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Reiter, Keramet

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Keramet Reiter*

The Origins of and Need to Control Supermax Prisons

Abstract: Supermaxes are prisons designed to impose long-term solitary confinement. Supermax prisoners spend 23 h or more per day in windowless cells. Technology, like centrally controlled automated cell doors and fluorescent lights that are never turned off, allows prisoners to be under constant surveillance, while minimizing all human contact. California built two of the first and largest supermaxes in 1988 and 1989. Corcoran State Prison and Pelican Bay State Prison, which together house more than 3000 prisoners in supermax conditions, were two of 23 new prisons built in California during the late twentieth century era of rapidly increasing incarceration rates and prison capacities. This article will address three stages of supermax operation in California: (1) the early, tumultuous years of total administrative discretion and egregious abuses; (2) the middle years of controlled expansion and entrenchment of supermax use; and (3) the recent events and reforms initiated following a hunger strike in California's segregation units in the summer of 2011. The history of California's use of supermax prisons reveals both the role of administrative discretion in shaping the initial design and day-to-day operation of the institutions, as well as the perverse incentives that made these institutions increasingly invisible and decreasingly governable. Supermaxes, then, serve as an important piece of the story of mass incarceration in California, a microcosm of the larger trends in administration, law, and politics, which have created the social and economic behemoth of a state prison system facing Californians today.

Keywords: California prison system; correctional institutions; penology; prisons; solitary confinement; supermax.

*Corresponding author: Keramet Reiter, Assistant Professor of Criminology, Law and Society and of Law, University of California, Irvine, CA, USA, e-mail: reiterk@uci.edu

They had sent me up there saying that I was a gang member, that I was a shot caller, that I was involved in violence . . . I'll never forget that day . . . I remember go[ing] up on a bus, and it took forever to get there . . . I'm just looking at trees, birds. And you see it's a beautiful coast out there . . . the big old pelicans and I'm trying to get every[thing] I can because I know that it's over . . . There's rumors, Lord . . . They say that you are 24 hours a day in your cell. That's what they were bragging about the place – it's the worst of the worst. It's the new Alcatraz . . . Then

finally, we get to Pelican Bay . . . And the best way I can describe the front of the entrance of the [supermax] is it's like – remember the old Star Wars movie? . . . Hans Solo's ship – the big old glass vessel? It's the first thing that came into my mind right then and there.

– A.L., former Pelican Bay prisoner

1 Introduction

In the opening quote, A.L. describes his first memory of arriving at the Pelican Bay supermax, in Crescent City, California, on the state's northern border with Oregon. The prison he entered in 1990 lived up to his worst expectations. He would spend at least 23 h per day in a windowless, 8-by-10 foot, poured concrete cell, with the fluorescent lights always on, for the next 10 years. Three-to-five times per week, an officer in a central control booth would press a button, remotely opening A.L.'s cell door. He would then be permitted to leave his cell, for an hour, or 2 at most, in order to shower, alone, or to go out into a solitary, empty exercise "yard," also made of poured concrete and not much larger than his cell. In an interview in 2010, A.L. painted a vivid picture of his first sight of Pelican Bay; he recalled being struck by the futuristic newness of the physical structure, comparing it to a Star Wars' space ship. Indeed, when A.L. arrived at Pelican Bay, the institution had been open only a few months, and it was one of the first such facilities built in the US.

Arizona opened the first supermax prison in 1986 (Lynch 2010). California opened two more, Corcoran State Prison and Pelican Bay State Prison, in 1988 and 1989. Over the next 20 years, almost every state would follow California's model, building tens of thousands of long-term solitary confinement cells. And California itself would continue to expand its use of long-term solitary confinement and segregation, converting additional units to supermax status during the 1990s. Just as in the rest of the California prison system, these "solitary confinement" units have frequently been overcrowded; more than half of the prisoners in these supermax facilities have been double-bunked over the last 20 years of operation (Reiter 2012).

Supermaxes are part of the trend of mass incarceration, which has increasingly dominated both California state politics and budgets. Between 1984 and 1996, California built 23 new prisons (Gilmore 2007). In the 1980s, California's prison expansion was the largest in magnitude of any state's, and California today

¹ Louisiana, on the other hand, has the highest rate of incarceration at 858 prisoners per 100,000 population; California's rate is almost half of Louisiana's, at 471 prisoners per 100,000 population. In fact, California's rate of incarceration hovers just above the national average (of all 50 states) incarceration rate of 447 prisoners per 100,000 population.

has more people incarcerated than every state other than Texas.¹ California prison building barely kept up with increases in the state prison population: between 1980 and 1990, the state's prison population more than quadrupled, from 23,000 to 100,000 people (Zimring and Hawkins 1994). Between 1990 and 2006, the California prison population nearly doubled again, reaching a high of 173,000 prisoners (Thompson 2012). During these years, the California Correctional Peace Officers Association (CCPOA), the union representing prison guards in the state, slowly gained political power. By the mid-1990s, the union had established the coffers and clout to determine electoral decisions about everything from the lengths of prison sentences to who would be governor (Page 2011). State corrections spending kept up with the rising prison population and CCPOA demands for increased investments in prisons and staff. Between 1980 and 2012, spending on prisons and corrections in California increased 436%, while spending on higher education decreased 13% (Anand 2012, numbers adjusted for inflation).

In spite of these large and continued investments in prison building and operation, California's prisons have faced persistent legal challenges to their constitutionality. Most recently, in 2011, the US Supreme Court ruled that the state's prison system was so overcrowded that it could not possibly provide constitutionally adequate healthcare to its prisoners. In light of this finding, the Supreme Court upheld a lower court's order to reduce the prison population by tens of thousands of prisoners (*Brown v. Plata* 2011).

