

# **PRISON CONDITIONS IN THE UNITED STATES**

**A Human Rights Watch Report**

**Human Rights Watch**

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The Prison Project, established in 1988, cuts across the five regional divisions of Human Rights Watch to focus on a single issue: prison conditions worldwide. The Prison Project has investigated conditions for sentenced prisoners, pre-trial detainees and those held in police lockups. It examines prison conditions for all prisoners, not just political prisoners. The work of the Prison Project is guided by the Prison Advisory Committee, whose chairman is Herman Schwartz. Other members are: Nan Aron, Vivian Berger, Haywood Burns, Alejandro Garro, William Hellerstein, Edward Koren, Sheldon Krantz, Benjamin Malcolm, Diane Orentlicher, Norman Rosenberg, David Rothman and Clarence Sundram. The director of the Project is Joanna Weschler.

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## PREFACE

As in all our previous studies of prison conditions around the world, the Prison Project of Human Rights Watch, in reporting on U.S. prisons, examines the human rights aspects of imprisonment. We have not attempted to be comprehensive; rather, through a series of investigations, we try to highlight issues that affect a significant proportion of the national prison population.

We conducted interviews with inmates in more than twenty prisons and jails in New York, California, Florida, and Tennessee, and in the federal prison system, as well as at an immigration detention facility in Florida. In addition, we surveyed prison litigation cases from 1984 on; studied reports by special masters, and journalistic accounts; and interviewed prison advocates, lawyers, former inmates, relatives of current inmates and correctional officials. We did not attempt in this study to examine conditions in psychiatric and juvenile institutions.

Although securing access from various correctional agencies took up to several months, we were eventually granted permission to visit every prison we requested to see, with one exception. As in all our investigations in other countries, we asked to see specific institutions and indicated that we wanted to talk to inmates out of the earshot of officials. We received a written refusal from the Administrator of Corrections in Puerto Rico.<sup>1</sup> Accordingly, as in the case of several foreign countries whose prisons we examined and which denied us access, we conducted our study there without visiting institutions, relying instead on other sources such as those mentioned above. In the course of our visit to Puerto Rico, the Administrator of Corrections authorized one brief prison visit, to an institution of her own choice.

In a few institutions elsewhere, we encountered resistance from the staff, despite prior authorization of our visits by the relevant correctional authorities. For example, in the Broward female institution in Miami, the staff initially refused to let us see the institution at all, and subsequently declined to show us their segregation units. Only after phone calls were made to the state capital were we eventually able to see the entire institution. In the California Institution for Women, despite prior agreement from the Department of Corrections as to the terms of our visit, we were given what the official guiding us there called "a standard two-hour tour" which did not include several facilities we had specifically requested to see. Despite our requests, the guide refused to let us stay on the premises longer than two hours. In

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<sup>1</sup>Though Puerto Rico is not a state, Puerto Ricans enjoy the protection of U.S. constitutional rights, and prisons of the Commonwealth of Puerto Rico must meet the same minimum standards as anywhere in the continental United States. Accordingly, they are included in this study.

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the Bedford Hills female institution in New York State, we were not allowed to see the Special Housing Unit, on the grounds that a separate permission from the Department of Corrections was said to be required for that.

Securing initial permission to visit California prisons took longer than in any other place in the United States. The Federal Bureau of Prisons, after an initial delay of several weeks, conducted a briefing with our representatives and approved our visits to the institutions we had requested to see. For the most part, the wardens and staff members of the federal prisons we visited were exceptionally gracious and cooperated fully in facilitating our study. In one case, however, our visit was cut short by the staff.

This report contains four sections describing conditions in jails, state prisons, federal prisons and Immigration and Naturalization Service institutions, and a chapter dealing with prison litigation, a chief tool in bringing about prison reform in the United States.

## INTRODUCTION

Perhaps the most troubling aspect of the human rights situation in U.S. prisons is a trend we observed that could be labelled "Marionization." In 1983, the federal prison at Marion, Illinois, until then similar to other maximum-security penitentiaries, implemented a series of extraordinary security measures. Since then, 36 states have followed suit in creating their own super maximum security institutions (called "maxi-maxi" in prison jargon). The confinement in "maxi-maxis" is administered by prison officials without independent supervision and leads to a situation in which inmates may in fact be sentenced twice: once by the court, to a certain period of imprisonment; and the second time, by the prison administration, to particularly harsh conditions. This second sentencing is open-ended — limited only by the overall length of an inmate's sentence — and is imposed without the benefit of counsel.

The prison at Marion, in rural Illinois, one of the most written-about among contemporary American penal institutions, holds inmates who have committed serious offenses in other prisons. In addition to serving as the ultimate disciplinary measure within the federal system, Marion also confines inmates deemed to present an extreme risk of escape or considered likely to be rescued by outside groups, due to their prominence. The conditions at Marion are much harsher than in any other federal prison, including confinement of inmates for up to 23 hours a day to their cells and denial of any contact visits. The length of confinement is undefined and transfer to a different institution depends on periodic review of each inmate's case by prison officials.

The proponents of such special measures argue that these separate institutions or wards help to keep other prisons safer by isolating the most violent and dangerous inmates from the rest of the prison population. Prison officials also point out that the very existence of these measures serves as a deterrent to inmates who might otherwise behave more violently. But the increasing use of "prisons within prisons," i.e. special wards or separate institutions with much harsher regimes, leads to numerous human rights abuses and frequent violations of the U.N. Standard Minimum Rules for the Treatment of Prisoners.<sup>1</sup>

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<sup>1</sup>Adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the U.N. Economic and Social Council by its Resolutions 663 C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977.

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The states have been quite creative in designing their own "maxi-maxis" and in making the conditions particularly difficult to bear, at times surpassing the original model.

A particularly glaring example is the windowless Q-Wing of the Florida State Prison at Starke, from which inmates never go outside and where some prisoners have been held as long as seven years. The four death row inmates who were there, at the time of our visit, had all been convicted of killings of correctional or law enforcement officials. That they were placed there rather than with the other 311 death row inmates, seemed to have had little to do with their disruptiveness within the prison, but rather with the identity of their victims. Apparently, such harsh confinement represents revenge by the prison system for killing one of their own. Uninterrupted extended confinement in windowless, badly ventilated cells, as in the Q-Wing at Starke, clearly amounts to corporal punishment, explicitly prohibited under the U.N. Standard Minimum Rules.

Another form of punishment is what is known as "strip status" at the Disciplinary Segregation Unit of the Oregon State Penitentiary. The inmate is stripped of all clothing, bedding, and personal possessions and is then expected to "earn" back items piece-by-piece with good behavior.

In addition to keeping their inmates in lockdown, "maxi-maxis" often inflict additional measures on them, such as lack of access to educational programs, which tend to lead toward total idleness. For example, when the prison at Southport, N.Y. was turned into a "maxi-maxi" institution early in 1991, all teaching and counselling staff members were eliminated.

Denial or sharp reduction of time outdoors, used both in Florida and in Oregon, sometimes for years at a time, also violates the U.N. Standard Minimum rules, which mandate at least one hour a day of outdoor exercise for any inmate who does not work outdoors. In the Maximum Control Complex in Westville, Indiana, inmates are locked down for between 22½ and 24 hours a day in their cells, never see anybody except their guards and are often punished with the loss of access to reading materials, among other measures.

These and similar measures, administered by prison officials without independent supervision, not only lead to abuses of authority but are cruel and inflict unnecessary suffering. Documents examined by Human Rights Watch show that determinations are made arbitrarily and that inmates have no recourse to challenge these decisions.

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Other prisons also apply disciplinary measures that violate international standards. For example, in the Broward institution for women in Florida, we witnessed the use of handcuffs as a disciplinary measure. In Broward, as well as in the Bedford Hills female prison in New York, undesirable, unpleasant work is used as a means of punishment. The U.N. Standard Minimum Rules prohibit the use of either measure.

Another type of disciplinary measure strictly prohibited by the Minimum Rules is collective punishment. We observed instances of such punishment in the Krome INS detention center where all women were punished for a protest action undertaken by some Haitian detainees; and in Rikers Island, where inmates who had not participated in the August 1990 melee at the Otis Bantum Center were nevertheless punished for it.

The situation in the jails is of particular concern. Pre-trial facilities everywhere in the world generally offer fewer amenities than prisons as they are intended for relatively short stays rather than for confinement for many years. This is also true in the United States. As a result, paradoxically, prisoners who are presumed innocent (because they have not been yet tried, in the case of pre-trial detainees) or those who have committed less serious offenses (and have received short sentences that can be served in jail) are subjected to much worse conditions than many of the most hardened criminals. It is especially troubling that, in fact, relatively long sentences may be served in jails in the United States. In some states, the law allows for sentences of up to several years to be served in jails. As a consequence, such prisoners are subjected for long periods of time to conditions that in the harshest prisons are used only as disciplinary measures, for example, no contact visits.

Because of inadequate classification and the deficient record-keeping afflicting jails, severe safety problems arise when prisoners with no criminal record are housed together with habitual violent criminals, leading to tragic consequences such as the 1989 suicide death of the 18-year-old Jason Iaquinta, who killed himself after being raped in the Napa County jail in California.

The situation on death rows, where inmates often spend ten years or more while their cases are on appeal, is often made additionally difficult to bear because of the attitude of the staff. Inmates we interviewed reported to us that, for example, they often experience difficulties in obtaining medical help or other necessities,

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because, as one inmate put it, "the mentality is that since we are going to die anyway, why bother to do anything." It is important to bear in mind that the human rights violations described in this report affect a large proportion of Americans -- in fact, the largest known such portion in any sizeable country in the world: out of every 100,000 persons, 426<sup>2</sup> are currently confined.<sup>3</sup> This record-high overall incarceration rate is much higher among African-American males: a staggering 3,109 out of every 100,000 are currently confined.<sup>4</sup> The United States imprisons more than a million of its citizens at any given moment, a larger number than any other country in the world.<sup>5</sup> Over a period of years, a much larger portion of the population is confined in the prisons during some part of their lives. They are incarcerated at a staggering cost. In many institutions, annual costs of incarceration run at over \$20,000 per inmate,<sup>6</sup> while, by comparison, annual tuition, room, and board at Harvard or other top American higher education institutions is slightly above \$18,000.<sup>7</sup> More African-American men between 20 and 29 years of age are

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<sup>2</sup>The ratio is higher for example on the West Bank, about 1,000 per 100,000. In the Bahamas, according to conservative estimates, the ratio is also at least 1,000 per 100,000. That country does not publish its prison statistics and we were unable to obtain the figures from the authorities.

<sup>3</sup>Marc Mauer, *Americans Behind Bars: A Comparison of International Rates of Incarceration*, (Washington, D.C.: The Sentencing Project, January 1991).

<sup>4</sup>*Ibid.*

<sup>5</sup>Among countries that disclose prison statistics. We do not know the number of prisoners in China. By comparison, India, with a population more than three times larger than that of the U.S. has an estimated quarter of a million prisoners. The third most populous country in the world, the Soviet Union, incarcerates just under a million persons at a time; if those confined in institutions for alcoholics in the Soviet Union are included, the number of prisoners would be *roughly* the same as in the United States. Again, leaving aside China, no other country has a prison population remotely comparable to that of the United States or the Soviet Union. India, with fewer than a fourth as many prisoners, has the next largest inmate population.

<sup>6</sup>American Correctional Association Directory 1990.

<sup>7</sup>William Raspberry, "Prison Costs More Than Harvard," *The Washington Post*, May 13, 1991.

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under the control of the criminal justice system (in prison, jail, on probation or on parole) than there are African-American men of any age enrolled in college.<sup>8</sup>

Over the past two decades, the U.S. has experienced an unprecedented growth in the number of people it incarcerates. Between 1973 and 1989 that number tripled and between 1980 and 1990, it more than doubled again.<sup>9</sup> In 1989 alone, the number of American inmates grew by 63,000 -- almost twice the current prison population of Spain, for example. Obviously, a growth of that dimension has a direct impact on prison conditions. Despite the fact that billions of dollars are invested each year in the construction of new prisons, U.S. prisons and jails are increasingly overcrowded. Because of budgetary constraints caused by the effort to provide as many prison beds as fast as possible, other aspects of prison conditions such as education, health care and drug treatment, to name just a few, tend to be overlooked.

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<sup>8</sup>Marc Mauer, *Young Black Men and The Criminal Justice System: A Growing National Problem*, (Washington: The Sentencing Project, February 1990).

<sup>9</sup>Department of Justice, *Prisoners in 1990*.

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Putting criminals behind bars has become a favorite theme in American political campaigns in recent years, and the promise to keep them there for ever longer terms is one that many politicians are most eager to make. No one who was in the United States during the last presidential campaign will readily forget the Willy Horton ads, blasting candidate Michael Dukakis for a furlough program for inmates in Massachusetts. Candidates of both major political parties at various levels of government have competed to demonstrate their toughness on crime and criminals. A British journalist recently pointed out that "the current state of American prisons is the result of a political system that rewards demagogues with slick television campaigns, full of sound bites promising quick-fix solutions."<sup>10</sup> Though one of the purposes is to control crime, this result has not been achieved. There is no compelling evidence that the dramatic increase in the rate of incarceration in recent years has been accompanied by a decline in the crime rate.

The steep rise in the prison population, which in itself seriously affects prison conditions, has been accompanied by a hardening attitude of the courts and the legislatures with respect to prisoners' rights and the rights of criminal defendants. A recent Supreme Court ruling will likely make it more difficult for inmates to challenge conditions of incarceration as "cruel and unusual punishment" under the Eighth Amendment to the United States Constitution.<sup>11</sup> During the last term, the Court also overturned five of its own precedents in the area of criminal defendants' rights and upheld a state law mandating a life sentence without parole for such first-time offenses as the possession of 1½ pounds of cocaine.<sup>12</sup> The new anti-crime bill, approved by the U.S. Senate in the summer and recently passed in a slightly different version by the House, contains provisions limiting federal court review of inmates' petitions; in addition, it doubles the penalties for several drug-related felonies, as well as adding 51 crimes punishable by death.

All of these developments are transpiring behind a thickening veil of ignorance, obfuscation and denial.

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<sup>10</sup>Martin Walker, "America's Gulag, Sentencing System Blights Land of Free," *The Guardian*, June 19, 1991.

<sup>11</sup>*Wilson v. Seiter*, 59 L.W. 4671 (1991).

<sup>12</sup>Linda Greenhouse, "The Conservative Majority Solidifies," *The New York Times*, June 30, 1991.

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We were discouraged by the difficulty and slowness of the process of obtaining permission to visit American prisons (which compared unfavorably with our experience in several less democratic countries).

Human Rights Watch's experience in gaining access to U.S. prisons and in seeing what we needed to see there provides a telling illustration of how difficult it is for the American public to obtain a reliable picture of the situation within prisons.





## CONCLUSIONS AND RECOMMENDATIONS

It would be redundant for a human rights organization to explain why we believe that human rights should be observed in prisons. Beyond moral concerns, however, there are pragmatic considerations that make the humane treatment of prisoners a matter of vital importance to the society at large. As a federal judge<sup>1</sup> has recently pointed out,

Prisoners who complain about the conditions of their confinement do not generally get much sympathy from society, but sympathy is not the issue here. From society's long-term perspective, there are sound reasons for prohibiting cruel and unusual punishment. People who are abused and treated with violence are those most likely to treat others abusively and violently. [...]

Many years earlier, a poet<sup>2</sup> noted,

I and the public know  
What all schoolchildren learn,  
Those to whom evil is done  
Do evil in return.

During the 1970s, there was a shift in the penal philosophy in the United States. Rehabilitation, as the main mission of prisons, was replaced by a focus on retribution, incapacitation and deterrence. Whatever the theory of imprisonment, it is worth stating what should be obvious: that it is in the interest of all to make certain that the hundreds of thousands of individuals who walk out of prisons each year (98 percent of U.S. prisoners do get released at some point) do not leave more dangerous than when they entered.

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<sup>1</sup>Judge Panner, *La Maire v. Maas*, 745 F. Supp (D. Or. 1990).

<sup>2</sup>W.H. Auden, "September 1, 1939."

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There is a similar pragmatic reason why, aside from the fact that it is morally wrong and illegal, prison authorities should not abuse the power they have over inmates: It is in their own best interest to treat prisoners humanely. As noted by a well known prison expert, Vincent Nathan, in court testimony, "When inmates live in a lawless environment, they tend to be more lawless, more violent than they otherwise would be."<sup>3</sup>

We offer the following recommendations regarding the human rights aspects of imprisonment in the United States:

- Maximum-maximum security facilities should be used only under supervision independent from correctional administration. Even then, they must observe certain standards, such as providing outdoor exercise at least one hour a day, providing educational opportunities and assuring access to reading matter, both legal and general.
- The use of physical restraints as a disciplinary measure and any form of collective punishment, both prohibited under the U.N. Standard Minimum Rules, should end.
- Denial of access to reading matter should never be used as a disciplinary measure.
- All cells should have a table and a chair. In no case should the denial of these pieces of furniture be used as an additional disciplinary measure.
- Denial of outdoors time as a disciplinary or supervisory measure should not be used. Each inmate should be allowed at least an hour of daily outdoors exercise, in compliance with the U.N. Standard Minimum Rules for the Treatment of Prisoners.
- In jails, classification and record-keeping must be improved, to avoid situations where non-violent offenders are housed with dangerous and predatory criminals. Limits should be imposed on the duration of a sentence that may be served in jail. In no case should it be longer than one year.
- Prisons and jails have a duty to protect inmates against violence from other

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<sup>3</sup>Fisher v. Koehler 692 F.Supp. 1519 (S.D.N.Y. 1988), p. 1540.

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inmates. The United States Department of Justice should publish an annual report on violence in prisons and jails identifying institutions where repeated incidents of violence take place and should examine the conduct of officials of those institutions to determine whether prosecutions of those officials for violations of federal law are warranted.

- We are concerned about the lack of work opportunities in many jails and state prisons. Under conditions of overcrowding, work opportunities help ease tensions caused by difficult living conditions, prevent violence and contribute to safety. Steps should be taken to assure an opportunity to work for all inmates capable of working.

- Prison officials should make every effort to confine inmates as close to their home as possible so as to facilitate the maintenance of family bonds. Out-of-state incarcerations, as in the case of federal inmates and Puerto Rican inmates, should end.

- All inmates should have access to phones. Given the distances relatives must travel to visit, telephones are often a necessity in maintaining bonds.

- Prisons should encourage access to prisons for inmates' relatives or friends, as maintaining these bonds gives inmates a better chance of staying out of trouble upon their release. Measures such as those taken by the Bedford Hills institution in New York, in helping to provide transportation to the prison, should be promoted.

- As a rule, all inmates should be permitted contact visits. Exceptions should be made only when a specific determination has been made that such visits are hazardous, or have been abused in the case of a particular prisoner.

- We are distressed by the diminishing number of furloughs within the federal system, reflecting, according to wardens we interviewed, the policy of the Bureau. This is particularly troubling in the case of minimum security institutions and with respect to female inmates. Because of the small number of institutions housing women, a large proportion of female prisoners in federal institutions serve their sentences far from home. Whenever possible, the Bureau should compensate inmates for this hardship with a more generous furlough policy. The minimum security camps house non-violent inmates and have no physical barriers that would prevent inmates from escaping, such as fences, bars, watch towers, etc. The thing that keeps inmates from escaping, we were told by prison officials, is that they do not want to risk, if caught, being transferred to a different institution and receiving a

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longer sentence for an attempted escape. This rationale, and the non-violent character of the inmates, should work in favor of granting more and not fewer furloughs in minimum security institutions.

- All types of institutions (although not all of them in each type) use guards of the opposite sex to supervise inmates. While we agree with the view expressed to us that the presence of guards of the opposite sex makes life inside more similar to free life and is thus beneficial to inmates, we are concerned about the violation of privacy when prisoners are regularly being seen naked or using the toilet by persons of the opposite sex. In circumstances when security considerations make it impossible to provide privacy (such as the toilets without doors in dormitories on Rikers Island, or the Federal Bureau of Prisons policy of not announcing guards' presence during some inspections), guards of the same sex should be used.

- We are distressed by the legal limbo situation of several hundred Cuban inmates in institutions all over the country. A review of all these cases should be undertaken promptly, and decisions as to the duration of incarceration should be made based solely on the criminal record of each inmate. No inmate should be left in prison without knowing how long he or she will be incarcerated.

- Incarceration of illegal aliens, except in cases of individual determination that an alien has committed a criminal offense that warrants incarceration, should stop. It is appalling that non-criminal detainees are held, sometimes for periods of a year or more, in conditions worse than those under which convicted criminals are incarcerated.

- Outside observers should have access to prisons. Visits by outsiders are frequently helpful in preventing gross abuses. They also help prisoners to vent frustrations and ease tensions by making it possible for them to voice their grievances to representatives of the outside community. The recent hostage-taking in the maximum-maximum security institution in Southport, New York, and its peaceful resolution after inmates were allowed to describe their grievances to a television crew, supports this view.





