USING CRISIS NEGOTIATION TEAM METHODS TO DECREASE VIOLENCE IN PRISONS

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I. INTRODUCTION

Fifty years ago, when riots erupted or inmates took hostages in prisons, staff would call in Special Weapons and Tactics ("SWAT") teams who were trained to raid prisons with excessive and destructive force.1 The raids often resulted in death, more violence, and expensive property damage.2

After an unsuccessful hostage situation during the Olympic Games in 1972, the New York City Police Department ("NYPD") and Federal Bureau of Investigations ("FBI") collaborated to create a new negotiation approach centered around "resolution of high conflict incidents without loss of life."3 Law enforcement agencies successfully applied this approach to disturbances outside of the prison system, and eventually, the Bureau of Federal Prisons ("BOP") used this approach to create specially trained crisis negotiation teams.4 These teams' methods have consistently proven effective in de-escalating both violent and large-scale inmate disturbances, but unfortunately, these methods have yet to be utilized in every day minor inmate offenses.5

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1 MICHAEL J. MCMAINS & WAYMAN C. MULLINS, CRISIS NEGOTIATIONS: MANAGING CRITICAL INCIDENTS AND HOSTAGE SITUATIONS IN LAW ENFORCEMENT AND CORRECTIONS 10 (2014).
2 Id.
4 Id.
5 Research shows that despite overwhelming data that current methods of punishment are actually exacerbating inmate violence in prisons, the methods continue to be used to control inmates. INSTITUTE OF MEDICINE (US) COMMITTEE ON ETHICAL CONSIDERATIONS FOR REVISIONS TO DHHS REGULATIONS FOR PROTECTION OF PRISONERS INVOLVED IN RESEARCH, ETHICAL CONSIDERATIONS FOR RESEARCH INVOLVING PRISONERS (Lawrence O. Gostin, Cori Vanchieri, & Andrew Pope eds., 2007), http://www.ncbi.nlm.nih.gov/books/NBK19877/; see generally SOLITARY WATCH, http://solitarywatch.com/facts/faq/ (last visited Sept. 24, 2015); see Charles F. Klahm et al., Accessing the Relationship Between Police Use of Force and Inmate Offending (Rule Violations), 63 CRIM. & DELINQUENCY 267 (2014).
The question posed by this Note is whether the same model and approaches used by the crisis negotiation team members to rectify violent inmate disturbances, can be used by prison guards for every day minor inmate conflicts and, in turn, create a safer and more manageable prison environment for both prison guards and inmates.

This Note is structured as follows: Part I of this Note introduces the Crisis Negotiation Teams and explains when, how, and why they were formed. Part I also discusses what factors ultimately lead teams to successful and safe negotiations. Part II discusses the current structure in place in today’s prisons and the consequences prison experiences have on the inmates. Additionally, Part II discusses prison guard training, as well as the effects this training is having on both inmates and guards alike. Part III offers some suggestions on how to fix issues within prisons, specifically the guard and inmate relationship, by using procedures currently in use by Crisis Negotiation Teams. The Note concludes that through applying the well-researched and effective methods created by the FBI, prison violence and recidivism can begin to decrease.

II. OVERVIEW OF CRISIS NEGOTIATION TEAMS

A. Who Created the Negotiation Model?

On September 4, 1972, eight heavily armed Palestinian terrorists entered the Olympic compound and took nine Israeli athletes and their coaches hostage. The terrorists had two demands: Israel must release Palestinian prisoners currently held in an Israeli prison and provide direct transportation to Egypt once the hostages were released. The Israeli government refused to negotiate with the terrorists, but the Munich Police Chief quickly began negotiations, offering large sums of money in exchange for the hostages’ safe return. Several hours passed with the terrorists making clear they did not want money. German police officers were dispatched to the stadium and pretended to comply with terrorists’ demands by providing terrorists and their hostages with helicop-

\footnotesize
6 See McMains & Mullins, supra note 1, at 4.
7 Id.
8 Id.
9 Id.
ters. Authorities planned to attack once terrorists and hostages arrived safely at the airport. As the helicopters landed, police officers abandoned the plan and began furiously firing at the terrorists—seventeen individuals were killed.

This situation was broadcasted internationally and caught the attention of the New York City Police Department. Prior to this event, the NYPD was growing increasingly concerned about the way in which hostage situations were handled as many of the hostage situations—like the 1972 Munich event—ended with injury or death. After Munich, the NYPD took action, using the expertise of Police Detective Harvey Schlossberg and Lieutenant Frank Boltz to examine psychological literature and develop negotiation tactics tailored for hostage situations. Schlossberg and Boltz’s research showed that due to the high levels of stress that accompany a hostage scene, nervous officers are quick to abandon their plan and resort to confrontational and uncontrolled techniques toward the hostage taker, eventually losing control and using force to resolve the issue quickly. When officers do not analyze the situation properly, incidents like the 1972 Olympic situation occur, and combined with lack of planning, death or injury is almost inevitable. Schlossberg and Boltz emphasize the importance of taking time to plan—researching who the hostage taker is, what his motivation is, and his general personality.

