



Testimony of Craig DeRoche
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Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences
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Mr. Chairman, Ranking Member Cruz, and other distinguished Senators of the Committee, I am grateful that you are revisiting this pressing issue.

The prolific use of solitary confinement in our nation’s prisons and jails is cause for genuine concern.¹ It is yet another example of the government allowed to grow unchecked, creating a burgeoning bureaucratic system loathe to produce results. Taxpayers and victims of crime count on a return for our investment in the criminal justice system. As a conservative, I believe we should apply serious scrutiny to processes that restrict liberty, including isolation practices. As a Christian, I believe that humanity ascribes its value and dignity from its Creator, and thus, I advocate for an accountability system that underscores the dignity and value of humanity in all circumstances. The disproportionate and arbitrary use of solitary confinement is not only immoral, it is a missed opportunity to break the cycle of crime. This approach does not increase public safety and is contrary to Justice Fellowship’s goals for the criminal justice system—accountability and restoration.

In prison culture, many tolerated norms are antithetical to societal standards. Justice Fellowship believes that the overuse of solitary confinement is a direct result of this lost culture war. Teaching people to become good citizens, rather than just good prisoners, is the charge entrusted to correctional officials by taxpayers. Skilled wardens understand that developing pro-social communities within prison walls is paramount to public safety—both inside and outside of prison fences. Part of creating safe communities inside prisons includes removing individuals who violate societal norms by placing themselves or other’s safety at risk. Skilled wardens also understand, however, that this removal process must be temporary, and that a clear path back into the community must be not only clearly available, but achievable. Skilled wardens and corrections officers should welcome oversight, performance measurements, and independent review to ensure their use of segregation increases safety in the prison and the safety of the community upon prisoners’ reintegration.

¹ United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. *Census of State and Federal Adult Correctional Facilities, 2005*. ICPSR24642-v2. Ann Arbor, MI: Interuniversity Consortium for Political and Social Research [distributor], 2010-10-05.doi:10.3886/ICPSR24642.v2. <http://dx.doi.org/10.3886/ICPSR24642.v2> (last visited Feb. 20, 2014).

The Legacy of Justice Fellowship

As many of you know, our founder, the late Chuck Colson went from being President Nixon's Counsel to a federal prisoner as a result of his involvement in the Watergate scandal. Although his power and pride crumbled, Colson's faith in Jesus Christ was strengthened. Upon his release from prison, Colson vowed never to forget the prisoners he left behind. In 1976, he founded Prison Fellowship, the largest prison ministry in the world today.

The genesis of Justice Fellowship actually began as a response to the use of solitary confinement and other appalling living conditions in prison. Chuck was the first outsider to enter Washington State Penitentiary in Walla Walla after a nine-month lockdown ended in 1979. He insisted on going into the worst segregation unit. The assistant warden offered him a raincoat since it was likely he would have excrement and urine thrown at him. Chuck declined the raincoat. No one threw anything at him as he made his way through, offering to pray for each prisoner, but Chuck was appalled by the filth, overcrowding, and chaos. He promised the leaders among the prisoners that he would take their story to the movers and shakers on the outside. Chuck's exit from the prison gates at Walla Walla became the founding moment for Justice Fellowship.

In the past 30 years, Colson and Justice Fellowship have played a leading role in passing groundbreaking justice reforms at the state and federal level. I am honored to continue leading Justice Fellowship by advancing reforms that increase restorative outcomes for victims, offenders, and communities. Thanks to funding included in the recent spending bill, I am pleased to report that Chuck's legacy on these issues lives on through the Charles Colson Task Force on Federal Corrections, which will review the challenges faced by the Bureau of Prisons and make recommendations for further reforms. I am grateful to the Chairman and Ranking Member for their leadership in addressing one of the Bureau's most pressing issues today—dangerous overcrowding—by sponsoring and cosponsoring the Smarter Sentencing Act.² This broad bipartisan support for reforming and reducing mandatory sentences for non-violent drug offenses is a signal that the political left and right are finally willing to cast aside sacred political epithets such as being “tough on crime” and “lock ‘em up and throw away the key” in order to have a meaningful conversation on how address the real challenges facing our nation's criminal justice system.

The History of Faith Communities and Solitary Confinement

The opening of the Eastern Pennsylvania Penitentiary in 1829 has been called the United States' “first experiment” in solitary confinement.³ The term “penitentiary” was coined because the Quaker leaders believed that placing prisoners in solitary cells made of stone would cause them to meditate on their sins, pray, and become penitent.⁴ However, the Quakers realized the critical spiritual element of fellowship cannot be overlooked. After visiting the penitentiary in 1842, Charles Dickens documented his observations of the men held in these solitary cells: “I believe it

² S. 1410, 113th (as reported by S. Comm. on the Judiciary, Jan. 30, 2013).

³ Laura Sullivan, *Timeline: Solitary Confinement in U.S. Prisons*, NATIONAL PUBLIC RADIO, July 26, 2006, <http://www.npr.org/templates/story/story.php?storyId=5579901>.

⁴ Id.

