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# The Modern American Penal System

## Hidden Prisons: Twenty-Three-Hour Lockdown Units in New York State Correctional Facilities\*

Jennifer R. Wynn†  
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### I. Introduction

There is increasing awareness today of America's grim incarceration statistics: Over two million citizens are behind bars, more than in any other country in the world.<sup>1</sup> Nearly seven million people are under some form of correctional supervision, including prison, parole or probation, an increase of more than 265% since 1980.<sup>2</sup> At the end of 2002, 1 of every 143 Americans was incarcerated in prison or jail.<sup>3</sup>

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\* This article is based on an adaptation of a report entitled *Lockdown New York: Disciplinary Confinement in New York State Prisons*, first published by the Correctional Association of New York, in October 2003. Jennifer Wynn served as the principal author and Alisa Szatrowski conducted the data collection and analysis.

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1. See The Sentencing Project, *Facts about Prisons and Prisoners* (2003), available at <http://www.sentencingproject.org/pdfs/1035.pdf>.

2. *Id.*

3. *Id.*

A trend less known to people outside the criminal justice community is the proliferation of super-maximum security "lockdown" units, highly secure prisons within prisons or free-standing facilities in which inmates are confined twenty-three hours a day.<sup>4</sup> In these newest additions to the correctional landscape, all movement is monitored by video surveillance and assisted by electronic door systems. Special alarms, cameras and security devices are everywhere. "These prisons represent the application of sophisticated, modern technology dedicated entirely to the task of social control, and they isolate, regulate, and surveil more effectively than anything that has preceded them."<sup>5</sup>

Living conditions include either solitary confinement or double celling, where two men are forced to cohabitate around the clock. Few programs are provided; simply enduring the extraordinary degree of idleness is one of the most difficult aspects of life in lockdown as there is virtually nothing for prisoners to *do*. Like animals in a cage, inmates are "cell-fed" through feed-up slots in thick metal doors. Most supermax prisons limit showers to just three a week. Visits with family and friends are conducted behind Plexiglas or mesh-wire barriers. Whenever prisoners leave their cells, they are mechanically restrained with handcuffs and a waist chain, and leg irons if they are considered seriously violent or escape-prone.

Designed for inmates who violate prison rules or whom correction officials deem threats to security, supermax facilities are attractive to correction officials because they are easier to manage than regular prisons. There are few, if any, programs to run, little out-of-cell movement, and minimal contact between inmates and staff. Lockdown units are also attractive to politicians seeking to burnish their tough-on-crime credentials. As the National Institute of Corrections notes: "The fact that such facilities often are politically and publicly attractive . . . also has had a role in their increase nationwide. They have be-

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4. See JAMIE FELLNER, *OUT OF SIGHT: SUPER-MAXIMUM SECURITY CONFINEMENT IN THE UNITED STATES* 2 (2000), available at <http://www.hrw.org/reports/2000/supermax/>.

5. See Craig Haney, *Infamous Punishment: The Psychological Consequences of Isolation*, NAT'L PRISON PROJECT J. (ACLU/Nat'l Prison Project), Spring 1993, at 3.

come political symbols of how 'tough' a jurisdiction has become."<sup>6</sup>

In 1984, only one prison in the United States, the federal penitentiary in Marion, Illinois, was a total lockdown facility.<sup>7</sup> After a series of catastrophes at what was then a general population prison—including the killing of two correction officers on the same day in October 1983—a state of emergency was declared and the prison was placed on permanent lockdown status, how it remains.<sup>8</sup> Over the past decade, the Federal Bureau of Prisons and forty state Departments of Correction have built total lockdown facilities, which together hold some 23,000 prisoners.<sup>9</sup>

New York has joined this trend. Between 1997 and 2000, the state built ten high-tech, total lockdown facilities, representing the most dramatic expansion of high-security housing in seventy years.<sup>10</sup> Including New York's first supermax prison, Southport Correctional Facility, which opened in 1991, these eleven freestanding facilities can house up to 3,700 inmates.<sup>11</sup> In some jurisdictions, they would be called "supermaxes," but New York correction officials resist that term.<sup>12</sup> Either way,

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6. NAT'L INST. OF CORR., U.S. DEPT OF JUSTICE, *SUPERMAX PRISONS: OVERVIEW AND GENERAL CONSIDERATIONS* (1999).

7. See JAMIE FELLNER, *COLD STORAGE: SUPER-MAXIMUM SECURITY CONFINEMENT IN INDIANA* 13 (1997) [hereinafter *COLD STORAGE*], available at <http://www.aclu.org/hrc/PrisonsColdStorage.pdf>.

8. *Id.*

9. See Paul Grondahl, *Sensible Control or Senseless Cruelty?*, ALB. TIMES UNION, Mar. 26, 2000, at B1.

10. Press Release, New York State Department of Correctional Services, Budget Agreement OKs Governor's Plan for Largest Cell Expansion in 70 Years, (July 30, 1997).

11. See CORR. ASS'N OF N.Y., *LOCKDOWN NEW YORK: DISCIPLINARY CONFINEMENT IN NEW YORK STATE PRISONS* 9-10 (2003), available at <http://www.correctionalassociation.org/lockdown-new-york-1.pdf> [hereinafter *LOCKDOWN NEW YORK*].

12. See Roy D. King, *The Rise and Rise of Supermax: An American Problem in Search of a Solution?*, 1 PUNISHMENT AND SOC'Y 163 (1999): Discussing his attempts to collect data from state officials on the number of supermax prisons in state Departments of Corrections, King writes:

At the other extreme, at least one state—New York—claimed both in its response to the NIC [National Institute of Corrections] and to my initial enquiries that it had no supermax provision according to the NIC definition of the term, although it did have a number of special housing units said to be for disciplinary segregation. On visiting New York facilities, . . . however, it was clear that some existing and much of the very extensive planned ac-

conditions are basically the same: twenty-three-hour lockdown, enforced idleness and extreme social isolation.

Indisputably, supermax prisons are among the most isolated institutions in the country. Few outsiders are permitted access; little public oversight exists. The inmates housed in these prisons within prisons tend to be the most marginalized individuals in the correctional system—a hidden population isolated not only from society, but from the subculture of prison. Some are illiterate; many are cognitively impaired or mentally ill.<sup>13</sup> According to the New York State Department of Correctional Services (DOCS), nearly a quarter (23%) of inmates in disciplinary lockdown units are on the mental health caseload.<sup>14</sup>

Not surprisingly, little is known about inmates in total lockdown units, how their experience in the darkest recesses of the prison system affects them or how they endure. The late criminologist Norval Morris, who has written extensively about supermax confinement, has noted: “Surprisingly little is known from research on who is sent to supermaxes, why, and for how long; or the effects of supermax confinement on the mental conditions and social skills of inmates.”<sup>15</sup>

### *Access and Methodology*

Statutory authority granted to the Correctional Association of New York in 1846 allows members of its Visiting Committee to enter New York state prisons and issue reports on conditions of confinement.<sup>16</sup> Under this authority we initiated a system-

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commodation had all the design characteristics and many of the operating procedures of what other states defined as supermax . . . .

*Id.* at 173.

13. See FELLNER, *supra* note 4, at 4. (“Correction officials also frequently place disruptive, mentally ill inmates in supermax confinement because they lack other housing options, such as secure mental health treatment units or segregation units specifically designed for mentally ill offenders.”).

14. Press Release, New York State Department of Correctional Services, Goord: Association Ignores Public Safety, Maligns Staff to Promote Inmates’ Issues (June 27, 2002), available at <http://www.docs.state.ny.us/PressRel/gangi.html>.