## **JAILS**

There were 3,316 jails nationwide in 1988, when the most recent census of jails was conducted.<sup>1</sup> These county- or community-based institutions hold detainees awaiting trial as well as persons serving sentences (usually short ones). Slightly more than half of all jail inmates in 1988 had not been convicted; 3.8 percent were convicted and awaiting sentencing; and 41 percent had been sentenced. The maximum length of a sentence that may be served in a jail differs from state to state; in California, Florida and New York, the maximum is one year. Florida law makes some exceptions to that rule, while in California and New York sentences of one year or less for different offenses may be served consecutively in a jail. In such a case, New York allows a maximum of two years to be served in jail. In California that period, we were told, may be longer. One of the jail staff members accompanying our delegation to the Sybil Brand women's jail in Los Angeles said he knew of an inmate who received ten consecutive one-year sentences to be served in jail. In Nashville, Tennessee, a current law allows sentences of up to eight years to be served in jail.

## **PRE-TRIAL DETENTION**

Persons charged with crimes and awaiting trial may be released on bail or on their own recognizance before trial. According to a recent Bureau of Justice Statistics Bulletin,<sup>2</sup> state courts denied bail in about 4 percent of cases. About 34 percent of all defendants included in the Justice Department study were not released prior to their trial, and of those, 89 percent had been granted bail but could not afford to post it.

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<sup>1</sup>The next National Jail Census is due in 1993. More recent statistics regarding some issues are available from the Annual Surveys of Jails.

<sup>2</sup>Bureau of Justice Statistics Bulletin, "Pretrial Release of Felony Defendants, 1988," February 1991.

In the Federal system, the percentage of defendants denied bail increased due to the 1984 Bail Reform Act, from less than 2 percent the year before, to almost 19 percent in 1985. While prior to the Bail Reform Act, 93% of defendants held until trial were incarcerated because they could not afford bail, after the Act became effective, that percentage decreased to 35.<sup>3</sup>

For accused felons charged under state laws, pre-trial detention periods vary; according to the Justice Department Bulletin cited above, the average was 37 days from the time of arrest to the adjudication. Forty-five percent of detained defendants were adjudicated within one month of arrest, and 96 percent within one year. Those awaiting trial for violent offenses had the greatest chance of being detained for more than a year prior to trial.

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<sup>3</sup>Bureau of Justice Statistics Special Report, "Pretrial Release and Detention: The Bail Reform Act of 1984," February 1988.

The Federal Criminal Code limits pre-trial detention of federal defendants to 100 days, but allows for the exclusion from the computation of that period several types of delays, such as those caused by mental examination of the defendant, transportation of the defendant from another district, consideration by the court of a proposed plea agreement, among others.<sup>4</sup>

#### **PHYSICAL CONDITIONS**

In 1989, the total capacity of jails nationwide was 367,769 and they held 395,553 inmates, with the average occupancy at 108 percent, up from 101 percent a year earlier and from 85 percent in 1983, when the previous National Jail Census was conducted.<sup>5</sup> The overcrowding varies from region to region (jails in the Northeast and West are generally overcrowded while those in the Midwest and South tend to be filled below their stated capacity). Also, the largest facilities — those with more than a 1,000 inmates — tend to be overcrowded (at 126 percent, on average, at the time of the 1988 census) while the smallest ones, under 50 inmates, tend to be filled below their capacity (at 64 percent).

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<sup>4</sup>18 U.S.C. §3161 et seq.

<sup>5</sup>Timothy J. Flanagan and Kathleen Maguire, eds., *Sourcebook of Criminal Justice Statistics*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (Washington, D.C.: USGPO, 1989). It is important to note that statistics about capacity are often misleading because they refer to the number of inmates that institutions were designed to hold. In practice, many cells are unusable or under repair at any given moment. Accordingly, the actual capacity of a jail or prison is generally 10 to 15 percent lower than its intended capacity.

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Jails are supposed to hold inmates for briefer periods than prisons, and that fact is reflected in the physical structure of most institutions. They often have very limited recreation facilities, house inmates in windowless cells, and provide little or no privacy to the detainees.

For example, the Criminal Justice Center in Nashville, Tennessee was built in 1982 with a capacity for about 300 inmates. At the time of our visit in 1990, it held more than 800 inmates and we were told that at some point recently it had held 1,100. For over six months, a staff member told us, the facility's gym was used to house several hundred pre-trial detainees. They had two bathrooms and two showers at the gym. At the time of the greatest overcrowding, additional space in the underground tunnel leading to the courthouse was used to house 200 inmates. There were no showers and no bathrooms in that area. When we visited, inmates were housed in cells. The cells we visited, however, had no windows and were very crowded (for example eight women in a cell of 174.20 square feet, or less than 22 square feet per prisoner).

The Sybil Brand women's jail in Los Angeles was originally designed to hold 910 inmates. The jail has become very overcrowded in recent years and a court order currently places the maximum to be housed there at 2,064. There were 1,715 inmates in the facility on the day of our June 1991 visit. The Los Angeles County jail, with a capacity of 5,700, is under a court order limiting the number of inmates to 6,800. On the day of our visit there in July 1991, the jail, according to the staff, "was in compliance with that order." The housing units there, in large proportion, are windowless.

Many jails, especially the large ones, use dormitories rather than cells for housing and offer little or no privacy. For example, at the Otis Bantum Correctional Center on Rikers Island<sup>6</sup> in New York City, out of 1,516 inmates at the time of our visit about 300 were housed in cells (mostly segregation) while the rest lived in dormitories and on the decks of converted ferry boats anchored to the shore of the island. Each dormitory housed up to 57 inmates, had an adjoining TV room, a bathroom, and two phones. There were no partitions between beds (which were spaced about 20 inches apart from each other); the bathrooms, which in some dorms had no shower curtains and the toilets which had no doors, were located in full view of the guards, stationed behind a glass wall and able to oversee four dormitories at once from their posts. Several of the guards were female and inmates complained

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<sup>6</sup>The 440-acre island confines about 14,000 inmates in 9 jails.

about having to take care of all of their physical necessities in their presence. The ferry boats housed over 80 prisoners on each deck. These living areas were very noisy and stuffy. Inmates told us that there was a mosquito problem in the summer and that they were cold in the winter.

In the Sybil Brand jail in Los Angeles, women slept in dormitories holding between 130-156 people. The dorms were crowded and offered no personal privacy. The Los Angeles County jail uses dormitories to hold the several hundred inmates designated as "trusties" and to house newly admitted inmates, while others are housed in cells.

### **SAFETY**

Classification of inmates in jails is often deficient or non-existent. As a result, prisoners with no prior criminal record — such as those, for example, arrested for driving while intoxicated — may end up sharing a cell or dormitory with dangerous criminals. Overcrowding, the frequent reliance on dormitory housing, and inadequate supervision by the staff often lead to dangerous situations. On Rikers Island, for example, the computers do not keep records of recidivists' past behavior in jail, and thus inmates with histories of violence toward other inmates may end up being housed in open dormitories.<sup>7</sup> A recent court case documented 1,300 reported incidents of inmate-on-inmate violence, 600 of them involving weapons, in just one of the nine jails on that island.<sup>8</sup>

In institutions where inmates are housed in large dormitories, guards often avoid going deep into the room out of concern for their own safety, thus leaving inmates unprotected from each other. In the intake area in the Nashville jail, 16

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<sup>7</sup>Tim Golden, "Inside Rikers Island: A Bloody Struggle for Control," *New York Times*, September 1, 1990.

<sup>8</sup>*Fisher v. Koehler*, 692 F.Supp. 1519 (S.D.N.Y. 1988).

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cells house a varying number (69 on the day of our visit) of new arrivals for up to a few days. We were told that cells in that section were not locked at night and that the guard's station was outside the cellblock.

A 1989 court case provides a tragic indication of the dangerousness of jails:<sup>9</sup>

Timothy Ryan was arrested and charged with motor vehicle violations. Because he could not post bail, Ryan was sent to the Burlington County Jail in New Jersey, where he was placed in a cell with nine other inmates. Another inmate also assigned to that cell was Maurice Scott who had been involved in several violent attacks during the two months of his incarceration. Jail documents showed that Scott had been convicted of a violent crime resulting in the injury or death of another person. Five days after Ryan's arrest, Scott attacked Ryan in a dispute over some food that had been brought to the cell for breakfast. At some point after the attack, prison guards were called and they brought a stretcher. Ryan was placed on the stretcher and carried to the jail's infirmary, where he was handcuffed and shackled before being taken to a hospital by ambulance. Hospital physicians diagnosed that Ryan's neck had been broken, rendering him a quadriplegic.

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<sup>9</sup>Ryan v. Burlington County, N.J., 889 F.2d 1286 (3d Cir. 1989).

Although inmates are reluctant to talk about these matters in interviews, court cases provide descriptions of frequent homosexual assaults in jails. In a Texas jail, for example, "Inmates without any homosexual tendency have been forced by other stronger inmates to perform acts of oral sodomy as well as anal intercourse. Many of these attacks have endured for long periods at a time. Among the female inmates, unwelcomed lesbianism is apparent."<sup>10</sup> Several inmates testified about sexual harassment and attempted rapes at the Correctional Institution for Men on Rikers Island in New York, and a court case documented a number of inmate rapes.<sup>11</sup>

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<sup>10</sup>Alberti v. Heard, 600 F.Supp. 443 (1984), p. 457.

<sup>11</sup>Fisher v. Koehler, 692 F.Supp. 1519 (S.D.N.Y. 1988).

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Human Rights Watch interviewed the mother of an 18-year-old man, Jason Iaquina, who committed suicide<sup>12</sup> in the Napa County Jail in California in December 1989. The boy's mother suspected sexual abuse as the reason for her son's suicide because reportedly he had once told her that he would commit suicide if he was raped. The initial autopsy did not determine whether the deceased had been sexually assaulted shortly before his death. At the mother's insistence, however, a second autopsy was performed and confirmed her suspicion. The police investigation showed that the boy (he turned 18 two weeks before his death) had been depressed because of harassment by older inmates and started tearing up sheets, threatening to "string himself up." The guards separated him from the rest of the inmates in a holding cell but threw the pieces of sheet into the cell with him and did not supervise him. He used the torn sheet shortly afterwards to kill himself. When other inmates, who could see him from their cells, realized that he was indeed serious about the suicide, they yelled at guards, who did not react. The mother filed a suit against the county which was settled out of court.<sup>13</sup>

### **DISCIPLINARY MEASURES**

#### **Authorized**

Inmates who cause disciplinary problems, or commit infractions while in jail, are punished with loss of privileges or by being placed in disciplinary segregation. Some jails add supplementary penalties to the segregation, such as the loss of canteen privileges, a reduction of recreation time or a prohibition on smoking. In at least two jails that Human Rights Watch inspected, the Sybil Brand women's jail in Los Angeles and the Los Angeles County Jail (men's) some inmates in disciplinary segregation are punished also with a special diet. For up to three

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<sup>12</sup>According to a February 1990 Bureau of Justice Statistics Bulletin, suicides are the leading cause of death in American jails.

<sup>13</sup>See also: Leslie Weinfield, "Questions surround 18-year-old's 1989 suicide in Napa County Jail," *Napa Register*, February 26, 1991.

days in a row, twice a day, their only meal consists of totally tasteless balls made of a blend of nutritional substances. The disciplinary diet may be administered for a maximum of ten days; during this period, after every three days, the inmate receives regular food for a day.

The New York City jail system, which houses 22,000 inmates, 70 percent of them on Rikers Island, has recently begun establishing a special maximum-maximum security section to confine inmates deemed especially dangerous or aggressive. The disciplinary segregation section on Rikers Island is currently being expanded to have a capacity of 900. Inmates who have committed multiple violations may spend up to eight months there, locked in their cells almost all day, without radio or television, canteen privileges or smoking.<sup>14</sup> Inmates interviewed by Human Rights Watch in the Otis Bantum Center segregation unit told us that they were allowed out of the cell for one hour a day: during this period they would exercise, shower and make phone calls.

### **Unauthorized**

A serious instance of misuse of disciplinary force by jail staff occurred in August 1990 at the Otis Bantum Center on Rikers Island, after inmates barricaded themselves in their dorms protesting long delays in getting meals and the fact that they were not able to receive visitors. These problems were caused by a job action by correctional officers who had barricaded the only bridge leading on to the island, making it impossible to deliver supplies or to pay visits. The inmates' uprising, which started on the same afternoon as the guards ended their strike, was quickly overpowered by the staff who then proceeded to beat inmates in retaliation. The incident left 120 inmates in need of medical attention, 81 of them with injuries to their heads and several in need of immediate hospitalization because they were unconscious or suffering from seizures or hematomas to the brain.<sup>15</sup> Some injuries were incurred when the melee was being quelled, but the number and types of other injuries confirmed inmate testimonies about systematic beatings by guards. The guards wore riot gear and, as pointed out by the Department of Investigation's

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<sup>14</sup>Selwyn Raab, "Rikers Maxi-Maxi Dungeon: Too Brutal?" *The New York Times*, July 4, 1991.

<sup>15</sup>City of New York Department of Investigation, *Report to the Mayor: The Disturbance at the Rikers Island Otis Bantum Correctional Center, August 14, 1990: Its Causes and the Department of Corrections Response*, (The City of New York: April 1991).

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report, could not be identified by inmates.<sup>16</sup> Among the staff, 21 individuals were transported to area hospitals for medical attention. Of those, five were treated for gas inhalation only (gas had been used to subdue the riot); none required hospitalization.<sup>17</sup>

In the days after the melee, many inmates were sent to punitive segregation. Human Rights Watch was able to interview some of them in the segregation unit about a month later. Inmates told us that after the uprising was subdued, they were told to go downstairs to the receiving room and take off their jackets and sweatshirts. Then, they were beaten with batons by guards in a corridor.

One man, who received a 130-day disciplinary segregation sanction as a result of the riot, required 15 stitches in the aftermath of the beating. He described first being beaten in his dorm and then in the downstairs hall. He said that after the beating was over, the guards wrote up everybody in the dorm for disciplinary infractions, regardless of whether they had participated in the riot. This man told us that he did not know what he had been charged with. "The guy asked me what happened, and the next thing I know is I have 130 days," he said. He also complained that, since the beating, he had headaches, ringing in his ear and some loss of hearing. He told us that, a month prior to our interview, the facility doctor recommended that he be sent to an outside specialist for evaluation, but that this recommendation had still not been acted upon.

The April 1991 Report to the Mayor confirmed that guards abused power against inmates; it did not, however, provide evidence against particular individuals and thus no sanctions were imposed against staff members. Inmates who were

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<sup>16</sup>Guards normally wear badges with their names pinned to their uniforms. Bullet proof vests and helmets worn as riot gear make identification impossible. Since the August 1990 riot, the City Department of Corrections has introduced regulations requiring that vests be marked in a clear way, enabling identification.

<sup>17</sup>Report to the Mayor.

charged with disciplinary infractions and placed in the segregation unit were cleared in November after a court dismissed all 262 charges against them. By the time of that decision, however, many inmates had already spent weeks or months in segregation.

The August 1990 disturbance was not an isolated example of guard brutality on Rikers Island. According to a 1988 court case regarding another institution on the island, the Correctional Institution for Men, officers often resorted to excessive force.<sup>18</sup> The court documented several instances of individual inmates who were punched in the face and/or beaten by guards; the decision also described a scene in which, following a disturbance in the dining hall, inmates in one dorm were taken by bus to a different part of the island where there were two rows of officers, 14 in each row, dressed in riot gear, waiting for them. The inmates, who were handcuffed to each other, were led between the two rows of officers who punched them and struck them with sticks.

## **ACTIVITIES**

Watching television is the main activity of most jail inmates. Because of relatively short stays (in theory, at least) few institutions provide meaningful work or educational opportunities.

The recreational facilities in the Nashville metropolitan jail (Criminal Justice Center) consist of a gym and an outdoor exercise area on the roof. Inmates are supposed to be able to use the outdoor cement area for one hour a day, but Human Rights Watch's interviews revealed that this minimum was not always observed. For example, one woman who spent eight months there before she was transferred to a different institution said that she never went to the gym during her entire stay there, and went only once a week to the outdoor roof area. Another woman, who had been in the jail for several months at the time of our visit, said that

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<sup>18</sup>*Fisher v. Koehler*, 692 F.Supp. 1519 (S.D.N.Y. 1988).

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she had an artificial hip and was unable to climb the stairs to the roof. The administration did not allow her to use the elevator. The indoor gym was used for more than six months for housing, reducing the already meager exercise opportunities for inmates during that period. Inmates in that jail said that all they did was sit in their cells all day, leaving them only for meals and recreation. At the time of our visit, some inmates had been at this facility for as long as three years. A 1989 law allows a sentence of up to eight years to be served in jail.

On Rikers Island, in the various facilities we visited, inmates said they were allowed at least one hour a day of exercise.

### **CONTACTS WITH THE OUTSIDE**

The Nashville jail and the two Los Angeles jails visited by Human Rights Watch delegations do not permit contact visits for inmates. Visitors are separated from the inmates by a glass wall and talk through a telephone. An exception, both in Nashville and in the Sybil Brand jail in Los Angeles, is made for female inmates who are permitted contact visits with their children (in Los Angeles an inmate must complete a parenting course to be eligible for such visits). Regular visits in the two Los Angeles jails may be limited to 20 minutes. Inmates on Rikers Island are allowed contact visits, although those in punitive segregation are required to sit across a very wide table from their visitors and in practice are unable to have any physical contact with them.

Jails allow inmates to use phones, although some limit the length and frequency of calls. We also heard numerous complaints about phones that were out of order in several of the jails we visited.

### **HEALTH**

Many of the inmates interviewed by Human Rights Watch complained about the quality and availability of medical assistance and the insensitivity of staff members to medical needs. Though we were unable to substantiate these claims for lack of medical expertise in our delegations, our survey of recent court cases revealed several issues similar to those raised in interviews.

Eleven years prior to his incarceration in a Kentucky jail, an inmate<sup>19</sup> was involved in a serious motorcycle accident in which he sustained compound fractures

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<sup>19</sup>Johnson v. Hardin Cty., Kentucky 908 F.2d 1280 (6th Cir. 1990)

to both legs. Having never fully recovered, he sometimes needed a cane to walk at the time of his incarceration. He had been found 100% disabled by the Social Security Administration. Upon arrival at the facility, he notified the jail of his situation, requested a cane and a small cell. Neither request was granted. After requesting a lower bunk, he was assigned an upper bunk five feet off the ground with no ladder. He had to climb up the bars to get to it.

While in jail, he tripped over the shower drain, fell from the elevated shower platform (approx. two feet) and was unable to get up. He was taken to a hospital and received a full cast on one leg and was told by the doctor to keep his weight off it and to use crutches. After the accident, he was placed in a small single cell. Despite the doctor's instructions and numerous requests by the inmate, he was not provided with crutches, with material to elevate his legs, or with extra blankets to keep his legs warm. He first received crutches when he was moved to a 4-person cell a full month after the accident. He also testified that numerous prison officials had denied his requests for a plastic bag to cover his cast when he used shower facilities or for a wash bowl so he could wash in his cell. The inmate claimed that he was forced to go without a shower for almost 40 days; only after he was moved to that 4-person cell was another prisoner able to obtain a plastic bag for him. He also testified to suffering a great deal of unnecessary pain because he often did not receive the medication prescribed for him.

Human Rights Watch has learned of two deaths in recent years caused by the use of restraints in the mental observation unit of the infirmary at the Los Angeles County Jail. The widow of Carl Bruaw, Joyce Amiri-Bruaw, told us about the events leading to her husband's death.

Carl Bruaw was arrested on August 2, 1988. He had no prior criminal record or history of mental illness, but had recently suffered a "temporary mental breakdown" which resulted in erratic behavior.<sup>20</sup> He was outside walking his dog in his underwear when a police officer stopped and questioned him; he reportedly

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<sup>20</sup>According to the testimony provided by his widow and supported by extensive photographic and medical records, at the time of his August 1988 detention at Los Angeles County jail, Carl Bruaw suffered from excessive use of force and beating at the hands of the jail deputies. According to the Los Angeles County Sheriff's Department medical services records, the detainee acted "inappropriately." Bruaw sustained various bruises, an injury to his eye and serious injury to his left testicle, which subsequently led to its atrophy. Bruaw filed a notice of intent to sue, but because of his death, this suit was not pursued.

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shoved the officer and was charged with misdemeanor assault. On March 8, 1989, he was sentenced to one year.