Supermaxes in particular are one of the more expensive, and ambiguously constitutional, aspects of California's prison system. Whereas California spends an average of \$49,000 per prisoner per year in most state prisons, the average annual cost of keeping a prisoner in Pelican Bay State Prison, the state's main supermax, is more than \$70,000 per year (Small 2011). Indeed, supermax prisons represent the outer extreme of the control problems the state's department of corrections has had over the past 20 years – problems controlling scale and overcrowding, problems controlling abuses, and problems adhering to constitutional mandates and managing court interventions. But supermaxes are not merely an exaggeration of the problems within the California prison system; supermaxes are a problem in and of themselves, imposing long-term solitary confinement, with minimal oversight and few limitations on the extremity of deprivations or the duration of confinement.

This article will address three stages of supermax operation in California: (1) the early, tumultuous years of total administrative discretion and egregious abuses; (2) the middle years of controlled expansion and entrenchment of supermax use; and (3) the recent events and reforms initiated following a hunger strike in California's segregation units in the summer of 2011. The history of California's use of supermax prisons reveals both the role of administrative discretion in shaping the initial design and day-to-day operation of the institutions, as well

as the perverse incentives that made these institutions increasingly invisible and decreasingly governable. Supermaxes, then, serve as an important piece of the story of mass incarceration in California, a microcosm of the larger trends in administration, law, and politics, which have created the social and economic behemoth of a state prison system facing Californians today.

2 Discretion and Abuse, 1986–1995

In 1986, the California Legislature passed Senate Bill 1222, authorizing construction of a new prison in California's Del Norte County. There was a brief legislative debate about what to name the prison, but little legislative discussion of what the remote prison would look like and no acknowledgement that it would be "the new Alcatraz," "a Hans Solo ship," or "a prison of the future" (Corwin 1990; A.L. interview 2010).

Craig Brown, who was the undersecretary of corrections in California during the peak prison-building years in the 1980s, explained that correctional administrators, not legislators determined the form Pelican Bay would take: "You're not going to find much in the record; it was all negotiated [off the record], and we [the correctional authority] pretty much had our way with the legislature" (Brown interview 2010). Usually, California administrative agencies govern construction details, like the issuing of bonds to fund building projects and the review of environmental impact decisions (Gilmore 2007), and usually the California legislature determines punishment structures, like the range of possible prison sentences for particular crimes, and the range of punishments to which prisoners convicted of certain crimes may be subjected, whether probation, prison, or death, for instance. In the case of the supermax at Pelican Bay State Prison, however, correctional administrators designed and built the prison with little independent agency oversight, negotiating their own, private bond funds and avoiding the usual requirements of independent environmental impact reviews (Keller 1986; Gilmore 2007). In addition to designing the physical structure of Pelican Bay with little political oversight, correctional administrators determined who was sent to Pelican Bay, why, and for how long. In other words, correctional administrators imposed long terms of total solitary confinement on prisoners, often changing the conditions of prisoners' confinement and effectively lengthening prison sentences, with little legislative (or judicial) oversight.

The supermax represents a different kind of punishment innovation, especially for California, a state known for tough-on-crime legislators (Gilmore 2007, p. 94) and tough-on-crime voters (Zimring et al. 2001, p. 3) driving punishment

innovations like the Three Strikes and You're Out sentencing law, which mandated life in prison for people convicted of three felonies. The combination of design discretion and punishment discretion correctional administrators exerted in constructing Pelican Bay State Prison allowed the institution to develop initially out of sight and un-noticed, nestled in the redwoods in a tiny coastal town in the northernmost county in California. A few local newspapers noted that a technologically-advanced prison had opened in Del Norte County (Griffith 1989; Corwin 1990), but at first judges and lawyers were not even aware of the novel conditions at the institution.

Over the next few years, however, stories of horrific abuse trickled out of both Pelican Bay and California's other main supermax, Corcoran State Prison.² As early as 1990, Judge Thelton Henderson, then the chief judge of the federal district court of the Northern District in California, the court with jurisdiction over Pelican Bay, started receiving letters from prisoners complaining about the harsh conditions at the prison. Henderson recalled: "We got a ton of handwritten letters and petitions from this place we had never heard of before – Pelican Bay" (Henderson interview 2011). And Steve Fama, a long-time prisoners' rights advocate with a non-profit law office outside of San Quentin State Prison, remembered knowing very little about the prison until years after it opened. At first, Fama mistakenly thought "it was not all that unusual or extraordinary – another prison" (Fama interview 2010). But when Judge Henderson appointed a group of lawyers, including Fama, to investigate the conditions at Pelican Bay State Prison, Fama quickly realized this was a new kind of prison, imposing newly harsh conditions. The lawyers Henderson appointed eventually brought a lawsuit, *Madrid v. Gomez*, challenging the constitutionality of the conditions of confinement and the operational procedures at the prison, especially within the supermax unit.

Before the initial, 1995 ruling in the *Madrid* case, disturbing investigative reports of abuse in California's Pelican Bay supermax surfaced. In 1994, the *San Francisco Chronicle* reported that Vaughn Dortch had won nearly one million dollars in a settlement with the California Department of Corrections (CDC).³ According to the settlement, in 1992, correctional officers had forced Dortch, a

² Both Corcoran and Pelican Bay have supermax units and general population units, within the larger prison complex. Note that California prison officials and department documents refer to these supermax units as "Secure Housing Units," or "SHUs." For ease of comprehension, however, the terms "supermax" and "supermax unit" will be used in this article.

