

Prison Overcrowding: Harmful Consequences and Dysfunctional Reactions

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At the outset of my brief written testimony, I want to make three preliminary, clarifying points. The first is that we now understand—in psychology and related disciplines—that powerful social contexts like prison can have real consequences for the people who enter them. When prison environments become unduly painful, they also become harmful, and prisoners carry the effects or consequences of that harm back into the free world once they have been released. Thus, bad prisons are not only unpleasant or uncomfortable; they can be destructive as well.¹ Second, the most important single factor (among many) that helps to explain the current crisis in American corrections—the lack of effective programming and treatment; the persistence of dangerous and deprived conditions of confinement; and the use of forceful, extreme, and potentially damaging techniques of institutional control (such as supermax)—is the overcrowding that has plagued our state and federal prison systems for much of the last 30 years.² Finally, had this problem been effectively addressed early in the era that saw unprecedented increases in the use of incarceration—for example, when the United States Supreme Court first confronted the then-controversial practice of double-celling in 1979³—not only would the recent history of corrections in the United States have been written very differently, but many of the problems that this Commission has been called upon to address and help resolve likely would never have come about.

Overcrowding and the Pains of Imprisonment

The massive influx of prisoners that began in the late 1970s and early 1980s in the United States produced a rate of growth in the nation's prison population that scholars and legal

commentators have repeatedly characterized as “unprecedented.”⁴ Among other things, this unprecedented prison growth meant that systems everywhere were dangerously overcrowded—and many still are.⁵ In fact, some prison systems grew so large, so quickly, that it became difficult for prison officials to keep track of the names and locations of all of the facilities in their system, let alone to meaningfully supervise and oversee them.⁶

The two largest prison systems in the nation—California and Texas—experienced comparable, remarkable rates of rapid growth. Over the last 30 years, California’s prisoner population expanded eightfold (from roughly 20,000 in the early 1970s to its current population of approximately 160,000 prisoners). Funding for prisoner services and programming did not remotely keep pace, which meant that many more prisoners had to make due on much less. In Texas, over just the brief five-year period between 1992 and 1997, the prisoner population more than doubled as nearly 70,000 additional prisoners were added to the prison rolls. Indeed, during the mid-1990s Texas achieved one of the highest incarceration rates in the nation, and the state now operates more than 80 prisons in order to accommodate the expansion in its already sizable prisoner population.

Of course, systems that grow at such a pace are at risk of losing their organizational stability. Despite the rate at which correctional capacity has been increased, many prison systems remain significantly overcrowded. Overcrowding, in turn, exacerbates the chronic pains of imprisonment. Not surprisingly, a large literature on overcrowding has documented a range of adverse effects that occur when prisons have been filled to capacity and beyond. As a group of prison researchers summarized in the 1980s, as the problem was just beginning to take shape, “crowding in prisons is a major source of administrative problems and adversely affects inmate health, behavior, and morale.”⁷ Two other early commentators concluded their review of the literature in much the same way, namely, that “[w]ith few exceptions, the empirical studies indicate that prison overcrowding has a number of serious negative consequences.”⁸

Although other variables may mediate or reduce the negative effects of crowding,⁹ the psychological toll can be substantial. Thus, despite an occasional study that yields an inconclusive finding,¹⁰ there is little reason to doubt the empirical consensus that crowding significantly worsens the quality of institutional life and increases the destructive potential of imprisonment. Among other things, we know that prison overcrowding increases negative affect among prisoners,¹¹ elevates their blood pressure,¹² and leads to greater numbers of prisoner illness complaints.¹³ Not surprisingly, exposure to “long-term, intense, inescapable crowding” of the sort that now characterizes many prison environments results in high levels of stress that “can lead to physical and psychological impairment.”¹⁴ In addition, overcrowding has been associated with higher rates of disciplinary infractions. For example, one study concluded that in prisons “where crowded conditions are chronic rather than temporary... there is a clear association between restrictions on personal space and the occurrence of disciplinary violations.”¹⁵

Overcrowding directly affects prisoners’ mental and physical health by increasing the level of uncertainty with which they regularly must cope. One useful psychological model of the negative effects of overcrowding emphasizes the way in which being confined in a space that is occupied by too many people increases the sheer number of social interactions persons have that involve “high levels of uncertainty, goal interference, and cognitive load...”¹⁶ Thus, crowded conditions heighten the level of cognitive strain that persons experience by introducing social complexity, turnover, and interpersonal instability into an already dangerous prison world in which interpersonal mistakes or errors in social judgments can be fatal. Of course, overcrowding also raises collective frustration levels inside prisons by generally decreasing the resources available to the prisoners confined in them. The sheer number of things prisoners do or accomplish on a day-to-day basis is compromised by the amount of people in between them and their goals and destinations.