In late June 1989, while serving his sentence, he went into a depression because he was not used to jail conditions, according to his wife. He was passive, confused and disoriented, and Los Angeles County Men's Central Jail authorities sent him to the mental observation unit of the jail infirmary.<sup>21</sup> On his third day there, June 27, infirmary officials decided he needed to be "restrained," and strapped him to his cot. They did not give him the required amount of food, exercise or supervision; they apparently just strapped him down and left him there. He died on July 3, after six days in the restraints, from a blood clot in the lung caused by prolonged immobility. His widow sued and Los Angeles County settled out of court.<sup>22</sup>

Carl Bruaw was the second man in five years to die of a blood clot in that infirmary. Stanley Malinovitz, 38, died January 28, 1984, after 40 hours in restraints. A jury recently awarded \$2.5 million to his widow and children.<sup>23</sup>

In September 1990, in a front-page article, the *Los Angeles Times* reported that state investigators had determined that the jail infirmary was not following acceptable practices for the use of physical restraints on mentally ill patients.<sup>24</sup> At

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<sup>21</sup>The infirmary is unlicensed; Los Angeles County has yet to comply with a 1980 court order requiring it to apply for and obtain a hospital license for the facility.

<sup>22</sup>Also see: Amy Louise Kazmin, "Widow of Inmate to Get Pension," *Los Angeles Times*, April 27, 1991; Amy Louise Kazmin, "Restraint Use Studied After 2nd Jail Death," *Los Angeles Times*, May 11, 1990; Rene Lynch, "Jail Restraints Probed After Death of Inmate," *San Fernando Valley Daily News*, May 12, 1990; Amy Louise Kazmin, "L.A. County Jail Infirmary Substandard, State Finds," *Los Angeles Times*, September 15, 1990; Lisa Pope, "For Many Mentally Ill, It's Street or Cell," *San Fernando Valley Daily News*, September 16, 1991; Amy Louise Kazmin, "County's Jail Hospital Flaws Cited in Past," *Los Angeles Times*, September 22, 1991; Amy Louise Kazmin, "Efforts Told to Improve Jail Hospital," *Los Angeles Times*, September 27, 1991; Gail Diane Wilcox, "Who Ya Gonna Call? Cop Busters!" *Los Angeles Magazine*, May 1991.

<sup>23</sup>Mayrene Barker, "Widow Wins \$2.5 Million in Jail Death," *Los Angeles Times*, December 12, 1989.

<sup>24</sup>Amy Louise Kazmin, "L.A. County Jail Infirmary Substandard, State Finds," *Los Angeles Times*, September 15, 1990.

the time of Human Rights Watch's visit to the jail, in July 1991, 10 out of the 45 patients in the mental observation unit were in restraints. The nurse who escorted our delegation during the tour insisted that the jail complies with all state guidelines for protection of restrained patients; these include releasing and allowing full range of motion for each of the restrained person's four limbs at least once every two hours.

An inmate in the Allen County Lockup Facility in Indiana, who had been put on a suicide watch there, brought a suit<sup>25</sup> alleging that the watch policy was abusive and restrictive and that unauthorized disclosures that he was suffering from AIDS-related complex were made. While on suicide watch, he was denied a change of clothing, bedding of any sort, soap, towel, washcloth, toothbrush, toothpaste, shaving items, toilet tissue, paper, pencils, a Bible or other reading materials, or visitors. He was stripped and given a white gown to wear and placed in a cell with nothing but a steel bed frame. He was also denied access to a telephone. (The officers present allegedly claimed that they had no disinfectant with which to clean the phone after his use.) He also testified that when he requested drinking water from the officers, they told him to drink from the toilet; when he protested that it was dangerous to his health, they responded that it was all right since he was going to die anyway. The inmate also testified that the officers verbally abused him and openly discussed his medical condition in front of other inmates. He stated that this incident was the most humiliating experience of his life and that he suffered from nightmares and other traumatic experiences long afterward.

### **CLOTHING**

In Nashville, inmates are required to wear white clothes inside the cell blocks and orange uniforms outside the blocks. Female inmates are allowed to wear private clothes after five p.m. (We were unable to determine if this rule also applied to men).

In the Sybil Brand jail inmates are required to wear jail uniforms at all times.

On Rikers Island, inmates are allowed to wear their own clothing (except for some specified items or colors). Visitors may take home inmates' clothes for laundering.

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<sup>25</sup>**Bird v. Figel, 725 F.Supp. 406 (N.D.Ind. 1989)**

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### **FOOD**

Inmates in all the jails visited by Human Rights Watch complained about the food. In Nashville they said that the commissary did not carry food and that they could not supplement their jail diet with purchases.

The Otis Bantum Center on Rikers Island, confining more than 1,500 inmates, does not have its own kitchen; food is brought in containers from another facility on the island. We heard complaints that the food was unappetizing, hot meals were served barely warm, while foods supposed to be served cold were tepid. Inmates voiced their concerns about the potential health hazards associated with transportation and storage of the food at above the proper temperature. Our visit to the dining room revealed that coleslaw, tuna salad and potato salad, on the lunch menu that day, none of which should measure more than 40 degrees Fahrenheit, according to the institution's standards, were at 64, 70 and 68 degrees respectively. Inmates also complained about not getting enough to drink and that they did not have salt and pepper on the table, which at least would have made the food a little more palatable. We observed that inmates and staff members who served food wore dirty clothes and hastily put on plastic gloves only when they noticed our delegation.





## STATE INSTITUTIONS

### PHYSICAL CONDITIONS

#### Overcrowding

All states operate their own prisons and state prisons confine over 90 percent<sup>1</sup> of American prison inmates. As of December 1990, according to the U.S. Justice Department, state prisons held 705,717 inmates, about 115 percent of capacity. The overcrowding varied from state to state, and from prison to prison. For example, Florida prisons were filled at 98 percent of capacity as of July 1991. In June, New York state prisons were at 99 percent of capacity; while Tennessee in the same month had 13,976 inmates and 9,600 prison beds. Prisons in Tennessee were not overcrowded, however, because a court order prohibits overcrowding of state prisons; the state uses the jail system to house its excess inmates. As a result, 1,826 sentenced inmates were held in jails awaiting transfer, and an additional 2,696 had been sentenced directly to jails. California prisons were at 188 percent of capacity in July, unevenly distributed; a few institutions were filled at close to or less than 100 percent, while one held 250 percent of its stated capacity. In Puerto Rico,<sup>2</sup> as of March 1991, prisons were filled at 113 percent of capacity system-wide, with some institutions significantly below their stated capacity, and others severely overcrowded (up to 180 percent of capacity in one case, over 150 percent in several others). It is important to note that prisons filled at close to 100 percent are in fact overcrowded because, in practice in every facility at any given time, some cells are under repair, used for storage or for other purposes.

State prisons house their inmates both in cells and in dormitories and deal with overcrowding by installing double bunks as well as using dayrooms, classrooms, office space, and other areas originally not designed as housing.

At Bedford Hills, a women's institution in New York State, dormitories with cubicles designed originally for one person had double bunks installed in them when Human Rights Watch visited. Two inmates shared 58 square feet enclosed by a five-foot-high partition in a large, noisy and stuffy dormitory. Dormitories were designed for 50, yet held about 90 inmates at the time of our visit. Inmates complained to us about the crowded conditions and about not being able to choose

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<sup>1</sup>Patrick A. Langan, "America's Soaring Prison Population," *Science*, March 29, 1991.

<sup>2</sup>See footnote 1 in Preface.

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a roommate. A severely overweight woman (she told us her weight was 280 pounds) said that when she and her roommate were both in the cubicle, they literally could not move. The warden of that institution told us that since double-bunking was implemented in the dormitories, the number of suicide attempts had increased.

The 30-person dormitories in the Tennessee Institution for Women offered no privacy at all. When Human Rights Watch visited, there were no partitions and beds stood in rows, with about four feet between them.

In the California Penal Institution for Men in Tehachapi, a facility designed for 2,764 which held 5,700 inmates at the time of our visit, medium security inmates were housed in 170-men dormitories, in which metal lockers for belongings separated double bunks from one another.

In men's institutions, dormitories add to safety problems, because large groups of inmates are left to themselves at night.

The majority of cells we saw during our visits to state prisons held one inmate. They were usually at least 60 square feet, with the exception of the windowless cells at the Tennessee State Penitentiary, which were slightly above 40 square feet (until recently, these cells frequently held two men). Permanent double bunks were added to cells designed for one at the California Colony for Men, leaving under 20 square feet per inmate.<sup>3</sup> All cells visited had toilets and sinks. Most inmates eat in dining halls, but individuals in segregation and in maximum-maximum security units have their meals shoved into the cells through a slot in the door; some complained about having to eat in the smell from the toilet.

The cell furniture in the state prisons we visited usually consisted of a bed, a cabinet, some shelving, a table and a chair. There were no tables and chairs at the Florida State Prison at Starke, where inmates often spend 24 hours a day locked in. Some cells there had trunks for an inmate's personal belongings and we observed these trunks used as makeshift tables. Other cells had no trunks and inmates there used cardboard boxes as tables on which to do their legal work or write letters. Many inmates there have not been able to sit on a piece of furniture

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<sup>3</sup>Dohner v. McCarthy, 635 F. Supp. 408 (C.D. Cal. 1985), p. 411. The California Department of Corrections confirmed to Human Rights Watch that double-celling continues.

that would give their backs support for years. Some reported to Human Rights Watch that they have experienced severe back pains. Similarly, close management (see "Disciplinary Measures," below) cells at the Broward institution in Miami had no tables or chairs.

### **Sanitation and Heating**

Sanitary conditions often vary in direct relation to overcrowding because the infrastructure breaks down more easily when many more people use it than originally planned. For example, the California Institution for Women, whose capacity is 1,026, held 2,533 inmates in July 1990 (this number was clearly lower at the time of our May 1991 visit; the official serving as our guide, however, was not sure of the figure and put the population at "about 1,900"). Inmates we interviewed there told us that showers often broke and water accumulated on the bathroom floors. A press report quoted an inmate there as saying: "You can't imagine what it is to have one toilet for 32 women. [...] There is a line in the morning and a line at night. Our sink has been out of order for a week."<sup>4</sup> An inmate Human Rights Watch interviewed in Puerto Rico described conditions in one of the penal camps, at Guavate. Dormitories there had capacity for 60 men. Occasionally, according to the inmate, up to 96 people slept in a dormitory. There were three showers and toilets per dorm, and five sinks; usually some were out of order. Occasionally, there was a shortage of blankets, and inmates suffered from cold at night.

The warden of the women's prison at Bedford Hills, New York, told us that, as a result of a sharp increase in inmates, the plumbing system often broke down; to ease the situation, clothes washers meant for the personal use of inmates in dormitories had to be removed, causing inconvenience and complaints.

Inmates living in the dorms of the Tennessee Institution for Women (which was not overcrowded) stated that they sometimes had to wait in line to use the bathroom.

Apart from run-down or insufficient infrastructure, some institutions were simply dirty and not cared-for.

At Starke, an institution which was not overcrowded, we observed that

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<sup>4</sup>"Special Report," *The Orange County Register*, July 29, 1990.

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corridors in some of the wings were filthy and the floor had water accumulations. One inmate in that institution recently described his cell: "Peeling paint on walls, leaking plumbing, broken glass in windows, dim lighting, roaches, rats/mice, ants, mosquitoes, moldy pillows and mattress, covered with filth, which have no plastic covers, unbearable heat in the summer, intense cold in winter."

At the California Institution for Women, located in an agricultural area about fifty miles from downtown Los Angeles, the smell of cattle manure is omnipresent, as are tiny cattle flies.

In Puerto Rico, the Court Monitor's<sup>5</sup> reports have described unsanitary conditions such as the presence of open sewers near kitchen areas, or rat infestation. In addition, the Monitor pointed out that some new institutions frequently achieve a state of dilapidation shortly after their inauguration. After a December 5, 1989 visit to the Bayamón 1072 prison, the Court Monitor stated "... the institution, *which opened in January 1989* (emphasis in the original), is dysfunctional in virtually every respect." One example frequently mentioned to us in interviews with prisoners were the air-powered doors in that institution, which cost several thousand dollars apiece, and which were immediately obliterated by inmates, apparently because a small part which would have prevented this was never installed, causing additional safety problems. The Monitor wrote:

The majority of the housing units in this eleven-months old facility have chains and padlocks as locking mechanisms. The monitors' observation revealed that in some of the housing units, all doors and gates of the 256-man housing units were open, allowing totally free movement of inmates.<sup>6</sup>

Electronically controlled doors in the one prison Human Rights Watch was permitted to visit in Puerto Rico, the Annex to the State Penitentiary ("Malvinas"), built in 1986, were (except for the maximum security section) never

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<sup>5</sup>To monitor the implementation of their orders in prison litigation cases, courts have often appointed court monitors who visit the institutions in question and produce periodic reports. In Puerto Rico, the monitor has been appointed to oversee the implementation of the orders resulting from the *Morales Feliciano v. Fernández Colón* case, (D.P.R. 1990). See also "Prison Litigation in the United States" chapter.

<sup>6</sup>Ninety-Sixth Report of the Court Monitor, January 10, 1990.

locked, leaving inmates unprotected at night.

In almost all institutions Human Rights Watch visited, we heard complaints about the temperature. Inmates in the dorms at Bedford Hills said that during hot days, the dorms were extremely stuffy and that some inmates fainted from the heat. At Starke, many inmates complained about heat in the summer and cold in the winter; the same concerns were voiced by prisoners at the Tennessee State Penitentiary in Nashville. Most institutions we visited, including those in hot climates, were not air conditioned.

#### **SAFETY**

One of the main problems in American prisons is inmate violence. The dramatic increase in the number of inmates and the resulting use of dormitories rather than single cells for housing, as well as the gross overcrowding of many institutions, has made inmates more vulnerable to physical assaults by fellow prisoners.

Assassination by fellow inmates has been the second or third leading cause of death in state prisons over the past ten years or so, with the first cause being illnesses and other natural causes, and suicides and inmate-to-inmate homicides alternating in second place. (Other causes of death listed by the Justice Department include executions, accidents, and a large group of cases described as "unknown.") In the ten years between 1978 and 1988 (the year for which the most recent statistics are available), assassinations by fellow inmates constituted between about 12 (1981) and 4 (1988) percent of all deaths that occurred in U.S. state prisons.

A court case describes an assassination in the Tennessee State Penitentiary.<sup>7</sup> Jerry Fails was working as an inmate janitor at that prison on August 17, 1986. While cleaning the walkways, he exchanged words with inmate Eggleston. Eggleston, who was drunk on liquor made in the prison, picked up a knife and chased Fails to the metal grill door leading to the prison yard. Fails discovered that the door was locked and a corrections officer observing the scene ignored Fails' pleas for help. Two corrections officers arrived on the scene to separate the inmates while another inmate opened the door. A third officer grabbed Eggleston's wrist but was pulled away by one of the two other officers who stated,

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<sup>7</sup>Walker v. Norris, 917 F.2d 1449 (6th Cir.1990)

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"Wait a minute, he's got a [knife]." Fails passed through the door, Eggleston followed and overtook Fails who implored the guards to help him, asking, "You all going to allow him to kill me?" Eggleston stabbed Fails to death as the officers watched.

The court found that the officers' inaction amounted to "deliberate indifference."

During Human Rights Watch's 1990 visit to that institution, inmates told us about an assassination that occurred a few weeks earlier in the medical unit of that facility. We were later able to obtain a copy of an official report confirming that a 27-year-old inmate serving a 3-year sentence for burglary was shot dead by another inmate late at night in the institution's medical ward. According to the records, a correctional officer and a nurse heard a shot fired and immediately after saw an inmate running from the back of the medical ward to the front area. He said he had been hurt and fell to the ground. He was pronounced dead on arrival at the Vanderbilt Hospital in Nashville, about 45 minutes later.

One of the factors contributing to the number of violent incidents in U.S. prisons is the presence of gangs. General statistics on the subject are unavailable, but a court gave this estimate on the gangs' presence in the maximum security institution in Stateville, Illinois:<sup>8</sup> "There are a large number of mutually hostile gangs in the institution, with gang affiliation running as high as 85 percent."<sup>9</sup>

In Puerto Rico, in the early 1980s, prisons experienced a wave of inmate assassinations perpetrated by other inmates. According to documents in Human Rights Watch's files, in 1980, at least 11 individuals were assassinated by their fellow inmates, most of them beaten to death. In 1981, 24 individuals were beaten to death; and in 1982, at least 32 inmates were either fatally beaten, strangled or hanged by their fellow inmates. Prison experts, lawyers, and prisoner rights advocates interviewed by us attributed this to gang wars that had been underway throughout the prison system. According to prison experts, the bloodshed was

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<sup>8</sup>Stateville is constructed as a panopticon (along the lines of Jeremy Bentham's proposal), permitting a single guard at the center of the prison to see into every cell. The theory was that this would provide the authorities with the maximum ability to control everything in the institution.

<sup>9</sup>Williams v. Lane, 646 F. Supp. 1379 (N.D.Ill. 1986).

eventually curtailed because inmates from rival gangs are now placed in separate institutions. The Puerto Rican Administrator of Corrections denies this, but virtually everyone else Human Rights Watch interviewed for this report in Puerto Rico has confirmed the existence of prison gangs and provided us with detailed information regarding the gangs' distribution within the system, as well as details of the gangs' internal rules. We were unable to obtain firm statistics of current inmate-to-inmate killings in Puerto Rico (the Administrator of Corrections said that there have been a total of "five or six" in the past few years); numbers obtained from other sources seemed slightly higher, but clearly much lower than in the early 1980s.

According to information obtained in interviews with relatives of inmates, prison experts and lawyers, gangs regulate numerous aspects of prison life in Puerto Rico through their own codes and, to a large extent virtually run prison life. A former inmate, who had spent more than ten years in various Puerto Rican prisons and who freely admitted to being a gang member, described situations when a member of another gang was placed in his gang's environment, and how they, the inmates, asked the administration "to remove that person, without reaching the necessity of having to recur to violence."

Overcrowding, which makes it more difficult for the staff to monitor inmates, also makes prisons more susceptible to violence.

### **Sexual Abuse**

In addition to homosexual relations by mutual consent,<sup>10</sup> many cases of homosexual rape have been documented, although, given the sensitive nature of this subject, the majority probably are never reported.

A judge recently called rape "one of the most degrading events, short of death, that can occur in prison."<sup>11</sup> The inmates who brought the class action suit against the Glades Correctional Institution (GCI) in Florida in which this comment

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<sup>10</sup>Prison officials admit that homosexuality exists in virtually all institutions, although they are usually evasive about the specifics. In view of the danger of infection with the AIDS virus, HIV, in two states, Vermont and Mississippi, and in the jail system of New York City, officials have decided to make condoms available to inmates.

<sup>11</sup>LaMarca v. Turner, 662 F. Supp. 647 (S.D.Fla. 1987), p. 687.

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was made had all been raped under similar circumstances. The court also found that the rapes were not isolated incidents, but flowed directly from the "lawless prison conditions at GCI."<sup>12</sup>

For example, a 25-year-old inmate was raped during his second night at GCI, as he was beginning to take a shower. He was grabbed and held at knife-point and told that if he hollered, he would die. He was penetrated anally by two or three inmates. He was so traumatized that, after being transferred to the Reception and Medical Center for dental surgery, he slashed his wrist with a razor blade to keep from being brought back to GCI.<sup>13</sup>

A 27-year-old was attacked by five inmates and dragged into the shower. The inmates raped him at knife-point 3 times over a period of 35-40 minutes. Having been warned by his assailants, he was afraid to tell the dorm officer and too embarrassed to seek medical attention. He later committed various disciplinary violations in order to be kept in administrative confinement. This inmate was later transferred to various other facilities and upon being transferred back to GCI, he immediately requested protective custody.<sup>14</sup>

Another inmate was raped 5 times by 3 inmates while held at knife-point on the bunk below his. For the next few days, the inmates followed him around. He was eventually taken to the Lieutenant's office by an officer who noticed that he was being followed and the Lieutenant agreed to put that inmate in protective custody if he would provide a written statement, which he did. He repeatedly attempted to bring the matter to the attention of the Superintendent but received no response to three different requests for a meeting. The only response he had to the rape was a one-hour meeting with a psychologist at GCI.<sup>15</sup>

According to another court case, even inmates in protective custody, the classification designed—among other purposes—to segregate inmates vulnerable to sexual assault, are not free from that danger. The court said about such inmates:

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<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

<sup>14</sup>Ibid.

<sup>15</sup>Ibid.

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"Nor do they enjoy complete security in protective custody. At least two inmates have been raped in protective custody, and the court learned from touring the institution that inmates who are not supposed to be in protective custody sometimes achieve access nonetheless."<sup>16</sup>

In a recent article, a federal judge described a case of a 19-year old farm boy from a southern state who had been sentenced to one year for possession of marihuana. Upon his arrival in the institution, he was placed in the processing unit with a capacity for 120, though holding 465 prisoners. His cell had four beds and held eleven men. In that cell, during 48 hours, the boy was sexually assaulted by the other inmates, "every hour, on the hour."<sup>17</sup>

In some cases, female inmates have been sexually assaulted by male prison staff. A former inmate interviewed by Human Rights Watch in Puerto Rico (see "Disciplinary Measures") said that on her third day at the Vega Alta women's prison, she heard another inmate screaming in her cell. At the time, inmates were locked down. She was later able to go to see that inmate who told her that she had been raped by male guards. The interviewee said she knew the names of the perpetrators but would not reveal them because the victim fears for her life and will not press charges.