15. See Leena Kurki & Norval Morris, *The Purposes, Practices and Problems of Supermax Prisons*, 28 CRIME AND JUST. 385 (2001).

16. The act of incorporation provides that,

The said executive committee of the Correctional Association of New York by such committees as they shall from time to time appoint shall have the

wide study of conditions in twenty-three-hour lockdown units in 1998.<sup>17</sup> Our research was prompted not only by the dramatic expansion of disciplinary lockdown in New York, but by a growing number of letters and phone calls from inmates, family members and attorneys suggesting serious problems. The most frequent claims include the unfair nature of disciplinary hearings, the trivial charges that result in disciplinary confinement, the length of sentences, forced partnerships with dangerous cellmates and inadequate access to medical and mental health services.

Between 1998 and 2003, we made forty-nine visits to lockdown units in twenty-six correctional facilities throughout the state.<sup>18</sup> We conducted structured survey interviews with 258 inmates to collect quantitative data on their experiences in disciplinary lockdown.<sup>19</sup> Interviews were conducted “cell side” by trained interviewers and ranged from twenty to forty minutes. In addition, we spoke at length with staff in each facility, including line officers, supervisory staff and mental health staff and reviewed logbooks to confirm rounds made by clinicians.

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power to visit all the prisons in the state, and annually report to the legislature their state and condition, and all such other things in regard to them as may enable the legislature to perfect their government and discipline.

1973 N.Y. Laws 398.

17. See LOCKDOWN NEW YORK, *supra* note 11, at 10.

18. *Id.*

19. *Id.* During site visits conducted between 1998 and 2001, we interviewed inmates using a checklist of questions. In 2002, we designed a structured survey to collect data about inmates' perceptions of and experiences in lockdown. Containing approximately forty questions, the survey was designed with input from correctional and mental health professionals and former inmates. We administered the survey to 258 inmates in disciplinary lockdown in the following twelve prisons: Attica, Clinton, Elmira, Five Points, Great Meadow, Green Haven, Sing Sing, Southport, Sullivan, Wende, Woodbourne and Upstate. Data were coded and analyzed using Statistical Package for the Social Sciences (SPSS).

## II. Background

### *Overview of Disciplinary Lockdown in New York State*

New York confines approximately 5,000 state inmates in twenty-three-hour disciplinary lockdown.<sup>20</sup> There are three types of lockdown in New York:

*Keeplock.* Inmates in “keeplock” status are kept locked in their own cells or in a separate cellblock in the prison twenty-three hours a day.<sup>21</sup> While keeplock is considered the least restrictive form of disciplinary housing, because inmates are permitted most of their personal property and their disciplinary sentences tend to be shorter, inmates in long-term keeplock status are governed by the same restrictions that apply to inmates in Special Housing Units.<sup>22</sup>

*Special Housing Units.* Special Housing Units (SHUs) are designated cellblocks or freestanding buildings in most maximum-security and some medium-security prisons.<sup>23</sup> The majority of SHUs are located in old-style maximum-security prisons, such as Attica or Sing Sing, where the cells tend to be dank and dimly lit. Most SHU cells have bars on the front or back of the cell; others are far more isolating, with three concrete walls and a thick metal door.

*High-Tech Lockdown Facilities.* Representing the newest form of disciplinary confinement, these modern-day prisons are electronically-controlled, freestanding facilities with state-of-the-art video and audio surveillance equipment. New York has eleven such facilities: Southport and Upstate, which constitute entire prisons, and nine “S-Blocks” on the grounds of other facilities. Combined, they have a total capacity for 3,700 inmates.<sup>24</sup>

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20. DOCS figures on April 14, 2003 show a total of 4,981 inmates in disciplinary lockdown. On that date, there were 1,529 inmates in keeplock, 432 in Special Housing Units, and 3,020 in high-tech total lockdown facilities.

21. GLENN S. GOORD, COMMISSIONER'S POLICY PAPER ON PRISON SAFETY AND INMATE PROGRAMMING 2 (2000) (on file with the author).

22. See N.Y. COMP. CODES R. & REGS. tit. 7, § 301.6 (2002) (“Keeplock admission”); see also *id.* at § 301.6(c) (“Inmates assigned to keeplock status in a special housing unit pursuant to this section shall be subject to the property limitations set forth in section 302.2 (a)-(g).”). See generally Paul Grondahl, *Walls and Rules Define Life in The Box*, ALB. TIMES UNION, Mar. 26, 2000, at B4.

23. N.Y. COMP. CODES R. & REGS. tit. 7, § 300.2(d) (1999) (defining “special housing unit”).

24. See LOCKDOWN NEW YORK, *supra* note 11, at 9-10.

*Factors Driving Construction*

Unlike the establishment of lockdown at the federal penitentiary in Marion, the build-up of lockdown in New York was not precipitated by a catastrophic event. Rather, the construction was driven mainly by two factors: the need for more maximum-security cell space and the availability of federal cash incentives in return for ending parole.

*Need for Maximum-Security Cell Space*

As the inmate population doubled from approximately 35,000 to 70,000 between the mid-1980s and mid-1990s—consisting mainly of nonviolent drug offenders—DOCS handled the increase by building more prisons and doubling the housing capacity in medium-security prisons through double bunking.<sup>25</sup> Because the SHUs in medium-security facilities were not expanded, however, inmates who violated rules serious enough to warrant disciplinary confinement were transferred to cells in maximum-security prisons and placed on keeplock status. However, many of the maximum-security prisons were already filled to capacity.

As a result, these maximum-security prisons were unable to accept incoming inmates from county jails (known as “state readies”), who were backing up in record numbers. The number of state-readies reached an all-time high of 4,425 in 1999.<sup>26</sup> Ultimately, the state was sued and ordered to pay \$63 million in fines (paid by taxpayers) to the counties for delays in accepting custody of these offenders.<sup>27</sup> With construction of the S-Blocks and Upstate Correctional Facility, DOCS was able to move inmates from cells in maximum-security prisons to the new lockdown units, thus freeing up maximum-security cell space for incoming general confinement prisoners.

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25. *See id.* at 12.

26. *DOCS Reduces Inmate Backlog Held in County Jails to a Record Low*, DOCS TODAY (N.Y. State Dep’t of Corr. Serv., Albany, N.Y.), Jan. 2004, at 4, available at <http://www.docs.state.ny.us/PressRel/DOCSToday/January2004edition.pdf>.

27. *Id.* at 5.



*Incentive of Federal Funds for Prison Construction*

The 1994 Violent Crime Control and Law Enforcement Act<sup>28</sup> contained a little-known provision that awarded states cash incentives to build new prisons if they changed their laws so that people convicted of violent offenses would serve at least 85% of their sentences.<sup>29</sup> Known as Violent Offender Incarceration/Truth-in-Sentencing (VOI/TIS) funds, these grants made it financially attractive for states to simultaneously build more prisons and end parole.<sup>30</sup> In 1995, New York abolished discretionary parole release for individuals convicted of a second violent felony.<sup>31</sup> In 1998, it ended discretionary parole for individuals convicted of their first violent crime.<sup>32</sup> In return, New York received nearly \$200 million of VOI/TIS funds between 1996 and 2000, which it spent on the construction of high-tech lockdown facilities.<sup>33</sup>

*Costs to Build and Operate*

Economic considerations also played a role in the expansion of twenty-three-hour lockdown facilities. In garnering support for new prison construction, New York correction officials and upstate legislators touted the economic payoffs of prisons for rural communities plagued by high unemployment and industry decline.<sup>34</sup> DOCS Commissioner Glenn Goord described the "substantial economic boost" that the new Upstate Correctional Facility, a massive double-celled supermax fifteen miles south

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28. The Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified at 18 USC §§ 921-922, 924(a)(1)(B)).