³ Note that in 2003, the California Department of Corrections (CDC) changed its name to the California Department of Corrections and Rehabilitation (CDCR). In references in this article to the pre-2003 California prison system, the Department will be referred to by its former name (CDC). In references to the post-2003 California prison system, the Department will be referred to by its current name (CDCR).

prisoner in solitary confinement at Pelican Bay, to take a bath in boiling water. His skin peeled off in chunks before he was removed from the “bath”; Dortch ultimately sustained third-degree burns over half his body. The investigative news show *60 Minutes* also reported on this case (“Former Inmate” 1994). Next, in 1993, while Judge Henderson was visiting Pelican Bay in preparation for the hearings in the *Madrid* case, officers at the institution invited him up into a tower overlooking one of the larger prison yards. When he got to the top and looked down, Judge Henderson saw everyone on the yard – including “my law clerks in their suits” – lying flat (Henderson interview 2011). Then shots were fired, and a “dramatic takedown” of prisoners allegedly involved in inciting a riot ensued. Later investigations established that correctional officers had known about the potential for unrest and staged the takedown as Henderson was ascending the steps to the overlook tower (US Attorney’s Office, Northern District of California 2002).

Meanwhile, at Corcoran State Prison, in California’s Central Valley region, five prisoners died between 1989 and 1994, after being shot by officers for alleged participation in gang fights. An additional 40 prisoners were injured. Criminal and civil cases brought against 20 correctional officers, along with investigative reports, revealed that these 45 prisoners were injured and killed in the course of “gladiator fights.” Correctional officers coordinated these gladiator events, by forcing known rival gang members, who were otherwise isolated from each other in the Corcoran supermax, into one small exercise yard. Officers then watched from the safety of prison control booths as the rival prisoners fought. Eventually, officers would shoot into the small exercise yards, often with fatal consequences (Gunnison 1998; Heller 2001).

The initial decision in the *Madrid* case, issued in January of 1995, demonstrated that the abuses uncovered in these investigatory reports and prosecutions against individual correctional officers were, in fact, more systemic. The *Madrid* case involved a class of prisoners – everyone housed at Pelican Bay State Prison – and detailed many more instances of abuse at Pelican Bay, especially in the supermax units. Correctional officers chained one prisoner, naked, into a “fetal restraint” position, and left him that way for 24 h. Officers beat another prisoner unconscious after he threw a food tray out of his cell. Dozens of prisoners experienced injuries ranging from fractured ribs to comas and brain damage after they were housed two-to-a-cell in the supermax units designed for total solitary confinement (*Madrid v. Gomez* 1995, pp. 1168–1169, 1165, 1239).

The *Madrid* court highlighted two important factors underlying the abuses at Pelican Bay: invisibility and discretion. First, the court described the “code of silence” among officers at the prison, who faced near-certain “retaliation and harassment” if they reported excessive force incidents like those described above (*Ibid*, p. 1156). Not only did this code of silence obscure and conceal abuses at

Pelican Bay, it also expanded the discretion correctional officers had over the lives and well-being of individual prisoners. The *Madrid* court described this multi-faceted discretion, noting that Pelican Bay correctional officers received insufficient training and operated with inadequate written guidelines, especially for situations involving uses of force against prisoners. As the *Madrid* court explained: “the absence of authoritative written guidelines allows policy to shift according to the predilections of individual mid-level staff” (*Ibid*, p. 1182). In sum, correctional officers had control over every aspect of the day-to-day conditions of confinement of Pelican Bay prisoners, from whether prisoners were housed with violent cellmates to whether prisoners were allowed out of their cells into the shower or exercise yard, whether they were given medical or mental health treatment, and whether they were beaten up and burned, or not.

Not only did correctional officers have discretion over use-of-force and other basic operational rules at Pelican Bay in the early years, but they also had significant discretion over who was sent to supermaxes and why. Correctional officers determine which individuals are assigned to supermax units, based on in-prison observations and behavioral assessments, by applying rules written by other correctional officers. In California, correctional officers usually assign prisoners to supermax units, like those at Pelican Bay and Corcoran, for one of two reasons. Either the prisoner breaks an in-prison rule, and is assigned to the supermax for a fixed period of time, ranging from a few months to a few years. Or the prisoner is labeled a gang member (as A.L. was in the quote opening this article) and is assigned to the supermax for an indeterminate period of time, possibly extending for the duration of the prisoner’s criminal sentence.

Not only do correctional officers, as opposed to judges or juries, assign prisoners to supermaxes, but correctional officers also define and apply the assignment rules. For instance, if a prisoner with a known infectious disease, like hepatitis C or HIV, spits on a correctional officer, the officer might choose among three possible responses: (a) ignoring the event, (b) charging the prisoner with throwing a caustic substance, resulting in a short-term supermax placement, or (c) charging the prisoner with attempted murder (because of the risk of the officer being infected with the prisoner’s disease), resulting in long-term supermax placement, for up to 5 years (California Code of Regulations 2009: Title 15, Section 3341.5(C)(9); Reiter 2012).

