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233 Broadway, 12th Floor
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June 19, 2012**

Thank you, Chairman Durbin, Ranking Member Graham, and members of the Subcommittee for holding this hearing on the human rights, fiscal, and public safety consequences of solitary confinement in United States prisons, jails, and detention centers. My name is Michael Jacobson and I serve as President and Director of the Vera Institute of Justice. Vera is an independent, nonpartisan, nonprofit center for justice policy and practice, with offices in New York City, Washington, D.C., and New Orleans. Since 1961, Vera has combined expertise in research, technical assistance, and demonstration projects to help develop justice systems that are fairer, more humane, and more effective for everyone. One of the ways Vera works toward these goals is through its Segregation Reduction Project, which partners with states to decrease safely the number of people held in segregation (also called solitary confinement), provides recommendations tailored to the states' specific circumstances and needs, and offers assistance as states plan and implement changes.

A. Background on Use of Solitary Confinement/Segregation in U.S. Prisons

Since the 1980s, prisons in the United States have increasingly relied on segregation to manage difficult populations in their overcrowded systems. According to the U.S. Department of Justice's Bureau of Justice Statistics (BJS), the number of people in restricted housing units nationwide increased from 57,591 in 1995 to 81,622 in 2005.¹ Segregation was developed as a method for handling highly dangerous prisoners. However, it has increasingly been used with prisoners who do not pose a threat to staff or other prisoners but are placed in segregation for minor violations that are disruptive but not violent, such as talking back (insolence), being out of place, failure to report to work or school, or refusing to change housing units or cells. In some jurisdictions, these prisoners constitute a significant proportion of the population in this form of housing.

Conditions within "supermax" units and facilities and in segregation units throughout the country have also become increasingly harsh. Evidence now suggests that holding people in isolation with minimal human contact for days, years, or—in some instances—decades is exceptionally expensive and, in many cases, counterproductive. Long-term isolation can create

¹ James J. Stephan, *Census of State and Federal Correctional Facilities* (Washington, DC: U.S. Bureau of Justice Statistics, National Prisoner Statistics Program, 2008, NCJ 222182). BJS requests information on individuals being held in "restricted housing units," but does not provide definitions for restricted housing units or for different types of segregation for respondents. As a result, the "restricted housing" category may include prisoners held in protective custody and death row units, as well as special needs and mental health units. For this and other reasons, BJS statistics may not accurately capture the numbers of prisoners in segregated settings. The BJS census includes both state and federal prisons, but excludes military facilities, local detention facilities, Immigration and Customs Enforcement facilities, and facilities that only house juveniles.

or exacerbate serious mental health problems and assaultive or anti-social behavior, result in negative outcomes for institutional safety, and increase the risk of recidivism after release.²

In the United States, segregation or solitary confinement is used most commonly: (1) to punish prisoners for rule violations; (2) to remove prisoners from the general prison population who are thought to pose a risk to security or safety; and (3) to protect prisoners believed to be at risk in the general prison population. Other reasons include ensuring the safety of prisoners under investigation, awaiting hearings, on death row, and addressing special needs, such as mental health. Although the terms used to refer to those held in solitary confinement or segregation vary tremendously across systems, the following examples are typical of the ways that state systems use segregation:

- **Disciplinary segregation** for violation of rules;
- **Administrative segregation** for those who are thought to pose a risk to safety or security and not necessarily in response to a specific violation;
- **Protective custody** for prisoners believed to be at risk in the general prison population;
- **Temporary confinement** for use when a reported incident is being investigated; and
- **Supermax or closed maximum-security prisons**, which may hold both disciplinary or administrative segregation prisoners.³

Prison officials fear that moving prisoners out of segregation will lead to violence and other serious violations. Two states—Ohio and Mississippi—have tested that concern. In the mid-2000s, Ohio and Mississippi reduced their supermax populations by 89 percent and 85 percent, respectively. Mississippi went from 1,000 to 150 prisoners in segregation; Ohio went

² David Lovell, “Patterns of Disturbed Behavior in a Supermax Population,” *Criminal Justice and Behavior* 35 (2008): 9852; David Lovell, L. Clark Johnson, and Kevin C. Cain, “Recidivism of Supermax Prisoners in Washington State,” *Crime and Delinquency* 53 (2007): 633-656; and David Lovell and Clark Johnson, “Felony and Violent Recidivism Among Supermax Inmates in Washington State: A Pilot Study” (University of Washington, 2004).