29. See BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, BULL. NO. NCJ 170032, SPECIAL REPORT: TRUTH IN SENTENCING IN STATE PRISONS (1999), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/tssp.pdf>.

30. *Id.* at 2.

31. Press Release, State of New York, Executive Chamber, Gov. George E. Pataki, Governor's "Right-sizing" of Prisons Working, as Non-violent Population Decreases; Numbers of Violent Offenders Increasing Along with the Length of Their Terms (Aug. 17, 1999), available at <http://www.docs.state.ny.us/PressRel/ritesize.html>.

32. *Id.*

33. Interview with Richard McDonald, Program Analyst, Corrections Committee, New York State Assembly (Nov. 25, 2002).

34. *Budget Expands Max Cells, Adds Two Medical Units*, DOCS TODAY (N.Y. State Dep't of Corr. Serv., Albany, N.Y.), June 1998, at 7.

of the Canadian border, would provide for the region through new jobs.<sup>35</sup>

Despite potential economic gains, building high-tech lockdown prisons cost taxpayers dearly. Upstate Correctional Facility cost approximately \$130 million to construct, or about \$173,333 per double-occupancy cell (\$86,666 per bed), exclusive of interest. The nine, 100-cell S-Blocks cost a total of \$108 million to build, or about \$120,000 per cell (\$60,000 per bed).<sup>36</sup>

Nevertheless, since Upstate and the S-Blocks opened, they have rarely operated at capacity.<sup>37</sup> Of Upstate's 1,200 disciplinary lockdown beds, 308 were empty as of April 2003.<sup>38</sup> At \$86,666 per bed, about \$27 million worth of cell space sat vacant on that date. Figures for the S-Blocks on the same date show 372 vacant beds, or \$22 million worth of cell space.<sup>39</sup> Combined, that is nearly \$50 million worth of vacant cell space.

### *Assignment to Disciplinary Lockdown*

Inmates are sent to disciplinary lockdown for violating prison rules. Every inmate entering the system is given a rulebook containing over 100 rules.<sup>40</sup> Each rule is assigned a "Tier" rating of I, II or III, which determine the severity of the violation, the type of hearing the inmate will be afforded and the range of punishment.<sup>41</sup> The least serious offenses receive a Tier I rating; the most serious offenses receive a Tier III rating and result in a "superintendent's hearing."<sup>42</sup>

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35. *Bids Awarded on Maximum-Security Prison*, DOCS TODAY (N.Y. State Dep't of Corr. Serv., Albany, N.Y.), Apr. 1998, at 8.

36. *Id.*

37. Memorandum from the New York State Department of Correctional Services, to the Correctional Association of New York (Apr. 13, 2003) (received in response to a request under the Freedom of Information Act) (on file with the author).

38. *Id.*

39. *Id.*

40. N.Y. COMP. CODES R. & REGS. tit. 7, § 270.3 (2002) (defining "prohibited behavior").

41. *See id.*; N.Y. COMP. CODES R. & REGS. tit. 7, § 300.2(d) (199) (defining "tiers of disciplinary hearings"). *see also* N.Y. COMP. CODES R. & REGS. tit. 7, § 251-1.5 (1983) (describing minor infractions); N.Y. COMP. CODES R. & REGS. tit. 7, § 251-1.6 (1989) (describing grounds for confinement).

42. N.Y. COMP. CODES R. & REGS. tit. 7, §§ 254.1-.9 (1990) (governing superintendent hearings).

Inmates and prisoners' attorneys frequently assert that the hearings are little more than "kangaroo courts," where inmates are essentially powerless to obtain a finding of innocence because cases often involve the word of a convicted felon against that of a correction officer. Another problem is that many rule violations have multiple ratings, and their classification of severity is based on the opinion of a correction official whose personal feelings about an inmate or pressure from fellow correction officers can influence his decision.

After a disposition is issued, the inmate has thirty days to appeal the decision to Central Office.<sup>43</sup> Central Office issues a time cut or reverses the disposition in over 20% of the approximately 27,000 Tier III rulings issued every year.<sup>44</sup> On one hand, the fact that one-fifth of all rulings are ultimately modified or reversed shows that the appeal process works. On the other hand, it points to problems with the hearing process itself, such as hearing officers' methods for establishing guilt or deciding on appropriate levels of punishment.

Another concern is the low level of infractions that land inmates in twenty-three-hour lockdown. When we reviewed the charges of inmates in the S-Block at Greene Correctional Facility during a June 2002 visit, we found that several men were sent there for such low-level violations as smoking and "horse-playing."<sup>45</sup> A hearing officer at a maximum-security prison we visited in April 2003 reported that the superintendent had begun pressuring hearing officers to sentence inmates to ninety days in disciplinary confinement so that they met the minimum requirement for a transfer to Upstate or an S-Block.<sup>46</sup> This practice illustrates the problems observed by criminologists Leena Kurki and Norval Morris:

Once a supermax is built, there is a tendency to keep it full. Admission criteria typically specify very serious violations . . . but

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43. N.Y. COMP. CODES R. & REGS. tit. 7, § 254.8 (1989).

44. *Newspaper Series Misrepresents SHU's Operations*, DOCS TODAY (N.Y. State Dep't of Corr. Serv., Albany, N.Y.), May 2000, at 9.

45. See generally CORR. ASS'N OF N.Y., STATE OF THE PRISONS: CONDITIONS OF CONFINEMENT IN 25 NEW YORK CORRECTIONAL FACILITIES (2002) [hereinafter STATE OF THE PRISONS], available at <http://www.correctionalassociation.org/images/State%20of%20the%20Prisons.pdf>.

46. Interview with Anonymous Hearing Officer, Green Haven Correctional Facility (June 2, 2003).

also leave room for much lesser violations (e.g., disruption of orderly operations; gang influences). Broad assignment criteria may well be used to keep supermaxes full rather than providing safeguards against arbitrary and unnecessary admissions, as was their original purpose.<sup>47</sup>

### *Portrait of Inmates in Disciplinary Lockdown*

The following table presents data from survey interviews with 258 inmates in disciplinary lockdown: 126 inmates in Special Housing Units, 44 inmates at Upstate Correctional Facility and 88 inmates at Southport.<sup>48</sup>

	SHU Inmates (n = 126)	Upstate Inmates (n = 44)	Southport Inmates (n = 88)
Length of SHU Sentence (mean)	42 months	37 months	34 months
Median Age	34	33	33
High School Diploma or GED	53%	66%	40%
On Mental Health Caseload	62%	47%	100% <sup>49</sup>
Received Deprivation Order in Lockdown	48%	48%	51%
Received Four or More Deprivation Orders in Lockdown	25%	53%	57%
Put on Restricted Diet in Lockdown	32%	5%	28%
"Never or Rarely" Go To Recreation	50%	2%	39%
Engaged in Self-harm While in Prison	31%	41%	40%
Attempted Suicide While in Prison	37%	42%	55%
Received Ticket for Self-harm or Suicide Attempt	61%	36%	46%
Prior Admission to Central New York Psychiatric Center (CNYPC)	30%	5%	14%

47. Kurki & Morris, *supra* note 15, at 392.

48. The sample of SHU inmates (n = 126) is sufficiently large to generalize to the total SHU population in maximum-security prisons (probability sampling theory requires a sample size of at least 50 units of analysis and ideally 100 units to generalize to the larger population from which the sample was drawn). The sample of Upstate inmates (n = 44) is insufficiently large to generalize to the total Upstate population or the similarly double-celled S-Blocks. The sample of Southport inmates (n = 88) is a stratified random sample drawn from a list of all 126 inmates on the mental health caseload. It is sufficient in size and randomness to generalize to the total population of inmates on the mental health caseload at Southport.