Overcrowding and Deprivation: Creating a Dysfunctional Prison Context

Prisoners in overcrowded correctional settings interact with more unfamiliar people, under extremely close quarters that afford little or no privacy or respite, where their basic needs are less likely to be addressed or met. Indeed, overcrowding operates at an individual level to worsen the experience of imprisonment by literally changing the social context or situation to which prisoners must adapt on a day-to-day basis. In addition to these direct, individual level effects, however, overcrowding changes the way the prison itself functions.

For one, prison systems responding to the press of numbers often forego the careful screening, monitoring, and managing of vulnerable or problematic prisoners—in part because there are too many of them to assess in a conscientious way and in part because the system lacks the capacity to address their special needs anyway. As one group of clinicians conceded, “Unfortunately, the prospect of screening inmates for mental disorder and treating those in need of mental health services has become a daunting and nearly impossible task in the present explosion of prison growth.”¹⁷ Unidentified and untreated mentally ill prisoners in mainline prison populations not only are more likely to deteriorate themselves, but also to have a significant adverse effect on the prisoners with whom they must live and interact.

Over the last several decades, prison administrators reacted to unprecedented levels of overcrowding in a variety of ways that—no doubt quite unintentionally—altered the nature of the prison setting—indeed, often made prison a more painful, harmful, and even more dangerous place. For example, resources for already limited programming and other activities were reallocated to create bedspace and maintain basic security. As the Commission no doubt knows, the prison overcrowding crisis in the United States coincided with the advent of a correctional philosophy that saw deprivation as a goal rather than a problem. Unprecedented amounts of unproductive inactivity and idleness resulted.

In addition, overcrowded prison systems often fail to address even the most basic educational needs of their prisoners. Surveys of literacy levels in prisons throughout the United

States have documented the magnitude of this problem. One national study concluded that about 7 out of 10 prisoners were either illiterate or functionally illiterate in 1992.¹⁸ Another study reached similar conclusions about the California prisoner population in the mid-1990s. Some 20.8 percent of California prisoners read at below the third grade level, and another 30 percent were only “marginally literate” by accepted educational standards.¹⁹ Little has been done to remedy these problems. By 2002, the California prison system housed over 150,000 prisoners, some two-thirds of whom had been incarcerated before. Yet, according to the Department of Corrections, those prisoners still read on average at no more than a 7th grade level.²⁰ In fact, prisoners around the country still routinely leave prison—and return—lacking basic literacy skills.

In addition, prisoners in overcrowded correctional systems often are placed on long waiting lists to obtain prison jobs, and some never do. By the start of the 1990s, the Bureau of Justice Statistics reported that nearly 40 percent of the nation’s prisoners had no prison work assignments at all, and that another 40 percent were assigned to what were termed “facility support services” that included primarily laundry, kitchen, and building maintenance jobs. Only 7 percent were involved in prison industry programs where they were likely to obtain job experiences and develop skills that could be transferred to the free world.²¹ A decade later, a number of large prison systems still were reporting the same or similar levels of idleness. For example, only a little more than half of all prisoners in California are employed in prison jobs of any kind.²²

There is widespread agreement among correctional experts that chronic idleness produces negative psychological and behavioral effects in prison. As far back as the 1980s, when trends toward overcrowding and the lack of prison programming had just begun, the U.S. Government Accounting Office noted, “Corrections officials believe that extensive inmate idleness can lead to destructive behavior and increase violence within institutions. Moreover, idleness does little to prepare inmates for re-entry into society.”²³ But this warning was largely

ignored as the trends toward higher rates of incarceration intensified over the next several decades.

Idleness-related frustration increases the probability of interpersonal conflict and assaults in prison. Overcrowding simultaneously reduces the opportunities for staff to effectively monitor prisoner behavior and drastically limits the options to reduce animosities between prisoners by separating them or sending them to different facilities. Thus, there is less for prisoners to do, fewer outlets to release the resulting tension, a decreased staff capacity to identify prisoner problems, and fewer options to solve them if and when they do. Among the negative behavioral effects that are likely to occur is an increased risk of victimization. For example, one prison researcher has noted that “[i]n less well-regulated institutions in which prisoners have little recourse to protection or in which there may be collusion between dominant prisoners and staff to maintain the peace, sexual violence tends to be greater.”²⁴ Others agreed that overcrowded conditions in which prisoners have much idle time can contribute to a higher level of prison rapes.²⁵

