

## **Human Rights Center Fellowship Application**

Concrete, steel, artificial light, complete technological automation, near-complete sensory deprivation, and total isolation – these are the basic conditions of supermaximum security prisons in the United States. “Supermax” prisoners remain alone twenty-three to twenty-four hours a day, under fluorescent lights that are never turned off. Meals arrive through a small slot in an automated cell door. Prisoners have little to no human contact for months, years, or even decades at a time, save brief interactions with correctional officers, who place hand, ankle, and waist cuffs on each prisoner before removing him from his cell. Prisoners only leave their cells four or five times per week for showers or for brief, solitary exercise periods in “dog runs” – concrete pens with roofs at least partially open to natural light.

The supermax is a new and widespread phenomenon in American criminal justice; almost every state built a supermax facility between the mid-1980s and the mid-1990s. Although human rights advocates have identified these institutions as potential sources of substantial human rights abuses (Human Rights Watch 1998, 2000; Gawande 2009), and psychiatrists and psychologists have documented the detrimental psychological effects of longterm solitary confinement (Haney 2003; Kupers 1999), few researchers have looked systematically at who is inside supermaxes, how long their terms of supermax confinement are, and what happens to them when they are released from supermaxes onto parole.

Without documenting these basic facts about supermaxes, we cannot know the extent of the human rights abuses within these institutions, nor advocate to minimize such abuses. With the assistance and support provided by a Human Rights Center Summer Fellowship, I propose to explore these questions, working within the framework of a nationally-recognized criminal justice research institution: the National Council on Crime and Delinquency. In the remainder of this application, I first provide background about how supermaxes work and how they violate human rights standards, then define the specific research questions I propose to explore this summer, and finally explain how this project fits into my broader human rights-related experience and career goals.

### **Supermaxes as Torture?**

Supermaxes are prisons within prisons. They allegedly imprison those who cannot be controlled in a general population prison setting: either “the worst of the worst,” who commit violent acts in violation of prison rules, or those who are validated gang members or otherwise established, in an administrative hearing, to be extreme security risks to institutional safety (Griffith 1989). In a recent *New Yorker* feature article, Atul Gawande called these facilities “Hellholes,” and the international community has condemned them as torture (Lobel 2008).

There are two situations in which solitary confinement might rise to the level of torture under international law. First, under Article 16 of the Convention Against Torture, Cruel, Inhuman, and Degrading Treatment, solitary confinement inflicted for retributive, or punitive, purposes is explicitly identified as a practice of torture, in violation of the treaty. Indeed, in 2006, responding to reports submitted by the United States pursuant to its obligations under the Convention against Torture, the United Nations Committee Against Torture expressed concern “about the extremely harsh regime imposed on detainees in ‘supermaximum prisons,’” including conditions of prolonged isolation. The Committee explicitly stated that such confinement potentially violated the Convention Against Torture, especially if such confinement was punitive. Second, under Article 10, paragraph 1 of the International Covenant on Civil and Political Rights, all detainees must be treated “with humanity and with respect for the inherent dignity of the human person.” In 2006, the United Nations noted, in a joint report on “the Guantanamo Situation,” that prolonged solitary confinement violates this inherent right to dignity, as well as the right to health, codified in the International Covenant on Economic, Social, and Cultural Rights.

While U.S. courts have found that indefinite placement in supermax conditions does not violate either the Fourteenth Amendment right to due process, or the the Eighth Amendment prohibition on cruel and unusual punishment (*Austin v. Wilkinson* 2005), these same courts have also referenced the inherent value of international norms and treaties in evaluating Eighth Amendment questions (*Roper v. Simmons* 2005). In other words, documenting the human rights violations inherent in supermax confinement has potentially valuable implications for litigation, even within U.S. courts.

