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Testimony of Pat Nolan
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Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
Reassessing Solitary Confinement:
The Human Rights, Fiscal, and Public Safety Consequences
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Mr. Chairman and members, I am grateful for this opportunity to discuss the impact of solitary confinement on inmates, corrections officers and on public safety.

My name is Pat Nolan. I am a President of Justice Fellowship, the division of Prison Fellowship Ministries that works to reform the criminal justice system. This is an important topic to our ministry because it was after witnessing the horrid and brutal conditions of Walla Walla Prison that our founder Chuck Colson added reform of the justice system to the work of Prison Fellowship.

Chuck had gone to Walla Walla to preach the Gospel and lead a Bible study. The prison had been locked down for over 9 months in retaliation for the murder of a correctional officer. During those long months, the prisoners were confined to their cells, forced to brush their teeth and drink water from their toilet bowls.

During those 9 months they were allowed out of their cells only once every 14 to 20 days to "shower". However, it was not like any shower any of us have experienced. Officers shouted instructions to strip, and the cell doors were opened. The lieutenant shouted instructions that they were to run to the shower room, through the running showers and back to their cells without stopping. They were forced to run between phalanxes of officers who rained blows on the running inmates with their batons. One inmate slipped on the wet floor and was viciously beaten by multiple officers until he could struggle back to his feet on his own.

Chuck was the first outsider to enter the prison after the lockdown ended. At his Bible study one of the inmates challenged Chuck to "tell the world what you have seen here". And Chuck said he would. A large number of the press was waiting outside the prison gates as Chuck exited. He told them about the conditions inside the prison and said, "You can't treat inmates like animals and then expect them to live decent lives after they are released." And he committed to work to reform the system, and from that searing experience he founded Justice Fellowship, the part of the ministry that I lead.

I bring a unique background to this work. I served for 15 years as a member of the California State Assembly, four of those as the Assembly

Republican Leader. I was a leader on crime issues, particularly on behalf of victims' rights. I was one of the original sponsors of the Victims' Bill of Rights (Proposition 15) and was awarded the "Victims Advocate Award" by Parents of Murdered Children. I was prosecuted for a campaign contribution I accepted, which turned out to be part of an FBI sting. I pleaded guilty to one count of racketeering, and served 29 months in federal custody.

While I was still in prison Chuck recruited me to put my experience as a lawyer, a legislative leader and a prisoner to use in service to prisoners, whom Jesus referred to as "the least of these, my brothers and sisters".

And so I come before you today to ask that you consider the toll taken on inmates held in solitary confinement, as well as the impact on the officers and the general public of holding so many prisoners in "the hole" for such long periods of time.

During my 15 years in the legislature and the 15 years since being released from prison I have visited many ad seg units, including Pelican Bay, Folsom, San Quentin, Corcoran and San Luis Obispo in California, Angola in Louisiana, and Huntsville in Texas. I also served as a member of both the National Prison Rape Elimination Commission and the Commission on Safety and Abuse in America's Prisons. Based on all I have learned through these activities I implore you to help the corrections community and the public to rethink how many inmates we send to solitary confinement and for how long.

A particular focus of my legislative activity was aimed at assisting the mentally ill who had been placed in California's jails and prisons. In an ironic twist, I was the floor manager for the bill which authorized the construction of Pelican Bay, California's "Supermax", the first state facility in the US designed exclusively for isolating prisoners. I say my support of the bill was "ironic" because the facility was sold to the legislature as being needed to house the "worst of the worst" inmates, not for those prisoners suffering with mental illness.

The justification for the extremely high costs involved in constructing and operating the Supermax was that moving the most violent prisoners to a single facility would make the other prisons safer. Sadly, the reality has been very different.

Solitary Confinement is Not Limited to Extremely Violent Inmates. The number of extremely violent prisoners was far less than the prisons officials had estimated. These officials didn't want the legislature to find out that there were a large number of empty beds in such an expensive facility.

So, they did what any good bureaucrat would do: they filled the beds with prisoners who weren't the "worst of the worst". They widened the net to include additional categories of prisoners. They added inmates who were incorrigible (i.e. difficult to manage). Most of these are mentally ill. By definition, someone who is psychotic has difficulty understanding and following orders. These prisoners are not bad, they are sick. However, many corrections officers find them difficult to manage, and write them up for violations of policies. After several "shots" they sent them to isolation. This makes the officers' jobs easier, but it also exacerbates the underlying

mental illness of the inmates, driving them deeper and deeper into mental illness.