A California Institution for Women guard who is the son of a high-ranking official of the California Department of Corrections was fired in 1987 for sexually attacking five inmates. A judge upheld his dismissal after he appealed that decision. Another guard in that institution was convicted in 1989 of three sex crimes, including assault with intent to rape, and was sentenced to ten years and eight months in prison. There have also been reports that inmates were forced to have sex with these guards under the threat of being set up with drugs or some other form of blackmail.<sup>18</sup>

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<sup>16</sup>Balla v. Idaho State Board of Corrections, 595 F. Supp. 1558 (1984).

<sup>17</sup>Donald P. Lay, "Our Justice System, So Called," *The New York Times*, October 22, 1990.

<sup>18</sup>"Special Report," *The Orange County Register*, July 29, 1990.

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### DISCIPLINARY MEASURES

#### Authorized

More than half the inmates in state institutions are found to violate prison rules while serving their sentences.<sup>19</sup> State prisons employ a variety of disciplinary measures to punish these infractions. Solitary confinement or segregation is the most frequently imposed sanction (more than 30 percent of all disciplinary measures<sup>20</sup>); the loss of good time accounts for a quarter of punishments. Other measures include loss of entertainment or recreational privileges, loss of commissary rights, extra work, loss of job assignment or loss of visits; transfer to a higher custody level and transfer to a different facility.

To deal with widespread violence among inmates and to impose their rules more effectively, some prison systems have developed a structure of disciplinary measures that has been described by observers as a "prison within the prison." Special prisons or separate units within larger institutions, with a much harsher regime and more secure than the rest, have been established. Prison authorities confine inmates who are deemed as disruptive, predatory, violent or posing a particularly high escape risk in such facilities. A decision to confine an inmate under such special conditions is made by prison officials alone, without any independent oversight. The idea was developed by the federal prison system (see "Federal Prisons" chapter), and is currently being implemented in some 36 states.<sup>21</sup>

We describe here how this system works in practice in a few places.

One of the institutions Human Rights Watch visited in compiling this report was the Florida State Prison at Starke. There were about 1,180 inmates there at the time of our visit in late April 1991, with 315 of that number on death row. The "general population," i.e., inmates not placed under any extraordinary restrictions and not in lockdown, was slightly smaller than death row and stood at

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<sup>19</sup>Timothy J. Flanagan and Kathleen Maguire, *Sourcebook of Criminal Justice Statistics*, p. 592.

<sup>20</sup>*Ibid.*, p. 593.

<sup>21</sup>Michael Isikoff, "Hard Time: Federal Mission at Marion," *The Washington Post*, May 28, 1991.

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about 300. Of the remaining 580, about 100 were psychiatric cases; 50 were in protective custody; and the rest were in administrative confinement (mostly inmates awaiting disciplinary hearings), disciplinary confinement and close management, the last group being the largest.

Close management, according to the state regulations "is long-term single cell confinement of an inmate apart from the general population, where the inmate, through his own behavior, has demonstrated an inability to live in general population without abusing rights and privileges of other inmates or disturbing the security, order or operation of the institution."<sup>22</sup> Such a placement is open-ended, and may last, we were informed, for as long as 15 years. The inmate is allowed three showers and two hours of outdoor exercise a week as the only time outside the cell. He can buy a limited number of goods from the canteen and check out one book a week from the library (if he is not on the Library Suspension List, another disciplinary measure at Starke). Inmates under close management can also be deprived of all exercise outside the cell and not allowed outdoors for years at a time. The Florida rules claim that "Close Management is not disciplinary in nature and inmates in close management are not being punished."

Disciplinary confinement is meant for inmates who commit an infraction within the prison. As in the case of close management, nowhere in the rules is a maximum duration specified for this type of confinement. One of the prisoners we spoke to briefly stated that he had been in disciplinary confinement for five years, another for four years. In addition to the restrictions associated with close management, these inmates are not allowed any reading material except legal materials (legal materials that are authorized "shall be accessible to inmates in disciplinary confinement provided such use of legal material is for the purpose of challenging such confinement or in the event there are time restrictions on filing court papers"<sup>23</sup>); they have no right to purchase from the commissary; they may be allowed two hours of exercise per week only after the initial 30 days; and they may receive visits only in extraordinary circumstances. An inmate in disciplinary confinement to whom we spoke briefly<sup>24</sup> said he had been there since 1989. Since

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<sup>22</sup>"Operation of Institutions," Chapter 33-3, December 1990, p. 30.

<sup>23</sup>Ibid., p. 35.

<sup>24</sup>The Florida Department of Corrections authorized interviews only with inmates whose names we had provided ahead of time. During the tour of the institution, however, the official who accompanied us allowed brief conversations with other inmates, through the

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then, he had not been allowed any exercise. We were later told by an official that the infraction that led to this inmate's disciplinary confinement was spitting on a guard.

There is also the Q-Wing, the smallest residential unit in the whole prison, which also houses the electric chair. The Q-Wing has 30 cells, of which six are set aside for death watch prior to an execution. The remaining 24 cells are punishment cells, for those who commit further infractions while already in one of the categories described above. Cells in Q-Wing are 6 feet 11 inches by 8 feet 7 inches, with a cement bunk, a toilet and a sink. There is no window and no furniture. The front of the cell consists of a grill, in front of which there is an enclosed area about two feet wide with a solid metal door; the heat in the cell is stifling. (We visited the cell on a relatively cool April day when the ventilation was on; even so it was extremely stuffy in the cell. We were told by inmates who live there that the ventilation is often switched off and that in the summer it is unbearably hot.) The guard is stationed on a different floor than most of the cells; there is no way other than shouting to communicate with him in case inmates need something or when there is an emergency. Inmates in Q-Wing never go outside or exercise. Most prisoners are placed in Q-Wing temporarily, but some have been there for years. Until a recent lawsuit forced the installation of additional lamps, cells in Q-wing were also very dark. When Human Rights Watch visited, there were four death row inmates there, of whom one has been there for more than seven years. We were able to interview one of the inmates sentenced to death, as well as another man who has been in that wing since 1986—with a 6-day interval in another wing during that period—who is not on death row.

The five individuals with whom Human Rights Watch had requested interviews ahead of time had been made to wait for us in a sort of metal cage the size of a desk top in a badly ventilated hallway, with nothing to sit on and with their wrists handcuffed behind them. They had been placed in these cages shortly after 8 a.m. even though the interviews would not start until 11 a.m. (The prison staff insisted on giving us a tour prior to any interviews). During the course of the interviews, we were made to leave the institution for an hour because the staff had to take their lunch break. Our request that the inmates be returned to their cells for the duration of the break was denied. The last interview started at 2:50 p.m.; that man had been caged since 8:15 a.m.

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cell door, and in his presence.

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Close management is also used for women in the Broward Correctional Institution in Miami. Despite the fact that Human Rights Watch's visit there had been authorized in writing by the Assistant Secretary for Operations of the Florida Department of Corrections, the prison's staff initially refused to allow us to see the institution. After communications with the state capital, we were allowed to enter the premises, but our request to see the segregation and close management units was resisted. After more phone calls, we were eventually allowed to see these units (although not all the parts we asked to see) but because of the time wasted, the visit was shorter than desired. We were not permitted to interview inmates during the tour. The close management unit had 15 cells. Cells had a bunk and a trunk, a window and a toilet. There was a microphone in each cell allowing for monitoring of the inmate; the light was controlled by the guard and, we were told, the light was never completely off; it is dimmed at night. Eight women were under close management there at the time of our visit. Inmates in close management do not go outdoors for the first 30 days of their confinement. The same applies to the first 30 days of disciplinary confinement. Women sanctioned with disciplinary confinement, regardless of the nature of their infraction, as an additional punishment do not leave their cells without handcuffs.

A court case provides details of how a similar system functions in Oregon.<sup>25</sup>

The Oregon State Penitentiary contains the Disciplinary Segregation Unit (DSU). It is a building separate from the main part of the penitentiary and it is used to segregate disruptive and dangerous inmates from the general prison population. DSU cells are 8 feet high, 6 feet wide and 8 feet, 4 inches deep, with a bed, toilet and sink. Three walls and the floor are concrete; the fourth wall consists of bars facing the tier. One part of the DSU is known as the close supervision tier in which there are six "quiet cells" which are closed to the tier by solid steel doors. The quiet cell area is separated from the rest of the unit and staff office by a second solid steel door which is normally kept closed. The quiet cells are lit 24 hours a day.

Inmates in the unit have been subjected to a practice known as "strip status." The inmate is stripped of all clothing, bedding, and personal possessions. He is then expected to "earn" back items piece-by-piece with good behavior.

Regulations permit DSU staff to place an inmate in full mechanical

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<sup>25</sup>LaMaire v. Maass, 745 F. Supp. 623 (D.Or. 1990).

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restraints in his cell, meaning leg irons and belly chains. This practice must be expressly approved by the superintendent, and is permitted only when the inmate is out of control and no other form of control would be effective.

DSU inmates may be placed on a controlled diet of Nutraloaf (made from blending, freezing and later baking foods used in meals) if they throw or misuse food or human waste, or misuse or fail to return trays or utensils.

Normally, DSU inmates are permitted to go out of their cells for 20 minutes per day, five days a week, during which they may exercise on the tier or in exercise cubicles. Outdoor exercise is a privilege which may be earned after 45 days without disciplinary violations. Inmates must use that same 20 minutes to shower, shave and obtain supplies. Prisoners who violate disciplinary rules may lose exercise privileges, after which they are permitted out of their cells only 10 minutes a day, three days a week, for showering but not for exercise.

The suit challenging the conditions was brought by an inmate who is serving a life sentence at the Oregon State Penitentiary and has been there since December 1985. He was in the Disciplinary Segregation Unit since November 1986 with a scheduled date of release into the general prison population of February 1993. The plaintiff had committed numerous disciplinary violations at the penitentiary, including assaults and destruction of property. He has a medical history of hypertension, epilepsy and vertigo and is under medical treatment with a tranquilizer for anxiety and depression. Because the loss of yard time as a sanction can accumulate, by the time of the trial, February 1990, the plaintiff had not been outside since August 1989 and was scheduled to remain without any exercise until February 1991. On some occasions, he had also been held in his cell in full mechanical restraints for days at a time without clothing, bedding, or personal property, even when there was no record of a continuing emergency or medical justification for doing so.

The court found several violations of constitutional rights and Judge Panner, who had personally toured the facility, offered this comment:

Prisoners who complain about the conditions of their confinement do not generally get much sympathy from society, but sympathy is not the issue here. From society's long-term perspective, there are sound reasons for prohibiting cruel and unusual punishment. People who are abused and treated with violence are those most likely to treat others abusively and

violently. Under the Oregon corrections system, many DSU inmates will soon be on the streets. Confining people under conditions of extreme violence, fear and hostility, and releasing them into society is like throwing a ticking time bomb into a crowd.<sup>26</sup>

New York State converted one of its 67 prisons into a maximum-maximum security institution in early 1991. The facility at Southport became an institution where about 600 inmates, deemed as the most violent and dangerous in the state, were confined in 6 by 10 feet single cells 23 hour a day, never left the cells without being shackled at the waist and wrists, and were allowed two showers a week. The metal-mesh fronts of the cells, designed to prevent inmates from throwing feces or food at guards, were covered with plexiglas.

By converting the Southport prison into a "maxi-maxi" facility (as this type of institution is known in prison jargon), the state attempted to solve two problems at once. In addition to separating those most dangerous, which presumably would make the other institutions safer, it also hoped to save money. In a move designed to save about \$3 million a year in salaries at Southport, sharp cuts in staff were carried out.<sup>27</sup> These included elimination of most of the teaching and counselling staff (all educational programs were phased out) but also cutting down by 50 the number of guards on the assumption that, because of the lockdown, fewer guards were necessary. Officials at the institution had misgivings about these decisions, as reported by *The New York Times* in February, 1991:<sup>28</sup>

Prison officials say they wonder if they will have enough staff to handle the inmates when the program is fully operating. They say, for example, that it takes seven minutes to shackle an inmate when he leaves his cell. That has not been a problem in winter, when few inmates care to brave the cold outside. The question, said Melvin Hollins, the first deputy superintendent, is "what will things be like on July 4?"

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<sup>26</sup>Ibid., p. 630.

<sup>27</sup>"Trying to Economize, New York Creates Its Own Alcatraz," *The New York Times*, February 20, 1991.

<sup>28</sup>Ibid.

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These words proved prophetic, with the exception that the crisis occurred sooner. On May 28, 1991, inmates in one of the exercise pens took three guards hostage, demanding improvements in the conditions of their confinement. The hostage-taking occurred during an unusual heat wave and inmates' grievances included complaints that their cells were covered with plexiglas; the reduction of visiting hours for relatives from 7 days a week to weekends only; delays by several hours in receiving meals; being allowed only five minutes for showering and shaving; and more.<sup>29</sup> Following hours of tense negotiations, hostages were released after inmates were allowed to describe the conditions of confinement and voice their grievances to a television crew. "The biggest concern that the inmates had was to tell their story to the outside world," the State Commissioner of Corrections, Thomas A. Coughlin 3rd, was quoted as saying by *The New York Times*.<sup>30</sup> According to the *Times* article, "the Commissioner and even some of the guards who had been taken hostage appeared to give credence to some of the grievances."

In the aftermath of the Southport rebellion, the idea of long-term lockdown in specially designated institutions came under a lot of criticism. In a comment echoing Judge Panner's view quoted above, Edward Koren, an attorney with the ACLU's National Prison Project, pointed out that "If you treat people like beasts, they're going to act like beasts." Another prison expert, Robert Gangi of the Correctional Association of New York, expressed his concerns that some inmates may be singled out for this type of confinement merely because they are outspoken about grievances.<sup>31</sup>

In Puerto Rico, an additional method of disciplining unruly inmates is to transfer them to the mainland United States.<sup>32</sup> Relatives of inmates told us that

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<sup>29</sup>See: "Southport Prison Special," by WNBG TV of Elmira, NY.

<sup>30</sup>John Kifner, "3 Hostages Released in End to Rebellion At New York Prison," *The New York Times*, May 30, 1991.

<sup>31</sup>Selwyn Raab, "Uprising Challenges 'Maxi-Maxi' Prison Idea," *The New York Times*, June 2, 1991.

<sup>32</sup>There is currently no federal institution in Puerto Rico. For that reason, federal detainees are held in the state prisons and in exchange Puerto Rico transfers to institutions in the U.S. one inmate for each federal inmate held on the island. At the time of Human Rights Watch's visit to Puerto Rico in late March 1991, there were 272 federal inmates confined

transfer, or the threat of transfer, is used sometimes as a method of pressure on an inmate. The Administrator of Corrections, in an interview, confirmed that the Administration occasionally transfers to the U.S. inmates who "cause difficulties within an institution." In addition, she said, some inmates volunteer to be transferred.<sup>33</sup> These inmates are transferred to institutions that are usually thousands of miles away from where their relatives live, and where, especially in rural areas, they often cannot communicate with the prison staff because of the language barrier.

Several prisons use undesirable work assignments as punishment. In the women's institution in Bedford Hills, New York the appointment to the cleaning detail is used as a disciplinary measure, according to the warden. At the female institution in Miami, the assignment to a disciplinary work squad is used. One of the women Human Rights Watch interviewed there described being forced to empty a human waste pit manually. The guards refused to provide gloves for that work.

The refusal to provide protective clothing for work in cleaning out the wet-well portion of the prison's raw sewage system at Tucker Maximum Security Unit, A.D.C. (Arkansas) caused inmates there to refuse to work and in turn led to their punishment by being demoted in classification, allowing fewer good-time credit days per month.<sup>34</sup>

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there.

<sup>33</sup> Inmates who had volunteered for transfer from overcrowded Puerto Rican prisons, and whose letters we were able to examine, claimed that they had been under the impression that they would be transferred back to Puerto Rico if they so desired, and were very unhappy when that did not turn out to be true. One inmate pleaded for transfer back to the island pointing to the fact that he had been diagnosed with a terminal illness and that he wanted to spend his last days in a prison closer to his relatives. Another inmate who asked to be transferred back from the continental U.S. wrote: "here, I don't know the language, don't have any relatives nearby and I am suffering a lot." Yet another inmate, who had been held in a minimum security institution in Puerto Rico, volunteered for a transfer to the mainland U.S. to find himself placed in a high security institution.

<sup>34</sup>Fruit v. Norris, 905 F.2d 1147 (8th Cir. 1990).

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### Unauthorized

The use of such means of corporal punishment as the whip was declared to violate the United States constitutional prohibition on cruel and unusual punishment in 1968.<sup>35</sup> Corporal punishment, however, in the form of excessive force by prison staff, continues. A recent study, conducted through questionnaires mailed in late 1989 to inmates in 41 states, most of them in maximum security institutions, revealed that seven out of ten inmates have witnessed beatings by guards. Of those, more than 40 percent reported witnessing such beatings routinely.<sup>36</sup> In the course of its research, Human Rights Watch encountered several accounts of beatings.

An inmate we interviewed in the State Penitentiary Annex (Malvinas) in Puerto Rico described an incident in March 1991 in which guards kicked another inmate in his genitals. That was done, according to our source, in retaliation for making a complaint.

Inmates at the Starke prison described to Human Rights Watch several incidents in which guards used much violence to subdue unruly prisoners. In one case, our interviewees told us, a man's leg was broken by the guards. On June 11, 1991, according to letters from inmates, an elderly inmate, described by his peers as mentally unstable, refused to submit to handcuffing in order to be removed from his cell. Guards sprayed him with chemical mace several times and subsequently entered his cell. According to written testimonies, the inmate was pinned to the floor by several correctional officers, at which point one of the guards took a riot shield and proceeded to hit the inmate with it in his face and upper torso, "in the same manner a rancher would dig a post hole with a post hole shovel." The inmate was unable to ward off the blows because his neck, arms and legs were pinned to the ground at the time by the other guards. The inmate's face was "a mass of blood" when he was eventually taken out of his cell.

A woman interviewed by Human Rights Watch in Puerto Rico, who had

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<sup>35</sup>Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968).

<sup>36</sup>Mark Hamm, et al., *The Myth of Humane Imprisonment: A Critical Analysis of Severe Discipline in Maximum Security Prisons, 1945-1990*, Prison Discipline Study (Sacramento, CA: 1991).

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spent a week in the Vega Alta women's prison there in January 1991,<sup>37</sup> told us that she heard a verbal exchange between an inmate and a guard. After the inmate refused to follow the guard's orders and "talked nasty" to a guard, she was beaten in her cell by one male and two female guards. After the beating, the victim, according to the interviewee, was bleeding.

In February 1991, in the same prison, a 6-months-pregnant inmate was sprayed by a guard with the liquid from a fire extinguisher and another inmate was beaten while handcuffed. The Director of Administration of Corrections, according to a press article, confirmed that these events indeed took place.<sup>38</sup>

Inmates and their relatives in Puerto Rico told Human Rights Watch about guard raids on the inmates' living quarters, usually conducted under the pretext of searches for contraband but leading to destruction of inmates' property and the growth of tension within the institution.

In Puerto Rico, most institutions do not have adequate capacity to discipline inmates by separating those who commit infractions. In the absence of this standard means of punishment, according to interviews, infractions are dealt with primarily by reducing visiting privileges or by transferring an inmate to another institution. It was alleged to us by a former prison social worker that the threat of transfer to an institution housing a hostile gang is used as a way of putting pressure on inmates. Confinement in a prison controlled by a gang other than an inmate's own poses an immediate threat to his life (see Safety, in this chapter).

## ACTIVITIES

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<sup>37</sup>The interviewee, Altigracia Oppenheimer, was born and raised in the United States; she had been a Puerto Rican community leader in Philadelphia. On 11 occasions, she said in an interview, she had been arrested there in civil disobedience cases. She had moved to Puerto Rico four years ago. On January 26, 1991, when she arrived from a trip abroad with her teen-age son, she was arrested at the San Juan international airport on a warrant from Pennsylvania. A bail of \$100,000 was set and she was transferred to Vega Alta. Within a few days, her lawyers were able to determine that the Pennsylvania charges had been dropped. She was freed after seven days in the institution.

<sup>38</sup>Miguel Rivera Puig, "Lydia Nada tuvo que ver con motín," *El Vocero* (San Juan), February 26, 1991.

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Some prisons require their inmates to work or study, some "encourage" them to work, some are not able to provide work for all inmates willing to work. In fact, more than half of the inmates in state prisons are not employed. According to the Criminal Justice Institute's *1991 Corrections Yearbook*, 59,833 state inmates nationwide had industrial jobs; 17,416 had farm jobs; and 206,361 worked in maintenance. The pay, according to the same source, ranges between \$1.88/day and \$7.64/day in industry, and \$.99/day and \$3.98/day for the other jobs.

