

Time-In-Cell: A Practitioner's Perspective

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Earlier this year, *The New York Times* reported that President Obama ordered the Department of Justice to review the practice of federal prison administrative segregation, commonly referred to as "solitary confinement."¹ The Association of State Correctional Administrators (ASCA), the membership organization of the fifty state corrections directors, also issued a statement calling for corrections facilities to sharply limit its use.² Against this backdrop, Yale Law School's Arthur Liman Public Interest Program collaborated with ASCA to survey the policies and practices that currently govern the use of "ad seg," as it is commonly known in the corrections field. Their findings, published in the *Time-In-Cell* report,³ establish a baseline from which to consider specific reforms. In fact, the report offers an unprecedented opportunity for those of us who supervise the operation of correctional facilities to see how this practice has been implemented across the country.

As a career practitioner in the field, I strongly concur in the need for reform. My years in corrections have also given me an appreciation for the complexities associated with preparing for and implementing such a significant change. It is crucial—both to the success of the reforms and to the well-being of the front-line staff who work in high-security settings—that we not underestimate the implications of this change. The success of any such venture will depend on our ability to win and maintain the trust of corrections personnel. In the following paragraphs, I define precisely the characteristics of administrative segregation; outline some key considerations for reform; reflect

1. Timothy Williams, *Prison Officials Join Movement To Curb Solitary Confinement*, N.Y. TIMES (Sept. 2, 2015), <http://www.nytimes.com/2015/09/03/us/prison-directors-group-calls-for-limiting-solitary-confinement.html> [<http://perma.cc/SP9F-S2WR>].

2. *Id.*

3. THE ARTHUR LIMAN PUB. INTEREST PROGRAM & ASS'N. OF STATE CORR. ADM'RS, *TIME-IN-CELL: THE ASCA-LIMAN 2014 NATIONAL SURVEY OF ADMINISTRATIVE SEGREGATION IN PRISON* (2015) http://www.law.yale.edu/system/files/area/center/liman/document/asca-liman_administrativesegregationreport.pdf [<http://perma.cc/3ME8-TK8F>].

on the role of culture—especially staff culture—in implementing reforms; and make recommendations for how to engage employees in the process.

I. THE CHARACTERISTICS OF AD SEG

Several varieties of restrictive housing exist, including disciplinary confinement (a form of temporary separation from the general population for a set period of time commensurate with the seriousness of an inmate's disciplinary infraction), and protective custody (a form of non-disciplinary separation from the general population for inmates who require additional protection from other inmates for reasons of safety or possible victimization). The *Time-In-Cell* report identifies administrative segregation as “separating prisoners from the general population, typically in cells (either alone or with cellmates), and holding them in their cells for most of the hours of the day for thirty days or more.”⁴ Another feature commonly associated with this form of isolation involves its indefinite duration, as opposed to the set time frame for disciplinary confinement. Administrative segregation usually does not include a fixed end date or time for release. Those decisions are often discretionary, and they are made at various levels of the corrections department according to the practices of that individual department.

Because of the nature of our inmate population, every correctional system will have a subset whose conduct poses a significant risk either to the physical safety of other inmates and staff or to the order, predictability, and therefore the security of the institution. Some will threaten other inmates and staff through physical intimidation, extortion, outbursts of rage, attempts to settle personal beefs or gang-related scores, brinksmanship, and other out-of-control behaviors. Unless addressed quickly and skillfully, these situations can escalate rapidly, extending the threat to additional other people. These behaviors generate punitive sanctions and separation from the population. Referred to as “disciplinary confinement,” the punishment generally involves placing the inmate in a cell with restrictive conditions for a set period of time. If the conduct is particularly egregious or dangerous, or is part of a pattern of threats to security and order, the inmate's time served in disciplinary confinement is usually followed by indeterminate administrative segregation. In these circumstances, administrative segregation has provided an important management option.

While this approach is the norm for cases of serious violence, in other instances confinement decisions become murkier. Without clear criteria to govern the use of administrative segregation, there is a risk it will encompass a hodgepodge of institutional offenders whose disruptive behaviors run the

4. *Id.* at 11.

gamut from chronically irritating to truly frightening. And we must remember that whatever circumstances led to their stay in administrative segregation, all inmates become subject to conditions that can have a profound impact on their psychological functioning.