Frequently inmates who are discipline problems are sent to segregation units, and once there they are kept for exceedingly long periods. For instance, the Vera Institute reports that a young prisoner was caught with 17 packs of Newport cigarettes, which is contraband in a non-smoking facility. He was given a penalty of 15 days in solitary confinement for each pack of cigarettes, which resulted in him being in isolation for 8 months!

The net has also been widened with gang members, some with no record of violence in prison, and often with very little evidence of gang affiliation. The isolation of alleged gang members disproportionately affects Latino and African-American inmates. However, white power gangs are shipped to isolation as well.

And last, they have added litigious inmates. Prisoners are known for asserting novel claims, and some do it frequently. These lawsuits are irritating. By sending these vexatious litigants to isolation, prison officials can discourage them from continuing with their annoying claims. Often in the transfer to isolation the inmate's legal files get lost. This may seem like just deserts for those who abuse our legal system with absurd claims. But the problem with this whole process is that some of those inmates who irritate corrections officers were successful in the courts because they had legitimate claims. Sadly, these inmates are just as irritating to some officials as those who file bogus claims, and these legitimate claimants end up in solitary, too.

The decision to send someone to solitary is most often made with no chance for the inmates to plead their case or appeal the decision. When the decision is made to transfer an inmate to isolation they are not afforded an opportunity to let their family know where they are. This causes great anxiety. They are suddenly unable to contact their loved one, which causes deep concern that they have been stricken by a serious illness or have been badly injured. The inmate arrives at the "hole" without any of their belongings, and no money on their account to make a call or buy a stamp to let their family know where they are.

Victims of Sexual Assault Are Often Placed in Solitary. The scandal of rape in prison has begun to be addressed because of the leadership of Congress in passing the Prison Rape Elimination Act. One of the common practices that should be corrected is placing victims in "protective custody". The attacker is often left in the general population while the victim is in solitary. This is unjust. In solitary the victim loses many privileges including calls home and visits, and they are prevented from participating in education classes and religious services.

The PLRA Often Prevents Legitimate Claims from Reaching Court. The Prison Litigation Reform Act was intended to eliminate nuisance suits by prisoners. While it has certainly reduced the burden of absurd claims, it has come at a high cost. Many victims of prison rape end up without recourse as a result of the PLRA. As I mentioned before I served on the National Prison Rape Elimination Commission, and we heard distressing testimony from victims that were prevented from going to court because of artificially short deadlines imposed by prison systems. The NPREC strongly recommended that Congress amend the PLRA to take these situations into

account. I also urge you to examine the strictures of PLRA and the attendant limitations of redress for the consequences of solitary confinement. The PLRA has made it more difficult for inmates with legitimate claims to pursue them. I hope Congress will find the right balance between stopping the abuse of our courts while keeping them available for rightful claims.

Pelican Bay: A Sanitary Dungeon. I took a group of journalists into Pelican Bay. Among them was David Aikman who was formerly Senior Foreign Correspondent for Time Magazine. He was the author of three of its Person of the Year cover stories. David was appalled at what he saw, and referred to the prison as a "sanitary dungeon". The men are held in their cells for at least 22 1/2 hours a day, with only a blank wall to stare at out their cell doors. David explained, "Exercise is 90 minutes of pacing like a grief-stricken dog around the bottom of a concrete well 20 feet by 10 feet by 20 feet high with a wire grating over the top." An inmate told us that in the recreation area he had once seen a bird fly overhead - the only time he ever saw any living thing outside his unit.

Spending Years in Isolation without Being Touched by A Human Being is Unhealthy. During what often ends up as years in solitary inmates are not touched by another human being, save when they are being moved by corrections officers, at which times they are loaded down with literally pounds of manacles and shackles with guards on either side of them. As they shuffle through the cell block, the inmates avoid eye contact because they are unsure how to react to a "free person".

Other witnesses with training in psychology can explain in proper medical terms the impact that this isolation has on people, even the strongest personalities. But I can tell you my observation is that these men are deteriorating quickly. They look like whipped dogs.