In Florida, 79 percent of inmates are involved in full time activities: work, education or a combination. Only inmates employed by prison industry (about 4 percent of all inmates in the state) are paid, earning between \$.13 and \$.40 an hour. In Tennessee, 80 percent of inmates have full time assignments (55 percent working, 25 percent educational). In Puerto Rico, as of March 1991, 3.5 percent of inmates had industrial or community jobs, 38 percent had part-time employment, and 21 percent were involved in educational programs. In California, 45.31 percent of inmates were working full time and less than one percent, part time. In New York, 3.5 percent of inmates had industrial jobs, fewer than one percent worked on prison farms and 33.6 percent worked in other than farm or industrial jobs, for example in maintenance; these figures include both full and part time employment.<sup>39</sup>

In places where there are not enough jobs for everybody willing to work, lack of employment additionally penalizes inmates by depriving them of an opportunity to shorten their sentences in reward for work.

Most institutions offer educational programs, sports activities, crafts, etc. All prisons are required to have law libraries; in addition, they have general book collections. Inmates may subscribe to newspapers and magazines, and have access to television and radio. In some institutions they are allowed to have radios and/or TV sets in their cells.

The majority of inmates spend most of the day out of their cells. The exceptions here are inmates in disciplinary segregation and those confined long-term to maximum-maximum security institutions or special sections of institutions. For example, several of the men interviewed at Starke told Human Rights Watch they felt that they were losing their minds because of the total idleness imposed on them. Starke offers no educational programs and as a punishment for those not in

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<sup>39</sup>Interviews with the respective Departments of Corrections.

disciplinary confinement, suspends the right to check books out from the general library. In a recent letter, an inmate at Starke wrote: "Boredom is a major enemy. Sensory deprivation is a way of life. There is simply nothing to do. Sit in your bathroom alone with none of your intimate possessions and try to imagine *years* of it week after week. Slowly it tears you down mentally and physically." Similarly, when the prison at Southport, N.Y. became a maxi-maxi institution, all educational programs there were discontinued.

Inmates at Tennessee State Penitentiary listed lack of meaningful educational opportunities among their chief complaints. In Puerto Rico, one of the most frequent complaints we heard from interviewees was of idleness.

#### LIVING CONDITIONS ON DEATH ROW

Over 2,500 American prisoners currently live under a sentence of death. The death penalty was invalidated by the U.S. Supreme Court in 1972 when the Court held all existing death penalty laws to be unconstitutional on procedural grounds. The Court did not hold that imposition of the death penalty is *per se* a violation of the Eighth Amendment's prohibition of "cruel and unusual punishment," thus paving the way for efforts by the states to draft new capital punishment laws that remedied the violations that the Court had noted. In 1976, another series of rulings by the Supreme Court upheld some of the new state capital punishment laws, encouraging other states to enact laws on the same lines. At this writing, 36 states have reinstated the death penalty and in 16 states a total of 150 executions had been carried out between January 1977 and July 1991.<sup>40</sup> Until a series of recent Supreme Court decisions, death row inmates could take advantage of several opportunities to appeal their sentences, initially in the state courts and, subsequently in the federal courts. The various legal proceedings usually took years, and some convicts have spent ten years or more on death row. According to Steve Bright of The Southern Center for Human Rights, a group litigating death penalty and prison conditions cases in 11 states, about half of the death sentences handed down by state courts are dismissed by federal courts on appeal. This will no longer be the case following the April 1991 decision by the Supreme Court curtailing the rights of death row inmates to bring multiple federal court challenges to the constitutionality of their convictions or sentences.<sup>41</sup>

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<sup>40</sup>Statistics from the NAACP Legal Defense Fund.

<sup>41</sup>Linda Greenhouse, "Supreme Court Puts Sharp Curbs On Repeated Death Row Appeals," *The New York Times*, April 17, 1991.

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The largest death row in the country, in Florida, held 315 inmates at the time of Human Rights Watch's visit there in late April 1991. They live in single cells, about 6 feet 5 inches by 9 feet 11 inches, some of them without a window (the window is located in the hallway, about 9 feet from the front bars of the cell). The cells are equipped with a bunk, a toilet, a sink and a trunk (there is no table; the trunk serves as a makeshift table in many cells). Death row inmates are allowed a TV and a radio, but no fans, and are permitted to practice hobby crafts: crocheting and watercolor painting. They are locked in their cells at all times except for a brief shower three times a week and two hours of outdoor exercise twice a week, when there is no rain. This is the only time that they have any direct contact with their fellow inmates. Many have lived in these conditions for more than ten years, and one of the inmates we interviewed had been there for 17 years. (See also "Disciplinary Measures," in this chapter.)

The Tennessee death row, which housed 91 inmates as of October 1991, is located at the Riverbend Maximum Security Institution in Nashville; it had been moved there from the Tennessee State Penitentiary as a result of a law suit that challenged the living conditions on death row at TSP as unconstitutional. The Riverbend institution is a new complex, where death row inmates are housed in a separate unit, complete with a law library, classrooms, and exercise pens. The cells are about 80 square feet and are equipped with beds, desks and stools, bolted to the wall or the floor. The windows, which do not open, are five inches wide and four feet tall, made of bulletproof fiberglass. Each cell has a toilet and a sink, and some also have showers. Inmates are allowed radios and TV sets, at least one shower a day, 14 hours of exercise time a week, crafts and a limited number of books. A major concern regarding physical conditions voiced by all those we interviewed was the stuffiness inside the cell. In addition, exercise yards, which are covered with thick wire mesh, are low, making ball games difficult; they get little sunlight.

Inmates of death row in Starke in Florida whom we were able to interview voiced numerous complaints about their treatment. Their assessment of the conditions was summed up by one prisoner who told Human Rights Watch: "since we are going to be killed anyway, it is O.K. to do anything to us in the interim." A similar attitude was expressed by inmates on Tennessee death row, who complained about delays in medical attention in emergencies such as a heart attack or an epileptic seizure. One of the inmates there said: "The mentality is that since we are going to die anyway, why bother to do anything." A Florida inmate with epilepsy said that because the regulation there is that an inmate must be restrained before the door to his cell is opened, he is left unattended during his epileptic

seizures.

Florida and Tennessee inmates alike described instances of bad taste, insensitivity and racism that had been displayed by prison staff. One prisoner in Tennessee told us that on a day when he returned from a court hearing, a prison clergyman asked him, "so, when are they going to fry you?" An inmate at Starke told us that after his friend was executed in April, he heard a guard saying "It's about time to get rid of some Niggers here."

Inmates on the Tennessee death row are divided into several groups, called levels, with a different set of privileges for each level. According to testimonies to Human Rights Watch, every new inmate starts on the lowest level, which means almost complete lockdown and no contacts with others, and may earn his way up to less restrictive levels. To get from the entry level to the most lenient, which allows several hours a day outside the cell and meals in the company of other death row prisoners, takes a year and a half. We were told that it is easy to lose one's status due to disciplinary reports; that is, those prisoners are bumped back to lower levels. Interviewees complained about the large number of frequently changing rules, as well as the fact that one could earn a writeup for "bad attitude." "We have to smile all the time because if you don't, you have a bad attitude," one inmate told us. "If you don't say anything, you have a communication problem," he continued. In its regulatory zeal, the administration of that prison also came up with a list of rules for young children visiting their fathers (see "Contacts with the Outside").

A woman whose death sentence had been commuted told Human Rights Watch about her experience on the Florida death row a few years ago, when she was the only inmate there. She said she had nothing to do and was isolated from other inmates. She was held in the prison hospital, because there were no death row facilities for women in Florida at that time.

Currently, the three Florida female inmates on death row are being held in the close management unit of the Broward institution (see "Disciplinary Measures") and live in cells similar to those of the rest of the inmates in that unit, but are allowed to have TV sets. They do not have contacts with other inmates in the unit.

#### **CONTACTS WITH THE OUTSIDE**

Visiting rules vary from state to state. Usually, inmates are allowed visits

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at least once a month, ranging from as little as 30 minutes (Mayagüez in Puerto Rico, once a week) up to several hours. In Tennessee State Penitentiary, visits are limited to one hour, except for visitors who travelled more than 100 miles, in which case they are allowed two hours. Inmates usually must have a list of approved visitors. We heard complaints from women at TIW that making a change on such a list may take up to 60 days. Inmates on close management at Starke get visits by special arrangement only. Loss of visiting privileges is used as a disciplinary measure. According to statistics compiled by the Justice Department, in 1986, about 6 percent of the penalties imposed nationwide involved loss of visiting privileges. Prison officials pointed out to us that this measure is usually applied to punish infractions that consisted in violating visiting rules.

Inmates may be searched, including their body cavities, on their way to and from visiting rooms. In maximum security institutions, this is done routinely. Relatives may be searched as well, although in most cases we were told that this was only done in cases when there was a strong suspicion of attempted smuggling of contraband. The exception was Puerto Rico, where several witnesses told Human Rights Watch about humiliating body searches to which female visitors, including minors and elderly people, were routinely submitted. All our witnesses said that men were not subjected to such searches.

Some prisons, such as for example Bedford Hills in New York, had attractive visiting areas; in others, there was no effort to make the time inmates spend with their families pleasurable. At Broward, for example, visits were held in an area where there were no tables, and food had to be kept on the floor. At Starke, we were told, the visiting room was unbearably hot (only administration offices and the clinic at that prison are air conditioned).

The visiting room on death row in Tennessee was neat and clean when we visited, and equipped with some toys. This "Kids' Korner" was complete with a curious item — a list of instructions on how to handle the toys, and a warning that failure to comply with the rules would lead to the removal of the toys.

Most American prisons do not permit conjugal visits. Among institutions we were able to see, the exception was Bedford Hills, where, we were told by the warden, inmates who were legally married were entitled to a limited number of conjugal visits. This is part of a state-wide program designed to facilitate intimate visits between inmates, both male and female, and their spouses. About 20% of New York's inmates are legally married; of those, not all can take advantage of this program, either because they are being disciplined or because their spouses are

estranged.

In California and Mississippi, inmates are permitted 48-hour visits in special trailers where they may spend time with members of their immediate family. Because the staff of the California Institution for Women (CIW) limited our visit there to two hours, we were unable to see the visiting accommodations. In the California Penal Institution for Men at Tehachapi, married inmates can have 3-day-two-night visits with their families in special apartments inside the institution. Such visits occur once every two or three months.

Most prisons visited by Human Rights Watch allow inmates to make phone calls. In a country as large as the United States, phones play a particularly important role in helping inmates to stay in touch with their relatives and friends who often are unable to undertake long journeys to distant prisons. Some institutions seem to impose no limits on the use of phones other than that inmates are not supposed to use the phones during work or school hours (i.e., Bedford Hills), while others limit the use of phones (CIW, for example, one call a day, regardless of whether there is an answer). Most institutions have phones for collect calls only. Inmates on death row in Tennessee have limited access to phones; they are allowed to make phone calls to 10 persons whose names are on a special list; they may make changes on that list once every three months. In general, phone conversations by inmates, other than communications with lawyers, are monitored. In all of Puerto Rico and at Starke, prisoners do not have access to phones.

In general, inmates may correspond with whomever they want. Letters to and from prisons are opened and often read. The exception is legal correspondence, which is mailed by inmates in sealed envelopes and which is opened in the inmate's presence on the way into the prison, and checked for contraband, but is not supposed to be read.

We received some complaints about the mail being slow in reaching inmates with the implication that the delays were caused by prison administrations. Inmates in the California Penal Institution for Men stated that it took 10 days for a letter to get to the prison from Los Angeles, about two-and-a-half hours by car from Tehachapi, where the prison is located.

In one institution, Broward, we were told that letters signed by several inmates were prohibited.

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### WOMEN INMATES

Women account for about 5.49 percent of state inmates, with their proportion differing from state to state.<sup>42</sup> For example, in California, Florida and Tennessee, the percentage stood at above six percent, while in New York it was at around 4.5 percent, and in Puerto Rico under four percent.<sup>43</sup>

Among institutions visited by Human Rights Watch, only the Bedford Hills facility allowed inmates who gave birth during incarceration to keep their babies in prison. Under a New York state law, female inmates are allowed to keep their babies for one year. If a woman is scheduled for release soon after that period, the facility lets the mother keep the baby longer, to avoid separation. The facilities for mothers and babies as well as the nursery at that facility appeared clean and colorful, and babies were cared for by a sufficient number of nannies during their mothers' work hours.

In addition to accommodations for babies, Bedford Hills, a facility where 75 percent of the inmates are mothers, has arrangements to help them maintain contacts with older children. In the summer, the facility runs week-long programs for inmates' children who are housed with local families and spend the day with their mothers on the premises. They play with their mothers in a large, toy-filled visiting room, and may also participate in a number of organized activities. In addition, they can also use a playground outside. Year-round, according to the warden, there are bus rides once a month from New York City and Albany, arranged so that children can visit their mothers without having to be accompanied by other relatives.

By contrast, neither the Tennessee Institution for Women nor Broward in Miami had any arrangements for visiting children and neither allowed infants to

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<sup>42</sup>The proportion of women in state prisons has been growing. In 1979, it stood at 4 percent, in 1986, at 4.4 percent.

<sup>43</sup>As of June 30, 1989, see: American Correctional Association, *1990 Directory*, p. XXII.

stay with their mothers. At Broward, we were told, inmates are not allowed to hold visiting children on their lap during the visit and are allowed to give them a brief hug only at the beginning and at the end of the visit. Other petty rules in that institution include a limit on one bottle and one diaper for a visiting baby; if this turns out to be insufficient, visitors with the baby have to leave and may not re-enter on the same day. Also, if an inmate walks up to the vending machine in the visiting room, she is reprimanded in front of her child. Only visitors are allowed to make purchases.

At the California Institution for Women, there was a large group of pregnant women during our visit there. They complained about idleness (they are barred from all prison work and training programs, though not from taking classes). They also complained about the heat, of not having access to water fountains at night, and of not being permitted to have ice. They also talked about lack of access to doctors and nurses, especially in the late months of pregnancy. One inmate told Human Rights Watch's delegation that she had tried to see a doctor six times, but she was turned away each time.

### HEALTH

In 1976, in *Estelle v. Gamble*,<sup>44</sup> the Supreme Court ruled that "deliberate indifference to the serious medical needs of inmates" violates an inmate's constitutional rights. Several of the inmates interviewed by Human Rights Watch complained about delays and difficulties in seeing a doctor, about the medical personnel's indifference to inmates' serious health problems and delays in providing a diagnosis or treatment. Since the participants in our delegations did not include medical experts, we were unable to substantiate these complaints. Many recent court cases, however, deal with problems similar to those brought to our attention by inmates.

A class action suit filed by inmates in the New Jersey prison system describes several instances of improper medical treatment.<sup>45</sup>

An inmate suffering from a chronic, painful ear infection that could be controlled by a specific medication was refused that medication by the prison

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<sup>44</sup>97 S. Ct. 287 (1976).

<sup>45</sup>*White v. Napoleon*, 897 F. 2d 103 (3d Cir. 1990).

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doctor who did not examine him or review his medical records. The inmate's ear infection became active, causing him pain and loss of hearing. On a subsequent occasion, the prison doctor suggested a treatment with a mild cleansing solution. The inmate, who is allergic to penicillin, feared that the drug might contain penicillin and asked to read the label. The doctor refused to let the inmate know the ingredients and said that he would have to accept the treatment or receive no treatment at all. The inmate refused to be treated with that medication, and the doctor filed disciplinary charges against the inmate for refusing to cooperate in a prescribed course of treatment. The inmate was acquitted of the charges after a prison disciplinary hearing.

Another inmate, who had been treated with a specific drug in a different institution, had a new drug prescribed by the prison doctor. The inmate suffered many more seizures than when he was using the old drug, but the doctor refused to switch.

An inmate with numerous skin blemishes, some of which changed color from red to brown over time, was afraid that they might be cancerous or pre-cancerous. He asked the doctor to examine the blemishes. With no more than a casual glance, the doctor said: "I don't do cosmetic surgery," or words to that effect.

Other allegations brought against this doctor in the suit included his substitution of drugs where other physicians had ordered "no substitutions"; delay of a surgery despite an urgent order from another doctor; the denial of decongestants to a prisoner with a severe sinus problem and taunting him with suggestions to "blow your nose" and "move to Arizona"; denial of any medication except Tylenol to a prisoner with emphysema and arthritis; and refusal of hospitalization to a prisoner following a heart attack.

The lack of concern about an inmate's medical condition can sometimes have tragic results.

Gwendolyn Miltier<sup>46</sup> was incarcerated at the Portsmouth, Virginia City Jail on January 9, 1985. During her incarceration, Miltier complained of chest pains, blackouts, and shortness of breath. A jail physician diagnosed her as suffering from angina, prescribed a drug to relieve her symptoms and recommended transfer to the Virginia Correctional Center for Women. Miltier's

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<sup>46</sup>Miltier v. Beorn, 896 F. 2d 848 (4th Cir. 1990).

medical records, which clearly documented her condition and a family history of heart disease, were sent with her to the Virginia Correctional Center to become part of her institutional records.

Because of Miltier's medical condition, officials at the correctional center immediately assigned her to the correctional center's Clinic Hall medical unit. A part-time contract physician provided Miltier's primary treatment, and consulted with her on at least 13 occasions between January 31, 1985, and February 26, 1986. On April 25, 1985, he recommended that Miltier should be referred to the Medical College of Virginia cardiology unit. The request for Miltier's transfer to the Medical College was initially approved, but ultimately, Miltier was never referred to Medical College physicians. Miltier continued to complain of chest pains. Her mother wrote the Virginia Correctional Center and other state officials concerning her daughter's medical condition and perceived lack of medical care. Because of the continued pains, a contract internist for the Virginia Department of Corrections was asked to evaluate Miltier's condition. That doctor saw the patient on a few occasions, for the last time on October 25, 1985, when she complained of chest pains, shortness of breath, and dizziness. Notwithstanding this last visit, the internist moved Miltier out of Clinic Hall into the general prison population. At no time did any of Miltier's health care providers perform the necessary diagnostic tests to rule out arteriosclerotic coronary heart disease. Between February 26, 1986, and June 11, 1986, the medical staff at the correctional center did not see or evaluate Miltier. On June 11, 1986, Miltier reported to the correctional center's clinic complaining of chest pains, dizziness, weakness, and headaches, and was told to return to her dormitory. She returned to the clinic on June 15, with similar complaints. The nurse on duty ordered Miltier back to the dormitory with instructions to rest and relax. The next morning, Miltier, this time assisted by two inmates, returned to the clinic complaining of severe chest pains and pain in her arms. The clinic nurses checked Miltier's vital signs and phoned the doctor to advise him about Miltier's condition. The doctor prescribed a tranquilizer and ordered Miltier to be placed under observation until another doctor was scheduled to arrive that evening. At 4:00 p.m., Miltier, having suffered an acute heart attack due to coronary artery thrombosis and arteriosclerosis, was found lying dead on the floor next to her bed in the clinic.

An inmate with a history of mental illness who was sentenced to five years in a Georgia prison for assault, had his anti-depressant drug discontinued by the prison doctor against the advice of a therapist who had treated the inmate for ten years prior to his incarceration and advised the prison about the inmates' suicidal

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tendencies.<sup>47</sup> (The same doctor, a year earlier, had abruptly discontinued the anti-depressant medication of another inmate, who then blinded and castrated himself.) Less than two months after the drug was discontinued, the inmate hanged himself from the cell bars with his sweat shirt.

### AIDS

The AIDS epidemic has created a new set of human rights concerns in the prison environment. Human Rights Watch has not conducted a systematic study of this subject, but wishes to note a few aspects.

It is not clear how many inmates are affected by the problem because most statistics regarding AIDS in prisons are estimates, but the speed with which the problem is growing and its urgency can be illustrated by the fact that, according to surveys conducted for the National Institute of Justice, in a four-year period between 1985 and 1989, there was a 606 percent increase in *reported* AIDS cases among federal, state and jail inmates. Some 17 states have mandatory testing for prisoners, raising serious concerns about violations of inmates' rights to privacy; other states encourage testing among high risk groups or conduct blind random screening.

A recent court case provided details of how mandatory testing for AIDS is done.<sup>48</sup> An inmate at the Nevada State Prison was forced by several guards to submit to a blood test, as part of a mandatory AIDS testing program, according to prison officials. Because the inmate refused to extend his arm and have his blood drawn, several guards armed with "taser" guns<sup>49</sup> entered his cell and threatened to shoot him if did not follow the nurse's orders. Seeing the guns aimed at him, the inmate ended his resistance.

The incidence of HIV infection among inmates varies greatly from area to area; as might be expected, it is highest in parts of the country where the disease is

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<sup>47</sup>Greason v. Kemp, 891 F. 2d 829 (11th Cir. 1990).

<sup>48</sup>Walker v. Sumner, 917 F. 2d 382 (9th Cir. 1990).

