimum sentences](#) for drug offenses. Still, there remain some ardent opponents, including Senate Judiciary Chairman Chuck Grassley (R-IA), who recently referred to criminal justice reformers as part of the “[leniency industrial complex](#),” seemingly the newest version of “[soft on crime](#).”