Parole, snitch, or die: California's supermax prisons and prisoners, 1997–2007

Keramet A Reiter

Punishment & Society 2012 14: 530
DOI: 10.1177/1462474512464007

Article

Punishment & Society
14(5) 530–563

DOI: 10.1177/1462474512464007
pun.sagepub.com

Parole, snitch, or die: California's supermax prisons and prisoners, 1997–2007

Keramet A Reiter
University of California, Irvine, USA

Abstract

Supermaximum security prisons ('supermaxes') across the United States detain thousands in long-term solitary confinement, under conditions of extreme sensory deprivation. In 1988 and 1989, California opened two of the first and largest of the modern supermaxes: Corcoran and Pelican Bay State Prisons. Today, California houses more than 3300 prisoners in supermaxes. Each month, between 50 and 100 people are released directly from these supermaxes onto parole. Using statistics obtained from the California Department of Corrections and Rehabilitation, this article explores who these prisoners and parolees are: what race are these prisoners, how long did they spend in solitary confinement, and how frequently are they released? Relative to non-supermax prisoners and parolees in California, supermax prisoners and parolees are disproportionately Latinos, who have served long prison sentences, under severe conditions. Analysis of interviews with correctional department administrators about the original goals and purposes of the supermaxes further contextualizes these data, revealing that supermaxes today function rather differently than their designers envisioned 20 years ago. In sum, this research provides one of the first evaluations of how supermaxes function, in terms of whom they detain and for how long, and how these patterns relate to the originally articulated purposes of the institutions.

Keywords

parole, prison, solitary confinement, supermax

Corresponding author:
Keramet A Reiter, Assistant Professor, Department of Criminology, Law & Society, & School of Law, University of California, Irvine, 3370, Social Ecology II, Irvine, CA 92697-7080, USA.
Email: reiterk@uci.edu

Introduction

Supermaximum security prisons (generally referred to as 'supermaxes') across the United States detain thousands in long-term solitary confinement, under conditions of extreme sensory deprivation. Prisoners remain in their supermax cells 23 to 24 hours a day. The fluorescent lights are always on, day and night. Meals arrive through a small slot in an automated cell door. Prisoners leave their cells four or five times per week for showers or for brief, solitary exercise periods in 'dog runs' – concrete pens with roofs only partially open to natural light. They have little to no human contact for weeks, months, or even years at a time. In 1988 and 1989, California opened two of the first and largest of the modern supermaxes: Pelican Bay and Corcoran State Prisons.[1] Today, California's supermaxes incarcerate more than 3300 people.

A prisoner is not sentenced by a court of law to a supermax prison, nor is he[2] usually sent to a supermax as a result of an initial classification of dangerousness when he enters a prison system. Rather, supermaxes are designed to hold those prisoners who cannot be controlled in a general population prison setting, prisoners who correctional officials assign, after an administrative hearing, to supermax, deprivation conditions. According to correctional administrators, supermax prisoners are the 'worst of the worst', 'most violent' prisoners in the state system (Corwin, 1990; Heller, 2001: 4). One architect, who worked on the design of Pelican Bay State Prison, described the prisoners the facility was designed to maintain as the 'Hannibal Lecters' of the world, referencing a fictional serial murderer and cannibal (Justice architect (California), 2010 interview).

However, supermaxes do not hold prisoners forever. Because placement in supermax prisons is based on in-prison behavior, or in-prison determinations of gang status, such placement has no effect on a prisoner's criminal sentence. (Supermax placement might indirectly affect a prisoner's overall time served, if a prisoner's supermax status prevents him from participating in prison programs, like education or drug treatment, in exchange for a reduction in prison time served, or if a given state's parole board delays discretionary parole hearings for prisoners in supermaxes (*Austin*, 2005: 215).) In other words, a prisoner's administrative assignment to a supermax is subsequent to and not directly related to a prisoner's initial criminal sentence. Indeed, just as with 97 percent of prisoners in the United States, many supermax prisoners are eventually released from prison.[3]

In fact, in California, as I will demonstrate, an average of 75 prisoners per month are released directly from state supermax cells onto parole; these prisoner are returned to the county from which they were originally sentenced. This statistic motivated the analyses presented in this article, which seek to answer the following questions: Who are these former supermax prisoners? How long have they spent confined in supermax conditions? How often do they return to prison, or to supermaxes? What are their racial backgrounds? How do these supermax populations and supermax parolees compare to general prison populations and to overall parolee populations? And, what do 10 years' worth of retrospective data tell us about

supermax policies? Have the institutions operated the way their builders intended them to operate, in terms of who is incarcerated and for how long?

These questions are critical to understanding both the specific shape and the broader impacts of the mass incarceration trends of the 1980s and 1990s (Zimring and Hawkins, 1991). Indeed, the data analyzed in this article respond to the call made by Roy D King (1999), in a *Punishment & Society* article published more than 10 years ago, for further attention to and investigation of the impacts of the rise of the supermax prison in the United States.

This article draws on (1) quantitative data describing 10 years of supermax releases in California and (2) qualitative interviews with former correctional department officials and prison architects, who participated in the design and construction of the state's first two supermaxes. These previously unreleased data provide the best available window into both the prisoner populations at California's first two supermaxes and the correctional justifications for building and operating the institutions. The analysis reveals that, in fact, supermaxes were not intended to detain so many people, for such long periods, and then release them directly back onto the streets. California's two supermaxes, then, represent an important case study both in assessing the impacts of supermax confinement and in understanding how and when criminal justice practice departs from original intent.

The first section of this article provides background information about California and why it is an important case study within the supermax phenomenon, as well as about how prison releases work in California, and particularly, how people are released from supermaxes, by paroling, by 'snitching', or by dying. The second section explains the mixed methods applied in this study to integrate analysis of data obtained from the California Department of Corrections and Rehabilitation (CDCR) with analysis of interviews with correctional administrators. The third section outlines the findings: evidence about how supermaxes were designed to function in the 1980s, descriptive statistics about who is released from supermax prisons in California, and an analysis of the mismatch between the design of the supermaxes and their current functioning. The final section addresses shortcomings in the data and suggests directions for future research.

Background: Supermaxes, California, and parole

Between 1986, when Arizona built the first supermax (Lynch, 2010), and 2010, when Colorado opened the newest US supermax, almost every state (and the federal Bureau of Prisons) either built a free-standing supermax facility, or retrofitted an existing prison to add a supermax unit, creating the standardized supermax conditions of long-term solitary confinement with maximum sensory deprivation.[4] Exact definitions of what constitutes a supermax vary, as do precise counts of how many people annually experience supermax confinement (Riveland, 1999). By the most conservative estimate, there are at least 20 supermaxes in the United States, although estimates range as high as 57 (Naday et al., 2008; Riveland, 1999). Similarly, population estimates suggest that there are anywhere from 5000 to

100,000 prisoners in supermax confinement at any given time in the United States; 20,000 has frequently been cited as an accurate count (King, 1999), although a recently published article challenged the accuracy of this number (Naday et al., 2008).

Based on the working definitions that have been proposed by Riveland, King, and Naday et al., and the author's own research into the use of supermaxes across the United States, this articles uses the term 'supermax' to mean a facility, either free-standing, or a separate unit within a larger prison complex, where prisoners are (1) isolated from the general prison population and from each other under conditions of sensory deprivation, (2) for long durations of more than a few months, (3) based on post-conviction security assignment decisions of correctional administrators. Supermax facilities, then, are different from smaller disciplinary segregation facilities, often called 'the hole', which exist in most prisons for short-term, or temporary isolation of prison trouble-makers. While 'the hole' is a classic feature of the US prison, referenced in court decisions throughout the 20th century (Reiter, 2012a), the supermax is a product of the 1980s mass incarceration boom, deploying modern technologies like computer-automated doors, poured concrete molds, and fluorescent lighting to impose unprecedentedly secure isolation for unprecedentedly long periods of time.[5]

The very debate over how to define a supermax and count supermax prisoners suggests just how little is known about this correctional phenomenon. This article seeks to address this shortage of knowledge by exploring a data set including specific characteristics of former prisoners, who spent time in one of California's two main supermaxes while they were incarcerated.

A limited body of work in both criminology and anthropology has investigated the supermax phenomenon. This research includes an anthropological account of life in Washington state's supermax (Rhodes, 2004), a descriptive account of the physical structure and day-to-day operation of California's Pelican Bay supermax (Shalev, 2009), and various studies documenting the detrimental psychological impacts of long-term isolation (see, for example, Grassian, 2006; Haney, 2003; Kupers, 1999). More recently, King (2007) surveyed more than 80 prisoners in two facilities: a high-security prison in Minnesota (Oak Park Heights, often mistakenly labeled a 'supermax', though Oak Park Heights prisoners participate in out-of-cell programs for eight or more hours per day, rather than spending 23 hours per day isolated in their cells) and a supermax in Colorado (Colorado State Penitentiary). King found that prisoners experienced some positive benefits from high-security and supermax confinement, but most prisoners also experienced the detrimental psychological impacts described by Grassian (2006), Haney (2003), and Kupers (1999). And one 2011 study purported to use an experimental model to evaluate the psychological impacts of solitary confinement in Colorado (O'Keefe et al., 2011); however this study has been criticized as flawed in design and operationalization (Grassian, 2010). Finally, a few authors theorized about the origins and scope of the supermax phenomenon in the early 2000s, but much

of this work has not been updated in the last decade (Kurki and Morris, 2001; Ward and Werlich, 2003).

No study has looked systematically at the operation of supermaxes over time, in terms of whom they detain and for how long, nor has any study addressed the particular population of prisoners who are released from supermaxes.[6] In other words, this article seeks to contextualize what is known from interview data documenting the negative experiences of prisoners in supermaxes, with statistical data about the scope and scale of these experiences, and qualitative data about the policy context in which supermax institutions operate.

Although the supermax phenomenon is relatively unexplored, it is critically important to understanding the shape of correctional innovation in the United States in the last few decades. The supermaxes built across the United States in the last 25 years are part of a broader trend of massive criminal justice system expansions, including both exponential increases in the numbers of people in prison and in the numbers of facilities built to house these prisoners (Zimring and Hawkins, 1991). In 1970, there were just over 100,000 people in prison in the United States; today, there are more than two million people in prison (West and Sabol, 2009; Zimring and Hawkins, 1991). While many researchers have documented and studied this overall criminal justice system expansion, few researchers have looked systematically at the specific justifications, uses, or long-term impacts of supermaximum security confinement. Even though supermax prisons make up only one small piece of the United States prison expansion, they represent the most severe manifestation of this expansion, a severity that is novel in both intensity and duration.

