

Understanding Federal “Restrictive Housing Unit” Environments



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I. Introduction

Some 7.3 million individuals are currently under the control of the criminal justice system in the United States: 2.3 million in prison, 800,000 on parole, and 4.2 million on probation. More than 10 million Americans are arrested each year, 600,000 of whom are imprisoned. Although recidivism is notoriously difficult to estimate, the most recent and comprehensive Bureau of Justice Statistics report found that, of the 400,000 state prisoners released each year, 68% were re-imprisoned within three years as a result of recidivism.¹

These astonishing numbers include 80,000 individuals who are held in isolation on any given day, some of whom do not count their isolation stays in days or months, but in years and even decades. Long-term solitary confinement, concentrated in single-use facilities, fell out of favor in American prisons for much of the twentieth century, until a building boom of control-unit (or “supermax”) prisons began in the late 1980s, when being “tough on crime” was all the rage. The justifications for these facilities, however, date back to revolutionary violence that took place in prisons across the United States in earlier decades, including the alleged escape attempt of George Jackson in California and the revolt at Attica in New York, both in 1971.² By 2005, an estimated forty states were operating supermax facilities, the physical design of which served to strictly isolate prisoners from both the outside world and their fellow inmates.³ Despite the extreme harshness of life in these prisons, the average stay far exceeds the United Nations’ recommended fifteen-day maximum.⁴

During the past several years, “solitary confinement” has received a great deal of attention throughout the country, and solitary confinement in federal facilities has received special scrutiny from federal legislators, federal oversight agencies like the National Institute of Corrections and the Office of the Inspector General, and federal courts. Federal solitary confinement has also faced critical exposés from national news outlets and litigation from prisoners’ rights advocates. In spite of all this attention, considerable confusion persists as to what constellation of conditions constitutes solitary confinement (let alone which of these conditions might be constitutional, effective, or ethical) within the national archipelago of 122 prisons that make up the Federal Bureau of Prisons (BOP) system.

This article seeks to (1) document the BOP practices that have led to confusion about the definition, prevalence, and conditions of solitary confinement and (2) outline the constellation of practices now encompassed within the new (as of 2015) umbrella term *restrictive housing practices*. First, we outline the critiques that have been leveled against BOP solitary confinement practices and policies, along with the responses of BOP officials. Second, we describe and define the range of labels assigned to different kinds of BOP housing units that impose some form of solitary confinement, or, in the new terminology, restrictive housing. Finally, we conclude with a discussion of the implications of this analysis—for both understanding and reforming solitary confinement practices.

II. Critiques of Solitary Confinement and the Birth of Restrictive Housing

One of the first signals of renewed federal attention to solitary confinement came from the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights headed by Senator Dick Durbin, which held hearings in 2012 and 2014 on solitary confinement practices in the United States. In February 2014 Charles Samuels, then Director of the BOP, testified before the Subcommittee. One of the more memorable moments of his testimony was when Senator Al Franken asked Samuels about the size of an average cell in solitary confinement—or “restrictive housing,” as Samuels dubbed it. The Director simply froze and could not answer the question. His inability to comprehend such a simple question exemplifies a harsh reality, demonstrating how out of touch prison administrators are with this human rights issue—and how little they know about the day-to-day operations of these facilities.⁵

The Subcommittee’s pressure on the BOP, along with a highly critical Government Accountability Office report that documented significant shortcomings in monitoring and evaluation of “segregated housing” in federal prisons,⁶ caused the BOP to undertake what was referred to as an “independent” study through the National Institute of Corrections (NIC).⁷ The NIC awarded the study to CNA Analysis and Solutions (CNA), a nonprofit research organization that operates the Center for Naval Analyses (as a defense contractor) and the Institute for Public Research. CNA released a report in early 2015.⁸ The consultants