³ In greater detail, these uses of Segregation can be described as follows: 1) **Disciplinary segregation** is a form of punishment for violations of prison rules. For example, a prisoner may be sentenced to a year in segregation for assault or possession of contraband, or for a period of months for violation of a direct order; 2) **Administrative segregation** removes prisoners from the general prison population who are thought to pose a threat to safety or security or who are believed to have information about an incident under investigation. For example, a gang leader believed to be coordinating gang activities within the prison may be placed in administrative segregation even if that individual has not violated any rules. Administrative segregation usually lasts for an indeterminate period of time and, for those considered a threat to safety and security, may be of long duration. In some systems, prisoners are not told the reason for their transfer to administrative segregation, and options for reevaluation or release back to the general prison population may be few; 3) **Protective custody** provides safety for prisoners believed to be at risk in the general prison population, such as a prisoner who provides information to correctional staff about violations committed by others, or someone considered at risk due to physical characteristics or other individual factors. Although segregated for their own protection, restrictions on human contact and programming for prisoners in protective custody can be as severe as for prisoners in disciplinary or administrative segregation; 4) **Temporary confinement** uses segregation while a reported incident is being investigated; it usually lasts for a short period and begins immediately after a rule violation is identified but before a hearing is conducted; and 5) **Supermax** (or closed maximum-security) **prisons** may hold both administrative and disciplinary segregation prisoners. All prisoners in supermax facilities are held in high levels of confinement, typically for long periods of time. Architecturally, supermax prisons are built to restrict visual and tactile contact with others. Educational and programmatic activities are greatly restricted.

from 800 to 90 prisoners.⁴ Mississippi not only reduced the number of people held in segregation but also saw an almost 70 percent decrease in prisoner-on-prisoner and prisoner-on-staff violence; and use of force by officers in the unit plummeted.⁵

B. Vera's Segregation Reduction Project

Prompted by the success of Ohio and Mississippi, Vera launched its Segregation Reduction Project (SRP) in February 2010. The first project of its kind, SRP works with state prison systems to safely reduce the number of prisoners held in segregation by facilitating policy changes that: (a) reassess the violations that qualify a prisoner for segregation and (b) recalibrate the length of stay in segregation, especially for minor violations. SRP also focuses on improving conditions of confinement in segregation and enhancing programming and support for safe transitions back to the general prison population. SRP's overall goal is to develop a national model that can be adapted for use in many jurisdictions.

Currently, SRP is partnering with the Illinois Department of Corrections and the Maryland Department of Public Safety and Correctional Services to help each:

- Develop criteria to determine who should be held in segregation and who could be moved safely to the general prison population;
- Assess disciplinary sentences and lengths of stay in segregation;
- Enhance programs to transition prisoners out of segregation;
- Improve conditions of confinement for those who remain; and
- Track the effects of moving prisoners from segregation to other levels of security.

The project is also collaborating with the Washington State Department of Corrections to assess its segregation policies and practices, analyze the effects of its use of segregation, and make recommendations for handling its protective custody, disciplinary, and intensive management populations. Vera is in the process of adding a fourth state in the Southwestern United States.

With this project, Vera aims to demonstrate that states can reduce the numbers of prisoners they hold in segregation without jeopardizing institutional or public safety, as well as to create a replicable model that can be adapted for use in other jurisdictions. Based on observations and analyses so far, it seems clear that segregated populations in U.S. prisons can be safely and dramatically reduced with no reduction of staff positions and with cost savings.

I. Bringing About a Culture of Change

SRP works with prison systems' administrators and key operations personnel, conducting site visits to all supermax and other facilities with significant segregation populations, reviewing policies and practices related to the use of segregation, providing comprehensive data analyses of

⁴ Terry Kupers et al., "Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs," *Criminal Justice and Behavior* 36 (2009): 1037-50.