Similarly, correctional officers define and categorize evidence that indicates gang membership; in California, gang validation requires three pieces of evidence. For instance, known gang tattoos, observed associations on a prison yard with other gang members, correspondence with known gang members, or possession of gang drawings might all be used in a gang validation file. A California assemblywoman recently commented at a hearing about the state’s supermaxes that “as an African American with tattoos who reads political literature” she could be

validated as a prison gang member (Rodriguez 2013). Gang validation, in turn, *may*, at the discretion of correctional administrators, result in indefinite placement in a supermax (California Code of Regulations 2009: Title 15, Section 3000, 3341.5, 3378(4); Reiter 2012). In the 1990s, these administrative decisions included few procedural protections; as of 2005, the US Supreme Court required that prisoners be told why they are being assigned to a supermax and have some opportunity to rebut the evidence against them (*Austin v. Wilkinson* 2005). But prisoners are not guaranteed a hearing, a lawyer, the right to call witnesses, or any other traditional criminal procedural protections during the supermax assignment process.

In sum, the invisibility and discretion noted by the *Madrid* court represents only one piece of the invisibility and discretion inherent in the design and operation of the supermaxes at Pelican Bay and Corcoran State Prison. First, as described above, correctional officials, in collaboration with architects, designed California's first supermax institutions with little oversight from independent state agencies, legislators, or judges. Prisoners' advocates only learned of the institution's existence (and futuristic design) after prisoners living there described the newly harsh conditions in letters and legal complaints. Second, California's supermaxes are in out-of-the-way places. Pelican Bay State Prison is nearly 400 miles north of San Francisco and more than 700 miles north of Los Angeles, and Corcoran State Prison is roughly 200 miles from both San Francisco and Los Angeles. Finally, California's supermaxes are invisible in the sense that they are prisons within prisons; correctional officers assign prisoners to supermaxes, based on in-prison behaviors and assessments. As former Pelican Bay prisoner A.L. explained above, he was sent to the Pelican Bay supermax not because of a specific rule he violated, but because of his assumed status as a gang member, along with allegations that he had been "a shot caller . . . involved in violence."

By 1995, both of California's supermax units, at Pelican Bay and at Corcoran, had faced critical public and legal scrutiny. Both institutions looked less like prisons of the future and more like torture chambers, or dark dungeons of the past. Following the initial order and settlement in the *Madrid* case, however, conditions at Pelican Bay, and California's other main supermax improved considerably. Over the next 10 years, the two supermaxes became an integral part of California's prison system.

3 Expansion and Entrenchment, 1996–2010

California's two main supermaxes continued to face occasional public scrutiny throughout the late 1990s and early 2000s. For instance, in 2000, Angela Davis,

a prison activist famous in California from the mid-1970s for her involvement with George Jackson and the Black Panthers, co-authored a feature article in the *San Francisco Chronicle* arguing that the expanded use of long-term solitary confinement in California, in new supermax prisons like Pelican Bay and Corcoran, constituted “extra-legal” punishment (Davis and Shaylor 2000). But the *Madrid* court, along with other federal courts in California considering challenges to the constitutionality of supermax operations and procedures throughout the 1990s and 2000s, never agreed with Davis’s conclusion that supermaxes were inherently “extra-legal.” Instead, courts worked with prison officials and lawyers to establish policies and practices that eliminated the most egregious abuses. These refined policies and practices, in turn, streamlined supermax operation; the legally approved supermax institutions became an integral and entrenched piece of the expanding California prison system. As the prison system grew, the use of supermaxes kept pace.

The resolution of the *Madrid* case, along with a series of cases challenging the policies governing placement of alleged gang members in supermaxes, provide good examples of this refinement and integration of supermaxes into the overall state prison system. Although the *Madrid* court found that the actions of staff at Pelican Bay had violated constitutional prohibitions against cruel and unusual punishment, the court never found that the conditions of long-term solitary confinement themselves were inherently unconstitutional. Instead, the court worked with lawyers and expert monitors to ensure that adequate policies and procedures were in place to prevent the abuses described in the previous section. The *Madrid* settlement forbid the placement of prisoners with pre-existing, serious mental illnesses in supermaxes, protecting some of the most vulnerable prisoners from supermax confinement. The *Madrid* court also oversaw the appointment of a new warden at Pelican Bay, Steve Cambra, who served from 1995 through 1998, and systemically reformed attitudes at the prison: “It was easy to change actually . . . it took me about four days to figure out what was going on. They used to fight the guys over their trays . . . [but I told them] just let them keep [the trays] and not get fed . . . Why fight these guys?” Cambra gave his orders to the officers at Pelican Bay: “We’re not going to play games with these guys . . . You [officers] don’t belong in lock-up if you ever stop looking at them [prisoners] as human beings” (Cambra interview 2010). Cambra explained his philosophy as if it was elementary math: if you stop engaging with the tough prisoners, they have no reason to antagonize you.

Cambra’s management style apparently worked. By the early 2000s, lawyers from California’s Prison Law Office, a non-profit firm of prisoners’ rights advocates, who monitored Pelican Bay pursuant to the *Madrid* settlement, reported that the prison was functioning within constitutional bounds. There were no

more reports of gladiator fights or egregious uses of force, and there were many fewer reports of inadequate medical care. In 2010, Judge Henderson closed the *Madrid* case, finding that the constitutional violations documented at Pelican Bay in the 1990s had long been resolved (“Judge Closes” 2011).

Other cases litigated in the late 1990s and early 2000s similarly helped to refine and streamline the state’s use of supermaxes. Throughout the mid-1990s, a few prisoners challenged the constitutionality of the rules governing their placement in supermaxes, especially the vague and discretionary rules permitting correctional officers to “validate” a prisoner’s membership in a gang and then assign that prisoner to supermax confinement for an indefinitely long period of time. Just as the *Madrid* case facilitated better treatment of prisoners, through better training and management of officers, so these cases about gang validation established consistent procedures, incorporating at least minimal due process protections and further streamlining the policy and practice of supermax confinement.