<sup>49</sup>A taser gun operates by firing a tiny dart, attached to the gun with wires, into the prisoner, and by administering a low amperage, high voltage electrical shock which temporarily incapacitates the prisoner.

most prevalent in the general population. Eleven state systems account for an estimated 87 percent of all cases in prisons, with New York, New Jersey, Florida, Texas and California measuring the highest. In New York, for example, an estimated 17 to 20 percent of inmates are HIV positive, according to a 1991 report by the National Commission on AIDS,<sup>50</sup> while in Mississippi, where there is mandatory screening, 1.4 percent of incoming inmates have the virus.<sup>51</sup>

The diagnosis of the AIDS virus makes an inmate more vulnerable to mistreatment in the prison environment and often leads to a number of abuses against him or her. For example, lack of confidentiality about HIV testing results has often brought verbal abuse by guards against the HIV positive inmates.<sup>52</sup>

In the early years of awareness of the AIDS epidemic, between 1984-1987, the approach of most prison administrators was to isolate all HIV positive inmates. This was done, according to Judy Greenspan of the ACLU's National Prison Project, when there was a lot of misunderstanding about how the virus was transmitted and led to some cases of severe mistreatment. Inmates who were HIV positive were frequently treated like lepers: feared, abused and deprived of most fundamental rights. They were often denied access to the law library, recreation, religious services, employment and vocational school, and locked in their cells for 23 hours, left alone with their own fear. For example, a New Jersey female inmate with AIDS was held in isolation for a year and a half and was denied even verbal communication with other inmates, until another inmate diagnosed as an HIV carrier was placed in the segregation unit with her.<sup>53</sup> An Alabama inmate who in 1985 was the first prisoner to test positive for the HIV virus in that state was, upon transfer to a different institution, forced to wear a full body suit, mask and gloves.<sup>54</sup>

In its recent report, the National Commission on AIDS also reproduced a

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<sup>50</sup>National Commission on Acquired Immune Deficiency Syndrome, *Report on HIV Disease in Correctional Facilities*, (Washington: March 1991).

<sup>51</sup>Sue Rochman, "The Final Lockup," *The Advocate*, February 26, 1991.

<sup>52</sup>Ibid.

<sup>53</sup>National Commission on AIDS, *Report on HIV Disease*.

<sup>54</sup>*The National Prison Project Journal*, Spring 1991.

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letter from another HIV positive inmate in Alabama describing the hardships of mandatory isolation of HIV positive inmates:

I learned that I'd tested positive for HIV on July 14, 1987. I was immediately removed from trade school (barbering), boarded onto one of the state transportation vans and moved to L.C.F.'s AIDS Unit with all of the other inmates who were HIV+.

Once in the AIDS unit I felt like an animal on display at the zoo. There is a double fence with razor wire atop it separating HIV+ inmates from the general prison population.

I am no longer allowed to take part in trade school, nor am I eligible to take part in any of the D.O.C.'s early release programs. Basically I was placed on a type of Death Row and this is where I've been for the last three years . . .

I am serving an 18 year sentence. For 6 years or so I'm expected to just sit around a dormitory with approximately 140 other men and watch T.V.<sup>55</sup>

AIDS and prison experts, including the National Commission on Correctional Health Care, the American Correctional Association and the American Bar Association argue against segregation of HIV positive inmates as a means of preventing the infection of the rest of the prison population. Indeed, the most recent findings, according to the National Commission on AIDS, show that AIDS virus transmission within prisons is "negligible."<sup>56</sup> Currently, however, about 10 states still segregate all prisoners who are HIV positive; many more states isolate those with full-blown AIDS.

According to Greenspan, prisoners with the HIV virus are also often dealt with more severely in disciplinary hearings. For example, they receive harsher disciplinary sanctions for their involvement in fights. There have been cases of HIV positive inmates being charged with attempted murder for biting and spitting. In

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<sup>55</sup>Ibid.

<sup>56</sup>Ibid.

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addition, because of the lack of confidentiality, HIV positive inmates are occasionally attacked by their AIDS-phobic fellow prisoners. There have also been instances of sick HIV carriers being refused proper medical care in prison infirmaries, because of the fear of the personnel there.

### CLOTHING

Most state prisons require inmates to wear uniforms. In some female institutions that Human Rights Watch visited, inmates were allowed to wear private clothes after work hours and on weekends. They were also allowed to wear makeup.

Inmates under close management at Starke prison are required to wash and dry their underwear in their cells. One inmate, who had been held under close management for over five years now, complained about getting skin rashes because he could not properly wash and rinse his clothes in the tiny sink and was unable to dry them properly (he stated he only had one change of clothing). The administration rejected his complaint.

### FOOD

Most inmates interviewed by Human Rights Watch complained about food, usually regarding its quality rather than the quantity. In Bedford Hills, some inmates told us that they often did not eat enough and went hungry; at Broward, inmates said that they were not given enough time to eat their meals, except for dinner. In addition, at that institution, disabled inmates had to stand in line for food.

Inmates who have money<sup>57</sup> can and usually do supplement their meals with purchases made in the commissary (except for inmates who are punished with the loss of commissary rights). Commissaries in general carry a variety of mostly non-perishable foods, as well as soft drinks. Inmates, with rare exceptions, do not have access to refrigerators, but in several institutions we observed ice machines in housing units.

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<sup>57</sup>Most institutions do not allow any circulation of money. The money is deposited in an inmate's account and deducted from it when the inmate makes a purchase.



## **FEDERAL PRISONS**

Most crimes are prosecuted in state courts and sentences are served in state institutions. Several categories of offenses, however, fall under the jurisdiction of federal courts.<sup>1</sup> Some crimes may be prosecuted in either the state or federal courts. Jurisdiction may depend on who committed the act, who the act was committed against, where the act was committed or what type of property was involved. The prosecutor generally determines the specific offense to be charged.

Once a person has been sentenced to a term of imprisonment for commission of a federal crime, he or she is committed to the custody of the Federal Bureau of Prisons. The Bureau then designates the place of the imprisonment, which may or may not be maintained by the federal government and may or may not be within the judicial district in which the person was convicted. This determination is based on several factors including the nature and circumstance of the offense, and the history and characteristics of the prisoner.

## **PHYSICAL CONDITIONS**

The federal prison system operates 67 institutions, with a stated capacity of 38,584, housing, as of March 28, 1991, 61,325 inmates.<sup>2</sup> The system is thus 59 percent above capacity and the overcrowding is at the root of many of the most serious problems related to the physical conditions of incarceration. According to Federal Bureau of Prisons statistics, 15 institutions were overcrowded by more than 100 percent.

Even new institutions become severely overcrowded soon after their inauguration. For example, on the day Human Rights Watch visited the Marianna, Florida Federal Correctional Institution (FCI) (medium security, male) which was inaugurated in 1988, there were 1,167 inmates, though the stated capacity was 496.

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<sup>1</sup>These include those involving national defense; international affairs; immigration, naturalization and passports; obstruction of federal government functions; obstruction of campaigns or elections for federal office; destruction of mail; felonies committed on Indian reservations, and hijacking of aircraft, in certain circumstances. Recently, a number of crimes that had previously been prosecuted in state courts have been made federal crimes by legislation adopted by the U.S. Congress, particularly those involving drugs. Of all federal inmates, 57 percent are confined for drug-related offenses.

<sup>2</sup>Again, see the note on stated capacities in the "Jails" chapter.

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Inmates were housed in cells, originally designed for one person, but used by two. In addition, the large central common areas in housing units were used as makeshift dormitories. Accommodations there were limited to double bunks and lockers and provided no privacy whatsoever. New arrivals were usually housed there and moved as soon as there were openings in the cells, sometimes several weeks later.

At the FCI at Tallahassee, whose capacity is 618, there were 1,255 inmates on the day Human Rights Watch visited. Most inmates lived in dormitories, housing more than 80 persons per room. Two inmates shared tiny, cramped cubicles with a double bunk, lockers and a small table. The cubicles measured 50 square feet, and the partition wall was 5 feet tall. Inmates complained about lack of privacy, noise and heat during the hot Florida summers (most housing units are not air conditioned).

The Mariel Cubans in Lewisburg in Pennsylvania (see below), some of whom spend as much as 23 hours a day locked in their 63-square-foot cells, complained about heat and stuffiness. One inmate we interviewed claimed to suffer nose bleeds as a result of the heat in his cell. In Marion, where, similarly, inmates spend up to 23 hours a day confined to their cells, there is no air conditioning and temperature in the summer reaches 90 degrees Fahrenheit.

In institutions visited by Human Rights Watch, as a result of overcrowding, almost all inmates' beds were double bunks. In many cells and dormitory cubicles, we observed fewer chairs than occupants. As the distance between the two beds on double bunks is sometimes too low for a person to sit on the lower one (as low as 1 foot 10 inches in some Tallahassee dorms), sitting on the bed is very uncomfortable. In Marion prison, inmates have no furniture other than the cement slabs that serve as beds.

Neither Marion penitentiary nor the cells occupied by the Cubans in Lewisburg had tables or chairs. The lack of furniture, in a situation where the inmate spends almost all his time in a cell for years on end, constitutes an additional punishment.

The female unit of the Federal Correctional Institution in Marianna, which houses low-, medium- and high-security inmates, was the only one among those Human Rights Watch visited where all the cells were equipped with listening devices that allow the staff to monitor activities within the cell. (The federal Bureau of Prisons maintains that the general living areas at that facility are not monitored by any type of listening device. According to a letter from the Bureau Director,

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"the original architectural renderings called for the installation of devices to control electrical utilities in the cells. This design also called for listening apparatus capability for use in case of medical or other emergency; however, neither device was installed."<sup>3</sup> During Human Rights Watch's visit to the facility, however, the delegation asked the accompanying Bureau of Prisons staff member about devices seen in the cells, and was told that they were installed for cases of emergency and enabled monitoring of the cells.)

The minimum security camps we visited (Allenwood, Pennsylvania, male; Marianna and Danbury, female) generally housed inmates in dormitories, in small cubicles, with little privacy. The camps, however, have no bars and no fences around them and inmates may walk on the premises with relative freedom.

### **THE MARIEL CUBANS**

American prisons and jails house about 2,500 Cubans who have completed their sentences but are still held in custody—some 1500 in the federal prison system—because of their immigration status. They are under the jurisdiction of the Immigration and Naturalization Service. The federal government reimburses states and localities for housing the remainder. Detainees in this category are individuals who arrived in the United States during the Mariel boatlift and subsequently committed a crime, or, in some cases, were imprisoned upon arrival because U.S. officials discovered that they had a criminal record in Cuba. At the moment of their arrival in the United States, the Mariel refugees were legally defined as "excludable aliens" rather than as refugees and were promptly granted parole in most cases. Under the terms of the parole, however, those who committed a felony were subject to deportation upon completion of their sentences. Because deportations to Cuba have been suspended several times since the 1980 boatlift as a consequence of difficulties between the Castro government and United States, many Cubans have been jailed indefinitely. That situation, combined with the threat of resumed deportations in 1987, had led to violent outbursts in federal facilities in Atlanta and Oakdale, Louisiana. In the aftermath, all Cuban cases were reviewed and those who had committed less serious crimes were freed. But many, including individuals who had been convicted of minor offenses, were left in a legal limbo and continue to be imprisoned.

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<sup>3</sup>November 1, 1991, letter from Director of the Federal Bureau of Prisons, J. Michael Quinlan.

Of that group, those who have "high security needs," according to officials, are held in Lewisburg penitentiary. During Human Rights Watch's visit there in April 1991, 41 were in a separate special housing unit, exclusively holding Cubans. Inmates in that unit are held there with no time limit (although, in theory, they can eventually be transferred to the prison's general population). They are isolated not only by the language barrier and their single-celling, but also by the fact that most receive no visits, since they have nobody in the U.S. to visit them. Their living conditions are significantly worse than those of the rest of the population in that prison.

Inmates we interviewed in Lewisburg talked about the anguish of not knowing how long their incarceration would last (federal courts have ruled that the Cubans may be held indefinitely in custody).<sup>4</sup> A few weeks prior to our visit, one inmate of that unit had committed suicide.

### DISCIPLINARY MEASURES

Disciplinary measures in federal institutions include a range similar to those in state prisons, such as suspension of privileges, placement in special housing (segregation), transfer to a higher security institution, etc. The ultimate disciplinary measure within the federal system is, for male prisoners, transfer to Marion, Illinois. This penitentiary, with a capacity of 435, has been used in recent years, according to prison officials, mostly as a disciplinary institution to confine inmates who committed a serious offense within the federal prison system.<sup>5</sup> Marion also houses inmates deemed extreme escape risks or considered likely to be rescued by outside groups, due to their prominence.

As of July 8, 1991, Marion held 327 inmates in several units, from the

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<sup>4</sup>See: Paul Nussbaum, "Mariel Boatlift Detainees Still in Limbo," *The Washington Post*, November 23, 1990; Laura Parker, "Many Marielitos Languish in Prison As Special Justice Dept. Reviews End," *The Washington Post*, June 25, 1991.

<sup>5</sup>Until 1983, Marion penitentiary functioned similarly to other high security institutions. Following a series of incidents in October 1983, in which two guards and one inmate were killed, the prison started operating under an almost permanent lockdown. Out of 373 inmates who were at Marion in 1983, 30 are still there. The average stay at Marion is under 3 years, although the average sentence is 40 years (inmates are moved to other institutions). Approximately 600 inmates have been transferred out of Marion since the 1983 lockdown.

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most restrictive, the control unit, housing up to 52 inmates; through the "general population" units housing roughly half of the inmates; to the two least restrictive units, each with a capacity of approximately 60 inmates. In addition, there is a special basement unit where high-profile inmates are held, among them convicted spies John Walker and Jonathan Pollard.

A federal court called the living conditions there "sordid and horrible" and provided this description:<sup>6</sup>

As a result of the permanent lockdown, each inmate at Marion is confined to a one-man cell (there are no female inmates in the prison) round the clock, except for brief periods outside the cell for recreation (between 7 and 11 hours a week), for a shower, for a visit to the infirmary, to the law library, etc. (Some inmates have more time outside the cell, as we shall see.) Recreation means pacing in a small enclosure — sometimes just in the corridor between the rows of cells. The inmate is fed in his cell, on a tray shoved in between the bars. The cells are modern and roomy and contain a television set as well as a bed, toilet, and sink, but there is no other furniture and when an inmate is outside his cell he is handcuffed and a box is placed over the handcuffs to prevent the lock from being picked; his legs may also be shackled. Inmates are forbidden to socialize with each other or to participate in group religious services. Inmates who throw food or otherwise misbehave in their cells are sometimes tied spread-eagled on their beds, often for hours at a stretch, while inmates returning to their cells are often (inmates of the control unit, always) subjected to a rectal search: a paramedic inserts a gloved finger into the inmate's rectum and feels around for a knife or other weapon or contraband.

Inmates in the control unit spend an hour once a week in an outdoor pen. Life in the "general population" units differs in that inmates get slightly more time

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<sup>6</sup>Bruscino v. Carlson, 854 F. 2d (7th Cir. 1988); a class action suit in which inmates challenged the lockdown conditions in the maximum security prison under the Eighth Amendment to the U.S. Constitution, which prohibits "cruel and unusual" punishment by government officials. The court ruled in favor of the defendants on the grounds that the violent nature of the inmates justified the conditions.

out of cell a day and in the summer are allowed outdoors three times a week. They are allowed to keep three cubic feet of books in their cells as well as yarnwork and hobbycraft kits. The two least restrictive units allow several hours out of the cell a day, with one of them allowing about 60 prisoners to use a dining room and to work outside the cell.

The seven prisoners in the "high-profile" unit live in 200 square foot cells located in the basement, equipped with showers, color TV, and more furniture than the other cells. The prisoners have no contact with anybody except those in the unit. They work and eat in their cells.<sup>7</sup>

Contacts with the outside vary depending on the unit an inmate is placed in, but no contact visits are permitted (they are conducted through a glass wall and a telephone) and never exceed five in a month. Marion is the only federal institution that does not allow any physical contact between inmates and their visitors. An additional difficulty in visits is the fact that Marion is a one-of-a-kind institution and as such serves the entire country. Due to its location in rural Illinois, it is extremely difficult to visit for most potential visitors. Inmates are allowed to make collect phone calls (limited to one ten-minute call a month in the control unit).

The decision to send an inmate to Marion is made by the Federal Bureau of Prisons staff. There is no maximum limit on the time an inmate may spend at Marion; each inmate's case is reviewed every 90 days, when the prison staff decides whether an inmate's confinement at Marion should continue.

Prison officials have maintained that the Marion penitentiary helps to keep other prisons safer by isolating the most violent and dangerous inmates from the rest of the federal prison population. They also contend that the very existence of that institution serves as a deterrent for many others, who otherwise would be more prone to commit acts of violence in prisons. Critics point out that because the decisions regarding confinement at Marion are made by prison staff and are not subject to appeal and to supervision by an independent authority, they are often arbitrary. In addition, a number of individuals who had not committed disciplinary infractions during their pre-trial detention were sent to Marion directly after sentencing. They include prisoners convicted of politically motivated criminal

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<sup>7</sup>See: Susan Lehman, "Lockdown," *Wigwag Magazine*, September 1990; Michael Isikoff, "Hard Time: Federal Mission at Marion," *The Washington Post*, May 28, 1991.

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offenses, among them Yukik Umura, Leonard Peltier, Raymond Levasseur, Sekou Odinga and Alan Berkman.

For a few years, the Federal Bureau of Prisons operated a unit meant to serve a similar disciplinary function for female inmates. In 1986 it opened the High Security Unit (HSU) in the federal prison in Lexington, Kentucky. The unit, with accommodations for 16 prisoners, was separated completely from the rest of the institution. It was located in the basement, received virtually no natural light and had bad ventilation. Heavy security screens on the windows of their cells prevented prisoners from seeing outside. Light was kept on in the cells 24 hours a day, cells were monitored by video cameras and the inmates were also monitored when they took their showers (there were no curtains in the bathroom). Inmates were frequently subjected to strip and body cavity searches. Their visiting rights were severely limited and so were their rights to correspond or to have access to reading material.<sup>8</sup>

The first two inmates assigned to HSU, Alejandrina Torres and Susan Rosenberg, arrived there in October 1986; they were joined in January 1987 by Silvia Baraldini. All three women had been convicted of politically motivated offenses. Prior to their arrest they were members of radical leftist organizations, and all three were serving sentences of more than 30 years imprisonment. None of the three had been transferred to Lexington because of a crime committed while in prison or a bad disciplinary record. The highest number of inmates HSU ever held was seven (the other inmates had been convicted for non-political acts).

A team of lawyers filed a suit on behalf of three of the inmates there challenging the conditions of confinement at HSU. The three were Silvia Baraldini, Susan Rosenberg and Sylvia Brown (Brown had been placed there because of a history of escapes from other institutions; Torres, who is a Puerto Rican independence activist and does not recognize the jurisdiction of US courts over her person, did not join in the suit). The plaintiffs alleged that their placement in the HSU violated their constitutional rights under the First, Fifth and Eighth

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<sup>8</sup>For more details, see: Amnesty International, *United States of America. The High Security Unit, Lexington Federal Prison, Kentucky*, 1988; and the 1990 PBS documentary "Through the Wire." The Federal Bureau of Prisons points out in its November 1, 1991 letter to Human Rights Watch, that Amnesty International never visited HSU and that its entire report is based "on the inmates' account of the unit, not any factual evaluation of the program."

Amendments<sup>9</sup> to the Constitution.<sup>10</sup>

A major contention of their counsel was that the Bureau's guidelines governing the transfer of the women to the HSU violated First Amendment rights because they retaliated against plaintiffs for holding leftist political ideologies and associating with groups viewed by the government as "radical." Counsel contended that the criteria were overbroad and vague and that their application had the effect of punishing the women for exercising their freedoms of speech, association and expression.

Before the HSU had opened, Norman Carlson, then the Director of the Federal Bureau of Prisons, had written to Congressman Robert Kastenmeier stating the proposed criteria for assignment to the Unit as essentially "the threat of external terrorist attacks on institutions" and histories of "assaultive, escape-prone or disruptive activity." However, in September 1987, Michael Quinlan, the next Director of the Bureau, wrote the Congressman noting other factors that were to be considered. According to Quinlan, the Bureau looked primarily at the severity and nature of the offense, prior criminal record, escape history and prior involvement with organizations involved in attempts to overthrow the U.S. government.<sup>11</sup>

The court found that the Bureau's criteria for placement in the HSU restricted inmates' political associations and expression and that by focusing on the prior associations of the inmates more than the other criteria, they encroached on the inmates' constitutionally protected freedoms. "Since it cannot be inferred automatically from their former memberships that they unqualifiedly subscribe to every aspect of the groups' conduct, their placement in the HSU cannot be justified without more credible documentation than that found in the Bureau's records."<sup>12</sup>

The court also stated that "the treatment of plaintiffs has skirted elemental

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<sup>9</sup>The First Amendment guarantees freedom of belief and expression; the Fifth Amendment guarantees the right to due process; and the Eighth Amendment prohibits cruel and unusual punishment.

