

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MARK OSTERBACK, et al.)	
)	
Plaintiffs,)	Case No. 97-2806-CIV-HUCK
)	MAGISTRATE JUDGE BROWN
v.)	
)	
)	
MICHAEL W. MOORE, et al.,)	
Defendants.)	
_____)	

SECOND REPORT OF PROFESSOR CRAIG HANEY

1. I am currently a Professor of Psychology at the University of California at Santa Cruz. I continue to teach graduate and undergraduate courses at the University of California and have continued to conduct research on and write about conditions of confinement in maximum security prisons and the psychological effects of various forms of incarceration. In much of that work I have continued to focus specifically on the assessment of the psychological effects of confinement in so-called “lockup,” punitive segregation, or “supermax” confinement (in what are variously known as management control, security housing, high security or, in Florida, “Close Management” units). My educational background and professional qualifications were summarized in the first Report that I submitted to this Court. I have appended an updated curriculum vitae to the Second Report as “Appendix A.”

Initial Analysis of Close Management Conditions

2. In September, 2001, I filed a Report in the above titled action, summarizing my observations and opinions about conditions of confinement in a number of Close Management (or “CM”) units in the Florida Department of Corrections. That Report also contained my opinions about the psychological effects of the Close Management conditions on the prisoners who were housed within them. I also addressed the issue of whether the presence of conditions of confinement or patterns of treatment or correctional practices at these units reflected the apparent deliberate indifference of correctional officials.

3. As the basis for that Report in 2001, I conducted tours and interviews at various Close Management units (specifically, Florida State Prison, Santa Rosa Correctional Institution, Washington Correctional Institution, and Columbia Correctional Institution), and evaluated various documents provided to me by plaintiffs’ counsel in which current and future Florida Department of Corrections plans and procedures for Close Management units were described. I also reviewed an extensive number of depositions taken of various Department of Corrections employees in conjunction with this case.

4. In the course of my tours at these various facilities in 2001, I conducted structured interviews with a total of 51 randomly selected Close Management prisoners, asking each prisoner the same series of questions designed to assess their overall level of psychological trauma and psychopathological symptoms associated with solitary-like confinement. As I noted in my first Report, the randomness of the selection meant that I was given an opportunity to interview and assess the psychological reactions of a representative sample of prisoners

from the four Close Management units that I had inspected. In addition, because each prisoner was asked the same set of questions, it was possible to form an opinion about the dimensions of each prisoner's level of adjustment and the nature of the psychological reactions he was experiencing while in Close Management.

5. The opinions I reached in my first Report were extremely critical of the conditions of confinement in the Close Management facilities I saw and the procedures I learned about and encountered in these units. I expressed serious concerns about the excessive punitiveness of these environments, the numerous complaints that were voiced by the prisoners whom I interviewed, and the psychological risks that were being taken subjecting persons to these conditions and treatment.

6. In that Report, I expressed the conclusions that: prisoners in the Close Management Units I toured and inspected were being subjected to extremely harsh treatment and deprived conditions of confinement; long-term exposure to such treatment and conditions was psychologically painful and potentially damaging and dangerous; an unusually high number of mentally ill and otherwise psychologically vulnerable prisoners were confined in the units I toured, suggesting that the psychological screening and monitoring practices that presumably were in operation in these facilities had not been effective in identifying and diverting mentally ill and psychologically vulnerable prisoners; and that the overall conditions and practices that prevailed lacked penological justification.

7. Further, I expressed the opinion that these problems appeared to be so systemic and long-standing that many Department of Corrections officials and employees either knew or should have known about the adverse psychological consequences of such confinement. Because these Department of Corrections officials and employees did nothing to ameliorate the damaging effects of these conditions and adverse forms of treatment, they were deliberately indifferent to the needs of Close Management prisoners.

Context and Basis of Second Report

8. After these opinions and those of two other plaintiffs' experts, Dr. Seymour Halleck and Chase Riveland, were expressed, the parties to the present case entered into an agreed upon Offer of Judgment effective December 26, 2001. A two-year period was specified for the implementation of the terms of the Offer of Judgment.