After Schlossberg and Boltz completed their study and published their findings, the NYPD used the research to establish the first program within the police department that specialized in negotiation-based strategies for dealing with hostage situations. Following the incident, it was shown why the hostage situation ended with so many lives lost. First, the German officers that were assigned to enter the stadium had no knowledge as to who or how many terrorists were inside the stadium and had no way of communicating with each other or their supervisors. Officers did not dress appropriately (had no helmets or bullet proof vests) and had no set plan for how to attack the terrorists when they arrived at the airport so officers just began firing at random. See McMain & Mullins, supra note 1.

10 Id.
11 Id.
12 10 In reports released after the incident, it was shown why the hostage situation ended with so many lives lost. First, the German officers that were assigned to enter the stadium had no knowledge as to who or how many terrorists were inside the stadium and had no way of communicating with each other or their supervisors. Officers did not dress appropriately (had no helmets or bullet proof vests) and had no set plan for how to attack the terrorists when they arrived at the airport so officers just began firing at random. See McMain & Mullins, supra note 1.
13 O’Neill, supra note 3.
14 See McMain & Mullins, supra note 1, at 6.
15 Id.
16 Id. at 9.
17 Id.
18 Id. at 4.
19 Id. at 10.
Following the NYPD’s program, the FBI created its own negotiation program.20

B. Violence and Negotiation

Prior to the creation of crisis negotiation teams, officials responded to hostage situations with extreme violence.21 Prison officials would call in the National Guard22 to control inmates with nightsticks and guns in a military type assault operation.23 One such situation was the 1971 inmate riot at Attica Prison,24 where 1,000 prisoners demanded better living conditions by taking control over the entire prison.25 Commissioner of Correctional Services, Russell Oswald, a man not liked among inmates, attempted to negotiate, but after several unsuccessful attempts, NYPD officers stormed the prison entrance with rifles and tear gas. Twenty-nine inmates and ten officers were killed and the State paid millions of dollars in court settlements to the families of those killed.26 Soon after this incident, the FBI released research about the potential benefits of bringing the negotiation model to prison incidents. The FBI began conducting studies that focused on understanding an inmate’s motivation and how officers could properly handle inmate issues in a non-confrontational manner.27

The first recorded incidents that complied strictly with the FBI’s suggested negotiation strategies were two prison incidents—one in a Louisiana Prison and the other in a Georgia Prison—that occurred in 1987.28 After the peaceful resolution of both these in-

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20 See McMains & Mullins, supra note 1, at 10.
21 Id. at 12.
23 See McMains & Mullins, supra note 1, at 9.
24 Id. at 10.
25 Id. at 11.
26 Id.
27 Id.
28 In November 1987, at two separate prisons, one in Louisiana and the other in Georgia, Cuban inmates took hostages as a result of their anger towards a possible deportation back to Cuba once released. In each incident, one highly trained FBI agent began initial discussions with the prisoner in charge of leading the riot, while the remaining FBI agents gathered intelligence about the prisoners’ demands. Law enforcement was able to use the approaches developed by Schlossberg and Boltz to negotiate with the inmates and after nine days in Louisiana and twelve in Georgia, the sieges ended with no deaths or injuries and a solution that benefitted both law enforcement and the Cuban inmates. See id. at 25.
incidents, the BOP developed the Office of Emergency Preparedness, creating a special unit within the office dedicated to resolving inmate conflicts through negotiation-centered tactics.29 Once the unit was developed and began training officers, the BOP set up a team close to every federal prison in the country.30 Today, every federal prison institution has access to a crisis negotiation team for large or violent prisoner related disturbances.31

C. Strategies of the Crisis Negotiation Teams in Prisons

Prison officials call in crisis negotiation teams during “domestic violence based hostage barricade situations, trapped criminals/fugitives, attempted suicides, and incidents involving subjects with mental illness.”32 The team is usually made up of individuals with extensive law enforcement backgrounds that exhibit strong communication skills, emotional maturity, and ability to cope in stressful situations.33 Every team has a crisis negotiation team leader who is responsible for devising the strategy and constantly communicating said strategies to prison staff and any other emergency response team on site.34 The team leader usually has a background and/or special expertise in behavioral science and criminal investigation, specifically dealing with hostile individuals.35 Leaders are responsible for training and leading other team members, keeping both themselves and the whole team up-to-date on the best and most recent negotiation practices in the field.36

Depending on the type of incident, the FBI recommends at least three negotiators per situation.37 Once the team leader maps out a plan, other team members focus on gathering intelligence about the inmates involved. Based on the intelligence gathered, they help create the basic dialogue and communication techniques.38 For example, a negotiator will use a different approach to