Prison overcrowding also can reverberate back through the criminal justice system, creating problems in local jails.²⁶ That is, prison officials may react to overcrowded conditions by attempting to slow the rate at which they are willing or able to receive new prisoners. In extreme cases, they may refuse to take them at all. But the jail overcrowding that results—as prisoners back up in the system, awaiting transfer to prison—is harmful in its own right. For example, “[L]arge jail populations may create logarithmically increasing demand for services, with overcrowding speeding the deterioration of jail facilities and further taxing the ability of institutions to provide for basic human needs.”²⁷

Unlike prisons, of course, jails are not structured for long-term confinement. Keeping prisoners there for longer periods of time means that they will be deprived even further of meaningful activity, programming, or needed services. In some cases, for some prisoners, the consequences are more dire. Thus, researchers have found that suicides are prevalent in jails with high ratios of inmates to staff members.²⁸ Jail overcrowding also may mean that

increasing numbers of persons will enter the prison system already traumatized by their prior incarceration.

The Dynamics of Desperation: Cycles of Dysfunctional Behavior

Overcrowding appears to have especially adverse effects on the institutional behavior of younger inmates. Thus, one study of the Texas prison system found that “The greater the proportion of young prisoners housed in the institution, the greater the infraction and assault rates. There is some evidence for an interaction effect between age and prison size. Younger inmates may be more susceptible to the problems and control structures in large prisons than older inmates.”²⁹ Another study obtained similar results, with overall correlations that revealed “a significant association between density and total assaults and assaults on inmates” such that the greater the density, the more frequent the assaults. But researchers found that the relationship between crowding and violence was “strongest in the institutions housing young offenders.”³⁰

Age-related crowding effects are not surprising. Younger prisoners tend to be more volatile, sensitive to their surroundings and, in general, more likely to react aggressively to the tensions and conflicts that crowded conditions of confinement generate. However, prison officials and staff members respond to these crowding-related infractions by punishing prisoners, often by placing them in disciplinary segregation units. The heightened reactivity of younger prisoners to their crowded living conditions means that greater numbers of them will be exposed to even harsher conditions in the segregated or isolated housing units where many eventually are confined.

A number of adverse and presumably unintended long-term consequences are likely to follow from this scenario. Prison officials typically use an inmate’s disciplinary segregation status to bar him or her from participation in educational or vocational programming. Moreover, extended time spent in segregation simultaneously places prisoners at risk of

developing a host of adverse psychological reactions that are associated with long-term isolation.³¹ A lack of even minimal forms of programming and exposure to potentially disabling solitary confinement jeopardizes subsequent adjustment in the mainline prison population as well as in the free world. And, if these prisoners do return to prison after having been released—something we know is unfortunately more likely than not—they often find that their prior disciplinary status leads more readily to their classification as a present security risk, making them prime candidates for assignment to a segregation unit once again.

Not surprisingly, several studies have suggested that overcrowding is associated with increased recidivism. For example, at the start of the 1980s, David Farrington and his colleagues found a strong relationship between overcrowding and prison ineffectiveness in England—prisoners released from overcrowded prisons were more likely to be recommitted for subsequent criminal infractions. The relationship could not be explained away by other variables, leading Farrington to recommend a reduction in prison overcrowding in order to improve the ability of prisons to reduce crime. By sending fewer people to prison, or by reducing the effective lengths of prison sentences, he argued, the effectiveness of imprisonment might be enhanced.³²

Similarly, several years after Farrington's English study, Canadian researchers concluded that placing low-risk offenders in often overcrowded high security facilities resulted in high rates of re-incarceration.³³ The rates were significantly higher than those of comparable low-risk offenders who had been placed in halfway houses. The researchers concluded that the failure to properly divert low-risk offenders from high to low security facilities—something that overcrowded prison systems often lack the capacity to do—“may actually increase the risk of future recidivism.”³⁴

Thus, the way officials respond to a structurally caused behavioral problem that they are powerless to control—reacting to crowding-related disciplinary infractions through the use of punitive isolation—can jeopardize the long-term well being of prisoners, create even more disruptive behavior later on and, indirectly, increase crime.³⁵

Ignoring the Critical Needs of Prisoners in Times of Crisis

The unprecedented influx of prisoners over the last several decades and the levels of overcrowding it has produced have badly compromised the evaluation and classification of incoming prisoners. The seriousness of a prisoner's commitment offense and the length of his sentence now largely determine classification levels and, as a result, dictate most housing assignments. This means that many fewer new inmates are meaningfully screened or given a careful diagnostic evaluation, or what—in the days of rehabilitation—was referred to as a “needs assessment.” The task of assigning prisoners to facilities turns largely on whether and where there is available bedspace rather than any matching of individual prisoner needs with available programming resources.