II. KEY CONSIDERATIONS FOR REFORM

Corrections directors are taking notice, and a number have commenced reviews of administrative segregation protocols. The goals of these initiatives include: reducing the number of confinees, developing and using more stringent and precise criteria for admission into ad seg, scrutinizing the effectiveness of the various types of ad seg conditions, and providing more robust clinical services to those who need them. This last category covers those with mental illnesses who wind up in ad seg because they have difficulty following rules and decompensate under the stress of prison life. Other approaches in play involve engaging inmates in programs and activities that promote pro-social behavior; developing step-down programs to ease the transition back into the general prison population; implementing more frequent status reviews; and requiring correctional decision makers to clearly articulate the evidence that informs any decision either to place an inmate into or to release an inmate from this status.

These efforts deserve praise. But before they can effectively make our institutions safer and healthier for both inmates and staff, we correctional officials need to address some fundamental issues. And, importantly, we need the support of our staff. Specifically, the process of reviewing and reforming ad seg must include a reexamination of the following questions:

A. What Criteria Should Figure in a Correctional Administrator's Decision To Transfer an Inmate to Administrative Segregation? How Is the Inmate Informed About the Reasons for the Decision? At What Level in the Organization Should the Final Determination Be Made?

At a minimum, the criteria must be clear and written into the department's formal policy. But they must also bear a significant relationship to safety and security, based on specific documented evidence of serious behaviors and incidents that actually compromise these goals. In each case, an inmate must be informed about the specific behavior that triggered an ad-seg decision. The ultimate decision maker must be able to review the facts in light of the inmate's history and must be experienced enough to weigh evidence wisely. And those decision makers must apply carefully considered criteria when assessing the inmate's readiness to return to the general population. Frequent behavioral reviews are key.

B. For Those Placed in Ad Seg, What Should the Conditions of Confinement Be?

Absent either judicial intervention or legislation to the contrary, corrections departments have great latitude in structuring the components of the ad-seg inmate's daily life. The *Time-In-Cell* report identifies a wide array of rules that govern the inmate's living environment: rules on the size, lighting, and heating of a cell; an inmate's participation in rehabilitative programs; permitted personal items, ranging from photographs to hygiene products; the inmate's ability to connect to life outside the cell via radio, televisions, and other electronic devices; books and writing materials; exercise; telephone calls; and visiting privileges. Although each corrections department configures these regulations according to its own philosophy and management style, these decisions must be made with a view toward the purpose of administrative segregation. That purpose includes the well-being of the inmate. For as we in corrections have witnessed first-hand, the atmosphere of deprivation and control can—and often does—have serious consequences for inmates in ad seg.⁵

III. THE ROLE OF STAFF CULTURE IN IMPLEMENTING REFORM

Any process of reform will be insufficient if it fails to adequately address the challenges faced by corrections staff. When courts commit any individual to our custody, an ironclad “no refusal” policy precludes correctional facilities from turning him or her away. As a result, our employees must manage a population that extends across every dimension: age, race, ethnicity, sexual orientation, religious affiliation, nature of offense, criminal history, length of sentence, propensity for violence, gang membership, cognitive functioning, mental illness, and developmental disability, among others—all in the claustrophobic environment of a closed society. The risk of tension leading to violence is understandably high, and our fundamental obligation is to keep all parties safe. Unless inmates and employees feel safe, it is unlikely that much good can be accomplished in our institutions. It is a tall order and most of the burden falls on our staff, particularly those in uniform.

Many correctional officers and their superiors often function in a manner akin to community police. Some posts directly oversee inmate job assignments, such as laundry and food service preparation. Others are assigned to inmate housing areas and locations where prisoners congregate in large numbers, such as dining halls, recreational areas, visiting rooms, the gym, and the prison yard. Officers must simultaneously respond to inmate inquiries, resolve problems, and keep a watchful eye out for any risks or threats to institutional security.