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involved in the report consisted mostly of retired wardens and administrators who failed to take practical advice from advocates on running detailed BOP computer system rosters to obtain targeted data on the target population they were studying. Instead, they relied on what they described as a “BOP data dump” provided by the Agency. Moreover, BOP central office administrators allegedly worked to preempt critical findings by warning wardens of the preliminary findings in advance of the study’s release, thereby allowing prisoners to be moved and transferred out of segregated housing.⁹ Solitary Watch, a nonprofit watchdog and investigative journalism group focused on the topic of solitary confinement, promptly characterized the NIC report as “an inside job” that “reached foregone conclusions,” providing little new information and few recommendations for serious reform.¹⁰

On the heels of the CNA report, in July 2015, President Obama became the first sitting President to visit a federal prison facility.¹¹ A few months later, in January 2016, Obama published an opinion piece in the *Washington Post* condemning solitary confinement; on the same day, the U.S. Department of Justice issued recommendations for significant reform of solitary confinement use, including banning solitary confinement for juveniles.¹² Although the move to ban juvenile solitary was largely symbolic (only a few juveniles annually experience solitary confinement in the federal prison system), it did bring further attention to the issue.¹³ In a *Harvard Law Review* commentary published on the eve of his departure from the presidency, Obama highlighted his attention to solitary confinement as a key building block of his efforts to rehabilitate federal prisoners.¹⁴

Between Obama’s federal prison visit and the release of the Department of Justice’s recommendations, in October 2015 the National Institute of Justice (NIJ) hosted a “topical working group” on the use of “restricted housing” in the United States. Simultaneous with the conference, the U.S. Bureau of Justice Statistics released its first-ever report attempting to document the scale and duration of solitary confinement use across the United States.¹⁵ One year later, the NIJ released a series of white papers on solitary confinement practices across the nation, along with a targeted funding call for further research on these topics.¹⁶ This NIJ convening and subsequent attention solidified the new (arguably euphemistic) term *restrictive housing* as the label of choice for the constellation of solitary confinement practices in use across the United States and within the BOP.

Indeed, before 2014, the term *restrictive housing* was practically absent in BOP policy statements. One of the first appearances of the term was in May 2014, when the BOP issued Program Statement 5310.16, “Treatment and Care of Inmates with Mental Illness.” Shortly before that, as noted above, BOP Director Samuels had used the term *restrictive housing* when he testified before Congress. Still, a search of the BOP public database reveals that the term is used infrequently in current policy, despite several separate

policies dealing with “solitary confinement,” including Control Unit Programs, Special Management Units, Special Housing Units, and Inmate Discipline. However, Program Statement 5310.16 includes two new evaluation forms, both entitled “Restrictive Housing Mental Health Evaluation,” for the initial and follow-up review of isolated inmates. The forms and the label are new, but the evaluation practice is not: BOP policy has always required that a written, in-person “psychology assessment” report be completed every thirty days for inmates housed in Special Housing Units.

Nonetheless, in June 2017, a coalition of prisoners’ rights groups and corporate litigators (including the Washington Lawyers’ Committee for Civil Rights and Urban Affairs, the Pennsylvania Institutional Law Project, and the law firm Latham and Watkins) filed a lawsuit challenging the treatment of mentally ill prisoners in segregation at the United States Penitentiary, Lewisburg (USP Lewisburg), in Pennsylvania. *McCreary v. Federal Bureau of Prisons* alleged that mentally ill prisoners should never have been placed in the prison’s “Security Management Unit,” according to BOP policy, and that once there, the prisoners were cut off from their medication regimens, given crossword and sudoku puzzles in place of counseling or treatment, and often housed in small cells for up to twenty-four hours per day with cellmates.¹⁷ The lawsuit followed up on an exposé, coproduced by National Public Radio and the criminal justice–focused news organization the Marshall Project, that had documented rates of violence at USP Lewisburg six times as high as in other federal prisons and blamed the violence on lack of mental health care and the prison’s practice of housing two prisoners together in one cell, with little or no time out of cell.¹⁸