**Fieldwork: Research Question, Methodology, and Outcomes**

The use of indefinite terms of solitary confinement, in conditions explicitly streamlined to create a sterile form of isolation, represents both a dramatically popular phenomenon in criminal justice policy and a novel form of extreme punishment, which pushes the boundaries of national and international dividing lines between decency and cruelty. And yet, the scholarship analyzing this phenomenon is minimal and inconclusive. In an effort to expand on this minimal scholarship, I plan to write a dissertation on the history and uses of supermax prisons in the United States. This summer, I am applying for an Human Rights Center (HRC) fellowship in order to support me as I complete the first, human rights-oriented piece of this project. In collaboration with the National Council on Crime and Delinquency (NCCD), I hope to document who is released from supermaxes in the state of California, and what they experience when they are released directly from solitary confinement, as they re-adjust to life outside of prison.

In pursuit of this goal, I plan to speak with prisoners who have spent time in supermaxes and are now on parole in the Greater Bay Area. Specifically, I plan to conduct semi-structured open-ended interviews with between 12 and 25 parolees. Through another advocacy organization, I have made initial contacts with two former prisoners in East Palo Alto who have spent time in supermax prisons, and I plan to use snowball sampling, working through these initial contacts, and through re-entry organizations in East Palo Alto and Oakland, to conduct further interviews. Interviews will focus on what life in a supermax was like from day to day, and on what re-entry challenges face parolees who have been in supermaxes. I will record and transcribe interviews and then analyze the responses using Atlas.ti coding software, to identify major categories of human rights impacts, including legal and psychiatric implications of confinement, and re-entry challenges. I have obtained approval through the Committee for the Protection of Human Subjects at the University of California-Berkeley to conduct these interviews (approval granted February 4, 2010, Protocol #2009-11-30). This fieldwork will provide a human-interest, human rights-focused perspective to statistical work I have already done analyzing the aggregate demographics of people released from supermaxes in California between 1997 and 2007. Having funding, and organizational support through both HRC and NCCD, will allow me the time and

resources to conduct the fieldwork, analyze the data, and write it up into a publishable form, for purposes of both policy advocacy and academic publication.

California is an ideal place to conduct this fieldwork, because of the scale of imprisonment, and especially the use of supermax confinement, in the state. Within both the broad context of the United States prison expansion over the past twenty years (Zimring & Hawkins 1991), and the narrower context of the supermax phenomenon, California is a leader – at least in terms of sheer numbers, if not in terms of economic efficiency or desirable policy outcomes. California’s prison expansion was the largest in magnitude of any state’s, and California today has more people incarcerated than any other state in the United States (West & Sabol 2008). Moreover, California has more prisoners incarcerated in supermaxes than any other state, by a factor of ten; this high supermax population matches California’s high overall state prison population. Finally, California releases approximately 100 prisoners per month directly from long-term supermax confinement onto parole. This unexplored phenomenon demands prompt investigation, and NCCD – a California-based organization – is an ideal partner in the outreach work and criminal justice policy analysis I propose to do.

During my summer work, I plan to produce a thorough advocacy document outlining the human rights abuses inherent in indefinite supermax confinement and providing eyewitness accounts of these abuses, from planned interviews. Such a document would hopefully be useful both to NCCD, in their advocacy work for improved U.S. prisons conditions, as well as to lawyers attempting to challenge conditions in supermax prisons. In addition, staff members at NCCD suggested that I could assist in hosting summer brainstorming sessions, focused on new ways the organization might incorporate human rights frameworks into their work. Finally, by the completion of my summer fellowship at NCCD, I plan to have a paper ready to submit for publication in an academic journal, analyzing the experiences of California prisoners in solitary confinement and on parole.