⁵ *Ibid.*

a state's use of segregation and the outcomes of that use, and—in consultation with corrections administrators and staff—recommending strategies to safely reduce the use of segregation and improve conditions of confinement for those who remain. Close collaboration at the agency and facility level and attention to a state's unique challenges encourage statewide adoption of changes. For example, in the Illinois Department of Corrections (IDOC), Vera and IDOC administrators presented SRP's recommendations to all 27 wardens, and changes are now being implemented in all IDOC facilities.

II. Progress Updates from SRP Partner States

Vera's partner sites have provided updates regarding their progress below.

1. *Illinois Department of Corrections (IDOC)*

"In January 2011, the Illinois Department of Corrections kicked off its Long Term Segregation and Administrative Detention project, informed by the work of Vera Institute of Justice. In the latter part of 2010, Vera visited each of the Department's Maximum Security prisons as well as our Closed Maximum facility, Tamms. Vera partnered with the Department's Planning and Research Unit to provide statistics, which drove the direction of the project. At project kick-off, the Department had 2,204 segregation inmates with 2.8 years as an average length of stay in segregation. Vera analyses also revealed that 85 percent of the segregation population were in disciplinary segregation for less severe types of infractions. Since it was also found that those who spent less time in segregation were not more likely to commit new violations during the first twelve months of release into general prison population, we were on our way to identify areas of improvement.

"The project has several layers of effort. We committed to changing the culture of discipline in our facilities by utilizing progressive discipline, rather than providing literal interpretation of the disciplinary code violation chart, thus resulting in less time in segregation and more appropriate and effective sanctions. This effort will help reduce the number of new disciplinary segregation inmates. In the instances where we had inmates serving years of segregation time, we instituted a Long Term Segregation Incentive Program to assist in behavioral modification through a tiered approach. This has been positively received by both staff and inmates. For the 200 inmates serving "Dead Time," the Department is reviewing the offenders' original segregation charges and the behavior exhibited while in segregation to consider time cuts, since they are currently serving time past their original date for release from prison.

"The mantra of the program has been to determine if we are mad at the offender or scared of them when making recommendations for segregation time and transfer. Taking the personal element out of the applied discipline has been a benefit to the Wardens in their constant review of the segregation time applied. To date we have seen improvements in the behavior of the inmates serving segregation time, which lessens the safety concerns to our staff. At some facilities, the segregation unit has seen a drop in numbers so that the cells can be used for general population. A full analysis has not yet been conducted, but anecdotal updates from our professionals have found the modified

approach with the buy-in of staff is making this project a success for the Illinois Department of Corrections.”

2. Washington State Department of Corrections (DOC)

“In May 2011, we asked Vera to come assess our Intensive Management Units (IMUs) and give us recommendations for improvements. A prison system can largely be judged by how it operates its highest-custody units. Due to budget cuts, we were losing a partnership with the University of Washington that helped us assess and examine use of long-term segregation, and we wanted to reach out to an independent organization on a national level.

“Based on the Segregation Reduction Project’s review and recommendations, a committee of administrators, mental health staff, and managers of WA DOC’s segregation units are now developing plans to implement some of Vera’s recommendations, including providing more resources to mentally ill offenders in segregation and creating programming in group settings for offenders in segregated living units.

“Today, we are working on expanding our Intensive Transition Program (ITP): a program designed to gradually introduce IMU offenders back into general population. The ITP at Clallam Bay in northern Washington has an 80 percent success rate and enhances staff and public safety by having fewer offenders return to their communities directly from segregation units. Since our involvement with Vera, we have committed more dollars to this successful ITP program and have doubled it in size. We are also seeking ways to expand mental health treatment into more IMUs around the state. In November 2011, we also permanently closed a 100-bed segregation unit at the Washington State Penitentiary and have safely reduced the number of segregated prisoners by 170 at a time when the incoming offender population was becoming more violent. Only about 2.7 percent of the 16,000 beds in the Washington prison system are now housed in Intensive Management Units.”

3. Maryland Department of Public Safety and Correctional Services (DPSCS)

Vera began partnership with Maryland in April 2011. Since that time, Vera has conducted site visits and is currently analyzing data on their segregation populations. These analyses will examine DPSCS’s use of segregation and alternatives to segregation, violations resulting in segregation time, length of the segregation “sentences,” and types of prisoners housed in segregation. Recommendations will be made for policy and practice changes.