49. The reader should note that all of the inmates interviewed at Southport were on the mental health caseload.

## III. Areas of Concern

*High Number of Inmates in Disciplinary Lockdown*

With approximately 5,000 inmates in twenty-three-hour lockdown, or 7.6% of the inmate population, New York's use of disciplinary segregation is three times that of the national average of 2.6%.<sup>50</sup> The high number of segregated inmates in New York suggests a flawed prison management strategy that over-relies on lockdown to control inmate behavior, as well as a possible staffing shortage. Richard Harcrow, President of the State Correction Officers' Union, said in an interview with the Correctional Association that insufficient staff in the prisons contributes to the high number of inmates in twenty-three-hour lockdown.<sup>51</sup> Harcrow cited the July 2003 stabbing death of an inmate in the yard at the maximum-security Green Haven Correctional Facility as an example.<sup>52</sup> "With only two correction officers in the yard to oversee up to 400 inmates, there's always potential for serious trouble," he said. "Inmates know they have the upper hand."<sup>53</sup> When we visited Green Haven in June 2003, correction officers reported that there is only one officer in the housing blocks to move some 300 inmates to meals and programs in the evenings. Insufficient staff leads to delayed services, frustrated inmates and fights, the officers said, and inmates who engage in fighting are likely to end up in lockdown.

In discussing the association between prison mismanagement, violence and the proliferation of supermax prisons in the United States, British criminologist Roy King noted:

The possibility should at least be examined that the reason for the high levels of violence in American prisons may have as much to do with the way in which prisons have been managed and staffed on the cheap, and the fairness and dignity with which prisoners are treated, as it has with the qualities that criminals bring with

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50. CAMILLE GRAHAM CAMP & GEORGE M. CAMP, *THE CORRECTIONS YEARBOOK* 47 (2002) ("New York had both the largest number of inmates in disciplinary segregation on January 1, 2002 and the greatest percentage of inmates in disciplinary segregation.").

51. Interview with Richard Harcrow, New York State Correctional Officers and Police Benevolent Association President (July 2003).

52. *Id.*

53. *Id.*

them into prison. It is at least a plausible hypothesis that the ever more repressive response to violence—of which supermax is but the latest expression—sets up a vicious circle of intolerance which is doomed to make matters worse.<sup>54</sup>

### *Length of Sentences*

The New York State DOCS does not assign fixed sentences to specific violations. Instead, it provides hearing officers with the following guidelines:

Assault with a weapon/serious injury	12-24 months
Assault with weapon/minor or no injury	6-12 months
Assault without a weapon/serious injury	9-18 months
Assault without a weapon/minor or no injury	3-9 months
Group or gang-related assaultive/disruptive behavior	12-24 months
Weapon/on person	6-12 months
Weapon/in area of responsibility	3-6 months

Although inmates in New York know the length of their sentences in disciplinary lockdown (inmates in some jurisdictions do not), there is *no limit* to the amount of time to which correction officials can sentence a person to lockdown. During a visit to Wende Correctional Facility in October 2002, we encountered a seriously mentally ill man who had accumulated a total of *thirty-five years* in solitary confinement. Moreover, while DOCS reports that the average sentence length to disciplinary lockdown is 5.3 months, many inmates are actually confined much longer, as this figure does not include the consecutive sentences correction officials mete out to inmates who violate rules in lockdown. Of the 258 inmates in our sample, for instance, prisoners reported an average cumulative sentence length of thirty-six months, almost seven times longer than the Department's reported figure of 5.3 months.

### *Prevalence and Experiences of Mentally Ill Inmates in Lockdown*

Mental health services in the New York State prison system are provided by a separate state agency, the Office of Mental Health (OMH). Of New York's 65,600 inmates, 11% (ap-

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54. King, *supra* note 12, at 183.

proximately 7,400 inmates) are on the mental health caseload.<sup>55</sup> Their representation in disciplinary lockdown is far higher, however: 23% of inmates in lockdown are on the mental health caseload, about 1,000 individuals.

Living for months or years in isolation can psychologically damage even the most mentally resilient individuals.<sup>56</sup> In *Madrid v. Gomez*, a landmark case involving conditions in California's Pelican Bay supermax prison, Federal District Court Judge Thelton Henderson observed that twenty-three-hour isolation "may press the outer borders of what most humans can psychologically tolerate."<sup>57</sup> Placing mentally ill or psychologically vulnerable people in such conditions "is the equivalent of putting an asthmatic in a place with little air to breathe," he stated.<sup>58</sup>

Research has demonstrated that mentally disordered inmates have greater difficulty conforming to strict correctional rules than non-mentally ill inmates and are more likely to accumulate infractions and end up in disciplinary confinement.<sup>59</sup> "Offenders who are sent to supermax settings because they have problems adjusting to other prisons disproportionately are persons who have had mental health problems in the past," noted Hans Toch, who conducted an extensive study of the experiences of mentally ill inmates in the New York State prison system.<sup>60</sup> Of the eighty-eight mentally ill inmates whom we interviewed at Southport, nearly three-quarters (74%) reported

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55. Editorial, *Inhumane Justice*, ALB. TIMES UNION, Oct. 23, 2002, at A10.

56. See, e.g., COLD STORAGE, *supra* note 7; see also Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. OF L. & SOC. CHANGE 447 (1997); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995) (holding super-maximum security confinement of mentally ill is unconstitutional as cruel and unusual punishment).

57. *Madrid*, 889 F. Supp. at 1265-66.

58. *Id.*

59. A Bureau of Justice Statistics report found that 62% of state inmates identified as mentally ill had been charged with a rule violation, compared to 52% of inmates not identified as mentally ill. See BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, BULL. NO. 174463, SPECIAL REPORT, MENTAL HEALTH AND TREATMENT OF INMATES AND PROBATIONERS 9 tbl.13 (1999), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/mhtip.pdf>.

60. Hans Toch, *The Future of Supermax Confinement*, 81 PRISON J. 376, 378 (2001).

previous stays in lockdown for rule violations.<sup>61</sup> Many of their stories were frighteningly painful.

"This is killing me for *real*," wrote an inmate from Southport, age thirty-three, who had been in disciplinary lockdown for three years and has five years remaining in SHU. In jagged capital letters he wrote to the Correctional Association:

I NEED TRUE AND REAL HELP. I HAVE A MENTAL CONDITION THAT I HAVE BEEN SUFFERING FROM SINCE MY CHILDHOOD. I HAVE SCHIZOPHRENIA BUT I DO NOT KNOW IF IT IS *GENETIC* IN ITS ORIGIN OR *DRUG INDUCED*. I KNOW A TOXIC DRUG THAT IS EXTRACTED FROM THE PUFFER FISH OR THE GLOBEFISH THAT IS USED TO INDUCE ZOMBISM IN HUMAN BEINGS IN THE WEST INDIES AND AFRICA. I BELIEVE STRONGLY THIS WAS DONE TO ME AT CHILDHOOD. I WANT AND NEED TO ASCERTAIN A CAUSE TO MY MENTAL ILLNESS BECAUSE THE INFORMATION ITSELF CAN TRULY SAVE MY LIFE.<sup>62</sup>

The most disturbing aspect of our site visits was encountering so many prisoners in twenty-three-lockdown who were actively psychotic, manic, paranoid or delusional.<sup>63</sup> On nearly every site visit, it was not uncommon to encounter individuals in various states of desperation: men weeping in their cells, men who had smeared feces on their bodies or lit their cells on fire, inmates who cut themselves in a form of self-directed violence known as "self-mutilation." Some inmates expressed persecutory thoughts—"The COs are poisoning my food"—or believed that the prison psychologist was "drugging" them.<sup>64</sup>

The following are statements made to interviewers during site visits or excerpts from letters received afterwards:<sup>65</sup>

- "Objects talk to me," said a twenty-six-year-old man at Five Points Correctional Facility. The inmate had been in solitary confinement for eighteen months and had another eighteen months to serve. "Sometimes the radiator comes alive and tries

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61. *Id.* at 378-79

62. Lockdown New York, *supra* note 11, at 24.

63. These observations were confirmed by independent psychiatrists who accompanied us on research visits.

64. See STATE OF THE PRISONS, *supra* note 45, at 16-18.

65. We have quoted verbatim the language used by the inmates, but have deleted names and corrected misspelling. See Lockdown New York, *supra* note 11, at 25-27.



to attack me. At night I get lonely and the door and the radiator and the shadows come alive and try to get me.”