The California case

Within both the broad context of the United States prison expansion, and the narrower context of the supermax phenomenon, California is a leader – at least in terms of sheer numbers, if not in terms of economic efficiency or desirable policy outcomes. California's prison expansion was the largest in magnitude of any state's, and California in 2008 had more people incarcerated than any other state in the United States (West and Sabol, 2008). In 2010, Texas surpassed California in terms of raw prison population numbers. (California's *rate* of incarceration, 471 prisoners per 100,000 population, hovers just above the national average, 447 prisoners per 100,000 population (West and Sabol, 2008).) The state of California alone exceeds the scale and costs of the criminal justice systems in many other nations. Similarly, my preliminary analyses suggest that California has more prisoners incarcerated in supermaxes than most other states, by a factor of 10. Some states (like Texas and New York) report thousands of prisoners held in small isolation facilities scattered throughout the state, but do not distinguish between facilities holding prisoners for short-term stays in isolation and facilities holding prisoners for long-term stays in isolation. A few other states with relatively large prison populations (like Virginia) estimate supermax populations comparable to California's. Because California's raw prison and parole population numbers, as well as its supermax population and

parole numbers, are so large, the state provides a rich forum for statistical analyses of criminal justice trends. California, then, makes for an important case study of supermaxes, both as a criminal justice policy trendsetter within the United States, and as a self-contained criminal justice system.

California's largest supermax is Pelican Bay State Prison, located in Del Norte County, on the state's northern border with Oregon; it opened in 1989. Pelican Bay was planned as California's first supermax. However, Corcoran State Prison, located in Kings County in the state's Central Valley, was converted at the last minute into a supermax facility; it opened in 1988, just one year before Pelican Bay. Each prison complex contains both supermax buildings and high-security general population buildings. In the last 10 years, California has also begun to operate two additional supermax units at the California Correctional Institution in Tehachapi, California.

This article, however, focuses on the state's first two supermaxes. Although the supermax wings at both Corcoran and Pelican Bay were designed to impose the same, highest level of security available in the CDCR, this article will reveal that the institutions have functioned differently over time. Even within supermax units in California, then, there is a hierarchy of security, with Pelican Bay maintaining prisoners in more extreme isolation, for longer periods of time, than Corcoran. These differences will be explored in greater detail in the findings section.

Paroling (and snitching and dying)

One important impact of the US mass incarceration policies of the 1980s and 1990s has been a growth in both the number of people released from prison and the number of people supervised post-release through parole programs. As of January of 2007, there were almost 800,000 people on parole throughout the United States, with over one-half-million people entering the parole system annually (Glaze and Bonczar, 2009). The state of California is the most significant contributor to this national parole population. There are 120,000 people on parole at any given time in California; this is 15 percent of all people in the United States on parole (Grattet et al., 2008).[7] Given the large numbers of people who are annually released from prison onto parole in the United States, researchers have increasingly paid attention to the process of release and re-entry back into society (Mauer and Chesney-Lind, 2002; Petersilia, 2003).

Nonetheless, scant attention has been paid to the release of prisoners from supermax prisons. A SAGE publications search revealed that only two recent articles have addressed the release of prisoners from supermaxes. Mears and Bales (2009) compared the recidivism rates of prisoners released from Florida supermaxes to matched groups of prisoners, who had not spent time in a supermax, and found no evidence that supermax prisoners were any more likely than other prisoners to be violent recidivists. Lovell, Johnson and Cain (2007) compared the recidivism rates of prisoners released from a Washington state supermax to matched groups of non-supermax prisoners and found that prisoners released *directly* from supermaxes had the highest felony recidivism rates among released

prisoners studied. This overall lack of attention to supermax releases might reflect the inaccurate assumption that, because the prisoners in supermaxes are the 'worst of the worst', they are never released from prison. However, even those prisoners serving long or indefinite terms in supermaxes eventually parole, upon the expiration of their criminal sentences.

Indeed, 'parole, snitch, or die' is common prison slang, which refers to the three ways a person assigned to a term of confinement in a supermax can leave. He can parole (recall that the supermax assignment affects only the prisoner's conditions of incarceration, *not* the overall criminal sentence); he can renounce his gang membership by 'debriefing', or 'snitching' on other gang members and about gang activity, in which case he will likely be placed in 'protective custody', in conditions which are often quite similar to standard supermax conditions (Blatchford, 2008); or he can die. In other words, parole is often the only viable way out of a term of supermax confinement.

Supermax releasees, much like supermax prisoners within overall prison populations, are not often looked at as a separate demographic within parole populations. Just as supermax prisons are important to understanding exactly how the US prison building boom has taken shape, so supermax releasees are an important and understudied segment of the population of people released from prison in the United States. Moreover, given both the allegation that these prisoners are 'the worst of the worst', who could not adjust to life within prison, and the conditions these prisoners have experienced in supermaxes – conditions documented to cause a variety of health and psychological problems (see, for example, Haney, 2003; Kupers, 1999) – supermax parolees are likely to face additional barriers to successful reintegration into their communities, beyond the usual collateral consequences of having a criminal record (see, for example, Mauer and Chesney-Lind, 2002).

Annually, California releases hundreds of prisoners from supermaxes into counties across California. Simply documenting this process, and the scale of the process, raises questions about how supermaxes actually function. Are supermaxes actually detaining the 'worst of the worst' prisoners, if over the course of a year, 40 percent of California's supermax capacity population is released directly onto California's streets (see Figure 5 and surrounding text)? And what can release data tell us about little-known aspects of the demographic characteristics of supermax prisoners? Finally, are people released from supermaxes likely to recidivate, or return to supermaxes? This article will explore these questions and provide some preliminary answers.

Methodology: Demographic statistics and key informant interviews

This article analyzes both quantitative data regarding prisoners released from supermaxes and qualitative interviews assessing how correctional officials envisioned supermaxes would function, when the institutions were built in the late 1980s. The quantitative analysis is based on 10 years' worth of unique, unpublished data, which I obtained following a request for information made to the CDCR in 2008. The data I obtained from the CDCR pertain specifically to prisoners who

have been released from prisons in California, after having served time in one of the supermax wings at either Pelican Bay State Prison or Corcoran State Prison.

Because the CDCR does not keep archival records of the population of the supermaxes on every day, over time, the best way to analyze the population over a 10-year period is to look at people who are released, because releases are documented and archived on a day-by-day, incident-by-incident basis. In other words, these are point-prevalence statistics; as with any institution, like a hospital or a school, exit statistics are easier to get and more accurately reflect ongoing patterns, absent day-by-day snapshots of who is in a given institution (Kaiser and Stannow, 2010). Moreover, by evaluating release data of thousands of supermax releasees, over a 10-year period, I am able to examine point-prevalence statistics for California's supermaxes that are likely quite representative in the aggregate.

An ideal data set might include demographic and length-of-stay characteristics for those prisoners in the supermax over the 10-year period (rather than those prisoners released from the supermax); however, because of the institutional snapshot problem, such data are not readily available. Indeed, four different CDCR administrators explicitly told me that the CDCR does not have any data tracking the lengths of stay of prisoners in supermax units. A researcher in the CDCR explained that administrators

> manage beds not people . . . so their measurement is how long a bed is occupied . . . they can't tell you how long a guy has been there because they start the count over every time he moves to a new bed. (Departmental Researcher, 2010 interview)

These statements further confirm that the data obtained through my information request are unique data, not usually collected by the CDCR, and the best available data on California supermax populations. In August of 2011, the California Department of Corrections and Rehabilitation publicly released additional, though limited, snapshot data about the range of durations of confinement of those supermax prisoners who had been in isolation at Pelican Bay for five or more years, as of August 2011 (Small, 2011). The data release followed a hunger strike led by prisoners in the Pelican Bay supermax in protest of the harsh conditions of supermax confinement. In covering the hunger strike, national media sources like National Public Radio, the *Los Angeles Times*, and the *New York Times* pressured the CDCR to be more transparent and provide more information about supermax prisoners; the August 2011 data release responded to this pressure. These data are discussed further in the sub-section on durations of confinement.

The CDCR has faced years of criticism from federal courts about its organizational opacity. In a 1995 decision establishing a number of constitutional problems with the operation of Pelican Bay State Prison, Judge Thelton Henderson accused prison administrators of cooperating to create a 'code of silence' about what took place at Pelican Bay (*Madrid v. Gomez*, 1995). The *Madrid* case, however, was closed in 2011, when Judge Henderson found that Pelican Bay had been operating smoothly, within acceptable constitutional standards, for years. The absence of available data about supermaxes in California, then, seems to be a more systemic

problem, attributable to the overcrowded, over-budget nature of the statewide prison system, which has limited resources and very few staff allocated to manage data collection and analysis.

The one other study that has looked at similar data about populations within a supermax was conducted in Washington state, which has just over 200 people in supermax conditions, less than one-tenth of California's supermax population. The data examined in the Washington study were obtained through the researchers' case-by-case reviews of prisoner files from the state department of corrections' electronic database (Lovell et al., 2000: 33–34). Due to the significantly larger scale of supermax incarceration in California, and the absence of a comparable electronic database (the CDCR was beginning to digitize prisoner files as of 2012), such case-by-case reviews are not feasible in California at this time.

In the context of supermaxes, and the lack of knowledge about the overall size, composition, or distinctive character of the supermax prisoner population, data on supermax releasees and parolees provide the best available window into the social composition of the supermax prisoner population. Moreover, release data are independently revealing; I contextualize these data in the framework of parole policies and recidivism in California, looking at the characteristics of supermax releasees relative to the characteristics of general parolees. This is the most accurate basis of comparison, as the data I analyze about people released from supermaxes are not directly comparable to either the state's overall prison population, or the state's overall parole population. However, the supermax release data are important for exactly this reason; the data capture unique information about the population of supermax releasees for the first time, and analysis of these data demonstrates how this population differs from the overall parole population. Moreover, the limitations of the data are doubly revealing; the limitations suggest both (1) how few data the CDCR collects or analyzes about its own supermaxes and how the institutions function and (2) what kinds of data should be collected and made publicly available.