<sup>10</sup>Baraldini v. Meese, 691 F. Supp. 432 (D.D.C. 1988).

<sup>11</sup>Ibid., pp. 437-438.

<sup>12</sup>Ibid., p. 439.

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standards of human decency"; it found, however, that the plaintiffs had not been denied the "essential mainstays of life" and that Eighth Amendment standards had not been violated. The court also found no violation of the Fifth amendment. In conclusion, Judge Parker stated:

It is one thing to place persons under greater security because they have escape histories and pose special risks to our correctional institutions. But consigning anyone to a high security unit for past political associations they will never shed unless forced to renounce them is a dangerous mission for this country's prison system to continue.<sup>13</sup>

In the aftermath of the suit, the inmates were transferred out of the Lexington High Security Unit and it has been dismantled. At least three of the women who had been previously housed at HSU (Silvia Baraldini, Susan Rosenberg, and Lynette Fromme) were at the Marianna high security institution when Human Rights Watch visited there in April 1991.

### **ACTIVITIES**

The majority of federal inmates are not confined to their cells during most of the day. The Federal Bureau of Prisons requires that all inmates work or participate in educational programs. In their free time, inmates may use a variety of sports facilities, watch television and videotapes, may use the library, crafts shops, etc. With a few exceptions, they are generally not allowed to have TV sets in their cells or cubicles,<sup>14</sup> but can have radios.

Recreation facilities in the federal institutions Human Rights Watch visited for this study were impressive. They included various ball fields, weight machines, aerobic equipment, tennis courts, jogging tracks and a miniature golf course. In addition, we observed a variety of classrooms, hobby workshops (arts and crafts), as well as libraries, legal and general. Inmates may use these facilities in their spare time.

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<sup>13</sup>That decision was later reversed on appeal.

<sup>14</sup>Television sets are allowed at Marion, and at the high security female institution at Marianna. During visits to federal institutions we also observed that handicapped inmates were allowed to have TV sets in their cells.

The exceptions are inmates in special housing units, usually confined there as a disciplinary measure or awaiting an administrative decision, and, in some cases, held there for their own protection, as well as the Mariel Cubans in Lewisburg and virtually the entire population of Marion prison. (Marion inmates have TV sets in their cells, but they only watch special programming broadcast on a closed circuit. Inmates there are confined to their cells for up to 23 hours a day and allowed to exercise in specially designated areas that lack the amenities available to the general population.)

All Cuban inmates we talked to at Lewisburg complained about unbearable boredom. They are single-celled, they eat in their cells and occasionally they are even barred from communicating with other prisoners in neighboring cells. They also told Human Rights Watch that frequently they were unable to communicate with their guards because of language problems and could not understand radio programs other inmates were able to listen to (there is no Spanish-language station in that part of Pennsylvania).

### **HEALTH**

We did not conduct a systematic examination of the medical services available for inmates. During our visit to the facility in Tallahassee, however, we received an exceptionally high number of complaints about the inadequacy of medical services from inmates we interviewed there. In addition, in the course of the research for this report we came across at least two examples of disturbing delays in providing vital medical help, with possible fatal implications.

The two cases of delay of treatment both involved relatively high-profile inmates, sentenced for politically motivated offenses.

Silvia Baraldini, one of the women held in the Lexington high security unit (see "Disciplinary Measures," above), experienced a delay of about six months before surgery was performed on a lump she discovered and reported to prison officials. According to her own account in a documentary film, she was accused of making up an illness. She was eventually diagnosed as having cancer of the uterus and was operated on, but only after a federal court ruling on the conditions of her confinement (see above).

Dr. Alan Berkman is serving a 10-year sentence after being convicted by a federal court of conspiracy to aid and abet the possession of weapons and

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explosives. While in prison, Berkman, a physician himself, discovered an enlarged lymph node under his arm. A biopsy showed that he was suffering from lymphatic cancer. The authorities wanted Berkman to receive treatment in the federal prison hospital in Springfield, Missouri, which lacked a cancer specialist and other necessary facilities.<sup>15</sup> It took a court order before the government allowed Berkman to receive treatment in a qualified cancer center. After his cancer went into remission, Dr. Berkman was sent to Marion.

In 1990, Dr. Berkman (who was then temporarily in the custody of the District of Columbia jail) suffered a recurrence. More than six weeks passed between the scan that revealed a mass in his abdomen and the biopsy to confirm the results of the scan. Several more days elapsed before any treatment was undertaken. A doctor commented: "The time scale is just way out of line with acceptable medical practice. If I had a patient with suspicion of such a recurrence, it would all be done within a few days."<sup>16</sup>

Before he was shipped back to Marion, Dr. Berkman eventually received medical treatment at the D.C. General Hospital. In December 1990, a *Washington Post* columnist described Berkman:

Partially paralyzed, he is attached to an abdominal catheter. Prison leg irons - the stiff medicine of his jailers - shackle his feet. The armed guard and chains symbolize the needlessly harsh treatment of Berkman...<sup>17</sup>

According to the Federal Bureau of Prisons, at this writing Dr. Berkman is in the Federal Medical Center for Prisoners in Rochester, Minnesota, where he had been transferred from Marion on February 25, 1991. His projected date of release is July 1992 (he had been eligible for parole since 1987).

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<sup>15</sup>In June 1991, the American Civil Liberties Union called for a Congressional inquiry into a number of concerns about the medical care offered at the US Medical Center for Federal Prisoners in Springfield. Congressional hearings on the quality of health care in federal prisons started on July 17 (see below).

<sup>16</sup>Dr. Thomas Garrett, quoted in "Death by Delay?" Anthony Lewis, *The New York Times*, May 15, 1990. See also Amnesty International Report 1991.

<sup>17</sup>Colman McCarthy, *The Washington Post*, December 2, 1990.

Serious concerns about the overall quality of medical help for federal inmates led to hearings held in July 1991 by the Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary.

One of those testifying, Elisabeth Alexander of the ACLU National Prison Project, described the system as deficient in both numbers and qualifications, additionally exacerbated by the overcrowding. Among the problems the national Prison Project has litigated have been the Bureau's medical transport system, which "subjects severely ill patients to long and arduous bus journeys, often for weeks at a time, sometimes resulting in death or serious aggravation of existing health problems.... [seriously deficient] care of patients with AIDS and HIV infection.... inadequate supervision of mentally ill patients... [and] inadequate care of diabetic and dialysis patients...."<sup>18</sup>

## AIDS

According to a spokesman for the Federal Bureau of Prisons, about 1 percent of inmates within the system test positive for the HIV virus. The percentage, however, is significantly higher for women within the federal system.<sup>19</sup> Between 1981 and 1990, there were 129 HIV-related deaths in federal prisons; 23 of them occurred in 1990.<sup>20</sup>

According to the Bureau's regulations, all new inmates are interviewed to identify those most likely to be infected. An inmate who is deemed at risk is

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<sup>18</sup>Testimony of the National Prison Project of the American Civil Liberties Union on the Problems of Health Care in the Bureau of Prisons, before the Subcommittee on Intellectual Property and Judicial Administration of the Committee on the Judiciary of the United States House of Representatives, July 17, 1991.

<sup>19</sup>National Commission on AIDS, *Report on HIV Disease in Correctional Facilities*, March 1991, p. 21. According to the November 1, 1991 letter from the Bureau of Prisons, the percentage of women with AIDS is about twice as high as that of men.

<sup>20</sup>Telephone interview with a Federal Bureau of Prisons spokesman.

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encouraged to take the HIV test. In addition, a physician may order an HIV antibody test if an inmate has chronic illness or symptoms suggestive of an HIV infection. Inmates who are pregnant, who are receiving live vaccines or who are admitted to community hospitals (if required by the hospital) are also tested. Inmates demonstrating promiscuous, assaultive, or predatory sexual behavior must also be tested, according to the regulations.

In addition, once a year a random sample of all newly incarcerated inmates committed to the custody of the Bureau of Prisons is tested. Also once a year, a sample of about 10% of all federal inmates is randomly tested. If an inmate considered for release, parole or placement in the community tests positive for HIV, the results, according to the Bureau spokesman, will not preclude his or her release, but certain correctional officers will be notified about the test results.

### **Smoking**

The Federal Bureau of Prisons does not house smokers with non-smokers. Accordingly, where inmates are confined in cells, there are smoking and non-smoking cells, and in dormitory settings, smoking and non-smoking dormitories. We were told that no non-smoking inmates would be forced to share housing with smokers. If there are not enough beds in a particular category, smokers are housed in non-smoking rooms and are allowed to smoke only outside the sleeping area.

## **WOMEN INMATES**

Women represent about seven percent of inmates within the federal system (just over 4,000 prisoners), with a rising proportion in recent years. Out of the 67 federal institutions nationwide, eight house females, of which five are attached to larger male institutions and three (in Alderson, West Virginia, Bryan, Texas and Lexington, Kentucky) exclusively hold females. There is one institution nationwide that houses high security female inmates, two with medium security levels and one with low security. Most are minimum security institutions.

A British prison expert recently wrote:

The prison is a man's world and prison systems are designed and run by men. Throughout the world women prisoners are a minority, usually a neglected minority. In most West European countries, the proportion of women prisoners is at most 5 percent. The prisons, or parts of prisons, that contain them are an

adjunct, an afterthought, a problematic addition to a system not designed for them.<sup>21</sup>

This statement fairly characterizes the situation in the federal prison system (although the percentage of its female inmates is slightly higher). Prisons do not take into account several of the vital needs of women. By virtue of their relatively low number and the fact that there are only eight female institutions nationwide, many women serve their sentences far away from their relatives. In the case of the Marianna institution in rural Florida, the only prison that encompasses a high security facility for women and one of the two with a medium security facility, most of the women are kept at long distances from their families. One of the women Human Rights Watch interviewed in Marianna Correctional Institution pointed out the sad fact that there was not a single visitor to that institution on Mothers' Day.

The federal prison system does not allow women who deliver a baby during their incarceration to keep it with them in prison for any period. Inmates' babies are usually delivered in an outside hospital and then placed with relatives or in foster care. A woman interviewed by Human Rights Watch in the Danbury camp,<sup>22</sup> who delivered a baby a few weeks prior to our interview, said she had spent six days in the hospital with the baby, but has not seen him since because her family had difficulty in arranging to visit.

There are no special arrangements for pregnant inmates if the pregnancy is normal. High-risk pregnancies are directed to the institution in Lexington, which has a hospital. If a woman gets pregnant while serving her prison term (except when the pregnancy occurred on a furlough), the pregnancy is considered an infraction. We were told of one such case in the Danbury camp, where some men and women inmates work together. The warden told us that the woman is likely to be transferred to a higher security institution after the baby is delivered, and that her good time will be taken away from her. The warden said that the prison will not make a great effort to identify the father of the baby.

Women inmates complained to Human Rights Watch that they had fewer

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<sup>21</sup>Vivien Stern, *Deprived of Their Liberty*, 1990. A Report for Caribbean Rights.

<sup>22</sup>The female minimum security camp at Danbury was the only federal institution we visited where our interviews with inmates were cut short at the request of the administrators.

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work opportunities than men and in institutions which housed both, got the lower-paying, less skilled jobs. In Danbury, for example, in the plant making equipment for the Department of Defense, men perform various electronics jobs, while women do packing and shipping.

Similarly, women tend to be provided with fewer educational and recreational opportunities. That discrepancy was visible in Marianna, where female inmates in the institution that housed 84 persons at the time of our visit (at various security levels, including maximum), had significantly fewer recreational facilities than the adjoining, larger, medium security male institution. Female inmates at Marianna also pointed out that the educational opportunities were fewer for them than for the men.

### **CONTACTS WITH THE OUTSIDE**

#### **Visits**

Visiting rights vary from institution to institution, but with the exception of the Marion penitentiary, federal inmates are allowed several contact visits a month. Visits usually take place in large rooms, furnished with tables and chairs, often equipped with vending machines and occasionally with microwave ovens. Some institutions have outdoor picnic areas in addition to visiting rooms. Most federal institutions we visited had rooms with toys or toy areas, and at least two (in Tallahassee and Danbury), had an outdoor playground area for the visiting children. On the other hand, the female camp at Danbury had no toys at all. Federal prisons do not allow conjugal visits.

#### **Phone Calls**

Federal inmates may make social phone calls. In most cases, only collect phone calls are allowed, but in some institutions there is a limited number of pay phones for inmates' use and they are allowed to have a certain amount of money in coins for the phone calls (and the vending machines). In some institutions (for example, at Marion) the use of the phones may be limited, in others there is a schedule for the use of phones; the duration of phone calls may be restricted by some institutions.

#### **Furloughs**

Federal regulations foresee a number of situations in which inmates who

are close to the end of their sentences and who had not been convicted of serious crimes against the person may be granted a furlough. During our visits to federal institutions we were repeatedly told, both by officials and by inmates, that the number of furlough grants has diminished sharply in recent months.

Several female inmates in Danbury minimum security camp told Human Rights Watch that there had been a visible change in the policy on furloughs in recent months. Prisoners who used to get them no longer did. We were told by inmates that furloughs had been limited almost exclusively to extraordinary situations, such as an emergency or a wedding.

According to the warden there, female inmates received approximately 80 furloughs in the first five months of 1991 (there were 171 women inmates at the time of our visit; the camp's stated capacity is 180). It was impossible for Human Rights Watch to determine how many prisoners actually benefitted from the furloughs or how long they lasted. In another minimum security federal institution, the Allenwood camp, housing males, we were repeatedly told that furloughs had been sharply reduced and that unescorted trips for medical appointments outside the prison were counted as furloughs.

### **Correspondence**

All regular incoming mail is opened by the staff and may be read, according to the Bureau's regulations. Outgoing mail may also be opened and read. Special mail, which includes correspondence with government officials, lawyers and the news media, if it is properly marked as such, is not opened leaving the institution, and upon arrival in prison, is opened and inspected in the presence of an inmate for contraband, but may not be read or copied, according to the regulations.

The majority of federal inmates may correspond with unlimited numbers of persons, although a warden may place an inmate on restricted general correspondence status. This allows only correspondence with the inmate's immediate family, unless its members would threaten the security or good order of the institution. Such limits are imposed on prisoners who committed offenses involving mail, or who pose a security risk. During our interviews in federal institutions we did not come across inmates under such restrictions.

Several women we interviewed in the high security institution at Marianna complained about delays in receiving mail. They said that instead of receiving letters regularly they got them in batches, every several days.

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### **FOOD**

In federal institutions visited by Human Rights Watch, the food seemed adequate and, in a few institutions where we tasted it, good. Federal institutions offer salad bars, sodas and occasionally provide ice cream. The staff eat the food served to inmates. Inmates in the Special Housing Unit of the Tallahassee institution complained that food arrived cold from the main kitchen.

Inmates are allowed to purchase a variety of products from the commissary, and in some institutions where a limited amount of money in coins is allowed, they may also buy food and drinks from vending machines. In most housing units we visited, we saw ice machines for the use of inmates.





## INS DETENTION

As of late 1989, according to the Immigration and Naturalization Service, the United States imprisoned about 7,500 foreigners who had been arrested for lack of proper documentation: persons who either were trying to enter the country without valid travel documents or were apprehended already in the U.S. without a U.S. visa or in violation of the terms of their visa (for example with an expired visa, or working without a work permit).

In the first half of this century, the U.S. frequently detained aliens, but in 1954 this policy was abandoned, except in cases of aliens likely to abscond and those posing a threat to national security or public safety.<sup>1</sup> In 1958, the Supreme Court noted that this non-detention policy reflected the "humane qualities of an enlightened civilization." According to estimates, only about 5% of persons whose admissibility to the US was questioned, were actually detained by the I.N.S. during that period. That policy changed with the advent of the Reagan Administration in the early 1980s, coinciding with a new influx of foreigners, especially Cubans (from the Mariel boat lift<sup>2</sup>) and Haitian boat people, and detention became the normal treatment for thousands with questionable immigration status. This policy is ostensibly intended to assure that aliens appear at all hearings on their legal status. Yet as INS officials acknowledge, its main purpose is to discourage aliens from illegally entering the country to seek political asylum or other means of permanently establishing themselves in the U.S.

To house its detainees, the INS uses several types of facilities:<sup>3</sup> it directly operates detention centers; it contracts with private for-profit companies to detain aliens; and it regularly uses a large number of county and city jails, reimbursing local governments for this service. One facility housing INS inmates is operated by the Federal Bureau of Prisons.

In compiling this report, Human Rights Watch visited the second-largest

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<sup>1</sup>See: *Hidden From View: Human Rights Conditions in the Krome Detention Center*, Minnesota Lawyers International Human Rights Committee and Physicians for Human Rights, April 1991.

<sup>2</sup>See "Federal Prisons" chapter.

<sup>3</sup>See forthcoming report to be released jointly by Americas Watch and Helsinki Watch on abuses by immigration officials on the US/Mexican border.

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INS-operated facility, the Krome Avenue Processing Center in Miami. Over the past several years there have been many reports of mistreatment of detainees at Krome, including verbal abuse, beatings, sexual harassment and arbitrarily imposed harsh disciplinary measures.<sup>4</sup> Since 1990, the facility at Krome has been under investigation by the FBI and the Justice Department.

The facility, with a stated capacity of 450, held 559 detainees on the day of Human Rights Watch's visit in late April 1991. We were told by the authorities that it "can accommodate" up to 1,000 detainees. It held 283 Haitians, 90 Cubans,<sup>5</sup> 58 Chinese, and 14 Indians. Other nationalities included Pakistanis, Colombians, Salvadorans, Hondurans, Nigerians, Poles, Israelis and more. There were 127 women detained at Krome when we visited. According to Krome officials, 80 percent of detainees are asylum seekers. The longest they stay at Krome, we were told, is 12 months. We interviewed several inmates, however, who had been there longer, including one man who had spent 20 months there by the time of our visit.

During our day-long visit to the facility, we were able to interview INS officials there and were given a tour of the entire institution. In the course of the tour, we spoke freely and out of the earshot of officials with several dozen detainees. None of those we interviewed reported that they themselves had been physically abused. One man, a Haitian in his twenties who had been in Krome for several months, told us of an incident in early 1991 in which a guard struck a detainee who had fainted. He told us that the guard said the ill detainee was feigning illness in order to get out of Krome.

Prior to our visit, we had received information about an alleged rape of a

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<sup>4</sup>See Minnesota Lawyers International Human Rights Committee et al.; "Long Docile, Haitian-Americans Turn Militant," *The New York Times*, May 5, 1990; "Behind Krome's Doors," *The Miami Herald*, April 11, 1990; "Abuse charges spur call for Krome investigation," *Sun-Sentinel*, April 5, 1990.

<sup>5</sup>Cubans currently arrive at Krome in numbers larger than any other nationality but they usually stay in the facility for only a few days until they are able to contact relatives or arrangements for them are made within the Cuban community in Miami. The United States does not deport Cuban citizens (with the exception of the so-called Marielitos; see "Federal Prisons" chapter); accordingly, they are released from detention regardless of their immigration status.

Haitian woman by a guard at Krome in February 1991.<sup>6</sup> Since then, she had been released, but we asked the facility's doctor about the case. She told us that the alleged victim came to the clinic two days after the reported incident and that she gave her a physical. She saw no signs of rape such as bruises. The doctor told us she did not perform a pelvic examination, however, because two days after the alleged victim had showered or changed her clothes, there would be nothing left to confirm the allegation of rape. That explanation is unpersuasive. Signs of internal trauma caused by rape could have been revealed by a pelvic examination despite the elapsed time. Moreover, after two days, a simple test might still determine the presence of sperm in her vagina.

#### PHYSICAL CONDITIONS

The facility consists of several buildings that include two housing units, male and female (separated from each other), male and female recreation areas, a clinic, a dining hall and kitchen and administration buildings. These are separated from each other by chain link fences and inmates are restricted from moving freely around the institution.

The men's housing building has ten large dormitories with double-decker bunks, in which the only other furniture is one picnic table per dorm and a TV set. Inmates have no cabinets for personal belongings. Adjacent to the dorms are bathrooms and toilets. Men's toilets and showers have no privacy - there are no stalls. Men are also required to ask the guard in his first-floor booth when they need toilet paper. Because of the acoustics in the building, the whole place is extremely noisy. The building is air conditioned, but dorms are thick with cigarette smoke (contrary to the policy adopted by the federal Bureau of Prisons, the Krome facility does not separate smokers from non-smokers). Male detainees may not circulate freely between the housing and the recreation areas.

Women are housed in a newer, one-story building, all in one dormitory. They have lockers for personal belongings (without locks) and their toilets and showers have stalls. The door between their housing and recreation areas remains open during the day.

Neither men nor women have pillows to sleep on. An official whom we asked about this explained that when there used to be pillows, "detainees had

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<sup>6</sup>See also "Guard accused of rape," *The Miami Herald*, February 28, 1991.

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pillow fights."

Married couples are housed apart from each other and are allowed one one-hour visit a week.