29 See O’Neill, supra note 3.
30 Id.
31 Id.
32 Id.
35 Peak et al., supra note 33.
36 Id.
37 Id.
38 See McMains & Mullins, supra note 1, at 418.
negotiate with an individual who is non-violent, controlled, and mentally stable as compared to an individual who has a severe mental illness. If an individual exhibits signs of paranoia, hysteria, or violence, the negotiator focuses on giving the person a sense of reality, and waits patiently before initiating any complex discussions.\footnote{In comparison, if an individual was mentally stable, then the negotiator would focus on first lowering stress levels and move towards a rapport. \textit{Id.} at 284.} In addition to having prior experience, negotiators are required to attend a uniform crisis negotiation course, monthly training sessions, and continuous practice drills with other team members.\footnote{See McMains \& Mullins, \textit{supra} note 1, at 302.}

Each member of a team is selected for their “contribution to the purpose and goals of the team.”\footnote{\textit{Id.} at 65.} That is, no two members of a team are alike or contribute in the same manner to a team’s ultimate success.\footnote{\textit{Id.}} As some members of the team—likely those who specialize in communication—negotiate directly with the hostage taker(s), other team members work behind the scenes with prison officials gathering intelligence on any and all inmates involved.\footnote{Who the inmate is determines the negotiation strategy, so the teams’ research will primarily focus on prior criminal history, educational history, work history, psychological profile, and family history. See \textit{id.} at 416–47.}

In negotiating directly with hostages, negotiations tend to follow a normal cycle: hostage takers make demands initially fueled by anger and frustration; once negotiators begin discussions, hostage takers move to a period of “withdrawal” where, in an effort to assert dominance, might decide not to speak; and negotiators act mindfully in building trust, developing a stable environment for a productive conversation.\footnote{Peak et al., \textit{supra} note 33.} Depending on the situation, the team assesses whether to bring in an outside negotiator or use a negotiator who works within the facility.\footnote{\textit{Id.} at 416–47.} An “in-house negotiator” is already familiar with the inmate population and might have better insights into an inmate’s motives and characteristics.\footnote{\textit{Id.}} However, if the in-house crisis negotiator has a bad or no relationship with the
inmates involved, inmates might perceive the negotiator as only wanting to advance the interests of the prison—in that case, an outside negotiator works better as an unbiased individual.47

Another important aspect is the passage of time. Time allows for “hostage takers possibly developing sympathy for their hostages, building rapport with negotiators, or simply tiring of the situation.”48 Only after a significant period of time passes49 will a team then begin to assess the actual substance of a prisoner’s demands.50 If the situation involves numerous prisoners, the team determines who the leader is and directs all communication to that leader. This allows for clear communication between only two parties without chaotic interferences of multiple people.51 An inmate’s demands usually revolve around ending overcrowding, improving food, improving visitation conditions, and improving facilities.52 The negotiator will decide which demands are nonnegotiable (such as an inmate demanding release) and which demands can be considered.53 The negotiator makes no false promises to an inmate and always checks with prison officials before making any offers.54 The negotiator avoids “coddling the captors” and continuously pressures inmates to resolve the situation in a peaceful manner.55 Once an agreement has been reached by all, there should be a formalized process so that the situation can come to a peaceful end and the inmate will know his demands will be met.56 Communication lines remain open during the entire process.57

47 Id.

48 Id.

49 Prior to Crisis Negotiation Teams, if there was a hostage incident, law enforcement would often use violent measures to force hostage takers to surrender and not take any time to evaluate the situation. See McMains & Mullins, supra note 1, at 10.

50 See id. at 416.

51 If multiple officers are attempting to communicate with inmates, it confuses inmates and makes it more difficult to establish a relationship. Additionally, when an officer is communicating with more than one inmate, this makes the conversation less intimate and negatively effects any potential of establishing a one-on-one relationship needed to stabilize the situation and come to an agreement. Id.

52 See id. at 416.

53 See Peak et al., supra note 33.

54 Id.

55 Id.

56 Id.

57 Id.
D. Are Crisis Negotiation Teams Effective?

The most important goal of crisis negotiation is to minimize injury and ensure inmate and officer safety. The teams continuously update their strategies by studying past incidents, and after every new incident the team records a detailed description in the FBI’s Hostage Barricade System. The database can be accessed and shared by all crisis negotiators in the country and allows negotiators to see which methods worked for their colleagues in a variety of scenarios. Negotiations are a much safer route and statistically safely resolve most hostage incidents. Even during incidents where an inmate is not willing to surrender peacefully “negotiations nonetheless succeed by stabilizing the incident through verbal containment; buying time to gather intelligence, staff, equipment, and other resources; and allowing the tactical team to identify the subject’s vulnerabilities and practice its planned entry.”

Studies show that in 1973, years before the negotiation model was introduced in the prison context, there were ninety-three riots for every one million prisoners, but in 2003 (once teams were introduced into the normal federal prison routine) there were only three per one million. Additionally, in 1973, there were sixty-three homicides per 100,000 prisoners, but in 2000, there were fewer than five, with inmate assaults on staff also significantly dropping. One major reason noted for the decline in prison violence is the establishment of Correction Emergency Response Teams (“CERT”), which include crisis negotiation teams. These teams have “not only helped quell disturbances and reduce violence in our prisons but also served to keep the whole subject of prisoner violence in the public eye.”