Steve Castillo initiated one of the more successful of these cases challenging gang validation procedures. In 1994, Castillo filed a claim alleging that he was validated as a gang member and placed in a California supermax in retaliation for working as a jailhouse lawyer. After 9 years of litigation, Castillo ultimately agreed to a settlement that promised substantial revisions to California’s prison gang validation procedures (Carbone 2004). Specifically, the settlement in *Castillo v. Alameida* required that prisoners be provided with copies of the documentation used to allege gang membership and be permitted an opportunity to rebut this evidence. The *Castillo* settlement also limited the ability of correctional officers to rely on either hearsay evidence or evidence provided by confidential informants, and the settlement required regular, 6-month reviews to re-establish that “validated” prisoners remained active gang participants, thereby justifying their continued supermax confinement (*Castillo v. Alameida* 2004).

California prisoners, however, continued to challenge the state’s gang validation procedures, especially the ambiguous evidence on which gang validation decisions are often based. For instance, Ernesto Lira challenged the gang validation that landed him at Pelican Bay, where he spent 8 years in solitary confinement. According to court records, correctional officers based Lira’s validation on three pieces of tenuous evidence: (1) a confidential inmate de-briefing report in which a prisoner in the process of formally dissociating from the Northern Structure gang listed low-level members of the gang, and included Lira in this list; (2) a drawing found in Lira’s cell allegedly containing a number, a star, and a bird all associated with the Northern Structure gang; and (3) a report from the Merced County Jail describing an incident at which Lira was present involving rival gang members accidentally entering the jail yard at the same time, provoking concerns about a fight that never happened. At the time correctional officials validated Lira

as a gang member, he was actually on parole, so he never participated in any kind of hearing and was never given a chance to rebut the evidence used to establish his gang membership. A Northern District Court of California ultimately found that Lira had been subject to an “improper validation” (and therefore had unnecessarily spent 8 years in solitary confinement). The court ordered the validation expunged from Lira’s prison record (*Lira v. Cate* 2009, p. *6). While the experiences of Lira and Castillo might have been singular mistakes in a system that processes hundreds, if not thousands, of gang validations annually, the settlement in *Castillo* suggests that greater limits on the administrative discretion inherent in the process were required. Given the discretion characterizing the gang validation process, and the lack of information about exactly how many prisoners are validated and assigned to supermaxes annually, whether Lira and Castillo represent isolated mistakes or two examples of a much larger phenomenon is impossible to determine.

In part, more clear rules and regulations governing the gang validation process were necessary because of the sheer numbers of prisoners being validated and assigned to supermaxes. Throughout the years that Lira and Castillo were litigating their gang validation challenges, the use of long-term solitary confinement was steadily increasing in California. The California Department of Corrections never seemed to have quite enough supermax cells. The prison system began adding extra supermax units before Pelican Bay even opened its doors, and the cells in these supermax units have frequently been overcrowded, housing two prisoners each in cells designed for total isolation.

Correctional administrators originally intended Pelican Bay to be the state’s one supermax. However, before Pelican Bay even opened, planners realized that the prison’s 1056 supermax beds would be insufficient to house the state’s growing isolation population. So, while construction workers were putting the final touches on Pelican Bay, in 1988, more than 500 cells at Corcoran State Prison were quickly converted to supermax cells and filled with prisoners. Corcoran was originally designed as a general, high-security prison with space for communal activity, like common dining areas, large prison yards, and classroom spaces. But construction of these planned communal areas was simply never finished for one 512-bed unit of the prisons. Instead, small, solitary exercise yards were added to this prison unit, to permit prisoners to go outside without having any contact with other prisoners (Larson interview 2010). In 1995, correctional administrators converted another 512-bed unit at Corcoran into a supermax unit. In 2000, correctional administrators opened yet another, overflow supermax unit at the California Correctional Institution at Tehachapi, with an additional 378 cells. Throughout these years, the California Department of Corrections also operated a small, 44-cell supermax unit for women at Valley State Prison (Reiter 2012). From

1990 to 2010, the supermax populations in California increased almost every year, rising from a low of around 1900 prisoners in 1990 to a high of about 3300 prisoners in 2010.⁴ California's supermax population has consistently represented about 2% of the state's overall prison population (Reiter 2012, p. 546), meaning that increases in supermax use have simply kept up with increases in the overall state prison population.

The number of available supermax beds in California prisons, however, has often lagged behind population increases. The *Madrid* court noted that, as of 1993, about half of the beds in the Pelican Bay supermax were double-bunked. California correctional officials have used double-bunking – the practice of housing two prisoners in the supermax cells designed for total isolation – consistently throughout the last 20 years. Double bunking rates at the Corcoran and Pelican Bay supermaxes peaked between 1993 and 1997, when between 40% and 70% of all supermax prisoners at both facilities were double-bunked. Today, double-bunking rates in the Pelican Bay supermax are much lower – around 10%. But double-bunking rates at the Corcoran and Tehachapi supermaxes remain high – around 60% and 100%, respectively (Reiter 2012, p. 544). In sum, California's supermax cells were overcrowded from the day they opened, and they have remained overcrowded over the last 20 years.

This overcrowding, like expanding supermax use more generally, is part of the pattern of mass incarceration in California. In 2011, the US Supreme Court upheld an order from a federal district court in California, to reduce the state's prison population by at least 30,000 prisoners, in order to relieve the statewide prison overcrowding crisis, which had led to constitutionally inadequate medical and mental health care throughout the state's prisons (*Brown v. Plata* 2011).