A month later, in July 2017, yet another watchdog group reviewed BOP solitary confinement policies (now formally called “restrictive housing policies”), especially for the mentally ill, and condemned them. This time, the investigating agency was the Department of Justice’s Office of the Inspector General (OIG). The OIG found that, in the federal prison system’s highest-security prison in Florence, Colorado, prisoners with mental illnesses spend an average of sixty-nine months in solitary confinement—even though many states limit such terms for the mentally ill to no more than thirty days.¹⁹ The report also found that the total number of prisoners receiving treatment for mental illness has fallen by 60% since the 2014 criticisms, likely because prison officials have reduced the number of prisoners identified as needing treatment.²⁰ Notably, the BOP officials also told the OIG investigators that “[t]he Bureau does not recognize the term *solitary confinement*” and that “solitary confinement does not exist” in the Bureau.²¹

The various terminology and slang—including *solitary confinement*, *segregation*, and *Special Management Unit*, all now encompassed by the term *restrictive housing unit*—makes understanding the isolation process extremely difficult for anyone outside of the BOP. Over the past few decades, during which supermax confinement steadily

grew in popularity, the federal government has evolved from isolating prisoners in Special Housing Units (commonly known as “Solitary,” the “SHU,” the “Hole,” or the “Box”) to use of “Control Units,” “Special Management Units,” “Communication Management Units,” and, most recently, “Reintegration Housing Units.” Indeed, there has been an evolution of “restrictive housing unit” settings within the BOP, which must be looked at from historical, policy, and professional perspectives alike. Here, we provide an overview of the varieties of segregation historically and currently in use in the BOP, in order to provide more robust context for future analysis and also to ensure that conversations about “restrictive housing” better encompass the breadth of highly restrictive and highly controversial practices currently in use. More specifically, this kind of analysis is foundational for legislators, advocates, and academics seeking to collectively effectuate change in federal restrictive housing practices.

III. Restrictive Housing Unit Policy

Traditionally, the BOP has had two rationales for isolating inmates from the general population of a facility: (1) *administrative detention* (AD), which includes isolation for protective custody, pending an investigation, or for general administrative security concerns; and (2) *disciplinary segregation* (DS), a sanction for violating the BOP “code of conduct,” or rules governing prison behavior. Although AD and DS can be difficult to distinguish in practice, a clear understanding of these two foundational rationales for isolation remains critical to making sense of when, why, and how the BOP segregates certain prisoners.

More specifically, then, AD is a “non-punitive” status that removes an inmate from an institution’s general population when necessary to ensure the safety, security, and orderly operation of correctional facilities or to protect the public. The most common reasons for the placement of inmates in AD is that they are being investigated for committing a prohibited act, are in need of protection (called protection cases, or “PC”), are being held over in transit to a different facility, and/or are in post-disciplinary detention. Although the Code of Federal Regulations (C.F.R.) has significant checks and balances governing AD, there are no specific time frames designated for the processing of investigations of suspected prohibited acts or for the processing of PC threat-assessment reports.²² Because of this vagueness and discretion, AD is, perhaps, the aspect of the “restrictive housing unit” process most in need of regulation.

Disciplinary segregation, by contrast, is a “punitive” status and can be imposed only by a Discipline Hearing Officer as a sanction for committing a prohibited act. It is similar to AD but usually involves housing in a different area of a segregation unit with more limited access to property, visiting, and the telephone. While federal courts have mandated minimal procedural protections (like notice, an opportunity to present evidence, and reviews of continued detention) for the disciplinary hearings that

precede placement in DS (or in Special Housing Units), many of these safeguards are not mandated until an incident report is actually issued.²³ Inmates, then, can languish in segregation indefinitely while awaiting a hearing.