Of course, as I noted earlier, few prisons are able to provide a majority of their prisoners with educational programs, vocational training, or meaningful jobs that provide them with transferable skills or useful work experience, so the lack of a needs assessment—in systems that are unable to address those needs—is perhaps not a pressing concern (even though, in properly functioning systems, it would be). However, compromises to screening and classification brought about by overcrowding do produce another harmful consequence. Even by the most conservative calculations, there are several hundred thousand prisoners who are badly in need of counseling and treatment for a variety of pre-existing cognitive, emotional, and psychological problems. In part because of the overwhelming numbers of incoming prisoners compared to the resources available to devote to the classification and intake process, many prison systems do a poor job at identifying such persons, let alone in allocating the necessary resources with which to treat them.

Maintaining Control Through Force and Intimidation

Overcrowding, widespread idleness, and the failure of many prison systems to address the basic needs of prisoners have changed the context of imprisonment. Prison administrators have been forced to anticipate and react to many volatile and potentially explosive situations. In many instances, their reactions have been predictable but problematic, serving to increase the amount of prison pain dispensed and making already dangerous situations, in the long run, *moreso*.

Indeed, in the face of extraordinary increases in the sheer numbers of prisoners, many prison administrators pressed for new tools with which to control and contain them. In most jurisdictions, any pretense of carefully managing the prison “careers” of inmates or effectively monitoring the quality of the conditions under which they were kept was sacrificed during the rapid expansion of the prisoner population. Criminologists Malcolm Feeley and Jonathan Simon identified an emerging penological management style in which correctional decision makers now think about prisoners only in the “aggregate,” as dangerous “populations” that need to be “herded,” rather than as individuals in need of personal attention. Indeed, in terms that captured both the dehumanized consciousness of the decision makers, and the devalued status of the prisoners under their control, Feeley and Simon analogized the overcrowding-driven new penology as akin to a “waste management” function.³⁶

Thus, rather than improving living conditions and investing in prison programs and meaningful activities in which prisoners could participate, many prison systems have committed to harsh policies and procedures designed primarily to maintain order and control and little else. They also now rely increasingly on sophisticated and expensive security hardware and surveillance technology. Metal detectors, x-ray machines, leg irons, waist chains, handcuffs, “black boxes,”³⁷ holding cages, “violent prisoner restraint chairs,” psychiatric screens, chain-link fences, concertina wire, tasers, stun guns, pepper spray, tear gas canisters, gas grenades, and, in some jurisdictions, mini-14 and 9 millimeter rifles, 12 gauge shotguns,

and the like now are employed inside the cellblocks of a number of maximum security prisons.³⁸

For example, in maximum security prisons in California, guards armed with rifles are strategically positioned inside mainline housing units and authorized to respond to inmate disturbances with lethal force. Even when they are asleep, prisoners are under what is euphemistically called “gun cover.” In New York City, the city’s large jail on Rikers Island has resorted to what has been characterized as an “iron hand” approach to regain and maintain order by “[u]sing an array of tools and tactics—from a huge S.W.A.T. team to electric stun shields to a program that aggressively prosecutes inmates for crimes committed inside the jail.”³⁹

But these iron hands have a decidedly modern, technological grip. At Rikers, for example, “stun devices—large plexiglass shield threaded with wires—deliver six-second bursts of 50,000 volts of electricity, and are used to incapacitate inmates and cut the risk of hand-to-hand violence.” In the late 1990s, the devices were being used on average about once a week in the jail. Guards there and elsewhere also employ specially equipped chairs “with magnetic sensors that can search for bits of metal hidden in inmates’ mouths and other body cavities.”⁴⁰ Although guards and prisoners at some facilities agree that the new combination of technology and toughness can suppress violence—at Rikers, what was described as “an almost eerie, ‘Twilight Zone’ calm” was created inside the formerly chaotic jail—it fails to directly address any of the underlying contextual causes of the tensions that precipitated the violence in the first place.