Overcrowding represents just one way in which California's supermaxes have operated in violation of the best intentions of their designers. Although courts, prisoners, and prisoners' rights advocates have worked to control the most egregious abuses within the supermaxes, more subtle misuses of supermax units

⁴ In the early 2000s, the California Department of Corrections began building small, free-standing Administrative Segregation Units (ASUs) on the grounds of existing prisons. These "Ad. Seg." units are designed for short-term isolation of a few months at most, as opposed to the long periods of isolation in the supermaxes of months-to-years. However, the Ad. Seg. units are modeled on the state's supermax units, with "corridors, cells without windows to the outside," and often hold prisoners for extended periods of time (Fama interview 2010). Even though these units could be construed as another expansion of California supermax capacity and population, the populations of these units are not usually counted with the populations of supermax units (SHUs as opposed to ASUs, in corrections jargon) in state reports.

have been frequent and growing. For instance, the original supermax designers argued that Pelican Bay was designed to hold all but “a handful of inmates” for a limited period of time, “something like 9 months, but no more than 18 months” (Brown interview 2010). Instead, today, the average length of stay in the Pelican Bay supermax prior to release is 30 months, or 2.5 years, and the average length of stay in the Corcoran supermax prior to release is about 6 months (Reiter 2012, pp. 547–48). These are average lengths of stay for prisoners who are eventually released; many prisoners at these institutions have spent years, and even decades, in total solitary confinement and may never be released. Specifically, as of 2011, there were more than 500 prisoners who had spent more than 5 years in solitary confinement in the Pelican Bay supermax; 291 prisoners had spent more than 10 years in solitary confinement there; and 78 prisoners had spent more than 20 years in solitary confinement there (Small 2011).

In addition to holding hundreds of prisoners for years, and in some cases decades more than the original supermax designers intended, Pelican Bay and Corcoran have also failed to provide the kind of transitional programming and housing that the original supermax designers describe intending. Both prisons have supermax units, which impose total isolation, and general population units, in which prisoners can congregate together over meals and in prison yards. Supermax designers like Larson and Brown, quoted previously, hoped that the close proximity of these general population units to the supermax units would facilitate “step-down” programs, allowing prisoners to ease back into socializing with other people, after spending time in a supermax, and before being released from prison completely (Reiter 2012). While these transitions happen sometimes, at other times, prisoners are released directly from supermax units onto California streets. An average of just over 900 prisoners per year are released directly from the supermax units at Pelican Bay and Corcoran, onto parole (*Ibid*, p. 553). Although California’s supermaxes are located hundreds of miles from the nearest urban areas, these release figures suggest that the connections between California’s supermax prisons and other communities throughout the state are closer than might be expected, since hundreds of prisoners annually are paroling directly from supermaxes back to their home counties.

Though California’s supermax units were constantly expanding throughout the 1990s and 2000s, and were less disconnected from their communities than might have been expected, the institutions remained largely invisible during these years. Corcoran and Pelican Bay, once a blight on the state’s prison system, with staff accused of a range of inhumane and unconstitutional abuses in the early 1990s, avoided any scandals throughout the 2000s. A combination of court oversight of the supermaxes, ensuring compliance with constitutional standards,

and the inaccessibility of the institutions to journalists and investigators has likely facilitated their low media profiles.

Reporters have not been especially welcome in California prisons in the last few decades, and they are especially unwelcome at the supermaxes. As one journalist, who has conducted extensive investigative reporting on solitary confinement in the US over the last few years said recently: “If the First Amendment ever manages to make it past the prison gates at all, it is stopped short at the door to the isolation unit” (Ridgeway 2013). Ridgeway noted that Shane Bauer, who himself spent time in solitary confinement in an Iranian prison, was one of the few journalists who had been granted access to visit Pelican Bay. But even Bauer had “severely limited and carefully orchestrated access,” – prison officials hand selected the prisoners interviewed and limited the prison tour to communal areas of the prison (*Ibid*). In 2012, the California legislature passed a bill to allow broader media access to prisons, such as permitting journalists to request interviews with specific, individual prisoners. Governor Brown vetoed the bill in October of 2012, and the strict limitations on access to individual prisoners remain in place in California (“Brown rejects” 2012).

Even basic descriptive statistics about Corcoran and Pelican Bay are difficult to obtain. The statistics quoted above, about lengths of supermax stay and numbers of supermax releases directly to parole, were obtained following a formal information request. And those statistics represent extremely limited data; more detailed information, like how many prisoners in California’s supermaxes are serving indeterminate supermax terms, how many are mentally ill, or how many assaults and violent deaths occur specifically in supermax facilities are simply not available – either never collected or simply not published – from the California Department of Corrections and Rehabilitation (CDCR). Public data reports from the CDCR often report aggregated data about prison population demographics and violent incidents by institution, rather than by units within institutions. Because the supermax units at Corcoran and Pelican Bay are only one segment of a larger prison institution, data about these specific units is essentially invisible.

Even in the absence of data about supermax units, the institutions appeared to be relatively well-governed throughout the early 2000s. After all, Judge Henderson closed the *Madrid* case in 2010. Through some combination of actual improvements in operational policies and concerted efforts to keep journalists out and information in, the institutions attracted little public attention. That all changed in 2011, when a prisoner-initiated effort brought California’s supermaxes, especially Pelican Bay, back into the local, state, national, and even international limelight for the first time in more than a decade.