C. Fiscal Impact of Prison Segregation

Significant fiscal costs are associated with housing people in segregation. In the Ohio State Penitentiary—Ohio’s supermax—in 2003, it cost \$149 a day to house a prisoner, compared with \$101 per day for a maximum-security prisoner and \$63 per day for an average general-population prisoner.⁶ The majority of the higher costs come from the need for additional staff to monitor segregation units. For example, the supermax required one corrections officer for every 1.7 prisoners; maximum-security housing required one officer for every 2.5 prisoners.⁷

Mississippi provides a clear example of the fiscal benefits of reducing the use of segregation. Deputy Commissioner Emmitt Sparkman described the changes as follows: “In 2007, we had nearly 1,300 inmates in long-term segregation and were spending hundreds of thousands of dollars on litigation and maintaining the physical plant. Once we reduced segregation to 335 inmates, we were able to [permanently] close Unit 32. We moved staff to other locations and there was attrition; we saved approximately \$5.6 million a year and were able to avoid layoffs and furloughs.”⁸

In Illinois, Governor Pat Quinn has proposed closing eight IDOC facilities, including the Tamms supermax prison. It costs Illinois’ taxpayers more than \$26 million a year to hold approximately 180 maximum-security and 180 minimum-security prisoners at Tamms. This translates into almost \$65,000 per year per prisoner—the highest cost of any IDOC facility.⁹

Given the current fiscal crisis, many more jurisdictions now are looking for new and effective paths forward, away from reliance on this expensive form of incarceration. States can no longer afford these costs. Illinois—with approximately 46,000 men and women in state prisons in February 2010—provides one example of why it is important to reassess the use of segregation in the nation’s prisons. Although only about 5 percent of the prison population was in segregation on any given day, more than half (56 percent) had spent some time in segregation during their current prison stay. Reducing the use of segregation and improving conditions of confinement can affect thousands in that one state alone and greatly alter per person costs of prison housing.¹⁰

D. Public Safety Impacts of Segregation

A study of correctional systems in Illinois, Arizona, and Minnesota found that segregating some prisoners in supermax facilities did little or nothing to lower overall violence

⁶ Daniel P. Mears “Evaluating the Effectiveness of Supermax Prisons” (Urban Institute Justice Policy Center, 2005). Available at <https://www.ncjrs.gov/pdffiles1/nij/grants/211971.pdf>

⁷ Ibid.

⁸ Vera Institute of Justice Blog, “Mississippi DOC’s Emmitt Sparkman on Reducing the Use of Segregation in Prisons,” October 11, 2011, <http://www.vera.org/node/5313> (accessed June 13, 2012).

⁹ John Maki, “It’s Time for Illinois to Close Tamms Supermax,” *The Huffington Post*, May 23, 2012, http://www.huffingtonpost.com/john-maki/tamms-prison-closure_b_1539255.html (accessed June 14, 2012).

¹⁰ Angela Browne, Alissa Cambier, and Suzanne Agha, “Prisons Within Prisons: The Use of Segregation in the United States,” *Federal Sentencing Reporter* 24, no. 1 (2011): 46-49.

across the system.¹¹ Prisoner-on-prisoner violence did not decrease in any of the three states. Prisoner-on-staff assaults dropped in Illinois, staff injuries temporarily increased in Arizona, and there was no effect in Minnesota.¹² Releasing prisoners directly to the community from solitary—a not uncommon practice—poses significant dangers to the public as well, as people housed in segregation for long periods may have difficulty dealing with the company of others, whether in the general prison population or in the community. A rigorous quantitative study of recidivism after release from prison for prisoners held in solitary confinement found that those released directly from supermax to the community had significantly higher felony recidivism rates and committed new offenses sooner than prisoners who spent three or more months back in the general prison population before release to the community.¹³

There also is some evidence that officers who work in SHUs are more likely to be assaulted. For example, one study found that 57 percent of serious assaults on staff occurred in a control unit that housed less than 10 percent of the facility's prisoners.¹⁴ It may be that segregated prisoners, some of whom have histories of violence, pose a greater threat to officers than prisoners in the general population. However, the harsh living conditions in segregation and, at times, the harsh treatment received there may also exacerbate tendencies toward violence.