Nonetheless, in the words of one Rikers guard, this harsh and tough approach to prisoner control “shows we’re in charge.”⁴¹ Despite the modern technology in which it is cloaked, this goal—showing who is in charge, sometimes at whatever cost—remains at the core of much correctional thinking. The prison equivalent of the “law of the instrument”⁴² means that the sheer availability of technological devices, hardware, and weapons is likely to have increased

their use, even in response to minor infractions that in past times would have been resolved in other, less forceful ways.

In perhaps the most punitive correctional trend, many prison systems are making more extensive use of a new form of disciplinary segregation or “lockup.” The use of long-term solitary confinement that was tried and then abandoned in the 19th century—when its psychological effects were recognized as harmful and inhumane—has returned in the last several decades of the 20th century, in the form of the modern “supermax” prison.⁴³ Presumably designed to limit and control violence by keeping prisoners isolated from one another, the practice confines them under especially harsh and deprived conditions for very long periods of time, with potentially disastrous psychological consequences. Despite judicial rulings that have severely criticized these practices, courts have permitted prison systems to continue to employ them.⁴⁴

Conclusion

As I have tried to show, overcrowding—having more prisoners than a facility can accommodate in a psychologically healthy and humane way—is directly connected to many of the problems that currently confront American corrections. Although it is by no means the only cause of the sometimes dangerous conditions and potential for abuse that exists in many of our nation’s prisons, it is a central and critical issue that must be effectively addressed if these other problems are to be solved.

¹ Many of these issues are addressed at greater length in: Craig Haney, Reforming Punishment: Psychological Limits to the Pains of Imprisonment. Washington, DC: American Psychological Association Books, forthcoming.

² “Overcrowding” is used as a term of art in this context. With respect to prisons, overcrowding is measured by more than just the ratio of prisoners to capacity. It also includes the extent to which a prison, or prison system, houses more prisoners than it has the adequate infrastructure to

accommodate. Many prison systems have increased their capacity over the last 30 years without commensurate increases in programming, medical, and mental health resources (among other things). These systems are “overcrowded” even though, technically, they do not house greater numbers of prisoners than their rated capacities.

³ The Court first confronted the issue of double-celling in the context of jail confinement in *Bell v. Wolfish*, 441 U.S. 520 (1979). Two years later, the issue was examined in the context of prisons and the 8th Amendment in *Rhodes v. Chapman*, 452 U.S. 337 (1981). In both cases, the Court refused to prohibit a practice that most experts and even many correctional administrators regarded as extremely problematic.

⁴ For example, in 1976—even before the incarceration boom began in earnest—a national news magazine told readers, “Prisons all across this country are dangerously overcrowded because of a recent, unexpected influx of inmates.” *US News & World Report*, 1976, p. 65. That influx continued and, over the next three decades, increased exponentially.

⁵ According to the ACLU's National Prison Project, by 1995 there were fully 33 U.S. jurisdictions under court order to reduce overcrowding or improve general conditions in at least one of their major prison facilities. Nine were operating under court orders that covered their entire prison system. National Prison Project, *Status Report: State Prisons and the Courts* (1995). Even those correctional systems that avoided judicial scrutiny often were significantly overcrowded.

⁶ For example, New York now operates some 70 prisons scattered across the state; fully 52 of them were built over the last twenty-five years. During this same time period, the prisoner population in the state increased nearly six-fold, from approximately twelve thousand to more than seventy thousand. See: T. Conover, Guarding Sing Sing, *The New Yorker*, 54-67 (April 3, 2000), at p. 56.

⁷ V. Cox, P. Paulus, & G. McCain, Prison Crowding Research: The Relevance for Prison Housing Standards and a General Approach to Crowding Phenomena, 39 *American Psychologist* 1148 (1984); G. Gaes, The Effects of Overcrowding in Prison. In M. Tonry and N. Morris (eds.), *Crime and Justice: Annual Review of Research* (1985); P. Paulus, *Prison Crowding: A Psychological Perspective* New York: Springer-Verlag (1988).

⁸ T. Thornberry & J. Call, Constitutional Challenges to Prison Overcrowding: The Scientific Evidence of Harmful Effect, 35 *Hastings Law Journal* 313, 351(1983). Overcrowding studies at women’s prisons showed similar effects. See B. Ruback & T. Carr, Crowding in a Woman's Prison: Attitudinal and Behavioral Effects, 14 *Journal of Applied Social Psychology* 57 (1984).

⁹ E.g., Ekland-Olson, S., Crowding, Social Control, and Prison Violence: Evidence From the Post-Ruiz Years in Texas, 20 *Law and Society Review* 389 (1986).

¹⁰ E.g., see J. Bleich, The Politics of Prison Crowding, 77 *California Law Review* 1125 (1989).