Straight from Solitary to the Street. When their sentence is finished, these men who are deemed so dangerous a moment before are frog walked to the gate and released - turned loose with no preparation. That is a practice that is horribly dangerous to the public, and also frightening to the inmates.

Having had no control over any aspect of their lives, even such a small matter as when they can exercise, they are then set loose with hundreds of key decisions confronting them, such as where to sleep, where to get a meal, how to get medical care, and where to find a job, etc. etc. The list is long, with many difficult choices, and no preparation for making good choices. Hans Toch, a noted criminologist, warns that "Supermax prisons may turn out to be crucibles and breeding grounds of violent recidivism. . . . [Prisoners] may become 'the worst of the worst' because they have been dealt with as such".

No Positive Activities to Occupy the Hours. Inmates in solitary confront the twin curses of loneliness and boredom. They are seldom given access to enriching activities such as education classes or religious programs. Without positive stimulation the mind rapidly deteriorates.

For juveniles in custody, this is particularly problematic. They could benefit greatly from education classes and job preparation. Yet, juveniles in adult facilities are often kept in isolation for their own protection. However, that

protection comes at a terrible price, because the youngsters have nothing positive to help them develop critical brain functions.

The Decision to Place an Inmate in Solitary is Seldom Reviewed. While some prisoners are so dangerous that they must be separated from other prisoners, solitary confinement is not limited to those circumstances and is overused. Many prisons do not have a policy of regularly reviewing each case to determine if such isolation is necessary. This results in many prisoners remaining in solitary for long periods of time, causing deterioration of their mental condition.

The Commission on Safety and Abuse in America's Prisons devoted an entire chapter of its report to Segregation. The chapter is a thorough analysis of the overuse of segregation, and the Commission made many good recommendations for reforms. I strongly suggest that anyone studying this issue begin by reading that chapter.

Recommendations of Justice Fellowship.

1. Limit solitary confinement to cases of clear danger of violence that cannot be controlled in other settings.
2. Review each case individually each month to determine whether solitary is still appropriate. The policy should be to transfer inmates out of segregation as soon as possible. (The American Correctional Association requires such reviews in their standards for accreditation).
3. Provide opportunities for inmates in segregation to engage in productive activities, such as education, treatment, and religious programs.

4. Allow inmates in segregation to have regular and meaningful human contact.
5. Carefully review each case for mental illness before confining an inmate in isolation. Evaluate mentally ill inmates at periodic intervals, with the reviews performed by psychiatrists who are not employed by the corrections department.
6. Allow inmates to challenge the decision to send them to segregation units.
7. NEVER release inmates directly from solitary confinement to the streets. Allow gradual decompression, with increasing opportunities for the inmate to make choices.

Conclusion. It is troubling that so many inmates are held in the harsh circumstances of solitary confinement for such long periods of time without recourse and without a systematic review of their cases. The harm that such prolonged periods of isolation cause are well documented, and these policies put the public at great risk after the inmates held in isolation are released.

The Church is called to speak for those who have no voice. And we are compelled to call out for reform in the overuse of solitary confinement.

We are a better nation than to allow this to be done in our institutions. A civilized nation should not allow its people to be treated like this. Sir Winston Churchill once said that, "the mood and temper of the public in regard to the treatment of crime and criminals is one of the most unflinching tests of the civilisation of any country". By that measure we fail. However,

we have the opportunity to change the policies that cause such harm, and restore our nation to the ranks of civilized countries.

We have heard encouraging testimony from such leaders as Commissioner Epps who has shown that prisons can be peaceful and orderly without resorting to isolation of prisoners. Mr. Epps is not alone. Other state correctional administrators have courageously reformed their policies on isolation, and their prisons are safer as a result.

So, also, Congress can address the overuse of solitary confinement. Prison Rape is an example where Congress has shown leadership in addressing appalling corrections practices in the past. While many officials denied the scandal of rape in America's prisons, Congress spoke with one voice by passing the Prison Rape Elimination Act, which has already begun to change the culture in prisons from tolerating prison rape to effective prevention policies, including prosecution of those who commit it. PREA started with public hearings to call attention to the prevalence and harm of prison rape.

So also, this hearing begins the effort to reform our policies on solitary confinement. Mr. Chairman, we applaud you for calling attention to the harm that is done by overuse of solitary confinement, and we stand committed to help you press for reforms.