The primary policy governing these practices was historically included in one federal policy directive entitled “Inmate Discipline and Special Housing Units.” In 2011, this policy was updated and separated into two separate policies: Program Statement 5270.09, “Inmate Discipline,” issued on July 8, 2011, and Program Statement 5270.10, “Special Housing Units,” issued on August 1, 2011. Today, there are at least four BOP policies directly governing the various types of “restrictive housing”: PS 5217.02, “Special Management Units”; PS 5270.10, “Special Housing Units”; PS 5270.09, “Inmate Discipline”; and PS 5212.07, “Control Unit Programs.” This proliferation of policies is representative both of the fracturing of labels and practices associated with solitary confinement (or restrictive housing) and of the variety of practices encompassed within the umbrella label of restrictive housing. More importantly, as suggested above, the more different labels, associated with a greater variety of policies, the harder the practice is to describe and evaluate—or, ultimately, to challenge and reform.

Not only have policies governing restrictive housing proliferated over the past few years, but the nature of this proliferation has been quite hidden. Routinely, BOP policy guidance is communicated through the issuance of *internal* memoranda to wardens from the BOP Director, Office of General Counsel, or Regional Director, rather than through the issuance of *public* Operations Memoranda, which would be in accordance with Program Statement 1221.66, “Directive Management Manual.” Two such internal memoranda—submitted on May 11 and November 23, 2005, by John M. Vanyur, Assistant Director, Correctional Programs Division, Central Office of the BOP, in Washington, D.C.—are of specific historical interest for understanding the Agency’s mind-set and culture around restrictive housing. These memos provided guidance in regard to “post-disciplinary administrative detention.” Specifically, the BOP in 2005, through these internal memoranda, required inmates, in at least some cases, to continue to reside in restrictive housing even after completing their DS sanctions. In order to be released from restrictive housing, an inmate not only needed to complete his assigned term in DS, but he was also required to maintain twelve months of clear conduct. If an inmate misbehaved in a restrictive housing unit, the (arbitrary) “clear conduct” period restarted, and the inmate faced another twelve months of isolation, perpetuating a continued cycle of isolation. This internal guidance directly violated regulations codified in the C.F.R., which required inmates to be released from DS at the conclusion of their assigned terms.²⁴ Nonetheless, the guidance, issued through internal memoranda in 2005, operated for more than a decade.

Blurring the boundaries between DS and AD and desensitizing staff to prolonged isolation, this internal guidance paved the way for the establishment of a variety of additional categories of segregation, or restricted housing, in the early years of this century. Here, we detail the history, justifications, and conditions for each of these practices (including some that predate the 2005 memoranda and some that postdate it) in order to document the proliferation of categories of segregation and the challenges of analyzing these categories.

The first specific category of segregated housing units has existed for decades in the BOP and has encompassed inmates in both AD and DS: Special Housing Units (SHUs). Most secure federal facilities operate a SHU to separate inmates from the institution's general population for both administrative and disciplinary reasons. In either form of separate housing, inmates are locked in a cell alone, or sometimes with as many as two other inmates, the third sleeping on the floor on a mattress.²⁵ Cell sizes vary depending on the facility design, with the average being approximately seven by nine square feet.²⁶ Inmates are locked in their cells twenty-three hours a day with the opportunity for one hour of recreation, ordinarily inside a small room or outdoor caged area. Food is brought to them on carts, and all movement within the unit is done with inmates in restraints, handcuffed behind the back. Inmates are rotated between cells on a periodic basis and have very limited access to law library materials or other programs. Social visiting is often limited or restricted, even without formal disciplinary sanctions. Telephone calls are allowed only once every thirty days, even when the placement is non-punitive in nature. The term *SHU* refers to the area of the prison where segregated inmates are housed, while the terms *AD* and *DS* describe the reasons for placement and the status of prisoners housed in areas like the SHU.