5. Craig Haney, Distinguished Professor of Psychology, Univ. of Cal. Santa Cruz, Address at the 2015 Ninth Circuit Corrections Summit (Nov. 4-6, 2015).

Some duties can put our staff directly in harm's way, including breaking up fights and assaults or extracting a violent inmate from a cell that he refuses to leave and escorting him to segregation. It is worth noting that the correctional officers in most systems perform these tasks with weapons that are only as powerful as pepper spray. Rhode Island carefully monitors the staff's use of pepper spray by requiring employees to submit a detailed report documenting incidents of use. An independent Security Specialist weighs the canisters to determine whether an excessive amount was used.⁶

The reforms discussed above are needed. But as we design, develop, and implement these changes, it is essential that we also prioritize the safety of our staff as well as other inmates. Failure to do so will doom our best efforts. Administrators require our line officers (those who interact face-to-face with inmates every day and night) and their superiors to supervise, manage, and give honest assessments of inmate behaviors. If those officers do not believe that the reforms we put in place adequately provide for their safety and for the stability of the institution—especially in high-risk facilities—we will lose them as allies.

Crucially, it is the custody personnel, many of whom have worked in the same prison for decades, whose values and beliefs mold what actually goes on in their institutions. Line correctional officers are very conscious of the risks they face every day. Their point of view is strongly shaped by critical incidents and their outcomes. Some officers have been victimized or know others who were harmed in the course of incidents that either led to an administrative segregation placement or that occurred while an inmate was already housed there. Even if the number of truly appalling cases is small, each one reverberates through the institutional culture for a long time afterward and reinforces the sense of danger that staff feel. Annual memorial services for officers killed in the line of duty underscore the officers' vulnerability. The fact that these acts of violence have occurred despite the precautionary measures already in place demonstrates that these acts do take place and may well occur again. Officers are keenly aware that if we don't get these changes right, it will be they who pay the price.

IV. RECOMMENDATIONS FOR ENGAGING STAFF IN REFORM

Given the stakes involved in reducing our reliance on administrative segregation—and the reality that line staff will be indispensable to the success of this effort—it is essential that we as leaders engage these personnel as partners in the change process. This approach will involve a shift from the hierarchical model that has traditionally characterized many corrections

6. R.I. DEP'T OF CORRS., *Standard Operating Procedures* (2015) (on file with the author).

systems. Corrections departments have historically organized their custody operations along paramilitary lines with a top-down, command-and-control structure. Decisions are transmitted from above. Obedience from those below is assumed. To shift the model through changes to administrative segregation calls for a more horizontal, more collaborative approach in which a cross-section of staff from various levels identify challenges and agree upon solutions. We need to listen to and respect our employees' legitimate anxiety and give serious attention to their ideas and points of view.

An initiative from my own department gives me reason for optimism about the potential that alternative models have to advance our goals of reform. Over the years, collaborating with staff at all levels and across different disciplines of custody and rehabilitative services, we have moved from a mindset that viewed placement in administrative segregation as the end of the line to one that sees it as something very different. Now, uniformed personnel and clinical staff work closely as a team to develop and implement customized strategies that help individual inmates break the cycle of behaviors that have led to their confinement in ad seg. They meet in case management sessions as a multi-disciplinary team to address the most difficult cases. By integrating behavioral health, medical treatment, programming and security-based perspectives, we have enhanced the trust and the level of communication between custody and rehabilitative services. The results include more effective crisis intervention, a reduction in the frequency of repetitious self-injurious actions and a decline in the number of trips to hospitals associated with disruptive behaviors. Inmates are more involved in empirically based treatment programs that serve to promote pro-social conduct. As a result, we have successfully reintegrated a greater number of challenging inmates from administrative segregation into the general population at less restrictive institutions.

Such initiatives take creativity, work, and time to develop. There will not be shortcuts here. In our hands is the health and safety of the millions who live and/or work in our nation's prisons. No matter how lauded we may be outside our agencies for the reforms we create, we cannot afford to become untethered from our workforce. If we do, we risk losing a rare opportunity to obtain the support and commitment essential for achieving the reforms necessary for the wellbeing of the people housed in administrative segregation.

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