. . . to be cruel and wrong. I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body.”⁵

I am glad to say that the faith community has made progress in reclaiming its history. Today, along with many faith groups, the Quakers are actively involved⁶ in advocating for reform of the use of solitary confinement and other pressing criminal justice issues.

The Overuse of Solitary Confinement

Isolating a prisoner in a cell alone may be necessary in cases where an individual poses a serious threat to institutional safety, but the overuse of solitary confinement for non-violent rule infractions, involuntary protective custody, and as a response to people acting out as a result of untreated mental illness, is not only wrong from a moral perspective, but often counterproductive.

In theory, solitary confinement is for “the worst of the worst” prisoners. Yet, the data often reveals a very different story. The Vera Institute’s Segregation Reduction Project found 85 percent of prisoners were sent to disciplinary segregation for minor rule infractions in Illinois.⁷ Common violations included being out of place, failing to report to an assignment, and refusing an order.

We should move out of solitary confinement people who were placed there for non-violent rule infractions, but even for people who landed there for legitimate safety reasons, we must make strides to give them opportunities to regain trust and make positive social choices. The goal should always be to move prisoners back to general population, and staff should be rewarded for encouraging prisoners to do so. People in segregation should have their cases individually reviewed by an independent authority regularly to determine their progress and whether less restricted housing is appropriate.

Public Safety at Risk: From Solitary to the Street

One of Justice Fellowship’s staff took a tour of segregation units in a state maximum security prison over a year ago. The prison had one staff member dedicated to a pilot “step-down” program. The program targeted prisoners who were currently in segregation but were due for release to the community within the next year and would move them to gradually less restrictive housing and increased programming. When asked how many of the prisoners on the long list for release were participating, the staff person replied that around 25% were involved. When asked about the rest, she replied that they did not have any capacity to include more of the prisoners,

⁵ CHARLES DICKENS, AMERICAN NOTES 146 (Fromm Int’l 1985) (1842).

⁶ Rachael Kamel & Bonnie Kerness, *The Prison Inside the Prison: Control Units, Supermax Prisons, and Devices of Torture*, AMERICAN FRIENDS SERV. COMM. (2003), <http://afsc.org/sites/afsc.civicaactions.net/files/documents/PrisonInsideThePrison.pdf>.

⁷ *Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of S. Comm. on the Judiciary*, 112th Cong. 4 (2012) (statement of Michael Jacobson, President & Director, Vera Institute of Justice) (available at <http://www.vera.org/files/michael-jacobson-testimony-on-solitary-confinement-2012.pdf>).

and some of them were just too dangerous to risk it. By now, these people—*too dangerous for the general prison population*—are our neighbors.

This phenomenon poses a serious public safety concern that should be thoroughly researched and addressed. One study found that prisoners freed directly from solitary confinement cells to the community had recidivism rates that doubled those of prisoners who were given a period of transition into the general prison population before release.⁸

People with Mental Illness

Many studies have documented the detrimental psychological and physiological effects of long-term segregation.⁹ I want to be clear that I am distinguishing mental *health* problems, which almost all of us face at some point in life, from acute mental *illness*.

Mental illness is too often punished rather than treated. Kevin, a young man I have the privilege to know, was diagnosed with bipolar disorder when he was 11. Other teenage boys pressured him to rob a pizza joint with a toy gun at 14. As a result, he was sent to a secure juvenile facility and later moved to an adult prison in Michigan where he spent nearly a year in segregation. Describing how the conditions made him feel he said, “It’s like a panic attack, like being trapped in an elevator. Eventually, I have to do something to get it out.”¹⁰ One time, that “something” was ripping a suicide blanket so that he could try to hang himself. Rather than try to get this young man the help he needed, prison officials ordered him to reimburse the department \$145 for the blanket and took 12 days of privileges away. Today, Kevin and his family are active advocates for justice reforms.

In many ways, this is a systemic problem that starts long before people enter the criminal justice system. Jails have become the *de facto* mental institutions in our country. I am grateful that the Senate Judiciary Committee has taken a significant step to address this systemic issue, by passing the Justice and Mental Health Collaboration Act, which equips law enforcement with Crisis Management Teams to respond to people displaying signs of mental illness and provide them with the resources they need before they are booked into jail.¹¹ Additionally, the legislation includes a specific provision providing the Attorney General with the ability to award resources to correctional institutions to develop alternatives to solitary confinement.¹²

⁸ See, e.g., Lovell, et al., *Recidivism of Supermax Prisoners in Washington State*, 53 CRIME AND DELINQ. 633, 633–56 (Oct. 2007).

⁹ See e.g., Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 INT’L J.L. & PSYCHIATRY 49 (1986); Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE 477-570 (1997); Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQ. 124 (2003).

¹⁰ Jeff Gerritt, *Mentally Ill Get Punishment Instead of Treatment*, DETROIT FREE PRESS (Feb. 5, 2012) <http://www.freep.com/article/20120205/OPINION02/202050442/PUNISHMENT-INSTEAD-OF-TREATMENT-Hundreds-of-Michigan-s-mentally-ill-inmates-languish-in-solitary-confinement-lost-in-a-prison-system-ill-equipped-to-treat-them>.