Another subcategory of SHU has also existed for decades in the BOP: Control Units (also called "supermaxes"). Control Units are a specific kind of housing unit (again, as distinguished from the status designations of AD and DS), even more secure and restrictive than a federal SHU. The concept of the "Control Unit" originated in Illinois at the United States Penitentiary, Marion (USP Marion), in the late 1960s, with a program referred to as "CARE," or the Control and Rehabilitation Effort. Although litigation and media exposés challenged the principles of CARE and the conditions in the first Control Units, the practice continued.²⁷ In the 1980s, prisoner Tommy Silverstein murdered Officer Merle Clutts in USP Marion. Prisoners were "locked down" into Control Units, much as portions of San Quentin and Attica had been "locked down" following incidents of violence in those state facilities in the 1970s. Supermaxes ultimately institutionalized such lockdowns. Today, in the federal system, lockdown facilities, or Control Units, are also often referred to as "ADMAX," or, in the case of the federal supermax facility in Florence, Colorado, "ADX." Opened in 1994, ADX was modeled on other state

supermax facilities in Arizona (the Special Management Unit in Florence) and California (the Pelican Bay Security Housing Unit in Crescent City).²⁸ At ADX, inmates are isolated from both staff and other inmates and spend twenty-three hours a day locked in their cells. Unlike the average "restrictive housing unit" setting, ADX units provide a TV-like monitor in the cell for viewing correctional programs.

Although USP Marion no longer operates a Control Unit, ADX does. In fact, there are several "restrictive housing unit" settings within ADX (which has a total of 408 beds), but there is only one ADMAX "Control Unit," with a rated capacity of seventy-eight inmates.²⁹ This is the most secure unit in the most secure prison in the entire federal prison system. In addition to the Control (or B) Unit at ADX, the other units, in order from most secure to least secure, are the Special Security Unit (or H), Special Housing Unit, General Population Units, and Intermediate Unit/Transitional Units. The 408-bed count represents a total of the various restrictive housing units within ADX, or ADMAX, which, in turn, is separate from the Florence penitentiary, which houses an additional 607 high-security inmates.³⁰

Even the most restrictive conditions at the ADX complex have confused federal experts. For instance, the exact nature of these conditions was a point of controversy in the terrorism trial of Boston Marathon bomber Dzhokhar Tsarnaev. One former federal warden, Mark Beezy, testified (for the defense) that Tsarnaev would have no media contact, extreme correspondence restrictions, and one fifteen-minute phone call per month if housed at ADX—while the warden of ADX at the time, John Oliver, testified (for the prosecution) that Tsarnaev would be able to write and receive unlimited letters and would be able to make at least thirty minutes of phone calls per month.³¹ (The distinction in privileges likely depended on whether Tsarnaev would be housed in the most restrictive "B" Control Unit or the slightly less restrictive "H" Special Security Unit.)³²

Another public misconception has to do with the degree of isolation commonly imposed by the BOP in its restrictive housing units. Specifically, with a few exceptions, the BOP does not practice single-cell isolation on a mainstream basis. In fact, most prisoners in what the BOP is now calling restrictive housing, in units like SHUs and Special Security Units, have a cellmate or some other minimal human contact, in addition to at least two to three hours per day of time out of their cell. In general, the only segregated BOP inmates who do not have cellmates are those in the Florence "Control Unit," those being temporarily held in solitary confinement for protective custody cases until a threat assessment is conducted, those pending authorization into the witness security program (who are often held in solitary confinement for long periods while the WITSEC application is being processed), and a few sporadic cases throughout the country in "restrictive housing unit" settings that are administratively determined on a case-by-case basis. Of course, the practice of

double-celling some prisoners in segregation, even if they are locked in their cells twenty-two or more hours per day, produces further confusion about what exactly constitutes solitary confinement, or restrictive housing, within the BOP.

At some point between 2003 and 2008, the BOP added an additional category of segregated housing units (beyond SHUs and Control Units) to their repertoire: Special Management Units (SMUs). According to Program Statement 5217.02, “Special Management Units,” dated November 19, 2008, SMUs were designed for inmates who “participated in or had a leadership role in geographical group/gang-related activity, [and] present unique security and management concerns.”³³ Although the BOP website notes that the first SMU was established in 2008 at USP Lewisburg, and that is when USP Lewisburg was physically retrofitted to be an SMU,³⁴ internal BOP memos indicate that restrictive housing at USP Lewisburg was first dubbed “SMU” in 2003. Specifically, on March 17, 2003, M. E. Ray, Regional Director of the BOP Northeast Regional Office, submitted a memorandum to all wardens regarding the placement criteria for the SMU at USP Lewisburg. This is yet another example of confusing labeling of restrictive housing facilities.