4 Hunger Strikes and International Attention, 2011 and beyond

In the summer of 2011, prisoners in the Pelican Bay supermax coordinated a large (thousands of prisoners participated throughout the state prison system) and extended (lasting for 3 weeks) hunger strike, protesting what prisoners described as basic injustices in supermax conditions of confinement. The July 2011 hunger strike both re-opened the question, which had been seemingly closed in the *Madrid* case, of whether the conditions at the Pelican Bay supermax were constitutional, and inspired international outcry that the conditions amounted to torture, whether or not they were constitutional under US law. These renewed debates about the constitutionality of and ethical justifications for supermaxes highlight just how invisible California's supermaxes were over the last 10 years, as well as how integral the supermax units have become to the California prison system, making reform a slow and contentious process. This section details the events leading up to the Pelican Bay hunger strike, the terms of the initial resolution of the strike, and the parameters of the ongoing debate among lawyers, politicians, activists, and correctional administrators about what reforms can and should be implemented within California's supermaxes.

In the spring of 2011, a group of prisoners housed in the Pelican Bay supermax, in a unit known as "the short corridor," allegedly the home of the state's most dangerous gang leaders, announced their intention to initiate a hunger strike in July, to protest "25 years of torture via CDCR's arbitrary, illegal, and progressively more punitive policies." Their five demands were poignantly simple. Two demands concerned issues that had been litigated over the last 20 years in lawsuits like *Madrid* and *Castillo*: (1) limit the use and duration of solitary confinement and mitigate the harshness of the conditions, and (2) reform the gang revalidation policy, to allow more prisoners to earn release from indefinite solitary confinement. Three demands sought improvement in the basic, spare conditions of supermax confinement: (1) "provide adequate food," (2) "provide constructive programming," and (3) cease the "application of 'group punishments' " in response to individual rule violations (Ashker and Troxell 2011).

On July 1, 2011, the Pelican Bay short corridor prisoners initiated the hunger strike as planned. According to CDCR, 5300 prisoners at nine prisons refused meals on July 1. On July 3, CDCR documented 6500 prisoners refusing meals. Initially, CDCR officials publicly argued that federal courts had upheld the constitutionality of the conditions at Pelican Bay, and that the alleged gang members leading the strike were exemplifying the very ability to wield dangerous influence over other prisoners that necessitated their isolation. Terry Thornton, the

department spokeswoman, explained in the *New York Times* on July 8, 2011: “The department is not going to be coerced or manipulated . . . That so many inmates in other prisons throughout the state are involved really demonstrates how these gangs can influence other inmates, which is one of the reasons we have security housing units in the first place” (Lovett 2011). The *New York Times*, however, noted that participants in the strike actually “transcended the gang and geographic affiliations that traditionally divide prisoners, with prisoners of many backgrounds participating” (*Ibid*). The *Times* understated the remarkable reality that alleged rival gang leaders, from prison gangs like the Aryan Brotherhood, the Black Guerilla Family, and the Mexican Mafia, known for decades of racially-charged enmity, were actually cooperating, in a fundamentally peaceful protest, to bring attention to the extreme conditions in which they were being held. Thornton’s rhetoric, however, re-packaged the peaceful protest as evidence of the dangerous influence of gangs. This re-packaging re-enforced the public justifications for supermaxes, as necessary to control “the worst of the worst” prisoners, thereby re-asserting the power of correctional administrators to define prison rules, identify prison rule breakers, and determine the punishments meted out.

As Goodman has observed in non-supermax prison contexts, race in California prisons consists of “patterned, negotiated settlements” and “racial categorization, and later segregation, is a fundamental element of how California currently punishes those it incarcerates” (2008, p. 766). In the case of the hunger strike, prisoners in Pelican Bay’s supermax resisted categorization and characterization as members of dangerous, racialized prison gangs, inspiring a re-negotiation of the patterns of their segregation. This negotiation has taken place at conference tables behind closed doors, between the hunger strike leaders and CDCR staff in July and August of 2011; in legislative hearings in August of 2011 and February of 2013; in new litigation re-opening the question of the constitutionality of the supermax; and in the public media, as national news reporters and international human rights organizations have increasingly sought and gained access to the supermax units at Pelican Bay State Prison.

Throughout July of 2011, the number of hunger strike participants at prisons across the state fluctuated, but prisoners in the Pelican Bay supermax continued the hunger strike until late July, tapering off between July 20 and July 26. A few of these prisoners were transferred to the prison’s infirmary, suffering dangerous health consequences from the lack of food (Barton 2011). The strike ended after “top CDCR officials,” including California’s then-Undersecretary of Corrections Scott Kernan, agreed to sit down with the four hunger strike leaders and discuss their demands and a potential resolution to the strike (Ashker et al. 2011). At this July 20 meeting, CDCR officials promised to “conduct a comprehensive review

of SHU policies” including considering implementing a step-down program for supermax prisoners. Officials also promised to expand the privileges available to supermax prisoners: providing limited exercise equipment (a ball) and warm clothing for prisoners on the solitary, outdoor exercise yards and allowing prisoners to receive one family photo per year and to possess colored chalk (Barton 2011).