### **CLOTHING**

Krome detainees are required to wear orange pajama-like outfits, similar to those used for federal criminal inmates in transit. These are particularly demeaning for women, many of whom come from societies where women do not wear pants and who reportedly feel ridiculous and "naked" in this clothing.

### **FOOD**

Most detainees described the food as satisfactory or good, but several complained about not having enough time to eat. We were told that the time allowed for a meal depended largely on the guard who was watching a particular group of detainees on any given day.

When we visited, women were served their meals after the men. We were told by the officials that all the women were being punished for a protest by some Haitian female detainees, which consisted in leaving bathrooms extremely dirty.

Detainees are searched after each meal.

### **ACTIVITIES**

Many of our interviewees complained of idleness. A limited number of jobs are available in maintenance of the facility for which detainees are paid \$1 a day. There are also classes in basic education, including English as a second language, and crafts; in general, however, there is little for inmates to do other than to watch TV. The men's section does not have a library; it burned down in 1988 and has not been replaced.

Those detained at Krome are not there because they committed crimes, but because they sought to leave a poor or repressive country to migrate to the United States without prior authorization. They are in an unfamiliar environment and, in most cases, do not speak the language. During our interviews, we repeatedly heard complaints about the lack of interpreters. For the 58 Chinese detainees, for example, the only method to communicate with anybody else in the institution was

through one of them who spoke some Spanish.

Even the Spanish-speaking detainees told us that at times there is no Spanish-speaking staff member around. An incident during our visit supports this claim. A Cuban detainee approached us and asked whether we could help him. He had been picked up by the Coast Guard three days earlier while trying to reach the U.S. on a raft made of car tires. During his perilous journey, he had lost his father's address in Miami. He remembered only a part of it, which he told us. Within three minutes we were able to reach his completely astonished relatives by phone. This man could not have called by himself because he was unfamiliar with the U.S. phone system (to figure out how to reach information from the phones at Krome, one has to go through a series of tape-recorded instructions). In addition, without a bilingual speaker at his side, reaching information even in Miami might have not been enough to locate his father.

Even more troubling is the situation regarding access to outside help. The INS is required by its own regulations to provide lists of addresses and phone numbers of local organizations providing free or low-cost legal help in immigration cases. At our request, the Krome staff gave us a list they compiled for the detainees, dated March 1990 (some of our interviewees said they knew of no such list; it was unclear on what basis the list was distributed, and to whom). Phone calls that we placed to all the organizations on that list revealed, among other things, that of 15 organizations listed, only three provided *any* services to Krome detainees; and one of these three could not accept collect calls (most phones at Krome are for collect calls only; moreover, many detainees do not have any money). One office was listed three times, under slightly modified names; one number belonged to a pregnancy counseling service; one number had been disconnected; and one person we called told us that she was "insulted by the list" because organizations on it, including her own, were not capable of helping Krome detainees. She said she had repeatedly made her concerns known to the INS and requested that her organization be taken off, with no results.

One particularly disturbing observation we made at Krome is that there is a clear lack of will on the part of the agency to alleviate the situation of their charges. An indication of the attitude of the INS was a statement by Krome's deputy administrator Mike Rozos in a *USA Today* interview. Describing the Krome detainees, he said: "This is not the crème de la crème [. . .] You have got scumbuckets here."<sup>7</sup>

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<sup>7</sup>"Critics call for closure of immigration center," *USA Today*, June 14, 1991.

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The conditions at Krome are inferior to those in federal facilities for convicted felons. An INS official told Human Rights Watch that "most of these people have never lived under better conditions than here," as if, even if it were true, this justified their confinement in circumstances worse than those the United States considers appropriate for criminals.

Though it is classified as a minimum security institution, Krome imposes more security restrictions on its inmates than minimum- or even low-security federal prisons: among them, searches after each meal, restricted movement within the institution, and fences around and within the compound. Furthermore, Krome, with its limited educational and recreational opportunities as well as housing that lacks even a modicum of privacy, is ill-equipped for long-term detention. It seems fair to assume that the miserable conditions of confinement are one more method the government uses to discourage aliens from pursuing any legal rights they might have to resist deportation and make them choose to return to the countries they fled rather than endure continued incarceration.

In previous years, Helsinki Watch, a division of Human Rights Watch, along with the Lawyers Committee for Human Rights, documented conditions in other INS detention centers and conducted interviews there with asylum seekers from several repressive countries.<sup>8</sup> The institutions visited included INS detention centers in Harlingen, Texas, New York City, as well as Los Angeles and El Centro in California. A photographer working with us, was in addition also able to document conditions in Oakdale, Louisiana, and Boston.

Two of our interviewees, a South African, and an Afghan, who were placed under INS detention after arriving at the J.F.K. airport in New York, in two separate incidents in 1985, reported having their luggage lost while in detention. This was particularly painful to them, since, fleeing their countries, they had in their luggage their most cherished and important possessions.

A detainee who was held in the INS center in Manhattan complained about the bright light in that institution that was on 18 hours a day, something that apparently gave him headaches.

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<sup>8</sup>*Mother of Exiles: Refugees Imprisoned in America*, Lawyers Committee for Human Rights and Helsinki Watch, 1986. See also *Detained, Denied, Deported: Asylum Seekers in the U.S.*, Helsinki Watch, 1989.

Individuals interviewed by us repeatedly complained about being hungry when in INS detention. They have also complained about excruciating boredom.

Several asylum applicants were shocked that each time they were taken out of the facility for a court appearance or for outside medical care, they were handcuffed. A particularly distressing account came from an Afghan asylum seeker, a Mujahadin, who along with a few friends escaped their embattled country:

One of us had his leg broken during the Russian bombardment. [In detention] he fell down from the upper cot, had his hand broken, and after three days they took him to the hospital. He was in the hospital like a dreadful animal. They handcuffed his hand and put a chain around his waist and the chain was attached to the cot so that he couldn't hurt anyone. How can a man escape with a broken hand and a broken leg?<sup>9</sup>

(This episode occurred when this group of Afghans, after a period spent in the INS facility in Boston, was transferred to a criminal jail in Rhode Island.)

Several INS detention centers, particularly those near the Mexican border, located in hot areas, hold detainees outdoors for most of the day. As is the practice at Krome with respect to the men, inmates are not allowed to walk in and out of the housing units, but rather are forced to stay outside for many hours at a time. Summer temperatures in those areas often reach 110 degrees Fahrenheit and detainees suffer from heat and exposure to the sun, because the shaded areas are insufficient to accommodate everyone. In the El Paso and Port Isabel facilities in Texas, inmates stay outdoors from daybreak until the evening in an outdoor recreation area.<sup>10</sup>

In El Centro, California, inmates had to stay outdoors, with nothing to do, from 6:30 a.m. until after dinner. Only following a hunger strike by the detainees in 1985, did the INS change its policy and allow the detainees to go into the barracks

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<sup>9</sup>*Mother of Exiles.*

<sup>10</sup>See footnote 3 in this chapter.

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in the afternoon.<sup>11</sup>

The Manhattan INS detention center, on the other hand, offered no outdoor recreational opportunities and the only time detainees went outside was on their way to court or hospital, or when taken to a local prison for recreation.<sup>12</sup>

Housing conditions in other INS detention centers resemble those at Krome, and large dormitories are the most common type of accommodation. Overcrowding varies, depending mostly on the current policy. For example, in 1989, when the INS launched a "detention" policy, the capacity of the Port Isabel, Texas facility was raised from 425 in January to 5,000 a month later. This was done by making beds into double bunks, adding more beds in each dormitory, and erecting large tents on the premises. As a result, some female inmates who were housed in the tents had no access to showers for more than one week and were not given clean uniforms for over two weeks. The INS has since stopped using tents for housing at Port Isabel.<sup>13</sup>

Other issues that are raised by the INS detention practices are addressed in the three reports by divisions of Human Rights Watch mentioned above. Here we raise concerns about two more aspects of the situation.

First, in areas distant from INS facilities, the agency confines aliens in local jails. In small communities with small jails, non-criminal aliens are frequently mixed with criminals. The foreigners, who usually do not speak English and who are generally defenseless in a prison environment, are often victimized by criminal suspects held with them in the same cell. Also, in INS-operated facilities that hold both criminal and non-criminal detainees, though they sleep in separate areas, they mingle during the day, according to an INS spokesman.

Second, an extremely serious concern is the detention of minors by the INS. At Krome, there were several juveniles, including young children, at the time of our visit, most of them apprehended and held with their relatives. We were told

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<sup>11</sup>*Mother of Exiles*

<sup>12</sup>*Mother of Exiles*.

<sup>13</sup>See footnote 3.

that minors at Krome are held temporarily, for up to a few days at a time, before arrangements can be made to release them into the community. In fact, we did not encounter any long-term detainees among the minors we interviewed. Elsewhere in the country, however, there have been documented cases of children placed in detention by the INS at institutions holding juvenile delinquents or parole violators, leading to the victimization of the vulnerable foreign minors.





## **PRISON LITIGATION IN THE UNITED STATES<sup>1</sup>**

The American legal system allows prisoners and pre-trial detainees to bring lawsuits when they believe that their rights are violated in detention. Until the late 1960s, courts rarely acknowledged that prisoners had rights, but in the last two decades or so, prison litigation has been used successfully by prisoners to challenge some conditions of incarceration. The basis for redress is usually the United States Constitution.

Court decisions often provide useful descriptions of prison conditions. These findings of fact are made after having evidence presented by prisoners-litigants and governmental authorities. In addition, some courts hire experts who provide their own insights into prison conditions. Occasionally judges view the conditions themselves.

This section gives a brief overview of prison litigation in the United States. In previous sections of this report, we have relied on descriptions of prison conditions found in recent court opinions.

### **HISTORY OF PRISON LITIGATION**

For years, the prevailing view was that prisoners did not enjoy the same constitutional protections as other Americans, and that once individuals were confined in a prison or detention center, they relinquished their rights. Thus, one court in 1871 declared that a prisoner had the status of a "slave of the state."<sup>2</sup> Courts were particularly wary of interfering in matters of prison administration and discipline (including prison conditions), questions which they thought could be best addressed by prison officials. This "hands-off" policy meant that prisoners enjoyed only those rights allowed by their keepers.

Beginning in the 1940s, judicial attitudes began to change. Very slowly, a few courts began to recognize some prisoners' rights, although it was not until the late 1960s and early 1970s that the courts regularly considered prisoners' cases and

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<sup>1</sup>Two excellent sources on prison litigation in the United States are Sheldon Krantz, *The Law of Corrections and Prisoners' Rights* (Minn.: West Publishing Co., 1988) and Daniel E. Manville and John Boston, *Prisoners' Self-Help Litigation Manual* (New York: Oceana Publications, Inc., 1986).

<sup>2</sup>Ruffin v. Commonwealth, 62 Va. 790 (21 Gratt.).

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handed down some landmark decisions. An important role was also played by Black Muslim civil rights activists who constituted an articulate and aware group of inmates.

An important stimulus was a violent prison riot in 1971 at Attica Prison, a maximum security prison in New York, where prisoners alleged — with justification — that conditions were terrible. In a series of cases, courts held that although a prisoner's rights were diminished by virtue of incarceration, prisoners nonetheless enjoyed some constitutional protection. For a period of about a decade, the courts closely examined prison conditions and intervened when it appeared that conditions were unusually cruel and inhumane.

Beginning in the mid-1970s, the pendulum began to swing in the opposite direction and the courts once again became reluctant to interfere in prison administration. In part, this was a reaction to the explosion of litigation which taxed court time and resources. The shift also reflected increasingly conservative court appointments, particularly at the federal level. The message repeatedly sent by the Supreme Court to the lower courts has been that courts should not intervene unless there is overwhelming evidence of gross constitutional violations.

In June 1991 the Supreme Court decided<sup>3</sup> that an Eighth Amendment challenge to prison conditions may be brought only when inmates can show a prison administration's deliberate indifference to basic human needs. Accordingly it is likely to become far more difficult for inmates to prevail in prison conditions litigation from now on.

Despite these difficulties, litigation remains one of the most important tools for achieving improvements in prison conditions. Litigation, or the mere threat of it, is a factor that has to be taken into account both by elected officials and prison administrators. As one prison litigator put it, "Without litigation, prison conditions would be the last priority for almost every state official. Prisoners do not vote; most of the voting public does not care whether prisons are being operated in an unconstitutional or even barbaric manner."<sup>4</sup>

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<sup>3</sup>Wilson v. Seiter, 59 L.W. 4671 (1991).

<sup>4</sup>Mark Lopez, "Almost 20 Years of Prison Litigation: What Has It Accomplished? What Remains to be Achieved," National Prison Project of the ACLU Foundation. A paper prepared for the June 1989 ACLU Biennial Conference at the University of Wisconsin.

## **PRISON LITIGATION IN THE UNITED STATES • 103**

Unfortunately, many of the gains achieved through prison litigation in the 1970s, were overwhelmed by the inmate population explosion of the next decade.

### **SUBSTANTIVE LEGAL PROTECTIONS FOR AMERICAN PRISONERS**

The United States Constitution provides the basis for most court decisions upholding prisoner rights. In general, courts take the position that prisoners enjoy fewer constitutional protections than others. They are also reluctant to interfere in matters of prison administration and discipline. Nonetheless, they do intervene when prison conditions are truly shocking.

Courts have determined that certain constitutional rights are more important than others and deserve special protection, even in the prison context. In general, these include the right to be free from cruel and unusual punishment such as physical abuse (Eighth Amendment to the Constitution), the right of access to the courts by means of the ability to consult a law library (Fifth and Fourteenth Amendments), freedom of expression and religion (First Amendment) and the right to due process in disciplinary and other institutional proceedings (Fifth and Fourteenth Amendments). Courts also seem to be sensitive in cases where racial discrimination is alleged. Some constitutional rights, such as the Fourth Amendment provision against unreasonable searches and seizures, are rarely recognized in the prison context, however.

Sheldon Krantz (see footnote at the beginning of this chapter) has noted the following trends:

- 1) Courts are more likely to act when constitutional violations are widespread or particularly shocking;
- 2) Courts are less willing to defer to prison officials when a pattern of conduct is long-lasting or continues to repeat itself;
- 3) Courts are reluctant to interfere when officials act in response to emergencies, such as a riot, even if their actions are abusive;
- 4) When examining emergency situations, courts intervene if rights continue to be violated for a long period of time;

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5) The court's willingness to intervene may depend upon the remedy being sought. Courts are more willing to order general improvements or invalidate regulations than to award damages or establish specific rigid requirements governing future conduct.<sup>5</sup>

### ACCESS TO COURTS

The American legal system allows prisoners to submit complaints not only through lawyers but also in the form of *pro se* lawsuits (that is, the litigants represent themselves). The *pro se* lawsuit is particularly important because counsel is rarely appointed to indigent prisoners complaining about substandard conditions. In a 1977 case, the Supreme Court held that the Constitution requires that prisoners have access either to adequate legal services or to law libraries.<sup>6</sup> Thus all prisons and jails must, by law, maintain legal libraries. (Unfortunately, in practice, prison libraries frequently lack critical materials and are inadequately staffed.) Many prisoners, especially those with long sentences, devote much of their time to legal research and have become known as "jailhouse lawyers." In addition to handling their own cases, they often assist fellow inmates in preparing legal papers. In practice, only a small portion of inmate complaints survive beyond the initial procedural stages before they are dismissed or denied by the courts, being deemed too frivolous. In 1979, for example, federal courts dismissed 9,943 out of 10,301 civil rights cases submitted by prisoners *pro se*, after the initial reading of their complaints.<sup>7</sup> That is, only 3½ percent survived the first stage of the process.

Because prison litigation is complex and requires substantial expertise, securing significant change generally requires representation by a lawyer, and often by a team of lawyers. High legal expenses and the need to hire experts often makes it extremely costly. Few lawyers in private practice have been willing to offer their services on a *pro bono* basis to prisoner complainants.

Although the Supreme Court has declared that in criminal cases indigent defendants are entitled to assistance from court-appointed counsel, no such right exists in civil cases or in post-conviction proceedings. Various attempts have been

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<sup>5</sup>Krantz, *Law of Corrections and Prisoners' Rights*, pp. 279-80.

<sup>6</sup>*Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

<sup>7</sup>Manville, *Prisoners' Self-Help Litigation Manual*, p. 1.

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made to provide free legal representation to inmates. For example, in New York City, the federal courts have organized a program that encourages large New York law firms to represent prisoners. In other jurisdictions, legal assistance is provided through law school clinics, volunteer lawyer programs, and public defender offices. An outstanding role in the field of prison litigation has been played by the American Civil Liberties Union. Its National Prison Project, established in 1971, has handled many of the conditions cases nationwide and a significant amount of the relevant work at the U.S. Supreme Court level.

In spite of such programs, the vast need for legal services for prisoners is largely unmet. Some state bar associations are considering proposals that would require lawyers to devote a certain number of hours per year to pro bono assistance, which could help to alleviate the situation.

In discussing the issue of access to courts by inmates in the United States, it is also important to note that court decisions have held that prison officials may not bar or censor attorney-client mail, and may not punish prisoners for allegations made in court proceedings.

### ACHIEVEMENTS OF PRISON LITIGATION

As a result of prison conditions lawsuits, several significant court decisions have been handed down ordering an end to abuses, most of them in the 1970s. Judges have ordered that substantial improvements be made in prison and jail conditions, including reduction in overcrowding, improving sanitation, establishing appropriate standards of medical care, reducing noise levels, increasing recreational opportunities, and improving the quality of food.<sup>8</sup> For example, due to law suits:

- In Alabama, six prisoners are no longer forced to live in a one-man cell; nobody is forced to sleep on top of a urinal or on the floor.
- A particularly dilapidated facility in Rhode Island was closed. The Old Maximum Security prison, which was found by the court to be "clearly unfit for human habitation," has been renovated and is now considered by inmates to be the

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<sup>8</sup>Krantz, *Law of Corrections and Prisoners' Rights*, p. 298.

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most desirable housing in the state system.

- In New Mexico, overcrowding has been eliminated; the level of violence has gone down; there have been large improvements in medical, dental and mental health care.
- Staff abuses that once included beatings and gassings by guards in the Virginia facility at Mecklenburg no longer occur.<sup>9</sup>

If the states fail to fulfill court orders, they can be held in contempt and fined substantial sums.<sup>10</sup> Currently, about 40 state prison systems or major parts of several systems are under court orders regarding prison conditions.

In many cases, however, courts have had limited success in implementing their orders; simply ordering substantial improvements rarely accomplishes much, and the courts themselves lack the time and resources to be directly involved in correcting the problems. Courts have found themselves forced to look for creative ways to bring about the implementation of their orders. As one court stated:

The experience of this court and other courts has demonstrated that it is not enough to make an order, no matter how detailed and explicit. Unless somebody checks the order against the defendants' performance, they do not perform. When someone watches them, they squirm, but they comply, or get out of the way for someone else to do so. Thus, rather than using the classical, simple and entirely appropriate remedy of sending the defendants to jail with the keys in their pockets, this Court will undertake to monitor the defendants' future performance of its order.<sup>11</sup>

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<sup>9</sup>Lopez, "20 Years of Prison Litigation," p. 3.

<sup>10</sup>For example, as a result of the lawsuit brought against the Puerto Rican prison system, since 1987 the Commonwealth of Puerto Rico has been paying fines for each inmate held in excess of the court-imposed standards, and as of March 1991 the payments have surpassed \$33 million.

<sup>11</sup>Jones v. Wittenberg, 73 F.R.D. 82 (N.D. Ohio 1976), p. 85.

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Since the mid-1970s, to monitor implementation of their orders, courts have frequently appointed Special Masters (sometimes called Monitors, Auditors, Compliance Coordinators, etc.). In addition to monitoring, Special Masters assist the court in formulating remedial decrees and in negotiating consent decrees. Special Masters, usually individuals with a background in law and/or corrections, have free access to institutions involved in the suit and produce periodic reports based on their findings. As these are of public record, they constitute an invaluable source of information about prison conditions in the United States.

In the words of one Special Master, "A mastership is more than the master. It is a symbiosis of a judge, counsel, parties, other institutional officials affected by the litigation, and the master himself."<sup>12</sup>

Courts may also award monetary damages against a municipality or local government unit. Monetary damages usually take the form of compensation to the individual whose rights have been violated; punitive damages -- intended to punish the officials who are responsible for the violations -- are rarely awarded. Attorneys' fees are frequently awarded to successful litigants.

The American legal system does not permit prisoners to obtain redress for all of the human rights violations that they experience in prisons and jails. Constitutional protections are limited in scope, and the judicial system is often slow and ill-equipped to address the miserable conditions found in so many of the country's prisons and jails. Also, the courts' ability to secure compliance with their orders is limited, particularly when corrective action is required. Nonetheless, much has been accomplished through litigation in eliminating some of the worst human rights violations in U.S. prisons.

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<sup>12</sup>Vincent M. Nathan, "The Use of Masters in Institutional Reform Litigation," *The University of Toledo Law Review*, Vol. 10, 1979.