¹¹ S. 162, 113th (as reported by S. Comm. on the Judiciary, June 20, 2013).

¹² Id. at § 3(j)(2)(C)(iii).

Maximizing Opportunities for Interaction and Healthy Relationships

We should never lose sight of a person's humanity and their need for fellowship. If someone needs to be placed in segregation because they pose an imminent danger, the environment must be as safe and humane as possible. Corrections administrators should have a plan in place that is focused on changing that person's behavior so they can succeed not only in the general prison population, but in society upon release.

Men and women who are in segregation for legitimate security reasons should be afforded the maximum opportunity possible for interaction with other human beings, communication with family and mentors, books, and other productive activities. The recent American Correctional Association standards affirm that people held in segregation and protective custody should have access to educational services, commissary, library access, religious guidance, counseling, and other activities.¹³

Alternatives and Strategies

A growing number of jurisdictions have requested assistance through independent review experts available to address the overuse of solitary confinement through the National Institute of Corrections as well as nonprofits like the Vera Institute's Segregation Reduction Project launched in 2010.¹⁴ I want to share some general concepts of promising alternatives and strategies used in several of these jurisdictions that have reduced the use of segregation as a result of this assistance:

- Creating "missioned housing" that allows for services targeted to the needs of prisoners with mental illness, developmental delays, or those at risk of sexual victimization. These units provide a smaller community setting for these vulnerable populations without placing them in solitary confinement.
- Whenever possible, offering alternative responses to disruptions such as anger management and behavior programs, reduction of privileges, or restricted movement in the prisoner's current housing.
- Providing incentives for positive behavior such as increased privileges, enhanced education, and job training.
- Providing training for staff on motivational interviewing to communicate with prisoners in a supportive manner that promotes pro-social behavior.
- Screening prisoners for cognitive disabilities and providing specialized training for staff on how to redirect and communicate effectively with this population.
- Staff training and enhanced interventions for developmentally and intellectually delayed prisoners.

¹³ *Using Administrative Segregation to Manage Offenders*, AMERICAN CORR. ASS'N (Winter 2013), http://www.aca.org/conferences/winter2013/WC2013_Presentations/C-1I%20Using%20Administrative%20Segregation%20to%20Manage%20Offenders.pdf.

¹⁴ Segregation Reduction Project, VERA INSTITUTE OF JUSTICE, <http://www.vera.org/project/segregation-reduction-project> (last visited Feb. 20, 2014).

Jurisdictions employing these strategies have not only reduced their use of segregation, but have also tracked concurrent reductions in the use of force on prisoners and the number of prisoner grievances.¹⁵

Accountability

Inviting accountability is not an easy thing to do, but it is a sign of good governance. We applaud the many jurisdictions, including the Bureau of Prisons, that have invited independent experts to review their use of segregation.

I also want to acknowledge the American Correctional Association and the Association of State Correctional Administrators for the work they have done to issue standards, provide an increased number of trainings, and generally raise awareness and opportunities to discuss best practices among their members.

Government accountability, whether over the Internal Revenue Service or the Department of Justice, is not a project with an end date. These are positive steps, but when the issue of human liberty and public safety is at stake, we must never give up watch.

We look forward to partnering with law enforcement and corrections officials as we continue to improve accountability and oversight, and increase the resources needed to advance best practices in our nation's prisons, jails, juvenile, and immigrant detention facilities.

Justice Fellowship's Recommendations

I would like to leave you with three parting recommendations:

1. Do not let the conversation end here. Stay invested in the Bureau of Prisons' progress and look for more opportunities for oversight and transparency in the future. One such opportunity might be through review by the Chuck Colson Task Force on Federal Corrections.
2. I urge you all to work with your colleagues in the Senate and the House to pass the Smarter Sentencing Act and the Justice and Mental Health Collaboration Act. We must reduce the dangerous overcrowding in the federal system which contributes to violence and the subsequent overuse of solitary confinement. We must also provide law enforcement and corrections officers with the training and support they need to divert people with serious mental illness from jails in the first place and to develop alternatives to segregation.
3. Make a personal investment in promoting restoration of your community. Many of us know how to give our clothes to those without and donate food to the hungry, but few know how to visit the prisoner. If you haven't had this opportunity, I would invite each of you to come with us to visit a prison and learn more about these issues firsthand.

Conclusion

¹⁵ Sec'y Bernard Warner, *Restrictive Housing*, (2013) (DOC Internal Report).

Restorative justice requires that the criminal justice system do more than warehouse people convicted of crimes. Restorative justice requires proportionate punishments to hold men and women accountable for the harm they have caused to their victims and communities. It requires treating those convicted of a crime with fairness and dignity, even if they are locked behind bars. It requires opportunities during incarceration for prisoners to make amends and rebuild the trust of the community. It requires finality of punishment, opening the door to a second chance and a fresh start. We have suffered decades of unproductive pendulum-swings in criminal justice. It is time to turn to what may seem a new and radical model, but is actually a long-standing and well-proven one: justice that restores.

In closing, I would like to thank the Chairman and Ranking Member for holding this federal hearing on solitary confinement, and I look forward to continuing our dialogue on this important issue.