9. At request of counsel for plaintiffs, I returned to assist in the assessment of present conditions of confinement. In order to accomplish this task, I visited Florida State Prison (on October 13, 2003), Union Correctional Institution (on October 14th), the Lowell Annex (on October 15th), Charlotte Correctional Institution (on November 12th), and the Santa Rosa Correctional Institution (on November 14th). A total of 47 randomly selected CM prisoners were interviewed on these visits.

10. I also reviewed a number of case-related documents provided by plaintiffs' counsel. These included: Defendants' Revised Offer of Judgment (dated October 2, 2001); Florida Department of Corrections Quarterly

Implementation Status Reports (dated January 15, 2002; April 15, 2002; July 15, 2002; October 15, 2002; January 15, 2003; April 15, 2003; July 15, 2003; October 15, 2003); Plaintiffs' First Monitoring Report (dated November 26, 2002).

11. Unfortunately, many of the documents that have been requested as a result of my visit, including individual prisoner files, have not yet been provided. For this reason, the opinions and conclusions I provide below are provisional and subject to some revision once this additional information is forthcoming and I have had time to integrate it with my observations and interview data.

Improved Conditions in Close Management Units

12. Defendants have made a number of improvements in the conditions of confinement in Close Management since I toured these units and interviewed prisoners in 2001. For example, the overall physical plant at both of the facilities that I saw then and more recently (FSP and Santa Rosa) appeared to have been upgraded. This was especially evident at Santa Rosa where, at the time of my last visit, the facility was in serious disrepair. In addition, although I did not actually see them, it is my understanding that writing surfaces were installed inside the cells of at least some CM prisoners, allowing them to more easily write during the long hours in which they are confined in their cells.

13. Close Management prisoners have now been given access to radios and most of the ones whom I interviewed have taken advantage of this change in CM policy. Prisoners also report that they have improved access to canteen (more items can be purchased by those prisoners who have funds), and there is slightly more movement within the institution (for example, in the form of weekly group

therapy at some facilities, several hours of out-of-cell exercise and, for prisoners on CM II or above, dayroom access on a limited basis). Although prisoners gave very mixed reports about the frequency and nature of the contact, CM II prisoners appear to have minimal access to educational materials. Some CM I and II prisoners reported that they also were permitted to make telephone calls on a very limited basis. In addition, CM III prisoners are placed on work lists and can be assigned to a limited number of jobs within the institution.

14. Because it was originally a maximum security mainline prison, rather than a CM facility, Florida State Prison lacked adequate individual office space or larger group meeting or therapy rooms in which to provide services to a population of prisoners who were segregated on their housing units or tiers. Over the last two years, these offices and larger meeting rooms have been created by converting dayroom space on the housing wings. Essentially the same approach appears to have been followed at the Santa Rosa Correctional Institution, where dayrooms have been remodeled to provide limited offices and group meeting rooms in which, presumably, counseling and group therapy sessions can take place.

Continuing Problems in Close Management Units

15. Although the above mentioned changes represent improvements in some aspects of the day-to-day living conditions of Close Management prisoners, many very serious problems remain. Conditions of confinement in these facilities, and the way in which Close Management prisoners are treated in the Florida CM units that I recently visited still inflict gratuitous pain and suffering and place

prisoners at grave risk of long-term psychological damage. I discuss some of these continuing, serious problems below.

16. There continue to be large numbers of prisoners who report being on CM status for many years. Based on what the prisoners have told me, it appears that many CM terms continue to be far in excess of what can be penologically justified. It continues to be the case that prisoners are being kept in these units long past the point in time when psychological deterioration would be expected to occur. Many prisoners indicated either that they had no idea how or when they might be released, or that the excessive filing of DRs and unsatisfactory behavior reports makes it impossible for them to progress out of CM.