¹¹ E.g., P. Paulus, V. Cox, G. McCain, & J. Chandler, Some Effects of Crowding in a Prison Environment, 5 *Journal of Applied Social Psychology* 86, 90 (1975): “The present study indicates that living under relatively crowded housing conditions in a prison produces both negative affect and a lower criterion of what constitutes overcrowding.”

¹² E.g., D. D'Atri, Psychophysiological Responses to Crowding, 7 *Environment and Behavior* 237, 247 (1975): “[T]he major hypothesis that there would be an association between degree of crowding and

blood pressure, systolic and diastolic, was strongly supported.”

¹³ E.g., G. McCain, V. Cox, & P. Paulus, The Relationship Between Illness Complaints and Degree of Crowding in a Prison Environment, 8 Environment and Behavior 283 (1976).

¹⁴ P. Paulus, G. McCain, & V. Cox, Death Rates, Psychiatric Commitments, Blood Pressure, and Perceived Crowding as a Function of Institutional Crowding, 3 Environmental Psychology and Nonverbal Behavior 107,115 (1978). See, also, Ostfeld, Adrian, Dasl, Stanislav, D'Atri, David, & Fitzgerald, Edward, Stress, Crowding, and Blood Pressure in Prison, Hillsdale, NJ: Lawrence Erlbaum (1987).

¹⁵ E. Megargee, The Association of Population Density, Reduced Space, and Uncomfortable Temperature with Misconduct in a Prison Community, 5 American Journal of Community Psychology 289, 295 (1977):

¹⁶ E.g., V. Cox, P. Paulus, & G. McCain, Prison Crowding Research, 39 American Psychologist 1148,1159 (1984). See, also, E. Sieh, Prison Overcrowding: The Case of New Jersey, 53 Federal Probation 41-51(1989) for a brief review. For a discussion of the health risks of prison and jail overcrowding, see B. Walker & T. Gordon, Health Risks and High Density Confinement in Jails and Prisons, 44 Federal Probation 53-58 (1980).

¹⁷ F. DiCataldo, A. Greer, & W. Profit, Screening Prison Inmates for Mental Disorder: An Examination of the Relationship Between Mental Disorder and Prison Adjustment, 23 Bulletin of the American Academy of Psychiatry and Law 573, 574 (1995).

¹⁸ National Center For Education Statistics, Literacy Behind Prison Walls. Washington, DC: U.S. Department of Education (October, 1994).

¹⁹ G. Sutherland, Reading Proficiency of Inmates in California Correctional Institutions. Sacramento: California State University (1997).

²⁰ California Department of Corrections website, at: <http://www.cdc.state.ca.us/factsht.htm>.

²¹ K. McGuire, & A. Pastore, Sourcebook of Criminal Justice Statistics, 1992. U.S. Department of Justice, Bureau of Justice Statistics. Washington, DC: USGPO (1993), at p. 634.

²² Specifically, only 53.6 percent of the more than 150,000 California prisoners were employed in any type of work assignment at the end of the year 2002. California Department of Corrections, CDC Facts, January, 2003 (<http://www.cdc.state.ca.us/cdcfacts.htm>). In addition to the sheer number of prisoners who go without such assignments, the quality of the programs for those who are assigned is often undermined by the ratio of prisoners to the resources devoted to meeting them. For example, here is how sociologist John Irwin characterized the vocational training programs in a medium security California prison he recently studied—programs in which fewer than twenty percent of the prisoners were fortunate enough to be involved:

Several conditions greatly weaken the efficacy of these vocational training programs, most important, the lack of funds and resources. Instructors report that they have great difficulty obtaining needed equipment and materials... Instructors are fired, or they quit and are not replaced... Further, the training programs are regularly interrupted by lockdowns [and inclement weather] during which prisoners cannot be released to the hill for vocational training.

John Irwin, The Warehouse Prison: Disposal of the New Dangerous Class. Los Angeles: Roxbury (2005), at p. 75.

²³ United States Government Accounting Office, Report to the Attorney General: Improved Prison Work Programs Will Benefit Correctional Institutions and Inmates 2 (1982). Other commentators agreed. Noting that “[l]ess than 20 percent of the national prison population works,” one expressed concern that most inmates just “sit around, becoming bored, restless and, sometimes, violent.” He argued that the best way to keep the costs of incarceration low and the potential for rehabilitation high was to “give inmates a job.” G. Mehler, Prisoners Need Jobs, and We Can’t Afford to Let Them Sit Idle, Los Angeles Daily Journal, (July, 23, 1984), at p. 12. But there was little evidence that this advice was taken.