In addition to this statistical analysis, I conducted in-depth interviews with more than 30 key informants, including: the executive official who worked for Governor Deukmejian overseeing prison building in California in the 1980s; five administrative officials who worked for the California department of corrections in the 1980s, when California correctional administrators decided to build the state's two supermax prisons; two former wardens of Pelican Bay State Prison; six architects who collaborated with correctional administrators in designing supermaxes; and one lawyer and one judge who later evaluated the constitutionality of the institutions. These dozens of interviews were part of a larger institutional history project; in this article, I include only citations to those interviewees directly quoted, for their descriptions of the purposes and intentions behind the supermax design. Where quotes from these key informants appear in the text, the informant's position within the CDCR is described, and the details of the interviews are listed in the references section.

I initially identified key informants by asking lawyers and correctional officials, whom I knew through prison research work, for names of people who had participated in prison building in California in the 1980s. With each key informant I

interviewed, I asked for names of others, who had worked on the design and building projects of California's first two supermaxes. These key informant interviews were semi-structured, open-ended oral history interviews; each lasted from two to three hours. I took careful field notes throughout the interviews, including transcribing direct quotations, and I typed these notes up immediately following interviews. During the interviews, I focused my questions on understanding who designed California's supermaxes, how the designers thought the institutions would function, and which prisoners they hoped the institutions would detain.

As with the statistical data, these qualitative interview data have obvious shortcomings, but these shortcomings are critically revealing about the institution of the supermax. Specifically, documentary evidence about the design of California's supermaxes, whether from state archives, legislative debates, or written department of corrections reports, would be particularly useful in understanding how the supermax designers thought the institution would function at the time of inception, as opposed to how these designers remember thinking the institution would function, 20 years later. Unfortunately, no such documentary evidence exists in California. Pelican Bay and Corcoran were uniquely administrative innovations, coordinated by the correctional administrators interviewed in this research, with virtually no legislative or judicial oversight, free from the requirements of environmental impact reviews and public bond financing schemes, which would have ordinarily created a paper trail of documents explaining the decision process underlying the supermax design (Gilmore, 2007; Reiter, forthcoming). As one correctional administrator explained about the supermax design process: 'You're not going to find much in the record; it was all negotiated [off the record], and we [the Youth and Adult Correctional Authority] pretty much had our way with the legislature' (Brown, 2010 interview).

Findings: A design gone wrong

The findings in this section include data about how many people, who have spent time in supermaxes, are released annually from the CDCR, how long these prisoners spent in the supermaxes, their demographic backgrounds, and their odds of returning to supermaxes. In addition, the data reveal a decade's worth of trends in these descriptive statistics. While this is basic, descriptive information, it is information that has, until now, been unavailable. It sheds light on exactly who has been in California's supermaxes over the last 10 years and exactly how the supermaxes have been functioning.

Framework: Best intentions at inception

In 1986, the California Legislature passed Senate Bill 1222 authorizing the construction of a 2000-bed 'maximum security complex in Del Norte County'. However, the bill did not describe exactly what form this 'maximum security complex' would take; these details were left up to executive officials and corrections

department administrators (Reiter, 2012b). Therefore, the data from the key informant interviews I conducted constitute the best available evidence about the motivations underlying the supermax design in California in the 1980s, and the administrators' goals for the institutions. (Of course, the interviews necessarily incorporate the wisdom of hindsight; the key informants were reflecting on institutions that have now been in operation for more than 20 years.)

These key informants articulated three key principles underlying the supermax design in California: (1) limited periods of supermax isolation; (2) limited availability of supermax cells; and (3) implementation of step-down programs to ease the transition between supermaxes and parole. In this section, I present a selection of relevant quotes from these key informant interviews, in order to explore each of these three principles, which are critical to understanding the contradictions between how the supermax was conceptualized and how it actually functions.

First, correctional administrators intended that supermax isolation would be for fixed, limited periods of time. Craig Brown, who was Undersecretary of Corrections during the 1980s prison-building boom, said of the supermax at Pelican Bay: 'I don't think we ever conceptualized it as a permanent thing for anyone other than a handful of inmates.' Brown (2010 interview) said 'the assumption' was that people would serve a set term at Pelican Bay, for 'something like nine months, but no more than 18 months'. In other words, the Pelican Bay designers presumed that individual prisoners would 'mellow out . . . get older', essentially decide cooperation and co-existence was better than living alone in the supermax. In addition, the Pelican Bay designers thought that people might end up in the supermax who did not belong there, and this potential for error provided another important reason for limiting supermax terms in some way: 'Now there should be a way out, if a guy does a lot of time. Some guys maybe go in there that don't need that kind of restraint', said Carl Larson (2010 interview), who was Director of Finance for the Department of Corrections during the prison-building boom and who oversaw the physical design of Pelican Bay. The data examined in subsequent sections in this article suggest that, in spite of the best intentions of California's supermax designers, many prisoners today serve indefinite supermax terms, with little hope of 'a way out'. Indeed, the *average* supermax term at Pelican Bay is longer than 18 months. Brown (2010 interview) expressed frustration at this outcome: 'The biggest disappointment to some of us was how long people got in there.'

Second, correctional administrators sought to limit the availability of supermax cells. 'We knew there would be a tendency to lock too many people in', Brown said. So, he explained, when Pelican Bay was built, Youth and Adult Correctional Agency managers explicitly wanted to keep supermax cells 'a relatively scarce resource, or corrections officers would be comfortable leaving inmates there' (Brown, 2010 interview). Larson (2010 interview) further elaborated that Pelican Bay was the original prison with a supermax design, and the only one with a 'single-purpose design' – the Pelican Bay supermax cannot easily be re-structured to house general population prisoners. By contrast, Corcoran State Prison was

designed as a maximum security, general population prison. However, as soon as Corcoran opened in 1988, two of the buildings within the new prison were converted to supermax units, functioning to detain prisoners in long-term solitary confinement. But, Larson (2010 interview) said of Corcoran: 'I would call it a temporary [supermax].' Specifically, he explained that Corcoran was designed to make retrofitting possible, with all the necessary space to create congregate living environments and prisoner programming, like access to a communal exercise yard. So California administrators hoped, even as they were revising building plans at the last minute to add more supermax cells, that the demand for these cells would decrease, not increase.

Third, the correctional administrators who oversaw the design and building of Pelican Bay and Corcoran thought that prisoners should not be released directly from supermax confinement onto parole. So they designed an institution like Pelican Bay, which included both supermaximum-security units and, 'step-down', maximum-security units, where prisoners could transition into having access to programs and human contact. In this way, prisoners would be guaranteed to spend time among the general prison population, before they were paroled. As Brown (2010 interview) said: 'I don't think any of us liked the idea of knowing inmates would be released from [supermax] to the street . . . The goal was they would . . . go to a [maximum], general population.' Larson (2010 interview) was more explicit about his concerns with releasing prisoners directly from a supermax onto parole: 'Do you want him [any prisoner] to come straight out of Pelican Bay, the zoo, to the street?'

Details from these oral history interviews with correctional administrators like Larson and Brown suggest just how much control these correctional administrators had in conceptualizing and building supermax institutions in California in the 1980s. In reflecting back on the institutions they designed, though, these administrators expressed frustration that the institutions are not functioning as originally intended. Indeed, the data analyzed in the remainder of this article demonstrate that none of the three critical principles these administrators attempted to implement through both structural design of the supermaxes and the scale of supermax bed allocations, were successfully implemented. Supermaxes, then, appear to be functioning very differently from the original intentions of their designers.

The path into the supermax

This section presents basic information about the mechanics of supermax confinement in California and about what is known of the people detained in California's first two supermaxes. In California, the supermax wings at the state's two highest security men's prisons are called the Security Housing Units, or SHUs. In a federal court case in which a judge found 'patterns of abuse' in the use of excessive force and withholding of adequate medical care in the Pelican Bay SHU, in the 1990s, the judge summed up the two possible modes of assignment to the SHU: 'SHU cells are reserved for those inmates in the California prison system who become affiliated

with a prison gang or commit serious disciplinary infractions once in prison' (*Madrid*, 1995).

When the CDCR completes an administrative process to 'validate' a prisoner as an affiliated member of a recognized gang, that prisoner is then automatically assigned to an indefinite SHU term. The validation process requires a CDCR official to document three 'independent source items . . . indicative of association with validated gang members or associates' (California Code of Regulations, 2009: Title 15, ss. 3000, 3341.5, 3378(4)). Such items might include tattoos associated with gang members, notes passed between prisoners believed to be gang members, or documentation of association with other prisoners believed to be gang members. In other words, the validation process involves significant discretion; any documentation of potentially illegal *group* activity could lead to gang validation. The definition of gang membership is so broad, in fact, that not all potential or actual gang members could possibly end up in the SHU. Once a CDCR official validates a prisoner as a gang member, and assigns that prisoner to an indefinite SHU term, the prisoner can only be invalidated if he either 'debriefs', proving he is no longer a member of the gang by 'snitching' on gang activity, or remains uninvolved in gang activity for a minimum of six years (California Code of Regulations, 2009: Title 15, s. 3341.5(C)(5)). (In March of 2012, the CDCR issued a report proposing alterations to the validation and the invalidation processes, including decreasing the minimum stay period from six years to four years (CDCR, 2012).)

According to the US Supreme Court, an indefinite assignment to supermax conditions is constitutional, as long as certain minimal due process protections are in place during the administrative hearing at which correctional officials determine the grounds for the SHU placement. Specifically, prisoners must have notice of the factual basis justifying their confinement in the SHU, and they must have some opportunity to rebut this factual basis. This 'opportunity for rebuttal', however, is extremely limited; it does not necessarily allow the prisoner the right to call witnesses, or to have an attorney, or even a non-attorney advocate present at any administrative hearing (*Austin*, 2005). After a prisoner has been assigned to an indefinite SHU term, federal courts have required some minimal, but regular, review of the prisoner's status, on at least an annual basis; however, the review need not identify what the prisoner could do to earn release from the supermax (*Austin*, 2005).

For those prisoners who commit a specific, serious disciplinary offense, their SHU assignment is for a definite term, based on the CDCR's SHU Term Assessment chart.[8] Determinate SHU terms range from a minimum of two months, for threatening institutional security, for destruction of state property, or for bribery of a non-prisoner, to a maximum of five years for murder or attempted murder of a non-prisoner (California Code of Regulations, 2009: Title 15, s. 3341.5(C)(9)). Attempted murder could involve what might ordinarily be considered a minimally aggressive activity outside of prison, such as spitting on an officer. Within the uniquely enclosed world of the prison, where a prisoner is more likely to be HIV-positive, or to have Hepatitis C, spitting is seen as an

extremely dangerous and aggressive action, which might rise to the level of a serious offense, meriting a SHU term of two to six months at the least (for 'throwing a caustic substance on a non-inmate'), or up to five years at the worst (for 'attempted murder'). In other words, as with the gang validation process, correctional officers possess broad discretion regarding what kind of serious rule violation to charge a prisoner with and what length of SHU term to impose, if the prisoner is found guilty of the rule violation. Moreover, the administrative hearing process itself incorporates significant discretion. As discussed above, a prisoner facing a serious rule violation charge in prison has none of the rights a criminal defendant would have in a court of law, and the prison official conducting the hearing is not constrained by standard criminal law requirements, such as the usual requirement that a defendant be guilty beyond all reasonable doubt.