17. Despite the very modest improvements in living conditions, the CM units still appear to be run on a policy of maximizing the deprivation and punitive control inflicted on prisoners. The lack of meaningful activity for prisoners on CM I status and, to a somewhat less extent, for those on CM II status, continues to be a significant problem. With the exception of those prisoners who attend a one-hour group counseling session each week (during which they typically are kept in restraints), Close Management I prisoners are still deprived of any group activity or meaningful social contact, eat all of their meals alone in their cells, and go for months, years, or indefinitely without experiencing caring human contact or touch. CM I prisoners are prohibited from participating in meaningful educational programming, meaningful vocational training, meaningful work, meaningful group religious services, or any other meaningful programs in which genuine self-betterment of any kind reasonably can be expected to result. These facts have not been appreciably altered since I wrote about them in September, 2001. CM II

prisoners have extremely limited, and in my opinion still not nearly adequate, opportunities to participate in some of these type of activities.

18. Close Management prisoners are prohibited from participating in meaningful recreational activities while confined in their cells. Although they are now permitted to have radio—an important improvement, to be sure—they still are not allowed to converse with one another in a meaningful way. Although some CM II prisoners reported that they were given limited access to dayrooms where they could watch television, they were kept in restraints during this time, and dayroom access was limited to approximately less than four hours a week. Out-of-cell exercise now takes place three times per week, for about two hours each time, in small caged-in areas that typically have concrete floors and which prisoners appropriately refer to as “dog runs” or “kennels” that have little if any exercise equipment of any kind. However, prisoners reported to me that their opportunities for dayroom use and outdoor recreation often were skipped.

19. Close Management prisoners still are restricted to three showers per week. During the few instances in which they are permitted to leave their small cells, they are placed in restraints (including those times when they are taken to and from the shower). Close Management prisoners still are prohibited from visiting the library, from visiting the law library, or from attending regular sick call within the institution. Thus, they are thus completely dependent upon others for meeting needs as basic as obtaining reading materials and addressing their physical and mental health problems and concerns. In addition, Close Management prisoners still are prohibited from having the sort of material possessions and personal property that are basic to life in maximum security

prisons, such as hobby craft, chess sets, and other things that prisoners use safely and productively to pass time when confined to their cells.

20. Close Management prisoners still are prohibited from the kind of normal and frequent visitation that is helpful (and, for some prisoners, necessary) to maintain healthy social and personal relationships with family members, loved ones, and friends. Visitation for Close Management prisoners is still infrequent and, except for CM III inmates, non-contact and, I am told, continue to occur in some instances in inadequately lit visiting booths in which it is difficult if not impossible for prisoners and their visitors to even see one another.

21. Finally, the Close Management prisoners I interviewed told me that they still were prohibited from talking to one another while in their cells, repeatedly complaining about a policy by which they still are written up (and, in many instances, continued for additional terms in Close Management) for “talking on the door” or “talking on the window.” Prisoners report that they still can be chemically maced or gassed as a result of these talking infractions.

22. Not surprisingly, the CM I and CM II prisoners whom I interviewed continue to suffer as a result of these extreme levels of deprivation and idleness. As noted above, except for the few hours a week during which they are taken to their exercise cages (and, for at least some CM II prisoners, weekly access to dayrooms and very limited work opportunities), there is no meaningful out-of-cell activity at all for these prisoners. Thus, the out-of-cell time afforded Florida’s Close Management I and II prisoners is still extremely low. As one of them put it, “it’s like you are in hibernation—you sit back and say, ‘I have nothing to live for.’” Indeed, prisoners in these units still are living in an unnecessarily and

psychologically harmful level of emptiness and frustration created by conditions of extreme deprivation and the lack of virtually any meaningful activity. Although the property restrictions have been relaxed somewhat, prisoners continue to be subjected to unreasonable property limits, and to be denied opportunities to engage in the bare minimum of meaningful in- or out-of-cell programming that would be necessary for them to remain cognitively alert and intellectually functional.