²⁴ M. King, Male Rape in Institutional Settings. In G. Mezey, G., & M. King, (Eds.), Male Victims of Sexual Assault. Oxford: Oxford University Press (1992), at 70.

²⁵ P. Gunby, Sexual Behavior in an Abnormal Situation, 245 Medical News 215-220 (1981).

²⁶ See, for example, H. Pontell, & W. Welsh, Incarceration as a Deviant Form of Social Control: Jail Overcrowding in California, 40 Crime & Delinquency 18 (1994).

²⁷ W. Welsh, The Dynamics of Reform Litigation: A Comparative Analysis of Litigation in California Counties, 26 Law & Society Review 591 (1992), at 604-605. See, also, P. Paulus & G. McCain, Crowding in Jails, 4 Basic and Applied Social Psychology 89-107 (1983). In the era of overincarceration, jail crowding has become the norm. From 1984 to 2000 (the last year for which data were available), jails in the United States operated with inmate populations that were at 90% or above their overall rated capacity. K. McGuire & A. Pastore, Sourcebook of Criminal Justice Statistics, 2000. U.S. Department of Justice, Bureau of Justice Statistics. Washington, DC: USGPO (2001), at p. 501. Some facilities are much more crowded and there is evidence that the problem has not subsided in recent years.

²⁸ See J. Wooldredge & L. Winfree, L., An Aggregate-Level Study of Inmate Suicides and Deaths Due to Natural Causes in U.S. Jails, 29 Journal of Research in Crime & Delinquency 466 (1992). In addition, the same study found that natural deaths in jail can be reduced when overcrowding is alleviated and other humane standards of confinement implemented.

²⁹ S. Eklund-Olson, D. Barrick, & L. Cohen, Prison Overcrowding and Disciplinary Problems: An Analysis of the Texas Prison System, 19 Journal of Applied Behavioral Science 163,174 (1983); G. Gaes and W. McGuire, Prison Violence: The Contribution of Crowding Versus Other Determinants of Prison Assault Rates, 22 Journal of Research in Crime and Delinquency 41 (1985).

³⁰ P. Nacci, H. Teitelbaum, & J. Prather, Population Density and Inmate Misconduct Rates in the Federal prison System, 41 Federal Probation 26, 29 (1977).

³¹ For example, see S. Grassian, Psychopathological Effects of Solitary Confinement, 140 American Journal of Psychiatry 1450 (1983); S. Grassian and N. Friedman, Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement, 8 International Journal of Law and Psychiatry 49 (1986); C. Haney, Infamous Punishment: The Psychological Effects of Isolation, 8 National Prison Project Journal 3 (1993); C. Haney and M. Lynch, Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement, New York Review of Law & Social Change, 23, 477 (1997); and C. Haney, Mental Health Issues in Long-Term Solitary and “Supermax” Confinement, 49 Crime & Delinquency 124 (2003).

³² D. Farrington & C. Nuttall, Prison Size, Overcrowding, Prison Violence, and Recidivism, 8 Journal of Criminal Justice 221, 230 (1980).

³³ J. Bonta & L. Motiuk, The Diversion of Incarcerated Offenders to Correctional Halfway Houses, 24 Journal of Research in Crime & Delinquency 302 (1987).

³⁴ *Id.* at 312.

³⁵ The criminal justice system in general also “behaves” in response to prison overcrowding in ways that sometimes make its long-term consequences worse. For example, if probation and parole services also are overtaxed by rapid increases in the number of recently released prisoners—as most studies of these agencies seems to indicate they are—then their agents will be less able to provide guidance and meaningful supervision, or to offer services designed to help probationers avoid prison and assist parolees in making a successful transition back into the free world. This would act to increase the effect of overcrowding on subsequent re-offending. For example, see: Edwin Lemert, Visions of Social Control: Probation Reconsidered, Crime & Delinquency, 39, 447-461 (1993); and Jonathan Simon, Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990. Chicago: University of Chicago Press (1993). See, also: William Kelly and Sheldon Ekland-Olson, The Response of the Criminal Justice System to Overcrowding: Recidivism Patterns Among 4 Successive Parolee Cohorts, 25 Law & Society Review 601-620 (1991).

³⁶ M. Feeley & J. Simon, The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications, 30 Criminology 449 (1992).