58 Id.
60 Id.
62 Id.
64 It should be noted that some teams within the Correction Emergency Response Teams are trained in handling weapons, and how to enter prisons with force without losing lives in situations where risk of life to inmates and guards are too high to use the negotiation model. Id.
control . . . CERT is an effective way to keep the peace in our swollen and non-rehabilitative prison system."\textsuperscript{65} By establishing rapport without violence, inmates are more likely to cooperate and respect guards in present and future incidents.\textsuperscript{66}

This process is easy to implement, and allows for time to gather intelligence and make strategic negotiation plans based on intelligence gathered.\textsuperscript{67} As history proves, conversation rather than force has a successful and long track record of saving both prison official and inmate lives.\textsuperscript{68}

\section*{III. Procedure and Protocol for Handling Inmates in Prison}

\subsection*{A. What happens when an inmate commits a minor offense?}

When a riot or severe disturbance takes place in a federal prison, prison officials are encouraged to call in the crisis negotiation team.\textsuperscript{69} However, “severe” disturbances are not the typical, everyday prison situation. Rather, minor infractions such as “loitering, staring, [and] leering” are far more typical, and although far less violent, are ultimately dealt with in a much harsher manner.\textsuperscript{70} According to the Inmate Discipline Program published and approved by the Acting Director of the BOP, when a prison guard witnesses or believes he witnesses an infraction by an inmate (even if the infraction is exceptionally minor), he should promptly report the incident to a supervisor, so a supervisor can punish the inmate.\textsuperscript{71} The supervisor can choose whether to conduct an interview with the inmate prior to distributing a punishment, and can also choose whether or not the inmate is entitled to a hearing on the matter.\textsuperscript{72}

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\textsuperscript{65} Id.
\textsuperscript{67} PETER M. CARLSON, \textit{PRISON AND JAIL ADMINISTRATION: PRACTICE AND THEORY} 472 (3d ed. 2015).
\textsuperscript{68} Id.
\textsuperscript{70} Id.
\textsuperscript{71} Id.
\textsuperscript{72} Id.
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There are a wide array of sanctions that an inmate might receive (with or without a hearing) including, but not limited to, losing phone or shower privileges, receiving a monetary fine, or being placed in solitary confinement for a few days, weeks, or months.\footnote{Id.} Although the Inmate Discipline Program does suggest that severe punishments—such as solitary confinement stays—should be given only if the inmate’s infraction was severe and violent,\footnote{Id.} repercussions are rarely given to officers who abuse their authority and distribute harsh penalties for minor offenses.\footnote{Carl ToersBijns, A Correctional Officer’s Challenge; Does Abuse or Neglect Lead to Violence?, CORRECTIONS.COM (June 4, 2012), http://www.corrections.com/news/article/30926-a-correctional-officer-s-challenge-does-abuse-or-neglect-lead-to-violence-.} In turn, inmates, no matter their infraction, are subject to severe punishments that do not match their offense.\footnote{Id.}

**B. Punishment in Prison**

One of the most common, severe, and easiest forms of punishment a prison guard can use against an inmate is a stay in a solitary confinement unit.\footnote{Id.} The practice of placing someone already imprisoned in complete isolation escalated in the 1980s and 1990s in response to the excessive gang violence that was happening within U.S. prisons.\footnote{Erica Goode, Solitary Confinement: Punished for Life, N.Y. TIMES (Aug. 3, 2015), http://www.nytimes.com/2015/08/04/health/solitary-confinement-mental-illness.html?_r=0.} Originally used to isolate only violent gang members from the general population, nowadays, any prisoner, regardless of whether their behavior is violent, can be sent to solitary for significant periods of time.\footnote{Id.} Aside from being a gang member, inmates are sent to solitary for any and all infractions including: possessing contraband, testing positive for drug use, ignoring orders, using profanity, or reporting rape or abuse by prison officials.\footnote{Id.} Additionally, prisons will sometimes place juveniles or
LBGT inmates in solitary for the “inmate’s own protection,” even when they have done nothing wrong.\(^{81}\)

Research has consistently proven that stays in solitary confinement worsen existing mental illness and produce symptoms even in prisoners who start out psychologically sound.\(^{82}\) Studies also show that frequent and lengthy solitary stays can create violent tendencies\(^{83}\) and limiting social interaction can be a “huge risk factor for mortality, bigger than alcohol, smoking, obesity, high blood pressure, or air pollution.”\(^{84}\)

Even more common than creating mental illness is exacerbating a pre-existing one.\(^{85}\) As of September 2014, “20 percent of prison inmates have a serious mental illness, 30 to 60 percent have substance abuse problems and, when including broad based mental illness, the percentages increase significantly.”\(^{86}\) As Dr. Gilligan, a N.Y.U. psychiatrist notes, “[a]t many jails and prisons around the country, solitary confinement has become kind of the default placement for the mentally ill, and are subject to stays in solitary for the sole reason of being mentally ill.”\(^{87}\) According to the American Psychiatric Association, placing mentally ill inmates in


\(^{82}\) McMains & Mullins, *supra* note 1. Depending on the prison, there exists a variety of names for solitary confinement. Some of the more common names are “segregation,” “restrictive housing,” “security housing units,” and/or “supermax” prisons, which are usually composed of only solitary confinement cells. SOLITARY WATCH, http://solitarywatch.com/facts/faq/ (last visited Sept. 30, 2015).