23. Prisoners describe a cycle that is common in units like these that are poorly run and which place no real premium on cycling prisoners out as soon as possible. Prisoners come into CM for major or even relatively minor offenses but, because they cannot handle the deprivation and oppressiveness of the environment and the harshness of the control wielded by the correctional officers, receive additional, often very minor disciplinary write-ups that keep them in CM. As one of them put it, “once you get in, you can’t get out.” As another one put it, “Once you get back here, you get madder and madder. So you get DRs and unsatisfactories, and that means you can’t get out.” There is no program designed to teach already “mad” or angry prisoners how not to act to increased anger, especially not in the face of the deprivation and, from their perspective, harassment to which they are subjected.

24. Indeed, the indices of psychological trauma and psychopathological symptoms of extreme isolation that I saw manifested in the prisoners I interviewed continued to be extremely high and, for some, dangerously severe. Prisoners continue to suffer under the cruel conditions of their confinement. Like the prisoners I interviewed in 2001, many of them are acutely aware not only of

the painfulness of this harsh and deprived existence but also of the adverse psychological effects that are occurring within them.

25. There continues to be no systematic “decompression” or “step down” program in the Florida Department of Corrections by which most Close Management prisoners are properly and adequately prepared for their release from this form of restrictive custody. Some prisoners in the random sample whom I interviewed have release dates that will occur in the next year or two. Yet they remain in the most restrictive Close Management conditions—Level Is— and will be released directly out of Close Management into the freeworld.

26. This, too, defies commonsense and lacks penological justification. The Close Management Units in which Florida prisoners are being kept force a variety of behavioral adaptations and psychological adjustments on them that are difficult to relinquish and may become extremely dysfunctional, counterproductive, and potentially harmful once they re-enter free society. Failing to prepare Close Management prisoners for this profound transition is cruel (in the sense that it virtually guarantees their failure) and potentially dangerous (in the sense that it can increase the risk of re-offending with, in at least some instances, a worse level of offense).

Recently Exacerbated Problems in Close Management

27. In addition to the many unresolved, serious problems summarized above, there are several problems that appear to have become much more severe over the two-year period during which Defendants undertook reform of the Close Management units.

28. In my September, 2001 Report, I noted “an unusually consistent and often highly emotional set of complaints voiced by the prisoners I interviewed concerning the arbitrary and excessive use of chemical agents on prisoners and the correspondingly arbitrary and excessive issuing of disciplinary write-ups that were then used to retain prisoners in Close Management.” This very serious and penologically unjustified practice has not abated over the last two years. If anything, the prisoner complaints have intensified greatly.

29. Indeed, prisoners in all of the institutions I visited were preoccupied with the excessive use of pepper spray. As one of the put it, echoing a sentiment expressed by many others, “I’m scared to get gassed. They spray a whole can at you!” Another said, “You are always scared and under pressure.” And: “They have one solution for every problem—gas.” The prisoners are unanimous that being gassed is a frightening, traumatizing experience. As one of them put it, “gas is horrible, it immobilizes you, creates a real feeling of panic.”

30. Prisoners report that these “gassings” occur with very little or no provocation and are not used to defuse otherwise difficult situations or potential conflicts. Instead, they report that correctional officers use pepper spray as punishment—gassing prisoners for unpleasant but non-threatening infractions, returning to gas them after a conflict has ended, and otherwise using this very painful and potentially physically damaging form of control to hurt and intimidate prisoners. Indeed, many prisoners reported that the gassings occur at night, when the prisoners are sleeping. They noted that they sleep with their clothes on to protect them from the gassings if they occur.

31. In some units, in some institutions, they report that the gassing goes on more or less on a daily basis. The infractions can be extremely minor: a number of prisoners reported that gassings occur in response to offenses as trivial as talking, and in other instances for “nothing at all.” As noted, the gassings occur at all facilities I visited, including the two designated for psychiatrically vulnerable prisoners—FSP and Union. Indeed, UCI is supposed to be an enriched treatment environment for more acutely disturbed prisoners, yet the reports of gassing were at least as extreme than at the other facilities. Indeed, several prisoners reported that prisoners were gassed for having declared psychiatric emergencies (presumably because correctional officers viewed the declarations as “manipulative”).