In sum, prisoners in California can be sent to the SHU either because correctional administrators determine they are gang members, or upon a finding that there has been a serious rule violation. Both processes – gang validation and rule violation findings – are codified in elaborate detail in Title 15 of California state law. However, correctional administrators have broad discretion in the SHU assignment process.

This very discretion makes analyzing how and to what effect the discretion is applied all the more important. But with such internal administrative flexibility in place, determining exactly who is in the SHUs and why presents a rather challenging question that could well require analysis of thousands of separate case files on any given day. Indeed, four separate correctional administrators, who work in management at CDCR headquarters, agreed that data describing the percentage of prisoners serving determinate and indeterminate SHU terms in the state of California were not readily available (Derby et al., 2010 e-mail). Nonetheless, in the next sections, I present the facts and figures that are available – what is known, and what can be logically deduced, about how many people are confined in supermaxes and why.

Overall supermax populations

Pelican Bay State Prison has a SHU with a capacity for 1056 prisoners (CDCR, 2010). Corcoran State Prison has a SHU with a capacity for 872 prisoners (CDCR, 2010). In addition, in the past few years, the CDCR has converted two additional units at a third prison, the Central California Institution at Tehachapi, into SHUs; these newer SHUs have a capacity for 378 prisoners (CDCR, 2010). Finally, Valley State Prison for Women, California's higher security women's prison has a small SHU wing, built to house 44 women in supermax conditions (CDCR, nd). In total, then, the CDCR has what they call a 'design capacity' for 2350 SHU cells.

However, the total SHU population in the CDCR is much higher; on 17 February 2010, it was 3384 (Derby et al., 2010 e-mail). Despite the SHU cell concept of total isolation in single-occupancy cells, some prisoners in the SHU are actually double-bunked. In general, the vast majority of prisoners in the Pelican

Bay SHU are single-bunked, but more than half of the cells in the Corcoran and Tehachapi SHUs are occupied by two prisoners. Table 1 summarizes this population and double-bunking information.

In fact, historical data comparing the rates of double-bunking over time in the Corcoran and Pelican Bay SHUs reveal that at least one-third of all the SHU prisoners at these institutions have been double-bunked, since the institutions first opened in 1989. Figure 1 shows these trends over time. Double-bunking rates at both institutions have been as high as 60–70 percent of all prisoners. In the last 10 years, though, the trends at the Corcoran and Pelican Bay SHUs have diverged, with the rate of prisoners double-bunked at Corcoran increasing, and the

Table 1. California supermax cell population, by prison, as of February 2010

Prison	Design capacity (DC)	Population	Double-bunked prisoners (Pop – DC * 2)	Single-bunked prisoners	% prisoners double-bunked
Pelican Bay State Prison	1056	1118	124	994	11
Corcoran State Prison	1024	1439	830	609	58
California Correctional Institution (Tehachapi)	378	764	756 (plus 8 overflow prisoners housed elsewhere)	0	100
Valley State Prison for Women	44	63	38	25	60
Total	2502	3384	1748	1628	52

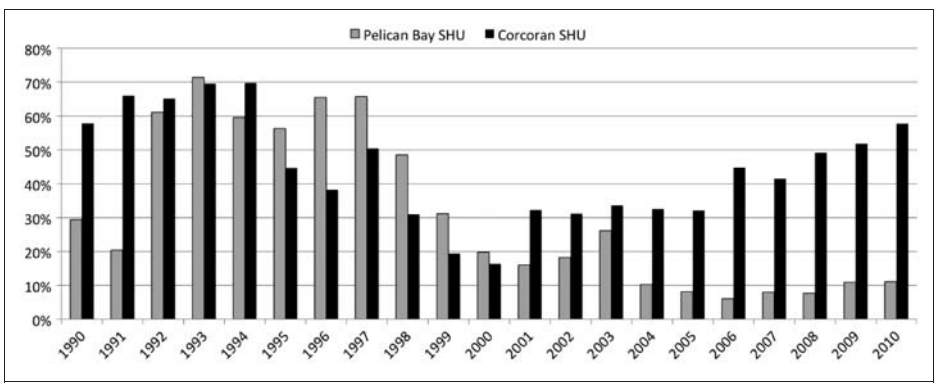

Figure 1. Percentage of double-bunked prisoners, 1990–2010.

rate of prisoners double-bunked at Pelican Bay decreasing. This suggests that the conditions at Pelican Bay are more isolating than those at Corcoran; the Pelican Bay SHU, then, imposes an even higher level of supermaximum, isolation security than the Corcoran SHU.

Table 2 shows the specific percentages of double-bunked prisoners over time, as well as the proportion of all supermax prisoners in the CDCR relative to the overall prison population throughout the Department. The proportion of supermax prisoners in the CDCR has remained relatively constant over the last 20 years, hovering around 2 percent of the overall prison population. The fact that the overall proportion of California prisoners housed in supermaxes has been relatively constant suggests that the *prevalence* of violent or dangerous prisoners in the California prison system has also been relatively constant. So, double-bunking variations must be caused by something besides a change in the *prevalence* of violent or dangerous prisoners in the California prison system. Perhaps there are variations in the *kinds* of violence this steady stream of prisoners commit, or the *kinds* of dangers they present.

Or perhaps double-bunking rates in the SHU are driven by rates of overcrowding throughout the prison system. After all, the raw number of supermax prisoners has increased steadily, with the increases in the raw numbers of the overall prison population. (This explains how the rate of supermax use has remained relatively constant.) So, in 1995, an extra supermax unit was opened at Corcoran State Prison, and in 2000, an overflow supermax unit was opened at the Central California Institute at Tehachapi (Larson, 2011 e-mail). The rules codified in California's Title 15 suggest that supermax assignment is based on whether prisoners break rules, or are established to be dangerous gang leaders, but these double-bunking data suggest that supermax assignment might actually be based, at least in part, on overcrowding rates in the CDCR.

Duration of confinement

As mentioned above, there are two categories of durations of supermax confinement: definite and indefinite SHU terms. Exact data about how many of the people assigned to supermax confinement are serving indefinite SHU terms and how many are serving definite terms are not readily available. However, based on a combination of publicly available data and analysis of the data I obtained regarding people paroled from supermaxes, some estimates of the breakdown between indefinite and definite terms can be made.

In 2010, the CDCR website noted that all of the Corcoran SHU cells were reserved for validated gang members (CDCR, 2010–2012). Today, the CDCR website notes that many gang members are housed in a second high-security unit adjacent to the Corcoran SHU (CDCR, 2010–2012); these changes are likely the result of changing policies regarding gang members within the CDCR (Amnesty International, 2012). As defined in Title 15 of the California Code of Regulations, people serving SHU terms solely because they are validated gang members are

Table 2. Rates of double-bunking and of SHU use, 1989–2010

Year	Corcoran		Pelican Bay		DOC SHU population as a percent of total prison population
	SHU population	Percent double-bunked	SHU population	Percent double-bunked	
1989	0	0	0	0	0.0
1990	720	58	1238	29	2.2
1991	764	66	1176	20	2.1
1992	759	65	1520	61	2.3
1993	785	70	1642	71	2.2
1994	786	70	1504	60	2.0
1995	1318	45	1470	56	2.3
1996	1266	38	1570	65	2.1
1997	1369	50	1573	66	2.1
1998	1212	31	1394	48	1.8
1999	1134	19	1251	31	1.6
2000	1115	16	1172	20	1.7
2001	1221	32	1148	16	2.0
2002	1213	31	1162	18	1.9
2003	1231	34	1215	26	1.9
2004	1223	33	1113	10	1.9
2005	1220	32	1101	8	1.9
2006	1319	45	1089	6	1.9
2007	1292	41	1100	8	1.8
2008	1358	49	1098	8	1.9
2009	1382	52	1117	11	2.0
2010	1439	58	1118	11	2.0

Note: In May of 1995, the California Department of Corrections opened a second Security Housing Unit at Corcoran State Prison. This housing unit had been planned as a SHU since the prison was built, but was not operated as one until 1995 (Larson, 2011 e-mail). So, prior to 1995, the design capacity of the Corcoran SHU used for calculating overcrowding in this chart was 512 single-occupancy cells. In 1995 and thereafter, the design capacity of the Corcoran SHU used for calculating overcrowding in this chart was 1024 single-occupancy cells. The calculation for the percentage of double-bunked SHU prisoners is as follows: (1) subtract the SHU design capacity from the SHU population to determine how many prisoners are housed in the SHU in excess of the design capacity; (2) multiply the difference between the design capacity and the population by two, because every prisoner in excess of the design capacity is, by definition, double-bunked with a second prisoner; (3) divide the total number of double-bunked prisoners by the total population to obtain the percentage double-bunked.

serving indefinite terms. The CDCR provides no comparable information on their website about how many people in the Pelican Bay SHU are validated gang members, although court cases and eyewitness accounts suggest that as many as two-thirds of the prisoners in the Pelican Bay SHU are also validated gang members (Blatchford, 2008; *Madrid*, 1995; Shalev, 2009). Following criticism of the harsh conditions in the Pelican Bay SHU in August of 2011, the CDCR released snapshot data about the prisoners in the SHU at Pelican Bay in that month. Of the 1111 prisoners housed in the SHU at Pelican Bay in August of 2011, 513 had been there for 10 years or more (Small, 2011). Because the longest determinate SHU term the Department imposes is for five years, these 513 prisoners are likely serving (very long) indeterminate SHU terms. (It is possible that a prisoner would be assigned to a determinate SHU term, break a prison rule during that term, and be assigned to a second consecutive SHU term, so the 10-year terms do not unequivocally represent indeterminate SHU terms.)