\(^{83}\) Harris, who is currently in prison for life and has gone to and from solitary during the course of his prison stay. When Harris was interviewed, the interviewer remarked that a two year stay in solitary “had not made him [Harris] more docile: Whenever officers finally did let him go back to general population, ‘I’d be angry,’ Harris told me. ‘Do something violent.’” Maurice Chammah, *Stepping Down from Solitary Confinement*, ATLANTIC (Jan. 7, 2016), http://www.theatlantic.com/politics/archive/2016/01/solitary-confinement-reform/422565/.


isolation makes their illness worse and causes “irreparable emotional damage.”

Studies also show that inmate suicide rates are significantly higher among people held in solitary confinement than in general population. As an example, among the inmate population at Pelican Bay, Dr. Stuart Grassian found that solitary confinement induces “hypersensitivity to external stimuli, hallucinations, panic attacks, cognitive deficits, obsessive thinking, paranoia, high rates of anxiety, nervousness, anger, violent fantasies, nightmares, trouble sleeping, dizziness, perspiring hands, and heart palpitations.” Other common occurrences suffered by inmates in solitary include receiving only a few hours per week of out-of-cell time, limited, if any phone access, and unsanitary bathroom and shower conditions. Solitary stays are also closely related to higher rates of self harm and suicide attempts by inmates.

In terms of the economy, solitary confinement units cost more to build than the average prison cell and it significantly costs more to house someone in isolation than it does to hold someone in the general population. On average, housing an inmate in solitary costs $75,000 compared to $25,000 per inmate in the general population.

The question remains: if the practice of placing inmates in solitary confinement harms inmates and creates more disturbances, why does it continue to be used? In a lawsuit against the Mississippi Department of Corrections, attorneys defending Mississippi inmates are confronted by the Department’s claims that inmates are lying about their conditions in prison, and specifically, their stays in solitary confinement.

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89 Id.
90 Id.
91 Rienzi, supra note 84.
92 In a 2014 study published in the American Journal of Public Health, researchers analyzed medical records of more than 134,000 New York City jail prisoners from 2010 to 2013. “The study found that solitary confinement was strongly associated with increased risk of self-harm, which ranged from self-inflicted lacerations to headbanging on walls to suicide attempts. Of the 7 percent of inmates in solitary confinement, 53 percent committed acts of self-harm, and 45 percent committed acts of potentially fatal self-harm.” Id.
94 Id.
95 Rienzi, supra note 84.
properties Union ("ACLU") has accused the Mississippi Corrections Department of intentionally abandoning inmates "so that medical symptoms or pre-existing conditions go untreated," and has cited cases where doctors falsely claimed to give inmates medical exams, the American Correctional Association continues to give these prisons high recommendations for accreditation. This indicates to the public that solitary is doing its job, and because the public often "doesn't care about what happens to prisoners" as compared to other issues, legislators have had little incentive to change the practice.

When working in a prison context, crisis negotiation teams are trained to evaluate the mental and physical state of the inmate prior to creating any plan of action. Although studies have shown that inmates are likely to cooperate with prison staff when spoken to with respect, guards continue to use solitary at their discretion no matter who the inmate is, and are rarely disciplined by supervisors for exposing inmates to excessive solitary stays. Prison officials have been engaging in this practice for so long that it has become "common practice," and there are few if any alternatives that are as easy and quick to implement when confronted with a troublesome inmate. Guards are trained to follow protocol and are trained to deal with inmates by subjecting them to harsh punishments and longs stays of isolation. Knowledge about the effects of solitary are still not known by those who operate prisons,

96 Id.
97 Although studies show that after releasing an inmate from solitary confinement they are more likely to commit another crime, disturbing the safety of the public. Justin Peters, Solitary Confinement is Horrible and Inhumane. Why Is It Legal?, S L A T E (Oct. 7, 2013, 2:26 PM), http://www.slate.com/blogs/crime/2013/10/07/herman_wallace_angola_three_solitary_confinement_is_horrible_and_inhumane.html.
98 See McMAINS & MULLINS, supra note 1, at 414–45.
100 Rienzi, supra note 84.
101 As noted by Colorado Corrections Department Director, Rick Raemisch, “If an inmate acts up, we slam a steel door on him. Ad Seg [i.e. solitary confinement] allows a prison to run more efficiently for a period of time, but by placing a difficult offender in isolation you have not solved the problem—only delayed or more likely exacerbated it . . . Our job in corrections is to protect the community, not to release people who are worse than they were when they came in.” Id.
102 It is difficult to create a complete shift away from solitary and towards an alternate to discipline when solitary has been used and accepted by corrections officers across the country for many years. This is so even though “states that reduced their use of isolation in prisons by up to 75% saw significant decreases in prison violence.” Id.
as many prison “experts” still defend that the practice helps to ensure the safety of staff and other inmates.103