E. Conditions in Solitary Confinement/Segregation

Prisoners may stay in segregated housing for years without the opportunity to engage in the types of interactions, treatment, and education experiences that would help them adjust when reentering either the general prison population or society. Segregated prisoners are typically taken out of their cells for only one hour out of every twenty-four for recreation or a shower. However, in some systems, prisoners are released once a week for a total of five hours. Before being released from their cells, prisoners are cuffed and may be shackled at the waist and placed in leg irons. Recreation times may occur anytime from 7:00 a.m. until 3:00 a.m. Typically recreation takes place in either an open cage outdoors (called a yard) or an indoor area, sometimes with an open barred top. Because many exercise areas are exposed to the weather, prisoners must choose whether to use them during extreme weather conditions or remain in their cells. Extreme weather may greatly reduce the amount of time prisoners are out of the cell, particularly when recreation periods are offered in five-hour blocks.

Except when overcrowding requires double celling, face-to-face human contact with individuals other than corrections officers is virtually eliminated in segregation. Officers deliver meal trays through a slot in the door, and counselors and mental health staff conduct visits

¹¹ This section is excerpted from the Commission on Safety & Abuse in America's Prisons, *Confronting Confinement* (New York: Vera Institute of Justice, 2006).

¹² Chad S. Briggs, Jody L. Sundt, and Thomas C. Castellano, "The Effects of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence," *Criminology* 41 (2003): 1341-76.

¹³ David Lovell, L. Clark Johnson, and Kevin C. Cain, "Recidivism of Supermax Prisoners in Washington State," *Crime and Delinquency* 53 (2007): 633-656; and David Lovell and Clark Johnson, "Felony and Violent Recidivism Among Supermax Inmates in Washington State: A Pilot Study" (University of Washington, 2004).

¹⁴ Peter C. Kratcoski, "The Implications of Research Explaining Prison Violence and Disruption," *Federal Probation* 52 (1988): 27, 28.

through the cell door. Segregation prisoners typically are not allowed contact with other prisoners, and visits with family members are curtailed or may be prohibited for a year or more. When visits are allowed, they usually are conducted by speaker or telephone through a thick glass window, precluding the opportunity for human touch.¹⁵

F. The Prevalence of Mental Illness in Prison

The prevalence of mental illness adds complexity to managing the confined population. The closure of most of the psychiatric institutions in the US over the last 50 years, and increasing reliance on community-based psychiatric care, have led to dramatic increases in the number of people with mental illness entering jails and prisons. A recent study found three times as many people with serious mental illnesses in the country's jails and prisons as in its hospitals.¹⁶ Another study documented that 14.5 percent of male and 31.0 percent of female jail prisoners had current, serious mental illnesses, rates much higher than in the general U.S. population.¹⁷ Research conducted by Vera's Substance Use and Mental Health Program (SUMH), using administrative data from government agencies, found that 19 percent of the sample of people who were booked into New York City jails and stayed for at least 72 hours required psychiatric services.¹⁸ The study also found that people with mental illness stay in jail an average of 40 days longer than similar individuals without mental illness in the general jail population. In another study, SUMH found that 33 percent of people arrested in Washington, D.C. had some indication of mental health needs based on existing criminal justice and mental health agencies' data.¹⁹

G. Recommendations

I. Strategies to Reduce Segregated Populations

The progress of SRP partner states and other jurisdictions demonstrates that prison systems can effectively and safely reduce the use of segregation, improving conditions of confinement for prisoners and leading to sometimes dramatic cost reductions for facilities and taxpayers. Proven methods for reducing segregation include:

1. ***Reduce intakes to segregation by using alternative sanctions for all but the most serious violations.*** Alternative sanctions may include restrictions of privileges like visitation, programs, commissary, and recreation time; restrictions on movement (referred to in some systems as "confined to cell" or "keep locked"); or transfers to a

¹⁵ Angela Browne, Alissa Cambier, and Suzanne Agha, "Prisons Within Prisons: The Use of Segregation in the United States," *Federal Sentencing Reporter* 24, no. 1 (2011): 46-49.

¹⁶ E. Fuller Torrey et al., *More Mentally Ill Persons Are in Jails and Prisons than Hospitals: A Survey of the States*, http://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf (accessed September 27, 2011) (Treatment Advocacy Center and the National Sheriff's Association, 2010).