In sum, with the more than 1000 people at Corcoran likely serving indefinite SHU terms, and as many as 500 or more people at Pelican Bay serving indefinite SHU terms (estimated at up to two-thirds of the 1000 to 1500 people in the Pelican Bay SHU), at least half of the SHU prisoners in California, and maybe more, have been assigned to indefinite SHU terms. Indefinite SHU terms are important, in part, because they likely contribute to the long periods – up to 20 years or more – that some prisoners spend in solitary confinement, as discussed in the remainder of this section.

While data about the average lengths of stay of prisoners *currently* detained in the Corcoran and Pelican Bay SHUs are limited to the August 2011 data discussed above, this section analyzes data indicating the average lengths of stay of prisoners *released* from the Corcoran and Pelican Bay SHUs over a 10-year period from 1997 through 2007. Specifically, these data capture, within a given year, people who either paroled directly from one of these two SHUs, or people who were paroled from another prison, but who had spent time in the SHU prior to being paroled. Because an average of 2300 people per year who have spent time in one of these two SHUs are paroled from prison, release data capture a substantial portion of the incarcerated SHU population in any given year (2300 represents more than two-thirds of the approximately 3400 prisoners in California SHUs on any given day).

Figure 2 shows specific data about the length of SHU terms at both Corcoran and Pelican Bay State Prison. The four lines in this figure represent the average (squares) and maximum (triangles) lengths of stay in the Corcoran (darker solid line) and Pelican Bay SHUs (lighter dotted line), displayed as a trend over 10 years. Table 3 shows the raw numbers on which the visuals in Figure 2 are based.

Figure 2 shows that the *maximum* lengths of stay in both the Pelican Bay SHU and the Corcoran SHU climbed steadily between 1997 and 2005, but then began to decrease between 2005 and 2007. The *average* SHU stay at Pelican Bay increased steadily over the entire period between 1997 and 2007, rising from just over one year of average stay-time to almost two-and-one-half years of average stay-time. The *average* SHU stay at Corcoran, on the other hand, has hovered right around

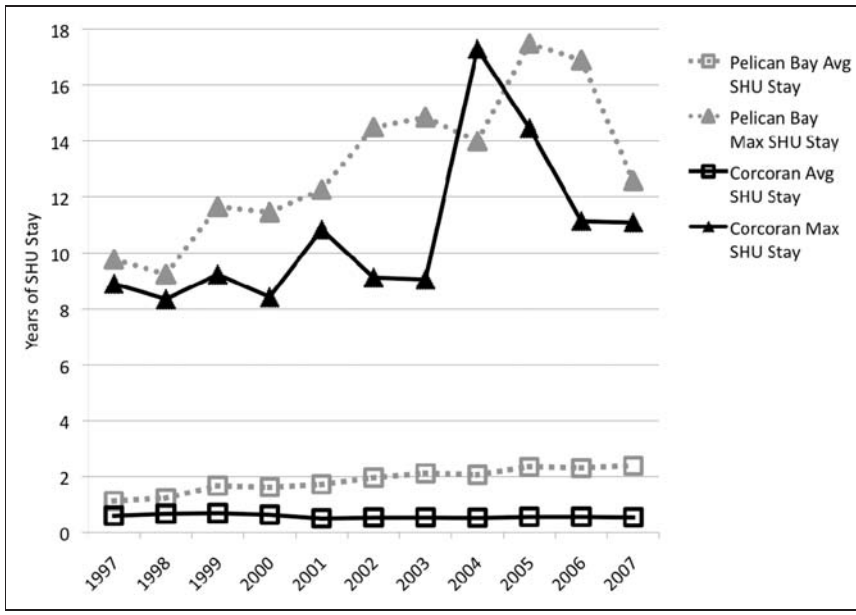

Figure 2. Average lengths of stay and maximum stays, in years, by prison, 1997–2007 (based on prior SHU terms of prisoners paroled from the CDCR within a given year).

one-half to three-quarters of a year. This suggests that the shorter *maximum* stays seen in 2006 and 2007 on the graph are not indicative of shorter *overall* stays in the SHU. Indeed, average stays in the Pelican Bay SHU appear to be increasing, while average stays in the Corcoran SHU have remained relatively stable.

Of course, the data fail to capture those people who have never been released or paroled from the SHU, so there are likely people in Pelican Bay and Corcoran who have spent periods of time in excess of 20 years, who are not captured in release data. Indeed, according to the snapshot data released in August of 2011 by CDCR, 78 prisoners in the Pelican Bay SHU have been there for 20 years or more (Small, 2011). As Figure 2 shows, even for those prisoners who have been released from the SHU, individuals' maximum periods of confinement in the sensory deprivation conditions range as high as 17 years, or more.

For visual clarity, Figure 2 does not show the minimum stays for California SHU prisoners; the annual minimum stays consistently hover around just one day at both Corcoran and Pelican Bay (Table 3 shows these data.) The spread of SHU stays, then, is extraordinarily wide, ranging from just over a week to decades. The spread at Corcoran is a bit narrower than the spread at Pelican Bay, as revealed by the shorter average and shorter maximum durations of Corcoran SHU stays. These differences suggest that, although the SHUs at both Corcoran and Pelican Bay were designed to house the same classifications of prisoners, who require isolation

Table 3. Range of lengths of stay, in months and days, by prison, 1997–2007 (based on prior SHU terms of prisoners paroled from the CDCR within a given year)

	Pelican Bay				Corcoran			
	No. prisoners paroled with prior SHU terms	Max. stay (months)	Min. stay (days)	Avg. stay (months)	No. prisoners paroled with prior SHU terms	Max. stay (months)	Min. stay (days)	Avg. stay (months)
1997	586	117	1	14	1327	107	1	7
1998	565	111	1	15	1466	100	1	8
1999	395	140	1	20	1344	111	1	8
2000	288	137	1	19	1145	101	1	8
2001	263	147	1	21	1877	130	1	6
2002	199	174	3	24	2426	109	1	6
2003	223	178	4	25	2620	109	1	7
2004	194	168	1	25	2789	208	1	6
2005	182	210	1	28	2543	174	1	7
2006	140	203	3	28	2552	134	1	7
2007	140	151	4	29	2814	133	1	7

as a result of either breaking prison rules or being gang members, the Pelican Bay SHU is in some sense tougher, housing prisoners for a broader range of durations of time and for longer average durations of time.

In another sense, these data raise more questions than they answer. In response to my data request, the CDCR provided tables, which showed the average, minimum, and maximum length of stay for the prisoners, who had served time in the SHU during their incarceration and had paroled in each year from 1997 to 2007. Of the thousands of prisoners in the SHU in any given year, these data do not reveal what proportion of prisoners served what range of time in the SHU. (In other words, breaking the data down into categories of time served, evaluating, for instance, how many prisoners spent five to 10 years in the SHU, is impossible.) Even absent this more nuanced data, one thing is clear: some prisoners are spending extended periods of time, as long as 17 years, in the SHU, prior to being released.

In sum, the data presented here about how long prisoners, who have been released from the California prison system, have spent in supermax conditions provide the first picture of both the range of lengths of stays in the SHU and the average lengths of stay over time. The data demonstrate that prisoners assigned to the SHU in California are spending extended periods in confinement there.

Moreover, the data show significant differences between lengths of stay in Corcoran and in Pelican Bay; prisoners tend to serve shorter terms of SHU confinement at Corcoran than at Pelican Bay. In one sense, then, Pelican Bay is functioning as intended: maintaining the most severe conditions for the longest periods of time. In another sense, though, both institutions are detaining prisoners for significantly longer periods of time than their designers intended, indicating that SHUs are potentially being overused, at least relative to their original intentions. Indeed, following the prisoner hunger strike at Pelican Bay in the summer of 2011, CDCR agreed to re-assess the scale of supermax use in the state (Montgomery and Terry-Cobo, 2011). The limited data presented here suggest another possible reform for the state department of corrections: collecting and making publicly available more precise data about the scale and duration of supermax use in the state.

Racial demographics of SHU populations

Figure 3 displays the racial demographics of those prisoners paroled from the CDCR in 2007 who had previously served time in the SHU. Figure 4 provides a comparison, by presenting the racial demographics of the general California parole population. (Note that these graphs refer to 'Hispanics', because this is the race category the CDCR uses to identify prisoners of Latino heritage. This is in contrast to the US Census, which uses 'Hispanic' as an ethnicity category, identified separately from the race categories.) While the racial demographics of those people paroled from the CDCR who have served SHU terms may not precisely represent

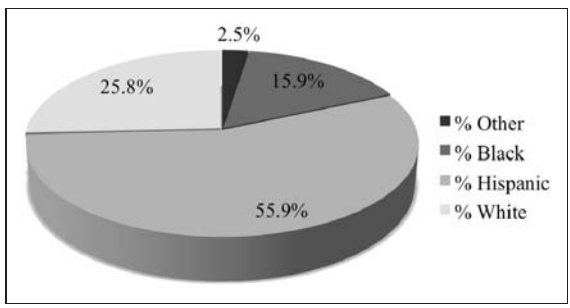

Figure 3. Racial demographics of supermax populations, 2007 (based on prisoners paroled from the CDCR who had previously served SHU terms).
Note: The percentages shown in this chart represent the *average* of the racial demographics of prisoners released from the Corcoran SHU and of the racial demographics of prisoners released from the Pelican Bay SHU, rather than a raw calculation based on the total number of SHU releases from both institutions. As discussed in the text, the disproportionate impact of SHU terms on Hispanics is more extreme at Pelican Bay than at Corcoran, although Pelican Bay also releases fewer prisoners annually than Corcoran. Therefore, the average numbers presented here better capture the overall disproportionate impact of SHU terms on Hispanics.

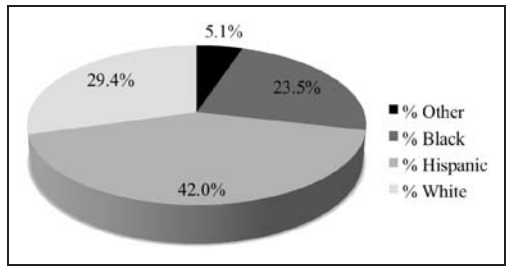

Figure 4. Racial demographics of general parole population, 2007.

the racial demographics of all those prisoners detained in the SHU, there is likely a close fit between the two populations. First, as discussed in the 'Overall supermax populations' section earlier, a substantial portion of the SHU population turns over every year; annual releases represent about two-thirds of the average daily population. Second, studies have found substantial similarities between prison populations and parole populations in California and in the United States (Petersilia, 2003).