- “I think I see people spying on me at night,” said a thirty-three-year-old man at Southport, serving eight years in disciplinary lockdown.
- “From the corner of my eye, I see things . . . people moving,” said a skittish Elmira inmate, aged thirty-seven. Sentenced to three-and-one-half years in solitary confinement, he described himself as “a suicidal loner.”
- “The COs rape me,” said a delusional inmate at Five Points, aged forty-five. Of the fifteen years of his incarceration, he has spent thirteen years “in the hole.” Through the feed-up slot in his door, he showed us his arms, which were covered with scars, and a five-inch scar on his neck where he had slashed his own throat in a suicide attempt. “The officers rape me and beat me because I know too much,” he said. “I hear voices telling me to kill myself.”

A contributing factor to the prevalence of inmates with mental illness in disciplinary segregation is the lack of inpatient psychiatric beds for inmates who are chronically mentally ill or in need of acute care. Superintendents reported that they face administrative hurdles when trying to transfer psychotic inmates to the inpatient hospital, Central New York Psychiatric Center (CNYPC), which has only 187 beds for the state’s 65,600 inmate population.<sup>66</sup> CNYPC’s capacity has not been expanded since it opened in 1980 despite the near tripling of the inmate population.<sup>67</sup>

Inmates who are transferred to CNYPC from disciplinary confinement are often returned to lockdown rather than to general population to serve out the remainder of their disciplinary sentence. In a cycle an outside psychiatrist described as a “misery-go-round,” the inmate typically deteriorates again, is returned to CNYPC, stabilized temporarily, sent back to the SHU, and the grim cycle continues.<sup>68</sup> Psychiatrist Stuart Grassian, one of the country’s leading experts on the psychological effects of solitary confinement, was appointed by the court in

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66. See Mary Beth Pfeiffer, *Suicides Soar; Psychiatric Resources Lag*, POUGHKEEPSIE J., Dec. 16, 2001, available at <http://www.poughkeepsiejournal.com/projects/suicide/po121601s4.shtml>.

67. *Id.*

68. Interview with Dr. Stuart Grassian (Jan. 8, 2002).

*Eng v. Goord* to monitor conditions in the Attica SHU. He commented on the ongoing nature of this problem after a site visit in 1999:

[T]he “revolving door” of decompensation in SHU leading to brief respite and then return to the toxic SHU environment, continues basically unabated. Mentally ill inmates continue to be housed in SHU even after they have recurrently become floridly ill and out of control in that setting. OMH’s failure to intervene in this reality—its failure to state that there *are* individuals incapable of tolerating Attica SHU—pulls OMH staff away from professional integrity, and towards a hostile, cynical attitude towards those inmates.<sup>69</sup>

A growing body of research confirms the harmful psychological effects of living in near seclusion, and numerous court decisions in recent years have concurred with research findings. “The record shows, what anyway seems pretty obvious, that isolating a human being from other human beings year after year or even month after month can cause substantial psychological damage, even if the isolation is not total,” wrote the judge in *Davenport v. DeRobertis*, a case involving SHU conditions in Illinois prisons.<sup>70</sup> Dr. Grassian concluded that incarceration in supermax conditions can cause either severe “exacerbation [or recurrence of] of previously existing psychiatric illness . . . .”<sup>71</sup> Another expert on the impact of supermax confinement, Professor Craig Haney, stated:

[P]risoners who enter these places with *pre-existing* psychiatric disorders suffer more acutely from [the] psychological assaults [of solitary confinement]. The psychic pain and vulnerability that they bring into the lockup unit may grow and fester if it goes unattended. In the absence of psychiatric help, there is nothing to keep many of these prisoners from entering the abyss of psychosis . . . . [For mentally ill prisoners to be] confined in a lockup unit that inflicts levels of social deprivation, virtually complete en-

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69. First Site Visit to the Attica SHU, Report of Dr. Stuart Grassian Pursuant to Settlement Stipulation at 63, *Eng v. Goord*, Civ 80-CV-385S (W.D.N.Y. June 1999) (redacted copy), available at [http://www.hrw.org/reports/2003/usa1003/Grassian\\_Report\\_Eng\\_Site\\_Visit\\_One.pdf](http://www.hrw.org/reports/2003/usa1003/Grassian_Report_Eng_Site_Visit_One.pdf).

70. *Davenport v. DeRobertis*, 844 F.2d 1310, 1313 (7th Cir. 1988).

71. First Site Visit to the Attica SHU, Report of Dr. Stuart Grassian Pursuant to Settlement Stipulation at 58-59, *Eng v. Goord*, Civ 80-CV-385S (W.D.N.Y. June 1999) (redacted copy), available at [http://www.hrw.org/reports/2003/usa1003/Grassian\\_Report\\_Eng\\_Site\\_Visit\\_One.pdf](http://www.hrw.org/reports/2003/usa1003/Grassian_Report_Eng_Site_Visit_One.pdf).

forced idleness, totality of surveillance and control, and an absence of meaningful psychiatric treatment . . . poses very serious risks of psychological deterioration and psychiatric decompensation.<sup>72</sup>

Statements from inmates we interviewed about how lockdown affects them mentally or emotionally include the following:

- “Sometimes I forget even the simplest things and I am always feeling unloved and lost and lonely and no one can understand,” said a thirty-two-year-old man at Clinton, where he had been in solitary confinement for over two years and twice attempted suicide.
- “If I have to read something, I have to re-read the same paragraph several times over to understand it. It was never like that before SHU time,” said a Southport inmate, aged twenty-five, sentenced to ten years in lockdown.
- “Mentally, I think I’ve lost it. I done things here that I never done before,” said another Southport inmate, aged 25, sentenced to ten years in lockdown. “Emotionally, I’m moody, stressful, and arrogant towards people that don’t deserve it. Physically, I feel broken at times. I’ve become a savage, the very thing that Southport breeds.”<sup>73</sup>

While a large body of literature attests to the damaging psychological effects of long-term isolation, there is no empirical research that shows the opposite: that long-term punitive segregation produces positive changes in behavior. That nearly three-quarters of the inmates at Southport had prior stays in disciplinary lockdown clearly undermines the notion that lockdown effectively deters future rule-violating behavior.

### *Additional Punishments: Deprivation Orders and the Restricted Diet*

Correction officials rely on a system of increasingly harsh punishments known as deprivation orders to discipline inmates who violate rules while in lockdown. The most common deprivation orders are loss of recreation, loss of showers, loss of haircuts, and the application of mechanical restraints (handcuffs and a waist chain) during recreation. Although DOCS asserts

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72. COLD STORAGE, *supra* note 7, at 100 (citation omitted).