¹⁷ H.J. Steadman, F.C. Osher, P.C. Robbins, B. Case, and S. Samuels, "Prevalence of Serious Mental Illness Among Jail Inmates," *Psychiatric Services*, 60, no 6 (2009).

¹⁸ Naomi Sugie and Jim Parsons, *From Risk to Resiliency: Part 1 Analysis* (Vera Institute of Justice, 2010).

¹⁹ Jim Parsons and Talia Sandwick, *District of Columbia Forensic Health Project: Technical Report*, (Vera Institute of Justice, 2012).

different facility or level of security.

2. ***Limit the violations for which segregation is a sanction, and reduce segregation time for certain categories of violations.*** For violations such as talking back (insolence), being out of place, failure to report to work or school, or refusing to change housing units or cells, alternative sanctions or reductions in segregation time should be considered.
3. ***Review currently segregated population.*** Conducting individual case reviews will allow policy changes, such as fewer violations that result in segregation and reduced segregation time, to apply to the currently segregated population. Such reviews would include assessments of the violation leading to segregation time, behaviors while in segregation, and potential for safe release to the general prison population.
4. ***Provide tiered incentives to reduce segregation time for sustained good behavior.*** Providing incentives in the form of reductions in segregation helps encourage good behavior and gives facility management flexibility to manage behavior.
5. ***Separate special populations into “missioned” housing.*** Administrators can create or expand dedicated housing units where programming, procedures, and other conditions are tailored to the needs of populations, while still ensuring safety.
 - a. In many systems, prisoners needing protection are held in the same units and subjected to the same harsh conditions as those serving sentences for rule violations or considered a threat to safety and security. Instead of using disciplinary segregation as the default housing option for prisoners in protective custody (PC), they can be housed in dedicated units with opportunities for congregate activities and programming to help them return to the general non-PC population (if appropriate). These units help systems reserve scarce security resources for ensuring the safety and security of all populations, creating potential cost savings.
 - b. Severely mentally ill prisoners unable to function in the general population without violations are better served in general population housing tailored to their needs. For example, Wisconsin’s Special Management Units allow severely mentally ill prisoners to receive specialized treatment and programming in a safe, secure environment.
6. ***Increase programming for prisoners in segregation.*** Programming should include opportunities for gradual resocialization to prepare prisoners for return to the general prison population and congregate activities for prisoners serving long terms in segregation.

II. Other National Recommendations

1. ***Mandate Gathering of National Data on Segregation.*** A major challenge with existing national-level data on segregation is a lack of clarity on types of segregation. For example, to date there are *no* reliable national statistics on populations in different forms of segregation. Additionally, the current BJS census does not include segregated populations in jails or Immigration and Customs Enforcement detention centers, so the size of this population is completely unknown. The BJS census also is conducted only once every five years. A more comprehensive census, completed more regularly and with more precise definitions, is vital to inform decision-making and legislation on the use of segregation in the United States.
2. ***Conduct a National Study on the Impact of Segregation.*** Expert studies should be funded to assess the costs of the use of (different types of) segregation compared to housing in the general prison population, and costs associated with incarceration in prison overall. In 2011, Vera's Cost Benefit Analysis Unit (CBAU) developed a sophisticated methodology to calculate prison costs and conducted a survey to collect this data. While this survey did not include specific information on segregation, it could be used as a model for this type of data collection.
3. ***Create National Standards.*** National standards on the use of segregation would encourage the field to adopt best practices for these settings. Vera has experience supporting this kind of work, having staffed the privately funded Commission on Safety and Abuse in America's Prisons (the subject of a 2006 Subcommittee Hearing on Corrections and Rehabilitation).²⁰ Additionally, Vera assisted the congressionally mandated National Prison Rape Elimination Commission in developing national standards to address sexual abuse in confinement settings. Creation of national standards governing the use of segregation would build on the work already undertaken by many states and this Subcommittee.

Concluding Statement

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

²⁰ *The Findings and Recommendations of the Commission on Safety and Abuse in America's Prisons: Hearing Before the Subcomm. on Corrections and Rehabilitation of the S. Comm. on the Judiciary*, 109th Cong. (2006).