C. Inmates and Prison Guards

Guards are trained to distribute excessive punishments at their discretion without ever having to engage in conversation with an inmate.104 Traditionally, prison guards are taught that the offenders are the “enemy” and that their job is to ensure that offenders remain under control and “contained” within the correctional facility.105 This attitude is then reinforced in “the correctional officer subculture and continues to be perpetuated at many levels within correctional agencies.”106 As suggested by a 2013 study examining the impact of inmates on prison guards, the prison guard subculture has developed into a distaste towards officers who show “positive perceptions of inmates,” and consequently, “[o]fficers who are ‘nice’ to offenders are often considered to be too friendly, which could alienate them from coworkers and supervisors.”107 The study also notes that officers will be internally conflicted with having a positive perception of inmates as it would go against the “us versus them” mentality shared by all of their fellow guards.108 This learned mentality creates an environment where staff feels pressured to treat inmates a certain way; consequently, turning to force by inflicting pain as “an affirmative strategy of control.”109

Along with the long established view amongst prison guards that violence must be used to control inmates,110 many states still do not adequately train their prison staff on how to deal with the inmate population. In some states, like New York, guards receive

103 Although protocol only calls for solitary confinement in severe circumstances, the punishment is currently being given for minor one-time infractions. Id.
104 Misis et al., supra note 99.
105 Id.
106 Id.
107 Id.
108 Id.
110 In a study about prison guards’ use of force on inmates, the author notes, “Manufacturing or exaggerating the need to physically control a prisoner is one means by which staff pre-textually use force for inflicting punishment on a prisoner . . . Often times the subjects of such force are mentally ill offenders whose behavior, as viewed by inadequately trained officers, is to be punished rather than treated.” Misis et al., supra note 99.
training in how to work with inmates who have mental health issues, but in other states, like California, prison guards receive little, if any, training on how to interact with inmates and specifically, inmates with mental health issues. Currently, the Standards and Training for Corrections (“STC”) in California gives correctional officers 176 hours of training and only fifteen of those hours are dedicated toward “legal issues, mental health issues, suicide issues, indicators of substance abuse, indicators of physical/mental problems, and assisting medical personnel in the distribution of medicine.” Further, only half of these hours are dedicated to teaching officers how to identify and work with inmates with mental health issues. Other states, like Georgia, require only four weeks of training, this compared with training for a Georgia highway patrol officer that requires thirty-one weeks of training, displays the limited resources states are willing to give corrections staff for adequate training. Countless studies emphasize the importance of conversing with inmates in a respectful manner when trying to resolve a conflict, yet prison staff typically views negotiation for resolving prison conflicts as an “illegitimate response.” Prison guards are the main source of care for an inmate with a mental illness, but are rarely trained in “verbal de-escalation techniques” or “to seek the intervention of mental health staff before resorting to force against inmates with mental disabilities.” Many times the inmates’ illnesses are the reason for their lack of compliance with prison guard demands, but with no proper training, guards are unable to recog-
nize inmates capabilities and resort to simply punishing the inmate.118

Guards receive little training on how to maintain their own psychological well-being.119 The job of a correctional officer is exceptionally demanding with its low pay and long hours, and guards are not trained in how to properly treat the inmate population.120 Because guards are overworked, poorly trained, and work in a system perpetuating violence, officers lack the ability to distinguish the difference between actual mental illness and a violent inmate, and succumb to treating the two the same.121 According to The Guardian, “New York City jail guards reported more use of force against inmates in 2014 than ever before—an average of 11 incidents a day ranging from pepper sprayings to punches.”122 Guards often use force in the absence of any emergency, and without making any attempts to “secure the inmate’s compliance through other means,” as this is how they were trained to act regardless of whether the circumstance requires guards to use violence.123 Officers are given access to “non-lethal weapons” meant to “minimize injuries to both staff and inmates,” promoting the idea that instead of talking with an inmate, a guard should just use a weapon as a first response.124

Another reason guards turn to force is simply out of fear that without force, the small number of guards will not be able to maintain control over the much larger inmate population.125 The proper inmate to guard ratio, as suggested by the American Federation of Government Employees (“AFGE”), should be three to one, yet guards are now outnumbered 4.4 to one.126 As a result, prison