Program Statement 5217.02 indicates that the SMU is “non-punitive” and lists the placement criteria, including gang associations, repeated disciplinary misconduct, and participation in group misconduct. The policy was recently reissued, having been revised from a four-level process of review and program participation, to be completed in eighteen to twenty-four months, to a two-level process, to be completed in twelve months.³⁵ The current SMU facilities are at USP Lewisburg and USP Allenwood (also in Pennsylvania; recently converted to a special “Mental Health Unit”). Insiders speculate that a facility in Thomson, Illinois, originally built as a state prison but later sold to the federal government, will eventually operate a large SMU. To date, however, it only houses about a hundred low-security prisoners.³⁶ Thomson was at one time being considered for prisoner transfers from Guantanamo Bay, Cuba.

In terms of security and control, SMU is a step up in security from a general-population U.S. penitentiary, but a step down in security from a SHU. Under the two-phase step-down program, all inmates start in Phase I, which is twenty-three-hour-per-day lockdown. Phase I provides for far fewer privileges and programs than inmates receive in the general population. As inmates move through the steps, however, they can earn more privileges than they would have in SHUs. Although SMUs are generally less restrictive than SHUs or Control Units, SMUs provide for fewer safeguards prior to placement approval. For instance, Control Unit policies require a formal team review every thirty days, while SMU policies require a review only every ninety days, with less stringent evaluation criteria.³⁷

Just a few years after the first SMU was established, the BOP created yet another category of restrictive housing:

Communication Management Units (CMUs). Today, the BOP operates two CMUs: one in Terre Haute, Indiana (rated capacity of fifty), which opened in 2006; and one at USP Marion (rated capacity of fifty-two), which opened in 2008. While the SMUs were referenced in internal policies five years *before* the BOP publicly acknowledged this category of restrictive housing, CMUs were not governed by any formal policies for the first four years of their operation. The BOP did not publish CMU rules in the Federal Register for comment until April 6, 2010. On March 10, 2014, the BOP reopened the comment period for fifteen days in response to ongoing litigation. It had been more than eight years between the establishment of the first CMU and the issuance of the draft policy, Program Statement 5214.02, “Communication Management Units.” The first formal CMU policy was ultimately issued in April 2015.

The formal definition of a CMU is as follows: “a general population housing unit where inmates ordinarily reside, eat, and participate in all educational, recreational, religious, visiting, unit management, and work programming, within the confines of the CMU. Additionally, CMUs may contain a range of cells dedicated to segregated housing of inmates in administrative detention or disciplinary segregation status.”³⁸

CMUs are for inmates whose current offense conduct requires increased monitoring of communication between the inmate and persons in the general community to “protect safety, security and orderly operation and to protect the public.”³⁹ There is no contact visiting in a CMU. All visits are conducted in English, unless another language is specified in advance and a translator scheduled. Non-English-speaking visits are conducted through simultaneous translation monitoring. Inmates designated to a CMU may be associated with terrorism, may have repeatedly attempted to contact victims and/or attempted illegal activities through approved communication methods, or may have received extensive disciplinary action due to misuse of communication methods.

In addition to developing ever more restrictive forms of “restrictive housing” in the first two decades of this century, the BOP has more recently established two forms of restrictive housing ultimately meant to be *less* restrictive: Reintegration Housing Units (RHUs) and Drop-out Yards. RHUs target male inmates identified as either verified or unverified protective custody cases, who consistently refuse to enter the general population, ordinarily at multiple locations. Information from the BOP’s Correctional Services Department that documents the inmate’s classification as a protective custody case, as well as information detailing the inmate’s placement in the SHU at previous facilities, is reviewed. A psychological evaluation from the referring institution is completed to determine whether the person is likely to persist in their belief that they cannot safely return to the general population at any facility, and whether the person is willing to participate in RHU programming. RHU inmates must be

classified as medium or high security, usually will not be active gang members, and must either have an unsubstantiated or unverified fear of general population placement or be considered a verified protective custody case at multiple locations.⁴⁰