32. One prisoner, who reported a long psychiatric history, told the following story: “In July of this year... I was crying out for help and I knew I wouldn’t be taken seriously. The guards just jump on prisoners when they ask for psychiatric help. They might say, ‘Go ahead, want help?’ meaning that you will get punished, maybe gassed for asking for it. Or they might take you out of your cell, out of view of the camera, and beat you, telling you, ‘don’t do this on our shift!’ because they don’t want to be bothered. So I took matters to the extreme because I knew it was the only way. I set myself on fire.” The outcome of this extreme cry for help, according to this prisoner, was that he was written up for arson, put in a strip cell for 21 days, and given no psychiatric assistance.

33. This cruel practice—gassing prisoners who are in need of mental health services—underscores the second exacerbated problem that now plagues the Florida Close Management units. Despite the reputation of the Florida State Prison as perhaps the most brutal and inhumane facility in the state prison system,

and despite the various staffing problems that have long plagued this institution, the Department of Corrections decided to use it as a facility where the state's most psychiatrically vulnerable CM prisoners would be housed. As a Correctional Medical Authority Physical and Mental Health Survey of the Florida State Prison noted in June, 2002: "A new [mental health] program is being developed for inmates on close management status, which encompasses the majority of the inmates served. This program will, when fully operational, provide enhanced services to inmates who are identified at risk for deterioration in mental status due to placement in segregated housing."¹

34. In my opinion, this plan was seriously misguided from the outset. Prisoners who are "identified at risk for deterioration... due to placement in segregated housing" need to be moved out of segregated housing, not merely concentrated in one large segregated housing unit. However, in addition to being poorly conceived, this plan has been extremely poorly implemented. Mental health services at FSP appear to be marginal at best. The prisoners I interviewed there—virtually all of whom appeared to be in need of significant mental health attention (and on psychotropic medications at the time of their interviews)—reported only minimal mental health contact. With the exception of no more than a superficial nod to the very serious mental health needs of the CM prisoners there, FSP is being run as a very large and very inhumane CM prison that happens to house an extremely disturbed population of prisoners.

¹ The Correctional Medical Authority Physical and Mental Health Survey of Florida State Prison (dated June 4-7, 2002), p. 3.

35. Prisoners at FSP are given access to “group therapy” sessions, which occur on a weekly basis and typically last for no more than about an hour. According to the prisoner I interviewed at FSP (and those at other institutions who had been there), these group meetings typically provide no therapy at all, but merely an opportunity for isolated prisoners to have some minimal social contact with other persons. This opportunity for minimal social contact is an experience whose significance is not to be minimized, but neither is it to be confused with therapy. Prisoners are kept in restraints during their “group therapy” sessions, hardly an optimal way to promote rapport, candor, and trust.

36. Indeed, the overwhelming majority of prisoners—who were quite open about acknowledging their serious mental health needs—complained about the lack of compassionate, effective care from mental health staff. They reported things like: “The mental health department here doesn’t help us—they just fill out charts.” Individual treatment sessions appear to be rare; obviously very disturbed prisoners reported being seen on an individual basis on a once a month or once every two month basis.

37. The use of Union Correctional Institution as a kind of mental health annex to FSP—“to better address the mental health needs of Florida State Prison close management inmates who require periodic inpatient mental health services”²—seems equally problematic. The very fact that this is seen as a cost-cutting innovation—“ensuring more timely and less costly access to inpatient care”—suggests that the movement of mentally ill prisoners from FSP to inpatient

² Florida Department of Corrections Quarterly Implementation Status Reports, dated July 15, 2003, p. 3.

care and back again is expected to occur on a regular basis. This was born out by the prisoners I interviewed at both facilities. Indeed, one prisoner characterized it this way: “It’s like a merry-go-round—FSP, UCI, I can’t tell this difference. Sometimes I don’t know where I am.”