### **Building a Human Rights Career: Summer & Long-Term Goals**

Because there is so little systemic research on supermaxes, finding the right niche from which to build this research and to be challenged by experts in the field presents a potential

dilemma. However, NCCD presents a unique opportunity for mentorship and advising, because they have a staff of researchers expert in a range of criminal justice policies intersecting with my research interests, and because the organization has worked for more than a century on exposing and remedying human rights abuses in U.S. prisons. Moreover, by working with NCCD, I will be able to build on their existing grassroots work on human rights abuses within the U.S. criminal justice system, conducting work that the organization values but would not otherwise have the resources to perform.

In addition, I would be deeply grateful for the chance to meet and work with the other HRC fellows and to share and brainstorm ideas for human rights frameworks for my larger research project, as I move forward. During my graduate studies at UC-Berkeley, I have been able to network between Boalt Hall and the Jurisprudence and Social Policy program to build context for investigation into supermaxes; the Human Rights Center, with its offer of new colleagues and existing expertise, would enrich this context and provide exactly the grounding for research and advocacy that I have been seeking.

I apply to the HRC fellowship program as someone who is not only committed to criminal justice research issues but who has been engaged in human rights work for many years. Exposing abuses in American prisons, working with prisoners, and advocating for their rights is my life's work. I have been volunteering in prison education programs in Massachusetts, New York, and California for the past ten years. In 2003 and 2004, I worked as a litigation assistant at the Prison Law Office, monitoring human rights abuses in prisons throughout California. Then, between 2004 and 2006, I worked for Human Rights Watch, in their U.S. Program, where I focused mainly on exposing human rights abuses within the American criminal justice system. I also worked during one summer of law school for the Southern Center for Human Rights in Atlanta, where I did anti-death penalty work and advocated for improvement of abusive prison conditions in Alabama and Georgia. In the long term, I am committed to continuing to research human rights abuses in U.S. prisons, understanding how these abuses get perpetrated, and advocating for better, less abusive policies. The HRC fellowship would provide the perfect context for my next steps toward these goals.

### Works Cited

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

Committee Against Torture. *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Conclusion and Recommendations of the Committee Against Torture, United States of America*. Thirty-sixth Session, CAT/C/USA/CO/2, 25 July 2006, at para. 36, available at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/CAT.C.USA.CO.2.En?Opendocument>.

Economic and Social Council, Commission on Human Rights. *Joint Report on the Situation of Detainees at Guantanamo*. Sixty-second Session, E/CN.4/2006/120, at para. 87, available at <http://www1.umn.edu/humanrts/OathBetrayed/United Nations Working Group.pdf>.

Fellner, Jamie & Joanne Mariner. *Cold Storage: Supermaximum Security Confinement in Indiana* (New York: Human Rights Watch & Physicians for Human Rights, 1998), available at <http://www.hrw.org/legacy/reports/1997/usind/>.

Fellner, Jamie. *Out of Sight: Supermaximum Security Confinement in the United States*. (New York: Human Rights Watch, 2000), available at <http://www.hrw.org/legacy/reports/2000/supermax/index.htm#TopOfPage>.

Gawande, Atul. "Hellhole." *The New Yorker*. Mar. 30, 2009, at 36-45.

Griffith, John. "New Border Prison Spurs Concerns." *The Oregonian*. Dec. 1, 1989, at D-1.

Haney, Craig. "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement." *Crime and Delinquency*, Vol. 49 No. 1, at 124-156 (Jan. 2003).

Kupers, Terry. *Prison Madness: The Mental Health Crisis behind Bars and What We Must Do about It*. (San Francisco: Jossey-Bass, 1999).

Lobel, Jules, "Prolonged Solitary Confinement and the Constitution," *Journal of Constitutional Law*, Vol. 11, at 115 (Dec. 2008).

*Roper v. Simmons*, 543 U.S. 551 (2005).

West, Heather C. & William J. Sabol. *Prisoners in 2007*, Table 2 (Bureau of Justice Statistics, NCJ 224280, Dec. 2008), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf>.

Zimring, Franklin E. & Gordon Hawkins. *The Scale of Imprisonment* (Chicago: University of Chicago Press, 1991).