73. LOCKDOWN NEW YORK, *supra* note 11, at 27.

that deprivation orders are used sparingly and only in the most extreme cases, our findings suggest otherwise. Nearly half (49%) of inmates reported receiving deprivation orders; 41% received four or more.<sup>74</sup>

A particularly severe form of punishment for inmates who have lost all privileges is the restricted diet, known by inmates as “the loaf.” Made of flour, potatoes, carrots and very little fat, the restricted diet consists of a one-pound loaf of dense, binding, tasteless bread that is served to inmates three times a day, along with a side portion of raw cabbage. After seven consecutive days on the diet, the inmate is given two days off.

DOCS asserts that three, one-pound servings of the loaf meet daily nutritional standards. However, our research showed that most inmates do not consume three servings a day because it is unpalatable and difficult to digest. Two-thirds of inmates reported that they “never or rarely” ate three daily servings a day. Southport inmates reported that correction officers intentionally serve the loaf when it is days old, moldy and stale.

The American Correctional Association prohibits using food as punishment,<sup>75</sup> and the Federal Bureau of Prisons and numerous states have abolished use of restricted diets. New York, on the other hand, has increased its use of restricted diets by over 100% in the past five years, from 626 diets in 1997 to 1,356 diets in 2002.<sup>76</sup> DOCS officials argue that the restricted diet is an effective tool for modifying inmate behavior.<sup>77</sup> If this were the case, its use would have decreased, not doubled, in the past five years.

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74. *Id.* at 28.

75. Standard 4-4320 provides, “Written policy precludes the use of food as a disciplinary measure. Food should not be withheld, nor the standard menu varied, as a disciplinary sanction for an individual inmate.” AM. CORR. ASS’N, STANDARDS FOR ADULT CORRECTIONAL INSTITUTIONS (forthcoming 2004).

76. Memorandum from the New York State Department of Correctional Services, to the Correctional Association of New York (May 2003) (received in response to a request under the Freedom of Information Act) (on file with the author).

77. *Commissioner Tells Views of Need for ‘The Loaf,’* DOCS TODAY (N.Y. State Dep’t of Corr. Serv., Albany, N.Y.), Nov. 2000, at 6.

*High Rates of Suicide and Self-Harm*

Given the prevalence of inmates with mental illness in disciplinary confinement, the limited treatment they receive and the psychologically damaging effects of extended isolation, the high rates of suicide and desperate acts of "self-harm," or "self-mutilation" are not altogether surprising.

More than half of prison suicides in New York take place in twenty-three-hour lockdown units, although less than 10% of the inmate population is housed in them.<sup>78</sup> "Perhaps no factor has been more tragically associated with jail and prison suicides than the consistent finding of isolated/segregated housing," wrote psychologist Ronald Bonner in the *Journal of the American Association of Suicidology*.<sup>79</sup> Of the 258 inmates in our sample, 44% reported that they had attempted suicide at least once while in prison and 20% had prior admissions to the psychiatric hospital for inmates. These figures are more reflective of a mental hospital than a prison.

New York's prison watchdog agency, the Commission of Correction, has issued numerous reports criticizing DOCS and OMH for their abysmal treatment of inmates with mental illness. "It is a well-established fact that inmates serving long-term sentences in SHUs are likely to decompensate," concluded Commission of Correction officials in a sharply critical report written after inmate Carlos Diaz hanged himself in his cell at Southport in 2000.<sup>80</sup> Diaz, who had a history of psychiatric problems, committed suicide after a series of misbehavior reports resulted in a sentence of fifteen years in solitary confinement.<sup>81</sup> The Commission of Correction expressed "significant concern" at the system's failure to monitor Diaz, who had suffered paranoia and hallucinations for years but who, after entering Southport, was determined not to be in need of mental health services.<sup>82</sup> In September 2002, another Southport in-

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78. Between 1998 and 2001, twenty-five of the system's forty-eight suicides occurred in SHU or keeplock. See Pfeiffer, *supra* note 66.

79. Ronald Bonner, *Correctional Suicide Prevention in the Year 2000 and Beyond*, 30 J. OF THE AM. ASS'N OF SUICIDOLOGY 370, 374 (2000).

80. See Mary Beth Pfeiffer, *Reports Show Lack of Mental Health Aid*, POUGHKEEPSIE J., Dec. 16, 2001, available at <http://www.poughkeepsiejournal.com/projects/suicide/po121601s3.shtml>.

81. *Id.*

82. *Id.*

mate, 22-year-old Paul Lagoe, was found hanging in his cell.<sup>83</sup> Lagoe had bi-polar disorder and a history of psychiatric admissions.<sup>84</sup>

A particularly tragic suicide was that of Jessie McCann, only seventeen years old at the time of his death in November 2001. McCann hung himself with a bed sheet at Downstate Correctional Facility after being put in disciplinary lockdown for infractions that his family said were related to his mental illness.<sup>85</sup> A Commission of Correction investigation of his death noted that McCann reported anxiety attacks when he was locked in his cell.<sup>86</sup> The use of disciplinary confinement "is appalling for someone his age who is struggling with anxiety and depression," the inmate's uncle told the *Poughkeepsie Journal*.<sup>87</sup>

Another indication of the pathology bred in total lockdown units in New York is the high rate of self-mutilation, a form of self-directed violence that involves cutting or slashing one's wrists, arms or abdomen, or burning, biting or otherwise mutilating one's flesh. Clinicians say that people engage in self-mutilation to alleviate feelings of overwhelming stress or to counteract "psychological numbness."<sup>88</sup> An inmate in solitary confinement at Great Meadow told us that he had ground his head in glass and showed us the scar.<sup>89</sup> "I do this in order to feel,"<sup>90</sup> he said. A persistent self-cutter at Wende explained, "I cut myself and the bad comes out."<sup>91</sup>

Department figures show that incidents of self-harm rose by 49% between 1995 and 2000.<sup>92</sup> Of the inmates in our sample,

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83. Interview with Sarah Kerr, Senior Attorney, Prisoners' Rights Project, Legal Aid Society (Sept. 29, 2002).

84. *Id.*

85. Jennifer Gonnerman, *For the Mentally Ill, Solitary Confinement Can be a Death Sentence: The Stories of Two Men Who Never Made it Out. Suicide in the Box*, VILLAGE VOICE, Dec. 17-23, 2003, at 40, available at <http://www.villagevoice.com/issues/0351/gonnerman.php>.

86. *Id.*

87. Mary Beth Pfeiffer, *Mental Care Faulted in Six Prison Deaths: Psychiatric Hospitals Proposed*, POUGHKEEPSIE J., June 28, 2003, available at <http://www.poughkeepsiejournal.com/projects/suicide/fr062803s1.shtml>.

88. Interview with Dr. Nancy Duggan (May 24, 2003).

89. Interview with Anonymous Inmate (Dec. 6, 2002).

90. *Id.*

91. Interview with Anonymous Inmate (Sept. 20, 2002).

92. See N.Y. STATE DEPT OF CORR. SERVS., UNUSUAL INCIDENT REPORT: JANUARY-DECEMBER 2000 5 (2001).

36% said they engaged in self-mutilation while in prison. Unthinkable to outside observers, DOCS issues misbehavior reports to inmates who attempt to kill or harm themselves, purportedly to discourage malingering. The act of "inflicting self-harm" is an official violation of DOCS policy.<sup>93</sup> To punish individuals in such desperate straits can only be described as cruel and misguided.

### *Toll on Correction Officers*

Special Housing Units are among the most stressful places to work in the New York correctional system. Inside these "prisons within prisons," correction officers work eight-hour shifts in units that are often dank, dimly lit and isolated from the larger facility. SHU officers manage the system's most difficult inmates with minimal special training, inadequate mental health resources and little support for the traumatic events they experience on a regular basis. Nowhere was this problem more pronounced than at Southport Correctional Facility.