³⁷ As described in a federal lawsuit addressing conditions of confinement at the Marion Federal Penitentiary: “A ‘black box’ is a small box that fits over the chain connecting the two cuffs and that is designed to prevent an inmate from picking the lock on the handcuffs.” *Bruscino v. Carlson*, 654 F. Supp. 609, 615, n. 4 S.D. Ill. 1987). It is designed to immobilize a prisoner’s wrists while he is handcuffed.

³⁸ Here is how a federal judge summarized the use of lethal force inside California’s Pelican Bay, a high security “supermax” prison:

The firearms used at Pelican Bay are: (1) the Ruger Mini-14 .223 caliber rifle, (2) the Heckler & Koch Model 94 (“H & K 94”) 9 millimeter carbine, using the Glaser Safety Slug, (3) the Smith & Wesson .38 caliber revolver, and (4) the Remington 12-gauge pump shotgun. Firearms were discharged 177 times in 129 incidents between the time the prison opened [in late 1989] and September 9, 1993. Of the 177 shots fired, 23 were intended to be for effect (i.e., were fired with the intent to hit a person), 152 were intended to be warning shots, and 2 were accidental. 109 shots were fired outdoors and 68 indoors. Of the 152 warning shots, 13 caused or were alleged to have caused inmate injuries from ricochets or bullet fragments.

Madrid v. Gomez, 889 F. Supp. 1146 (1995). at p. 1179, n. 52.

³⁹ C. Drew, Behind Bars, An Iron Hand Drastically Lowers Violence, N.Y. Times, A1, A27 (November 8, 1999), at A1.

⁴⁰ Drew, at p. A27.

⁴¹ Ibid.

⁴² Abraham Kaplan is credited with enunciating this principle—when your only tool is a hammer, everything begins to look like a nail. A. Kaplan, The Conduct of Inquiry. New York: Harper (1964). For a

discussion of the extremes to which the use of these forceful techniques can be taken in contemporary corrections, see *Madrid v. Gomez*, 889 F. Supp. 1146 (1995):

[T]he Court is convinced that the instances of force being used excessively and for the purpose of causing harm are of sufficient scope, variety, and number to constitute a pattern. Plaintiffs have convincingly documented a staggering number of instances in which prison personnel applied unjustifiably high levels of force, both pursuant to, and in contravention of, official prison policies. Simply put, the evidence before the Court is proof of the most powerful, unambiguous kind that a pattern of excessive force has become an undeniable reality at Pelican Bay.

At p. 1181.

⁴³ For a discussion of the psychological effects of this form of confinement, see: Grassian, Grassian & Friedman, Haney, and Haney & Lynch, cited at note 28 above. For an account of the nature of the trends toward supermax confinement, see: M. Isikoff, *Hard Time: The Mission at Marion; Federal Prison Revives Debate on How to Handle Incurable Felons*, 114 *Washington Post* A1, col. 1 (May 28, 1991); R. Immarigeon, *The Marionization of American Prisons*, 7(4) *National Prison Project Journal* 1 (1992); M. Isikoff, *Human Rights Group Faults Super Security Prisons*, 114 *Washington Post* A36, col. 1 (November 14, 1991); R. Perkinson, *Shackled Justice: Florence Federal Penitentiary and New Politics of Punishment*, 21 *Social Justice* 117 (1994).

⁴⁴ In the *Pelican Bay* case, for example, the judge expressed serious concerns over the “stark sterility and unremitting monotony” of the interior design of the supermax units, and noted that prisoners housed there could “go weeks, months or potentially years with little or no opportunity for normal social contact with other people.” The court also remarked that the sight of prisoners in the barren exercise pens to which they were restricted created an image “hauntingly similar to that of caged felines pacing in a zoo,” and acknowledged that “many, if not most” of the prisoners housed in supermax “experience some degree of psychological trauma in reaction to their extreme social isolation and the severely restricted environmental stimulation” to which they are exposed. *Madrid v. Gomez*, at p. 1229, 1235. Indeed, the court’s opinion acknowledged that “[s]ocial science and clinical literature have consistently reported that when human beings are subjected to social isolation and reduced environmental stimulation, they may deteriorate mentally and in some cases develop psychiatric disturbances.” At 1230. The judge concluded that *Pelican Bay* inflicted treatment on prisoners that, in his words, “may well hover on the edge of what is humanly tolerable for those with normal resilience, particularly when endured for extended periods of time.” At p. 1280. However, although the *Madrid* court also found that overall conditions in the supermax units were “harsher than necessary to accommodate the needs of the institution,” the judge concluded that he lacked any constitutional basis to close the prison or even to require significant modifications in many of its general conditions. At p. 1263.