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118 Id.
119 Id.
120 For example, prison guards currently stationed at Guantanamo Bay have reported high levels of psychological trauma that they say is due to the intense and demanding prison atmosphere. This type of trauma has been known to enhance a guard’s stress and temper against inmates. Id.
121 Id.
123 Misis et al., supra note 99.
126 Id. Additionally, it should be noted, “[t]he Department of Criminal Justice currently has 3,304 corrections officer vacancies throughout its 109 prison units, even after the closure in 2013
guards do not feel safe, and as noted by Mr. Lance Lowry, President of the Texas Chapter of the American Federation of State, County, and Municipals Employees, “You can’t run a facility at 50 percent staff and be safe.” Historically, the prison guard profession has always had a high turnover rate due to its low pay, long hours, remote facility locations, and general “difficult working environment.” Today, this means guards using force out of fear of the large inmate population, angering inmates, and creating a cycle of more violence amongst offenders towards guards. As prison populations continue to rise, prison staff numbers plummet with an estimated 3,200 correctional guard shortages across the nation.

It is important to note that in the most severe of circumstances, guards might have to use violence in order to protect both themselves and other inmates; however, even in these situations, there is a disjuncture between what police behavior is legally permissible and what behavior citizens perceive to be proper and fair. In a 2006 article examining the effects guards’ violence have on inmates, guards proved to use their “fists and feet” as a measure of first response to control an inmate regardless of the severity of an inmate’s infraction. Given the violent culture created within the prison system, it is understandable that prison guards have reported that they themselves commonly worry about violent attacks by inmates and often feel that using violence against
D. Effects on Inmates

Regardless of whether an inmate is suffering from a mental illness, studies show that inmates subject to force are more likely to engage in assaultive and other rule violating behavior, especially those who did not resist police authority when having force used against them.137 Consequences of officers using force are especially problematic when the inmate fails to perceive his treatment as fair.138 Historically, individuals who are exposed to violence, regardless of whether they did something wrong, “become less attached to their abuser, develop expectations about aggression at the hands of others, and become hyper vigilant toward aggressive prompts.”139 Additionally, individuals who experience abuse and violence will often mimic the behavior and begin turning to violence to resolve their problems.140 This in turn leads to more violence amongst inmates. As studies show, inmates who had force used against them when not resisting arrest, commit a “higher

134 Id.
135 There is a current lawsuit against Rikers Island for inhumane treatment of inmates by guards. As the lawsuit states, “violence has been inflicted by ‘uniformed staff . . . knowingly permitted and encouraged by Department supervisors . . . who have created and now perpetuate a policy of permitting uniformed staff to use unlawful, excessive force with impunity . . . [failing] to rein in lawless staff and curb violence in the jails, despite having full knowledge of the . . . scores of serious injuries [suffered by] prisoners.” David Anthony Fuller, Supervision and Discipline of Corrections Officers Are Key to Stopping Violence at Rikers Island, TRUTH OUT (Sept. 18, 2014), http://www.truth-out.org/news/item/26243-effective-supervision-and-rational-discipline-of-corrections-officers-are-key-to-stopping-an-explosion-of-violence-on-rikers-island.
136 Klahm et al., supra note 5, at 302.
137 Id. at 300.
138 Id.
139 Id. at 3.
140 Id. at 4.
number of assaults, drug/alcohol violations, and other nonviolent infractions than other inmates.\footnote{141}

IV. PROPOSAL

A. Training Prison Staff

For anything in the prison system to change, the BOP must incorporate the training provided to crisis negotiation team members, to those prison staff who deal with the inmate population on a daily basis. Crisis negotiation team members are taught to approach and evaluate situations differently depending on whom the inmate is. Conversely, guards receive little, if any, training on how to converse with an inmate, so they have no choice but to turn to acting violently and without cause.\footnote{142} For example, if a mentally ill man is starting to become violent and prison staff have not received training in working with mentally ill inmates, then, as said by a corrections consultant and use of force expert:

Lacking adequate training in mental illness and in conflict de-escalation have led, in some cases, to prisoner deaths or other serious injuries . . . the strange, often violent, and irrational behavior of agitated mentally ill prisoners, and their protracted struggling against being restrained, can scare correctional officers into acting more aggressively than they should during a restraining process.\footnote{143}

Adequate training and set protocols on how to handle certain types of inmates without using violence has the potential to create positive relationships between inmates and guards.

As noted in the BOP handbook for incoming prison officers,\footnote{144} officers and their superiors are given complete control