Southport is a high-tech, total lockdown facility housing 780 inmates in solitary confinement. As an OMH Level 2 facility, it does not have the clinical resources to manage seriously mentally ill inmates. In March 2001, a local newspaper printed a story about the hazards faced by Southport correction officers after inmates threw urine and feces at them over a five-day period.<sup>94</sup> When we visited Southport a month later, it appeared that little had changed to improve officer safety. During a group interview with four officers, each had a story of being stabbed, spat at, assaulted, or "thrown at." One man had twice been put on prophylactic HIV medications after exposure to blood or feces. They reported that the work is "degrading" and "humiliating." Many officers, they said, take anti-depressants to cope with the stressful and depressing nature of the job.<sup>95</sup>

When we returned to Southport in May 2002, correction officers asked to meet with us privately off facility grounds for fear of reprisal from the superintendent. They reported that,

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93. See N.Y. COMP. CODES R. & REGS. tit. 7, § 270.2(B)(23)(i) (2002) ("An inmate shall not inflict or attempt to inflict bodily harm on themselves.").

94. Margaret Costello, *Prison Staff Seek Safer Environment*, STAR-GAZETTE, March 29, 2001, at 1C.

95. See LOCKDOWN NEW YORK, *supra* note 11, at 33.

“the biggest problem is that a quarter of the inmates are mentally ill and shouldn’t be here.”<sup>96</sup> Two psychologists share a caseload of 130 inmates. All of the officers said that they knew of inmates who manifested obvious signs of mental illness but who were not on the OMH caseload.<sup>97</sup> They also stated: “The administration heard you were coming and moved the worst inmates out.”<sup>98</sup>

One officer described a situation where mental health staff ignored two referrals from security staff and the dire consequences that resulted:

When T. came from Attica, he was paranoid as hell. Shortly after he got here, we had to move him to another cell because we were painting the tier, but he refused to come out. He kept saying, ‘You’re gonna jump me, I know it. You’re gonna mess with my legal papers.’ I told him we’d videotape him leaving his cell so everyone would be protected, and things went smoothly. After that, I put in a referral to mental health staff. Unfortunately, I had to give the inmate a ticket for disobeying a direct order—refusing to move from his cell. At the disciplinary hearing, the lieutenant put in another psych referral because he knew that T. was nuts. Unfortunately, both referrals were ignored.

About a week later, we had to move him again to a different cell for logistical reasons. He agreed to come out, with cuffs and a waist chain, and stand on the gallery facing the window as directed. But all of a sudden he started panicking, getting riled up and yelling paranoid thoughts about COs destroying his papers. The officers got nervous and decided to put him back in his cell and get the hell out of there. When they removed the waist chain, he flipped. He bit two of the officers and spit blood in one guy’s face. It was a bloody mess. In total, six officers were injured and three of them went out on sick leave.<sup>99</sup>

Because the inmate had never been tested for HIV—and, not surprisingly, refused to be tested when asked—the officers were put on prophylactic medication for six months. The side effects of this medication include extreme nausea, vomiting and headaches. Sexual intercourse is discouraged. The correction officer summed up the situation as follows:

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96. See *id.* at 33-34.

97. *Id.* at 33.

98. Interview with Anonymous Southport Correction Officer (May 14, 2002).

99. Interview with Anonymous Southport Correction Officer (Feb. 21, 2002).



So now you've got three COs on the cocktail [HIV medication], who can't have sex with their wives, and one is still out on sick leave. You've got an inmate with a new court case, maybe years added to his sentence, plus hospital costs and probably weeks of workers' comp. Meanwhile, the whole reason this happened is because T. is nuts and never should've been sent here. But according to OMH, he's not mentally ill at all.<sup>100</sup>

### *Dangerous Double-Celling Arrangements*

The New York State prison system has 3,000 beds in high-tech, *double-celled* total lockdown facilities: 1,200 at Upstate Correctional Facility and 1,800 in the nine S-Blocks located on the grounds of medium-security prisons.<sup>101</sup> In these units, each prisoner lives with another man twenty-four hours a day in a 105-square-foot cell (the size of a large bathroom) behind a two-inch thick steel door. Each cell contains two beds, a desk, shower, sink and toilet. Standing in the middle of a cell, a prisoner can touch both the bunk bed and the wall.

Living in such close quarters can quickly become intolerable, as prisoners sleep, eat, shower and use the toilet within a few feet of each other. Many men complained bitterly about this forced cohabitation and lack of privacy. The toilets, for example, are in open view, with no barriers or screens for privacy. The showers lack curtains, because correction officials say inmates might use them to kill themselves, strangle a cellmate, or conceal themselves during count time. "Recreation" is provided in an empty cage attached to the outside of the cell. At fifty-five square feet, it is just large enough to do jumping jacks or pull-ups. Correction officials do not permit balls, weights or any exercise equipment in the rec "pens."

Although other states have built similarly stark, high-tech lockdown units in recent years, few have taken New York's approach of double-celling so many high-risk prisoners. One exception used to be California's Pelican Bay state prison, which holds 1,250 inmates in its Special Housing Unit. Several years ago, about half of those prisoners had a cellmate, but the prison reduced that to twenty percent after seven inmates were killed

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100. *Id.*

101. GOORD, *supra* note 21, at 9.

by their cellmates during a twelve-month period.<sup>102</sup> Six of the prisoners were strangled; the seventh was severely beaten in the face and head.

At Upstate Correctional Facility, Jose Quintana was brutally murdered by his cellmate in May 2001.<sup>103</sup> "He killed the man with his bare hands," the superintendent said when we visited the prison several months later. "They were arguing about whether to turn off the light."<sup>104</sup> An in-depth investigation by the *Village Voice* revealed that for twenty minutes, while Quintana's cellmate kicked and pounded his head against the wall, correction officers did little more than watch through the window and wonder what to do.<sup>105</sup> DOCS is supposed to have an "extensive screening process" that "prohibits the double celling of inmates . . . who are highly assaultive, those exhibiting histories of aggressive homosexual behavior, and those with histories of extreme violence."<sup>106</sup> Yet, Quintana was a murderer with a history of attacking other prisoners. The man who killed him was serving time for armed robbery.

The case of inmate Arthur Fletcher represents another stark example of double-celling mismanagement. According to the Commission of Correction, Fletcher's "negative mental health history" did not prevent him from being assigned to the Mid-State S-Block in July of 1999.<sup>107</sup> Nor did his protests not to be housed with a cellmate because he "felt in danger." For refusing to be double-celled, he was sentenced to thirty days in a single-celled SHU. "Following his time served," wrote the Commission, he refused to come out and be placed back in general

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102. See generally Vince Beiser, *A Necessary Evil? Pelican Bay State Prison House 'The Worst of the Worst' in the Starkest Isolation Imaginable. But These 'Supermax' Units Are Turning Inmates Into Mental Cases, and the Asylum Gate Opens Right Back Into Our Streets*, L.A. TIMES, Oct. 19, 2003, at 112; see Andy Furillo Scripps, *Killer May Hold Key to Bringing Down Prisoners*, ROCKY MTN. NEWS, Feb. 8, 1998, at 14A; Susan Sward, *Pelican Bay Killings Linked to Supremacists 'Reign of Terror' at Prison, DA Alleges*, S.F. CHRON., Feb. 28, 1998, at A1.

103. Jennifer Gonnerman, *Anatomy of a Prison Murder: Guards Watch as Prisoner Kills His Cellmate*, VILLAGE VOICE, Apr. 10, 2001, at 38, available at <http://www.villagevoice.com/issues/0114/gonnerman.php>.