In general, prisoners on parole who have spent time in the SHU are slightly less likely to be either white or African American than the average prisoners on parole. However, prisoners on parole who have spent time in the SHU are significantly more likely to be Hispanic than the average prisoners on parole; in 2007, almost 56 percent of the prisoners paroled after having spent time in the SHU were Hispanic, while only 42 percent of the general parole population was Hispanic. This is, perhaps, not surprising, given the already-discussed phenomenon of correctional officers 'validating' gang members and assigning them to indefinite SHU terms; indeed, some of the largest and most feared gangs in California, like the Norteños and Sureños, are associated with Latino culture (California Department of Justice, 2005; National Youth Gang Center, 2009).

In sum, Figures 3 and 4 show that Hispanics are disproportionately more likely to have spent time in the California SHUs than other racial and ethnic categories of prisoners. A chi-square test, comparing ten year's worth of California parole data with 10 years' worth of SHU release data confirms that the disproportionate impact seen on Hispanics in 2007 has been consistent and significant over the past 10 years (p-value $\leq .001$ in every year but 2001, when p-value $\leq .01$). Table 4 shows these calculations.

While this disproportionate impact of the SHU on Hispanics might be logically related to the process of gang validation, it is also important for understanding just who is most likely to experience confinement in the SHU and why. Moreover, if the SHU is disproportionately targeting some minorities, this disproportionate impact deserves legal scrutiny, to determine whether the disparate impact of this extremely

Table 4. Results of chi-square test comparing racial demographics of SHU releases to racial demographics of California parole populations, 1997–2007

Year	% Hispanic on parole	% Hispanic supermax releases	% Hispanic Pelican Bay releases
1997	42	47*	55**
1998	42	50*	58**
1999	42	47*	53**
2000	42	49**	58**
2001	41	**42**	52*
2002	41	38**	52**
2003	39	41*	53**
2004	39	39*	57**
2005	40	43**	62**
2006	41	46**	**54**
2007	42	46**	66**

Notes: *p<.01; **p<.001. These calculations show that the higher proportion of Hispanic prisoners released from the SHU in each year between 1997 and 2007 is significant, or very unlikely to be due to chance, in every year but 2001. In addition, in 2006, the higher proportion of Hispanic prisoners released directly from Pelican Bay was *not* significantly different from the proportion of Hispanic prisoners in the overall parole population. Note that in two additional years, 2002 and 2004, the overall percentage of SHU releasees who were Hispanic was the same or less than the overall percentage of people on parole in California who were Hispanic. These percentages are still significant, however, because the overall racial demographics of SHU releases in those years still differed significantly (in terms of percentages of Whites, Others, and Blacks) from the overall racial demographics of people on parole in California.

punitive confinement on Hispanics is truly justified by gang activity or other potential safety concerns.

The path out of the supermax

In this section, I review what data are available on how many people parole from supermaxes annually. I also evaluate a few very rough estimates of the frequency with which people serve multiple terms in a supermax, as well as the recidivism rates of supermax parolees.

Figure 5 reveals that the CDCR releases hundreds of people annually, directly from the SHUs at Pelican Bay and Corcoran, into their communities, under parole supervision.[9] The lightly shaded bottoms of the bars represent releases from the Pelican Bay SHU, and the darkly shaded tops of the bars represent releases from the Corcoran SHU. On average, 909 prisoners are released annually from the

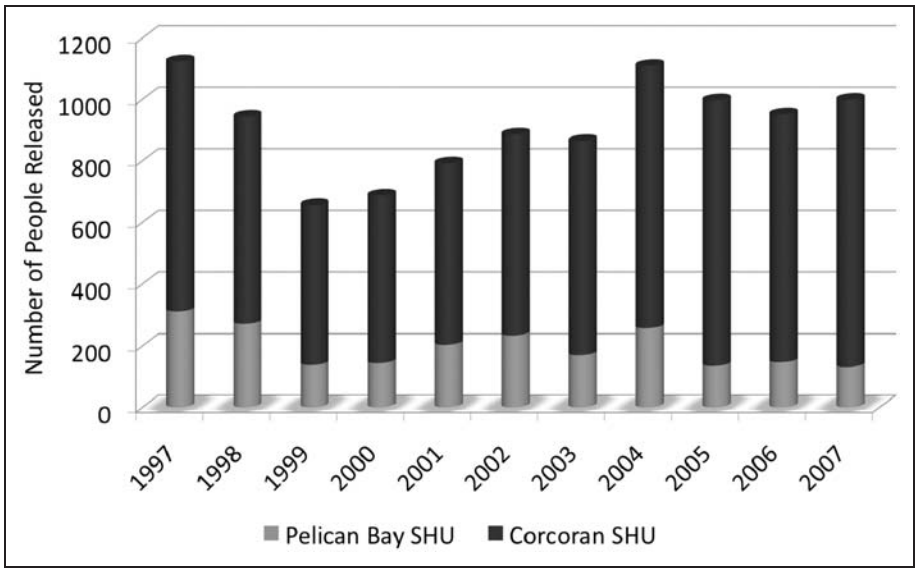

Figure 5. Annual releases from supermaxes directly to parole, 1997–2007.

supermaxes directly to parole; 909 prisoners account for roughly 38 percent of the overall annual supermax population in California.

Figure 6 reveals that about one-third of all prisoners who are paroled after having spent time in the Corcoran SHU are paroled directly from the Corcoran SHU, while the majority of all prisoners who are paroled after having spent time in the Pelican Bay SHU are paroled directly from the Pelican Bay SHU. So just as prisoners in the Pelican Bay SHU are serving longer average sentences than prisoners in the Corcoran SHU, they are also more likely to parole directly from the SHU.

The data suggest that hundreds of prisoners every month are paroling directly from the SHU, or paroling from a high security prison within a few weeks of being released from the SHU. These prisoners have spent an average of one to two years, and up to 17 or 18 years, in near-complete solitary confinement (or, possibly, in contact with only one other cellmate). The fact that they are released from these conditions directly onto parole raises immediate questions about how supermax releasees re-adjust to a world with natural light, the noise of traffic and conversation, and physical, human contact. Indeed, what little is known about the recidivism of supermax parolees – both in terms of returns to prison from the street, and returns to the supermax from within prison – suggest that re-adjusting to life outside of the supermax is potentially challenging.

Figure 7 shows the proportion of those prisoners paroled from the CDCR with any SHU experience, who had served more than one SHU term. More specifically, this percentage was calculated by dividing the number of people paroled in any

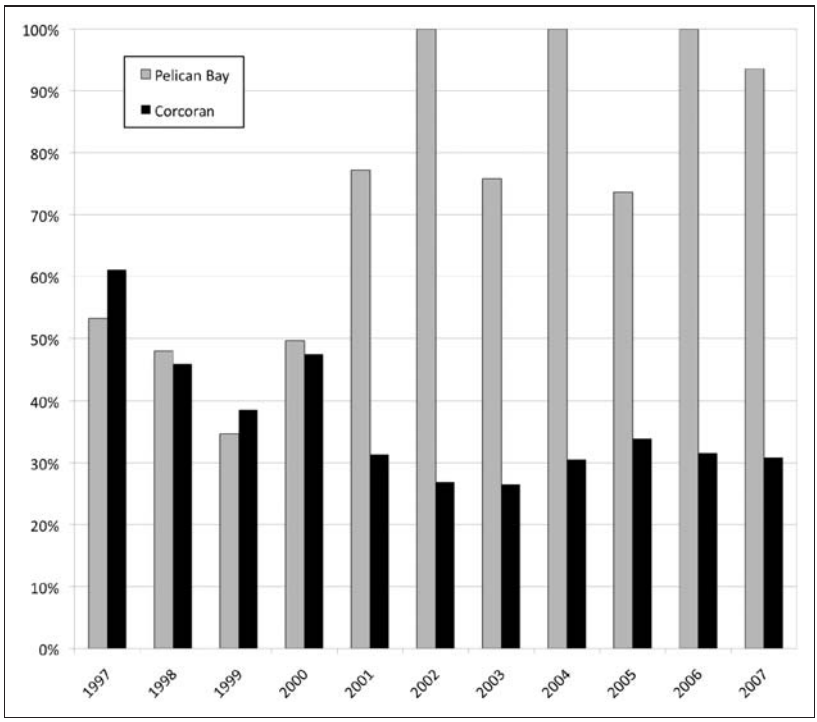

Figure 6. Percentage of total annual SHU-experienced parolees who paroled directly from Pelican Bay or Corcoran, 1997–2007.
Note: In 2002, 2004, and 2006, the CDCR reported that a few more prisoners paroled directly from the Pelican Bay SHU than paroled from throughout the prison system, with a prior history of having served time in the Pelican Bay SHU. This suggests that in each of these three years, one of these two calculations about supermax parolees was mis-reported.

given year, who had served any time at all in either the Pelican Bay or Corcoran SHU, by the number of people paroled in any given year, who had served more than one term in the SHU during their prison sentence. This provides a rough estimate of what percentage of the SHU population in any given year has served more than one term in the SHU. These data suggest that there is a significant amount of 'SHU recidivism': one-third to three-fourths of all the prisoners paroled in any given year with prior SHU experience had served multiple terms in the SHU.

These data again reveal that there are significant differences between the two institutional populations at the Pelican Bay SHU and the Corcoran SHU. In all but one year (2001), prisoners paroled after having served time in the Pelican Bay SHU were more likely to have served multiple SHU terms than prisoners paroled after having served time in the Corcoran SHU. In some years, in fact, all of the prisoners paroled after having served time in the Pelican Bay SHU had served multiple SHU terms there. This again suggests that the Pelican Bay SHU detains prisoners who

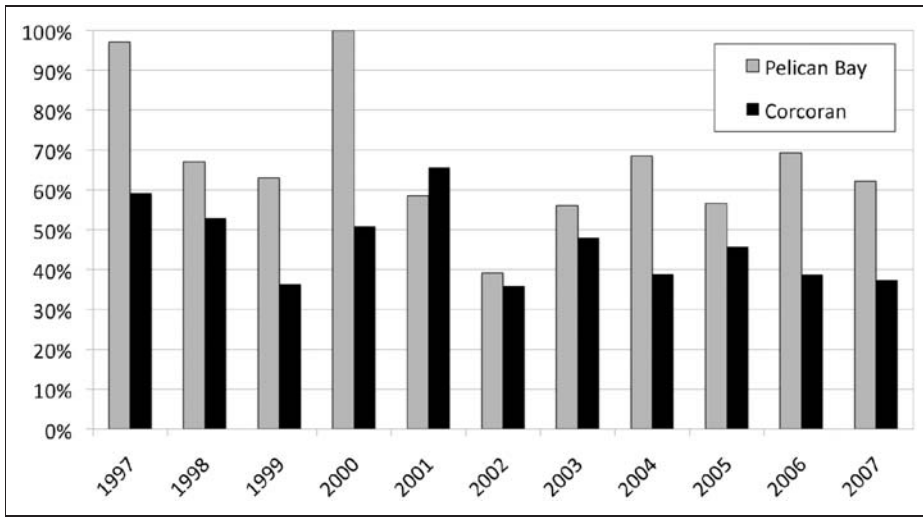

Figure 7. Percentage of total annual SHU-experienced parolees who had served multiple SHU terms, at Pelican Bay and Corcoran, 1997–2007.
Note: In 2000, the CDCR reported that 298 prisoners were paroled from Pelican Bay after having served multiple SHU terms, but that only 288 prisoners in total, who had served time in the Pelican Bay SHU, were paroled in that year. This suggests that one of these two calculations about supermax parolees in 2000 was mis-reported.

are more problematic or challenging to the prison order than those prisoners at the Corcoran SHU.