The prisoners’ concerted, non-violent action attracted national and international attention. Major California news sources like the *Los Angeles Times*, the *San Francisco Chronicle*, and the *Sacramento Bee* followed the strike closely. *The New York Times* ran an op-ed condemning the harsh conditions in solitary confinement at Pelican Bay (Dayan 2011). In August of 2011, the California Assembly held hearings on conditions in the state’s supermaxes. For the first time in the history of California’s supermaxes, the state legislature was paying close attention to the institutions – scrutinizing institutional policies, procedures, and populations. In October of 2011, the United Nations Special Rapporteur on Torture condemned the use of prolonged solitary confinement, especially as demonstrated by US policies, as torture (“Solitary confinement should be banned” 2011). Amnesty International sent a delegation of human rights and prison experts to visit Pelican Bay in November of 2011 and published a report condemning the conditions there a few months later (Amnesty International 2012). For the first time in years, journalists were welcomed in to tour the prison and talk to prisoners (Bauer 2012; Montgomery 2013). Solitary confinement in California was no longer invisible.

As of early 2013, prisoners, prison officials, and legislators were still engaged in an active debate about the fairness of the gang validation procedures underlying supermax confinement. In February, California Assembly member Ammiano held a hearing on the proposed revisions to CDCR’s gang validation policies, and Ammiano publicly promised he would hold further hearings to examine the conditions of confinement in the units (Rodriguez 2013). Meanwhile, the national civil rights organization, Center for Constitutional Rights, filed a lawsuit in May of 2012, seeking to re-open the question of the constitutionality of the conditions in the Pelican Bay supermax. The suit alleged that prisoners who have spent 10 or more years in the Pelican Bay supermax have suffered “predictable psychological deterioration” and been “denied any meaningful review” of their “effectively permanent” isolation status (*Ruiz v. Brown* 2012). This suit, along with the renewed legislative attention to supermaxes, suggests that the institutions will not be receding back into invisibility within the California prison system in the immediate future, anyway.

Even as legislators and lawyers are re-scrutinizing the conditions of confinement in California’s supermaxes, prison officials are working to further refine the institutions, to assert that with the right policies and procedures, the institutions

can be operated within acceptable constitutional and ethical norms. In August of 2012, CDCR released a substantially revised “Gang Validation and SHU Exit Policy.” The policy places many additional restrictions on the gang validation procedure underlying indeterminate placement in supermax confinement. Under the new policy, more reliable evidence (like a prisoner’s admission that he is a gang member) is given more weight than less reliable evidence (like the simple presence of a gang tattoo) in the gang validation process. Gang validation will not automatically result in the prisoner serving an indeterminate period in the supermax; instead, the prisoner must first be found guilty, through an administrative hearing, of a specific gang-related offense. Finally, CDCR promised to begin reviewing the files of those prisoners currently serving indeterminate supermax terms as validated gang members, to see whether they might be eligible for release under the new policies (McDonald 2012). As an example, under the new gang validation policy proposed by CDCR, A.L., quoted in the introduction to this article, might never have been validated as a gang member. And had he been validated, he likely would not have been sent to the Pelican Bay supermax, because his file did not contain any evidence of an actual gang incident in which he was directly involved.

In February of 2013, CDCR officials reported that the status of 144 gang-validated prisoners held in the supermaxes had been reviewed; of these, 78 had been released back into the general prison population, 52 had been placed in transitional programs with the goal of eventually releasing them back into the general prison population, and 10 had agreed to formally dissociate from gangs by providing gang activity information to prison officials (St. John 2013). Of course 144 prisoners represents only about 10% of the supermax population at Pelican Bay State Prison, and less than 5% of the state’s overall supermax population, so many more files still need to be reviewed. Prisoners in the Pelican Bay supermax, hundreds of whom have spent more than 10 years in total solitary confinement, remain impatient with the slow reviews and limited change. Noting that many of their initial demands remain unmet, they have called for another hunger strike in July of 2013 (Ashker et al. 2013). Prisoner advocates have joined the chorus of frustration, noting that these preliminary reviews and decisions indicate that many prisoners were unnecessarily held in supermaxes and improperly labeled as dangerous gang members (Small 2013). Indeed, following the July 2011 hunger strike, CDCR’s claims regarding the necessity of supermax confinement and the dangerousness of the prisoners held there have been both publicly questioned and internally re-evaluated. The hunger strike and its aftermath have both revealed how invisible California’s supermaxes were and opened up the possibility for greater oversight, reform, and reductions in the use of supermaxes statewide. Whether oversight will be maintained, reform completed, and reductions achieved remains to be seen.

5 Conclusion

Twenty-plus years of hindsight suggest that California's supermaxes represent an arguably failed experiment in unchecked discretion and punitiveness in prison operation. Courts intervened to refine the operations of the institutions, to render them constitutional, if not humane, but prisoners continue to spend years, if not decades, in these institutions, and prison officials continued to expand the scale and duration of supermax confinement throughout the 2000s. Supermax use in California tracked overall prison population growth in the state, and supermaxes experienced overcrowding, just as other prisons throughout the state did.

Just as the expanding use of supermaxes paralleled the expanding use of prisons statewide, so the proposed contractions in the use of supermax confinement, following the 2011 hunger strike, have also tracked a contraction in the use of state prisons overall. In 2010, California relinquished its long-standing status as the American state with the most prisoners – to Texas (Carson and Sabol 2012). As of 2012, California was in the midst of a dramatic downsizing of its state prison population, following a federal district court population reduction order in the *Plata* case. Perhaps the contractions in California's overall prison populations, and the concerted re-evaluation, by legislators, judges, and correctional officials, of the state's use of supermax prisons, represent a turning point in California corrections, away from mass incarceration. Regardless of what trends in supermax incarceration rates and overall incarceration rates Californians witness in the coming years, the state's 24 years of supermax incarceration suggest that prison systems lacking adequate oversight are susceptible to abuses of human rights and excesses of incarceration, in terms of the numbers of people incarcerated, and the durations and severity of their experiences of incarceration.

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