104. See LOCKDOWN NEW YORK, *supra* note 11, at 136.

105. Gonnerman, *supra* note 103.

106. *Id.*

107. N.Y. STATE COMM'N OF CORR., IN THE MATTER OF THE DEATH OF ARTHUR FLETCHER: AN INMATE OF THE GREAT MEADOW CF 2 (June 23, 2000).

population.”<sup>108</sup> Fletcher was then sentenced to a ninety-day SHU term and transferred to Mid-State’s S-Block. “In spite of his objections,” the Commission states, “he was housed with a cellmate and became increasingly anxious due to ideation that his life was in danger.”<sup>109</sup> A subsequent mental health evaluation determined that Fletcher suffered from delusional disorder of the persecutory type and schizophreniform disorder, both major mental disorders.<sup>110</sup> He was transferred to Great Meadow and, a month later, was discovered hanging by a belt in his cell.

### *Chronic Idleness*

A key problem with disciplinary lockdown in New York is that inmates are basically warehoused. Whereas some states, such as Colorado, use disciplinary confinement as an opportunity for intervention, New York provides no meaningful programs in which inmates can engage, no jobs to perform or congregate activities to prepare them for increased social interaction in general population or society.<sup>111</sup> Using lockdown to simply punish and warehouse inmates is shortsighted and ultimately costly, as it jeopardizes the safety of inmates and officers in the facilities to which inmates return.

For some inmates, the enforced idleness deepens their feelings of frustration and hostility. For others, particularly those in highly secluded, dimly lit cells with thick metal doors, a kind of deadening lethargy sets in. Many inmates in our sample reported that they spend much of the time sleeping, as there is nothing to do and no way to tell time. A significant number of prisoners reported that they stopped going to recreation, giving up their only opportunity to leave their concrete cells and breathe fresh air. Psychiatrists who accompanied us on visits reported that refusing recreation can indicate clinical depression, over-medication and/or listlessness brought on by social isolation and reduced stimulation.<sup>112</sup>

Of the inmates in our study, 39% reported that they “never or rarely” go to recreation. The most common reasons were fear

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108. *Id.*

109. *Id.*

110. *Id.*

111. See Grondahl, *supra* note 103

112. See LOCKDOWN NEW YORK, *supra* note 11, at 35-36.

of harassment by correction officers, around whom inmates feel particularly vulnerable while mechanically restrained, the futility of exercising in restraints, the lack of exercise equipment in the rec pens and the inclement weather in northern New York, where temperatures can be below freezing six months of the year.<sup>113</sup> Because of “security reasons,” inmates are not permitted to wear gloves or hats during recreation.

### *Inaccessibility of Staff / Neglected Inmates*

A persistent concern of inmates in lockdown units, particularly in the new, high-tech facilities where they live behind thick metal doors, is lack of access to staff. Aside from shouting or banging on the door—which can earn inmates a misbehavior report—prisoners have no way of contacting staff in case of an emergency. On several site visits, we randomly encountered seriously neglected individuals or were directed to them by concerned officers or inmates in neighboring cells.

- During an August 2002 visit to Upstate, we met a disabled prisoner whose wheelchair had been confiscated “for security reasons” when he arrived at the facility. Through the window in his cell door, we saw the inmate sprawled on the floor. He had pulled the mattress onto the floor and placed his belongings on the bed frame so that he could reach them. He was in extreme distress and said that he could barely hoist himself onto the toilet. Because of his disability, he had trouble moving his hands and could not write a grievance to medical staff. He said he had spent several weeks living on the floor.
- In the long-term keeplock unit at Clinton, which we visited in August 2002, a correction officer directed us to a foreign-born inmate who had been in keeplock for over a year for refusing a TB test. He was lying in bed, stock-still and staring into space. He appeared catatonic. The correction officer reported that the inmate had not spoken to anyone, neither inmates nor staff, in almost a year. He refused recreation and showers and occasionally bathed in his cell. Because he was not a disciplinary problem and refused to speak with mental health staff, he was simply left in this condition.
- Several cells down from this inmate, we came upon a prisoner with full-blown AIDS. He was so ill that he could barely lift his head off of the pillow. He said that he was in extreme pain and

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113. See *id.* at 36.

"starving" and asked us repeatedly to contact a nurse. He was disoriented but aware that he was dying, in keeplock, the darkest, dankest cellblock in the prison.<sup>114</sup>

A review of inmate death reports by the Commission of Correction<sup>115</sup> identified the following cases of neglect that had fatal consequences:

- In May 2001, Elmira inmate Shane Maxwell, aged 27, died of "decreased food and water" intake five months after announcing that he was going on a hunger strike. Maxwell had a long history of mental illness and was housed in disciplinary lockdown. The death report noted that staff repeatedly failed to record the inmate's vital signs or monitor his condition disciplinary housing, calling such restrictive confinement "inappropriate . . . given Maxwell's medical and mental health history."
- Six months later, in almost identical circumstances, inmate Harry Figueroa, aged 45, died of "decreased intake of food and water" at Auburn Correctional Facility following a hunger strike. Figueroa had a history of mental illness and was being held in an observation cell on suicide watch at the time of his death.
- In the SHU at Five Points Correctional Facility, Demario Parks, aged 35, hung himself in a recreation cage attached to his cell. A videotape later showed Parks "climbing the rec pen and attaching the bed sheet to the pen and fashioning a ligature around his neck," the Commission report stated. After his first failed attempt, he tried again and succeeded. The report noted that the facility had no policy for monitoring the video cameras that are trained on inmate recreation pens.<sup>116</sup>

### *Direct Releases to Society*

If an inmate completes his prison sentence before his term in lockdown expires, he is released directly to society.<sup>117</sup> Good correctional practice (and common sense) dictates that prisoners participate in transitional programs to prepare them for increased social interaction after months or years in isolation. New York and most other states do not offer such opportunities. Instead, inmates are taken from an environment where every

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114. *Id.* at 38.

115. Pfeiffer, *supra* note 87.

116. *Id.*

117. See Grondahl, *supra* note 9.

aspect of their lives is controlled and surveilled, where every hour is spent in a cage or in restraints, and released to the street.

At Southport, inmates deemed too violent to walk the prison corridors unshackled are routinely escorted in handcuffs and waist chains on the day of their release, right out the front gate. A Southport correction officer told us that he sometimes violates policy and escorts inmates unshackled through the corridors on the day of their release. "If the guy's going to stab someone, I'd rather it be me than the first person he bumps into at the Elmira bus station," he said.<sup>118</sup>

#### IV. Conclusion

Our research based on site visits to nearly every lockdown unit in the New York State prison system gives grim testimony to the serious problems that exist in these facilities. Findings reveal significant numbers of inmates suffering from mental illness as evidenced by the high rates of self-mutilation, suicide attempts and psychiatric hospitalizations, a paradigm that stresses punishment over treatment and a demoralized correctional staff.<sup>119</sup>

Because of the isolated nature of lockdown facilities, there is great potential for misuse of authority and abuse of inmates and staff. Without careful measures to mitigate against these factors, lockdown units can become breeding grounds for sadistic behavior, fatal neglect and callous indifference to human suffering.

Unfortunately, the New York State Department of Correctional Services uses the walls of its prisons to hide from public view the human rights violations that occur inside. When the Correctional Association sent DOCS an advance copy of its report on lockdown units, the Commissioner responded by banning the agency from the units. The retaliatory nature of the Commissioner's actions was obvious and took litigation to redress—a costly undertaking for a small nonprofit agency. In the mean time, inmates and staff continue to suffer while the need for reform remains.

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118. See LOCKDOWN NEW YORK, *supra* note 11, at 15.

119. *Id.* at 23.