\footnote{141}{Id. at 18.}
\footnote{142}{As noted in an article discussing how prison guards are trained, the author notes, “It’s not enough to search for ways to put prisoners down more efficiently when they engage in violence. That misses the point. Do pepper spray and batons work? Sure . . . By the same token, guns and tasers also work. But this is how you control behavior, not change lives and win minds. This isn’t the recipe to reformation or rehabilitation, but the recipe for negative reinforcement.” Christopher Zoukis, Report on Understaffing in Federal Prisons Misses the Point: Focus on Reformation, Not Incapacitation and Repression, HUFFINGTON POST (Jan. 7, 2016, 2:51 PM), http://www.huffingtonpost.com/christopher-zoukis/report-on-understaffing_i_b_8923558.html.}
\footnote{143}{Inadequate Responses and Abuses by Correctional Staff, HRW, https://www.hrw.org/reports/2003/usa1003/9.htm#_ftn243 (last visited Jan. 29, 2016).}
\footnote{144}{U.S. DEP’T OF JUSTICE, supra note 69.}
over which inmates to punish, and what punishments the inmates are given. Comprehensive and stricter protocols would give clear
guidance to officers and make them aware of the limitations in
their authority. Stricter protocols would also eliminate the possi-
bility of guards using their own discretion in distributing punish-
ments. As studies show, officers given complete control over
inmates negatively impacts the inmates who are not able to predict
when they will be punished and for what they will be punished.145
Predictability will help inmates understand the rules and conse-
quences, help guards to only punish at the appropriate times, and
ensure that the punishment matches the offense. A comprehensive
training manual will also help establish repercussions for officers
who break the rules and force supervisors to take action when an
officer uses excessive force against an inmate in an unjust manner.
As noted in a recent article, when supervisors look the other way,
it sends the message to officers that the conduct they are engaging in is appropriate.146 Accountability, repercussions, and set proto-
cols could help alleviate this problem, and as demonstrated by ex-
perts, inmates who know and perceive their treatment as proportionate to their offense, are far more likely to be coopera-
tive and respectful of their superiors.147 Eventually, if both super-
visors and officers begin to follow proper protocol on how to treat
inmates fairly, the learned mentality of dominance and violence
might turn to rehabilitation and establishing control in a effective
and appropriate manner.

Part of the training that a crisis negotiation team member also
experiences is gathering intelligence about their subject prior to en-
gaging in any conversation and using that intelligence to communi-
cate properly.148 Prison staff require training on the inmate
population they are in charge off and in how best to talk to an
inmate depending on their mental, social, and/or physical status.
Once the guard knows whom they are dealing with, they can learn
how to use crisis negotiation strategies in talking, listening, and re-
sponding to the inmate, and eventually coming to a solution that
benefits both the guard and the inmate.149

145 See Misis et al., supra note 99.
146 ToersBijns, supra note 75.
147 Klahm, supra note 5.
148 See McMains & Mullins, supra note 1, at 4.
149 Crisis negotiation team members emphasize that an effective solution to disturbance can-
not be achieved without team members taking the time to listen to prisoner demands, and un-
derstanding the motivation for these demands. Without active listening, inmates are likely to get
frustrated and feel as though they are not being heard or taken seriously. See id. at 415.
B. Abandoning Ineffective Practices

The practice of placing an inmate in solitary has been proven ineffective and correlates directly to an increase in prison violence.\textsuperscript{150} Crisis negotiation teams seek to establish a trusting relationship by talking with their subject, not by isolating them without any means of communication.\textsuperscript{151} Violent punishment needs to be saved for worst-case scenarios. Creating a plan for each individual incident helps guide an officer towards establishing control in a respectful, beneficial, and effective way. As noted by Former Deputy Warden Toer, “the [prison] culture prevents better relationships to exist, where these officers and prisoners can communicate and exchange appropriate environmental needs to resolve their issues.”\textsuperscript{152} As protocols begin to change, perhaps prison staff will begin to recognize the benefits to be had in establishing rapport with inmates and creating an atmosphere of respect.

V. Conclusion

Americans make up 5\% of the world’s population and 25\% of the world’s prison population.\textsuperscript{153} As The New Yorker states, there are now more black men in prison, jail, and on parole than were enslaved in 1850, and keeping inmates imprisoned takes up almost a third of the Justice Department’s annual budget.\textsuperscript{154} Prisons were created to separate violent offenders from society, yet almost half of all inmates housed in federal prisons are serving time for non-violent drug offenses.\textsuperscript{155} Studies show, and will undoubtedly continue to show, that how an inmate is treated responds directly with

\textsuperscript{150} Peters, supra note 97.
\textsuperscript{152} ToersBijnx, supra note 75.
\textsuperscript{155} According to the BOP website, there are currently over 80,000 prisoners serving time for non-violent drug offenders, at any given time in federal custody. Offenses, Fed. Bureau of Prisons, https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp.
how the inmate will act in prison and once released.\textsuperscript{156} Crisis negotiation team methods are effective, and if the BOP wishes to make the prison system a place where inmates are rehabilitated, they should look no further then the methods already in place.

\textsuperscript{156} As noted by the founder of the Justice Policy Institute on the prison system, “We are missing a huge opportunity. We are warehousing people, punishing them and returning them to our society worse off than when we got them. I think our goal should be ultimately to help turn people’s lives around—but we are not treating our prisoners that way right now . . . We are putting people in prison, many times, for non-violent crimes and turning them out more violent and dangerous than when they went in.” Dianne Clemens, \textit{Prison: To Punish or to Reform?}, Pov, http://www.pbs.org/pov/whatiwant/prison-to-punish-or-reform/.