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Two Supreme Court Justices Say Criminal-Justice System Isn't Working.

Justice Breyer says mandatory minimum sentences are "a terrible idea"

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"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 idea of total incarceration just isn't working.' — Justice Anthony Kennedy
"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