From a public policy and community re-entry perspective, the more interesting question is not about SHU recidivism, but about parole recidivism; how successful are these SHU parolees at re-integrating into their communities? Currently, no data exist regarding the recidivism statistics for prisoners paroled directly from the Corcoran or Pelican Bay SHUs, or for prisoners who are paroled from elsewhere in the prison system, but who have previously served a term in the SHU. When I requested this information from the CDCR, they gave me one aggregate number: the number of prisoners who had been paroled directly from the Pelican Bay or Corcoran SHU between January 1997 and December 2007, and who had been returned to prison for violating parole within two years of release. In total, 6195 prisoners, over 10 years, were in this category of recidivating after having been paroled directly from the SHU. This amounts to 62 percent of the total number of prisoners paroled directly from the SHU over this period. Over this same 10-year period, the average two-year return-to-prison rate for all prisoners paroled in California hovered around 60 percent. Such data are too aggregated to provide any rigorous sense of how supermax parolees fare on parole; the data simply suggest that supermax parolees might face greater challenges than the average prisoner and might have a higher likelihood of recidivating. However, more

data disaggregated by year, by criminal history, by age, and by length of stay in the supermax, are necessary to provide a truly rigorous analysis.

Overall, these data reveal that a prisoner who goes to the SHU once is extremely likely to return to the SHU again; such a prisoner might also be more likely to return to prison once he is paroled. Moreover, a parolee who was released from the SHU, and violates his parole, will be returned directly back to the SHU. These data are an indication that SHUs may not be functioning to deter misbehavior in prison; despite the harsh conditions of the supermaxes, prisoners seem to cycle in and out of these units repeatedly.

Are California's supermaxes functioning as intended?

In brief: no. First, the state's supermaxes have been continuously expanding in terms of the sheer number of people detained in conditions of extreme sensory deprivation, since they were first opened in 1988 and 1989. By 2001, the CDCR was operating two additional supermax units, detaining hundreds of additional prisoners, at the California Correctional Institution at Tehachapi. And, over the past 20 years, California has resorted to double-bunking at least some prisoners in supermax conditions, although the supermax institutions were originally designed to house prisoners in total isolation. This double-bunking happens more frequently at Corcoran and Tehachapi than at Pelican Bay. In fact, each of the state's supermaxes operates differently – detaining prisoners under different conditions for different periods of time – suggesting just how inconsistent supermax practices can be, and providing evidence of the day-to-day discretion correctional administrators exercise in assigning prisoners to supermaxes. In sum, supermax beds have not been limited to the 1056 Pelican Bay supermax cells originally designed to be the sum total of California's supermax beds.

Second, prisoners are spending long periods of time in supermaxes – an average of more than two years in Pelican Bay, and as long as 17 or 18 years, prior to being paroled. These long sentences suggest that getting out of supermaxes – whether by paroling, snitching, or dying – can be hard, if not impossible. By contrast, the correctional administrators who designed and built Pelican Bay and Corcoran in the 1980s hoped that prisoners would spend a maximum of 18 months in these institutions, and envisioned transitional programs to facilitate leaving these institutions.

Third, hundreds of people annually are released directly from supermaxes onto parole, having spent at most 90 days outside of a supermax cell before being released. Hundreds more people every year are cycling in and out of the supermaxes; more than half of the supermax population in any given year has served two or more terms of confinement in the supermax. The correctional administrators who designed and built California's supermaxes in the 1980s envisioned a functional, deterrent punishment: people would spend a fixed term in intensive solitary confinement, and then they would return to the general prison population, and, hopefully, avoid the supermax in the future. Correctional administrators also

designed facilities to ensure that supermax prisoners would spend time in a general prison population, *prior* to being released onto parole. In practice, hundreds of prisoners per year are released directly from supermaxes onto parole, and the same people appear to be cycling again and again through the supermaxes.

Conclusion

Understanding more about how supermaxes function and whether they are effective is critical to evaluating the success of one of the most popular trends in extreme punishment in the 21st century: long-term solitary confinement in conditions of extreme sensory deprivation. This article reveals as much about what is *not* known about these institutions as what is known, and suggests many further avenues of study. Better data about who is in supermaxes, why, and for how long are needed. Rigorous studies of the experiences of supermax releasees on parole – and their likelihood of returning to prison – are also needed.

Despite all these unanswered questions, this article does provide some answers. Primarily, it reveals that supermaxes are not functioning as their designers intended them to function. Secondarily, California's supermax story suggests an explanation for this observation: the role of discretion in correctional administration. As discussed in the section 'The path into the supermax', correctional administrators have broad discretion in assigning prisoners to supermax terms. Even though the high-level correctional officials who originally designed and built Pelican Bay and Corcoran hoped that the Security Housing Units would provide a small, fixed number of supermax beds, forcing correctional administrators to limit how many people were assigned to these institutions as well as the lengths of the assignments, the original designers had no control over how their buildings would ultimately be used within the CDCR.

The data in this article also reveal two potentially significant public policy problems with California's supermaxes: SHU prisoners appear to be disproportionately Hispanic, relative to the general prison and parole populations in California, and SHU prisoners are frequently released directly from the SHU onto parole. These facts raise questions about whether the SHU functions in a discriminatory way; whether the SHU adequately prepares prisoners to survive on the streets, given the number of people who are released annually from long-term solitary confinement onto parole; and whether the SHU makes our communities safer.

Acknowledgements

This article could not have been written without the patient and frequent assistance of current and former California Department of Corrections and Rehabilitation officials, nor without the careful and thorough reading and advising of Deborah Lustig, David Minkus, Maureen Lahiff, and Franklin Zimring. I would also like to thank Barry Krisberg, who

provided helpful comments during a public presentation of an earlier version of this article, and the critical and thoughtful members of Berkeley's Institute for the Study of Societal Issues Graduate Fellows Program, all of whom read and commented on multiple iterations of this article, bringing refreshing interdisciplinary perspectives to this project. Finally, thank you to the anonymous reviewers who helped to sharpen the argument of this paper.

Notes

1. Most state prison systems have a few hundred people in supermax prisons; California has a few thousand (Naday et al., 2008: 79; Riveland, 1999). Arizona opened the first supermax in 1986 (Lynch, 2010). California correctional administrators identified the Arizona supermax as the institutional prototype on which they modeled the Pelican Bay State Prison supermax (Reiter, forthcoming). Other states, and the federal system, subsequently looked to the California model, copying many details of the design (Justice architect (Arizona), 2011 interview; Justice architect (formerly with the federal Bureau of Prisons), 2011 interview).
2. All but about 40 of California's 3300 supermax prisoners are men; these male supermax prisoners are therefore the focus of this article.
3. The 97 percent figure is based on my own calculation: adding the number of people sentenced to death in the United States (3305) and the number of people sentenced to life without the possibility of parole (41,095) together, and dividing by the number of sentenced people currently in state or federal prison (1,540,805), to get a percentage of people who will never be released: 2.88 percent (Nellis and King, 2009; *Sourcebook*, 2009; West and Sabol, 2009). Petersilia (2003) uses a similar calculation in her book, *When Prisoners Come Home*.
4. Prior to 1986, solitary confinement was in use in US prisons, but the facilities were more makeshift, and the terms were usually much shorter than supermax terms are today (see, for example, McLennan, 2008; Rothman, 1971).
5. Some scholars have identified high-security facilities in operation in the 1960s and 1970s as supermaxes; for instance, Ward and Werlich (2003) call Alcatraz federal prison a supermax. However, prisoners at Alcatraz spent many hours each day out of their cells, sharing meals in a communal dining hall, and exercising and working in groups; this daily communal activity sharply distinguishes the conditions in Alcatraz from the total isolation conditions, with minimal human contact and sensory deprivation, imposed in modern supermaxes.
6. Ward and Werlich (2003) do discuss conduct of prisoners released from Alcatraz and Marion prison, characterizing these institutions as supermax prisons. However, as discussed at note 5, neither Alcatraz nor Marion meets the working definition of a supermax – as an institution maintaining prisoners in long-term and total isolation – laid out in this article.
7. By comparison, California's overall state prison population accounts for just 11 percent of the United States' total federal and state prison population.

In California, the combination of a mandatory three years of parole for all released prisoners and rigidly enforced rules for behavior on release, contribute to the relatively large number of parolees as well as to higher incarceration rates in the state. Specifically, when a California parolee violates a condition of his or her parole, he or she participates in an administrative hearing, rather than a criminal court adjudication. This administrative process often bypasses many of the procedural protections of a criminal trial and results in the parolee being re-incarcerated, and serving some portion of the three-year 'parole' term in prison.

8. The Department Operations Manual (CDCR, 2009) notes that a prisoner might also be assigned to a SHU voluntarily, if he requests protective custody *and* prison officials validate the legitimacy of the request, or for brief, involuntary terms of less than 10 days, if the prisoner is newly arrived at a high security institution, and officials need to determine whether that prisoner will be safe in the general prison population. However, these two forms of assignment are not part of my evaluation of SHU populations or the focus of this study; prisoners in protective custody are counted separately, as residents of 'Protective Housing Units' rather than 'Secure Housing Units', and prisoners who spend less than 10 days in the SHU are not captured by most of my data, which are focused on longer-term confinements to the SHU. To the extent that a prisoner who spent only 10 days in the SHU is counted in the aggregate, average length-of-stay data I discuss, such short stays might be pulling down the overall average stay data, which already indicates long average stays of close to two years.
9. According to the researcher who provided these data, the numbers in this figure might actually include some prisoners who spent 90 days or fewer in the general population at the institution where they served their SHU term. However, the CDCR cannot say with precision exactly how many prisoners this is true of, again suggesting shortcomings in the manner and detail of data collected about the SHU.