In addition to establishing RHUs in 2016, the BOP established Drop-out Yards in 2010. In that year, the BOP approved an executive paper entitled “Security Threat Group Drop-out Institutions” to identify specific institutions for the designation of security-threat group drop-outs attempting to disassociate from gangs. Drop-out units now exist in Otisville, New York (medium security), and Tuscon, Arizona (high security). Authorization to place an inmate in a Drop-out Yard is a lengthy process, which involves a thorough debriefing by investigators in collaboration with several entities, including the National Gang Intelligence Center, U.S. Customs and Border Protection, the Drug Enforcement Agency, and various units of the FBI (including the Criminal Investigation Division, the FBI Laboratory, Cryptanalysis, and Racketeering Records). As of June 2015, there were approximately 293 people in the drop-out units.⁴¹ Upon arrival on a Drop-out Yard, inmates are placed in a nine-month cognitive behavioral therapy-related program and receive monthly interviews by BOP investigative staff. As of 2017, the BOP did not appear to have a formal public policy on these units.

IV. Implications

This review of the various categories of restrictive housing designations and practices in the Federal Bureau of Prisons reveals a number of important patterns. First, a wide variety of restrictive housing practices have proliferated over the past decade: Control Units, SHUs, CMUs, SMUs, and RHUs, to name just a few. Second, the history of policies governing these facilities suggests that administrators tend to design them, often issuing no governing policies, or only issuing internal governing policies. In the case of SMUs and CMUs, for instance, it took at least five years for the BOP to publicly acknowledge the existence of the facilities and seek to establish public rules and procedures for their operation. Third, the naming practices of these facilities create challenges for understanding exactly who is housed in them, what policies govern their operation, and how they differ from other facilities with different names. Such obfuscation makes taxonomies like the one we have sought to present here all the more important to maintain and analyze.

In sum, in our highly technical and specialized society, solitary confinement has morphed in many directions under the “restrictive housing unit” umbrella. It is important for professionals to understand these experiments in warehousing people and to appreciate their complex dynamics and characteristics within the prison setting. Through rendering these categories of restrictive housing more transparent, we hope to better facilitate advocacy and research efforts.