38. Again, this seriously misconceives the mental health needs of psychiatrically vulnerable prisoners. These prisoners need to be screened out of CM confinement entirely. Once identified, their mental health needs must be adequately addressed, and they need to be transitioned to safer, less stressful prison environments. There is no justification for recycling them back into the psychologically assaultive conditions that prevail in CM.

39. The handling of women CM prisoners, all of whom are housed at Lowell Correctional Institution, further underscores the lack of attention the Florida Department of Corrections has given to the mental health needs of its CM prisoners. An extremely high percentage of the women CM prisoners I interviewed at Lowell CI either reported long psychiatric histories or gave clear indication of immediate psychiatric problems (or both). Yet these women were housed under a standard Florida Department of Corrections CM regime, subjected to extremely deprived and oppressive conditions and treatment, and appeared to be getting little if any specialized mental health treatment (and certainly none commensurate with the problems they described). Not surprisingly, many reported and manifested symptoms of psychological trauma and the adverse effects of extreme isolated confinement.

Conclusion

40. Over the two-year period during which Defendants agreed to improve conditions of confinement for CM prisoners, too little of significance has changed, too much of the inhumane regime remains intact, and several important problems appear to have gotten worse. Based on the interviews I conducted in October and November, 2003, I have concluded that Florida Close Management Units continue to subject prisoners to extremely deprived, restrictive, and oppressive living conditions.

41. Prisoners in the Florida CM units I recently visited continue to feel desperate and hopeless in the face of this mistreatment. Many have come to believe that there is no possible or realistic way out of their current level of harsh confinement. As noted, many of them already have spent many years living under such deprived conditions.

42. Prisoners in these units still lack meaningful opportunities for programming, are punished for talking, prohibited from congregating with one another, and visit under such limited conditions that most of them discourage visitors of any kind (many of whom would be required to travel long distances for non-contact visits). They continue to be significantly more deprived and oppressive than those in many other institutions with which I am familiar, and certainly worse than conditions in one notorious facility that the federal judge who examined it concluded “may press against the outer bounds of what most humans can psychologically tolerate.”³ Indeed, in the course of my recent

³ Madrid v. Gomez, supra note 7, at 1267.

interviews with a representative group of these CM prisoners, I determined that many of them manifested symptoms associated with an extremely high level of psychological trauma and experienced the kind of psychopathological reactions that are created by extreme forms of isolated confinement.

43. In addition to this widespread isolation-related trauma, the CM units at FSP and UCI, in particular, house an unusually high percentage of mentally-ill and psychologically-vulnerable prisoners.⁴ Although supposedly intended as some sort of combined “CM treatment facility,” these facilities are glaringly inhumane, and house predominately prisoners who are uniquely unsuited for such harsh confinement. FSP was an especially disheartening experience. There are a remarkably large number of psychiatrically vulnerable prisoners housed in CM there. But simply concentrating them in one place, and providing them with group therapy once a week, does not turn an otherwise oppressive and abusive psychological environment into a “treatment facility.”

44. Moreover, an unusually high percentage of women CM prisoners housed at Lowell CI appeared to have significant mental health problems. Many reported extensive psychiatric histories and current mental health needs that were not being effectively addressed. Their continued placement in CM confinement cannot be justified in psychological or penological terms. Here, as with the other psychiatrically vulnerable CM prisoners, this kind of confinement is likely to lead to long-term perhaps permanent forms of psychological deterioration.

⁴ I should note that the screening is far from perfect. I encountered several prisoners at FSP and UCI who did not appear to have psychiatric histories or current psychiatric problems, and a number of prisoners in the CM units at other facilities who did.

45. Even in units supposedly designed to hold psychiatrically vulnerable prisoners, and certainly in the other CM units I visited, there were widespread complaints voiced by prisoners about rampant overuse of pepper spraying or “gassing” for relatively trivial infractions. The gassing appears to be administered for the purpose of punishment—that is, simply to inflict pain—and, as such, it is a practice utterly without penological justification.

Completed on December ____, 2003, at Santa Cruz, California.

CRAIG WILLIAM HANEY, Ph.D., J.D.