References

Amnesty International (2012) *USA: The Edge of Endurance – Prison Conditions in California's Security Housing Units*. AMR 51/060/2012. London: Amnesty International. Available at: http://www.amnesty.org/en/library/info/AMR51/060/2012/en

Austin v. Wilkinson 545 U.S. 209 (2005).

Blatchford C (2008) *The Black Hand: The Story of Rene 'Boxer' Enriquez and His Life in the Mexican Mafia*. New York: HarperCollins.

Brown C (2010) (former Undersecretary of the Youth and Adult Correctional Authority, California) interview with author, Sacramento, CA, 22 January. Notes on file with author.

California Code of Regulations (2009) Title 15: Crime prevention and corrections. Division 3 rules and regulations of adult institutions, programs and parole,

Department of Corrections and Rehabilitation. Available at: http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/Title%2015%202009.pdf

California Department of Corrections and Rehabilitation (CDCR) (nd) Valley State Prison for Women. Available at: http://www.cdcr.ca.gov/Visitors/Facilities/ VSPW-Institution_Stats.html

California Department of Corrections and Rehabilitation (CDCR) (2009) Department operations manual. Available at: http://www.cdcr.ca.gov/Regulations/Adult_Operations/DOM_TOC.html

California Department of Corrections and Rehabilitation (CDCR) (2010–2012) California State Prison – Corcoran. Available at: http://www.cdcr.ca.gov/Visitors/Facilities/COR.html (last accessed 19 February 2010). Updated to: California State Prison, Corcoran. Available at: http://www.cdcr.ca.gov/Facilities_Locator/COR-Institution_Details-SHU.html (last accessed 27 September 2012).

California Department of Corrections and Rehabilitation (CDCR) (2010) Weekly report of population. Data Analysis Unit, Estimates and Statistical Analysis Section, Offender Information Services Branch, 22 February. Available at: http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad100217.pdf (with interpretation provided by Jim Derby, 2 March 2010, e-mail on file with author).

California Department of Corrections and Rehabilitation (CDCR) (2012) Security threat group prevention, identification, and management strategy. Version 5.5, 1 March. Available at: http://www.cdcr.ca.gov/Reports/index.html

California Department of Justice, Division of Law Enforcement, Criminal Intelligence Bureau (2005) Organized crime in California: Annual report to the California Legislature. Available at: http://www.ag.ca.gov/publications/org_crime2005.pdf

Corwin M (1990) High-tech facility ushers in new era of state prisons. *Los Angeles Times*, 1 May, A-1.

Departmental Researcher (2010) Phone interview with author, 19 May. Notes on file with author.

Derby JS (Deputy Director of Facilities Planning Branch, CDCR); Meier R, (Chief, Population Management Unit); Neuschmid R (Chief, Program Support Unit); and Atkinson J (Chief, Offender Information Services Branch) (2010) E-mail exchange with author, 2 March. On file with author.

Gilmore RW (2007) *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. Berkeley, CA: University of California Press.

Glaze LE and Bonczar TP (2009) Probation and parole in the United States, 2007: Statistical tables. Bureau of Justice Statistics, NCJ 224707, August. Available at: http://www.ojp.usdoj.gov/bjs/pub/pdf/ppus07st.pdf

Grassian S (2006) Psychiatric effects of solitary confinement. *Washington Journal of Law & Social Policy* 22: 325–383.

Grassian S (2010) 'Fatal flaws' in the Colorado Solitary Confinement Study. Solitary Watch: News from a nation in lockdown, 15 November. Available at: http://solitarywatch.com/2010/11/15/fatal-flaws-in-the-colorado-solitary-confinement-study/

Grattet R, Petersilia J and Lin J (2008) Parole violations and revocations in California. US Department of Justice, 13 October.
Haney C (2003) Mental health issues in long-term solitary and 'supermax' confinement. *Crime and Delinquency* 49(1): 124–156.
Heller M (2001) They shoot prisoners, don't they? *Independent*, 28 January, 4.
Justice architect (Arizona) (2011) Phone interview with author, 4 February. Notes on file with author.
Justice architect (California) (2010) Phone interview with author, 4 August. Notes on file with author.
Justice architect (formerly with the federal Bureau of Prisons) (2011) Phone interview with author, 2 February. Notes on file with author.
Kaiser D and Stannow L (2010) The rape of American prisoners. *New York Review of Books* 57(4), 11 March. Available at: http://www.nybooks.com/articles/archives/2010/mar/11/the-rape-of-american-prisoners/?pagination=false
King RD (1999) The rise and rise of supermax: An American solution in search of a problem? *Punishment & Society* 1(2): 163–186.
King RD (2007) The effects of supermax custody. In: Liebling A and Maruna S (eds) *The Effects of Imprisonment*. London: Willan Publishing, pp. 118–142.
Kupers T (1999) *Prison Madness: The Mental Health Crisis behind Bars and What We Must Do about It*. San Francisco, CA: Jossey-Bass.
Kurki L and Morris N (2001) The purposes, practices, and problems of supermax prisons. In: Tonry M (ed.) *Crime and Justice: A Review of Research*. Vol. 28, Chicago, IL: University of Chicago Press, pp. 385–434.
Larson C (former Director of Finance, California Department of Corrections) (2010) Interview with author, Sacramento, CA, 22 February, 14 April. Notes on file with author.
Larson C (2011) E-mail exchange with author, 20 July. On file with author.
Lovell D, Cloyes K, Allen DG and Rhodes LA (2000) Who lives in supermaximum custody? A Washington State study. *Federal Probation* 64(2): 33–38.
Lovell D, Johnson LC and Cain KC (2007) Recidivism of supermax prisoners in Washington State. *Crime and Delinquency* 53(4): 633–56.
Lynch M (2010) *Sunbelt Justice*. Stanford, CA: Stanford University Press.
Madrid v. Gomez 889 F. Supp. 1146 (ND Cal. 1995).
Mauer M and Chesney-Lind M (2002) *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. New York: The New Press.
McLennan RM (2008) *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941*. New York: Cambridge University Press.
Mears DP and Bales WD (2009) Supermax incarceration and recidivism. *Criminology* 47(4): 1131–1165.
Montgomery M and Terry-Cobo S (2011) Reform could transfer hundreds of inmates out of isolation units. *California Watch*, 27 October. Available at: http://californiawatch.org/dailyreport/reform-could-transfer-hundreds-inmates-out-isolation-units-13285
Naday A, Freilich JD and Mellow J (2008) The elusive data on supermax confinement. *The Prison Journal* 88(1): 69–92.

National Youth Gang Center (2009) Race/ethnicity of gang members. National Youth Gang Survey analysis, Office of Juvenile Justice and Delinquency Prevention. Available at: http://www.nationalgangcenter.gov/Survey-Analysis/Demographic sanchorregm

Nellis A and King RS (2009) *No Exit: The Expanding Use of Life Sentences in America*. Washington, DC: The Sentencing Project. Available at: http://www.sentencingproject.org/doc/publications/publications/inc_noexitseptember2009.pdf

O'Keefe ML, Klebe KJ, Stucker A, Sturm K and Leggett W (2011) One year longitudinal study of the psychological effects of administrative segregation. NIJ Document No. 232973. Available at: www.ncjrs.gov/pdffiles1/nij/grants/232973.pdf

Petersilia J (2003) *When Prisoners Come Home: Parole and Prisoner Re-entry*. New York, NY: Oxford University Press.

Reiter K (2012a) The most restrictive alternative: A litigation history of solitary confinement in U.S. prisons, 1960–2006. *Studies in Law, Politics, and Society* 57: 69–123.

Reiter K (2012b) *The Most Restrictive Alternative: The Origins, Functions, Control, and Ethical Implications of the Supermax Prison, 1976–2010*. Unpublished doctoral dissertation, University of California, Berkeley.

Reiter K (forthcoming) The path to Pelican Bay: The origins of the supermax prison in the sunbelt, 1982–1989. In: Andrews N and Chase R (eds) *Sunbelt Prisons: New Histories of Inmates and Incarceration*.

Rhodes LA (2004) *Total Confinement: Madness and Reason in the Maximum Security Prison*. Berkeley, CA: University of California Press.

Riveland C (1999) Supermax prisons: Overview and general considerations. US Department of Justice, National Institute of Corrections. Available at: http://www.nicic.org/pubs/1999/014937.pdf

Rothman D (1971) *The Discovery of the Asylum: Social Order and Disorder in the New Republic*. Boston, MA: Little, Brown and Company.

Senate Bill 1222, 1986 Leg., Gen. Sess. (Ca. 1986) (enacted).

Shalev S (2009) *Supermax: Controlling Risk through Isolation*. Portland, OR: Willan Publishing.

Small J (2011) Under scrutiny, Pelican Bay prison officials say they target only gang leaders. 89.3 KPCC Southern California Public Radio, 23 August.

Sourcebook of Criminal Justice Statistics Online (2009) Table 6.80.2009: Prisoners under sentence of death by race, ethnicity, and jurisdiction, on Jan. 1, 2009. Bureau of Justice Statistics. Available at: http://www.albany.edu/sourcebook/pdf/t6802009.pdf

Ward DA and Werlich TG (2003) Alcatraz and Marion: Evaluating supermaximum custody. *Punishment & Society* 5(1): 53–75.

West HC and Sabol WJ (2008) Prisoners in 2007, Table 2. Bureau of Justice Statistics, NCJ 224280, December. Available at: http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf

West HC and Sabol WJ (2009) Prison inmates at midyear 2008 – statistical tables. Bureau of Justice Statistics, NCJ 225619, March. Available at: http:/bjs.ojp.usdoj.gov/content/pub/pdf/pim08st.pdf

Zimring FE and Hawkins G (1991) *The Scale of Imprisonment*. Chicago, IL: University of Chicago Press.

Keramet A Reiter is an Assistant Professor of Criminology, Law and Society and of Law at the University of California, Irvine. She holds a JD and PhD from the University of California, Berkeley, and she is currently working on a book on the history and uses of supermax prisons. Recent publications include a *California Law Review* article on prisoner participation in medical experimentation and a *Studies in Law, Politics, and Society* chapter on the history of litigation around solitary confinement in the United States.