Notes

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- 18 Christie Thompson & Joseph Shapiro, *Inside Lewisburg Prison: A Choice Between a Violent Cellmate or Shackles*, National Public Radio (Oct. 26, 2016), <https://www.npr.org/2016/10/26/498582706/inside-lewisburg-prison-a-choice-between-a-violent-cellmate-or-shackles>.
- 19 U.S. Dep't of Justice, Office of the Inspector General, Review of the Federal Bureau of Prisons' Use of Restrictive Housing for Inmates with Mental Illness (Jul. 2017), <https://assets.documentcloud.org/documents/3893449/Review-of-the-Federal-Bureau-of-Prisons-Use-of.pdf>.
- 20 *Id.*
- 21 For coverage of the report, see Ryan J. Reilly, *Federal Prisons Officials Claim Inmates Aren't Held in Solitary. DOJ Watchdog Says They Are*, Huffington Post (July 12, 2017), http://www.huffingtonpost.com/entry/federal-prison-solitary-confinement-mental-illness_us_59664623e4b005b0fdca5f85?nf5; Justin George, *Federal Watchdog Finds Mentally Ill Are Stuck in Solitary*, The Marshall Project (July 12, 2017), https://www.themarshallproject.org/2017/07/12/federal-watchdog-finds-mentally-ill-are-stuck-in-solitary?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20170713-796#.mKCgYloHY.
- 22 See 28 C.F.R. § 541.
- 23 See, e.g., Wolff v. McDonnell, 418 U.S. 539 (1974); Wilkinson v. Austin, 545 U.S. 209 (2005).
- 24 See 28 C.F.R. § 541.33 Release from the SHU: "(b) Disciplinary segregation status. You will be released from disciplinary segregation status after satisfying the sanction imposed by the DHO. The SRO may release you earlier if it is determined you no longer require disciplinary segregation status."
- 25 In 2016, the Marshall Project reported on the "deadly consequences of solitary with a cellmate." See Christie Thompson & Joe Shapiro, *The Deadly Consequences of Solitary with a Cellmate*, The Marshall Project (Mar. 23, 2016), <https://www.themarshallproject.org/2016/03/24/the-deadly-consequences-of-solitary-with-a-cellmate#.FghiQwmUw>.
- 26 Federal Bureau of Prisons, Program Statement 1060.11, Rated Capacities for Bureau Facilities (June 30, 1997), https://www.bop.gov/policy/progstat/1060_011.pdf (governs cell capacities and requirements).
- 27 Committee to End the Marion Lockdown, *From Alcatraz to Marion to Florence—Control Unit Prisons in the United States* (1992), http://people.umass.edu/kastor/ceml_articles/cu_in_us.html. See also Jessica Mitford, *Kind and Usual Punishment: The Prison Business 134–135* (1974); *Adams v. Carlson*, 488 F.2d 619 (7th Cir. 1973).
- 28 Reiter, *supra* note 4.
- 29 "Population Report Aug. 8, 2017," available from BOP FOIA Project, *Responses to Project Requests*, <http://www.victorvillefoia.org/Responses%20to%20Project%20Requests.html>.
- 30 Federal Bureau of Prisons, Admissions and Orientation Handbook, Us Penitentiary, Administrative Max, Florence, Colorado, retrieved from <http://www.bop.gov/locations/institutions/flm/>.
- 31 See Zoë Sobel, *Key Witnesses in the Dzhokhar Tsarnaev Trial*, WBUR News (Mar. 28, 2015), <http://www.wbur.org/news/2015/04/02/tsarnaev-key-witnesses>; "Tsarnaev Testimony Shifts to Potential Prison Conditions," WPRI (May 6, 2015), <https://www.youtube.com/watch?v=L9jM56lDedE>.
- 32 For a description of the different privileges associated with each unit, see https://www.bop.gov/locations/institutions/flm/FLX_prea.pdf, 5–6.
- 33 For the BOP Program Statement, see http://www.law.umich.edu/special/policyclearinghouse/Documents/5217_001%20ocr.pdf.
- 34 For a history of this unit, see Karen M. Morin, "Security Here Is Not Safe": *Violence, Punishment, and Space in the Contemporary US Penitentiary*, 31 *Environmental and Planning D: Society and Space* 381 (2013).
- 35 For a discussion of these changes, see *Changes to Special Management Unit (SMU) Policy*, Federal Bureau of Prisons (Aug. 26, 2016), https://www.bop.gov/resources/news/20160826_smu_policy_change.jsp.
- 36 See *AUSP Thomson*, Federal Bureau of Prisons, <https://www.bop.gov/locations/institutions/tom/>.
- 37 28 C.F.R. § 541.49 Review of Control Unit Placement: "a. Unit staff shall evaluate informally and daily an inmate's adjustment within the control unit. Once every 30 days, the control unit team, comprised of the control unit manager and other members designated by the Warden (ordinarily to include the officer-in-charge or lieutenant, case manager, and education staff member assigned to the unit), shall meet with an inmate in the control unit."
- 38 Federal Bureau of Prisons, Program Statement 5214.02, Communications Management Units (Apr. 1, 2015), https://www.bop.gov/policy/progstat/5214_002.pdf.
- 39 28 C.F.R. § 541.49.
- 40 Federal Bureau of Prisons, Operations Memorandum 003–2016, Reintegration Housing Unit (rhu) Activation Procedures (May 9, 2016), https://www.bop.gov/policy/om/003_2016.pdf.
- 41 Internal BOP source. On file with J.D.