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HUMAN RIGHTS VIOLATIONS IN THE UNITED STATES

RED ONION STATE PRISON Super-Maximum Security Confinement in Virginia

The day I arrived I was...told that I was at Red Onion now and if I act up they would kill me and there was nothing anyone could or would do about it.

Inmate Statement to Human Rights Watch

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I. SUMMARY

The treatment of inmates at Red Onion State Prison, Virginia's first super-maximum security facility, raises serious human rights concerns.¹ The Virginia Department of Corrections is responsible for safely and humanely confining all its inmates, even those deemed to be violent, disruptive or to pose other security risks. Like many corrections departments across the country, Virginia's has endorsed the confinement of purportedly dangerous inmates in extremely restrictive, highly controlled facilities. Absent thoughtful leadership and careful policies, the potential for human rights abuses at such "supermax" facilities is great. At Red Onion, unfortunately, the Virginia Department of Corrections has failed to embrace basic tenets of sound correctional practice and laws protecting inmates from abusive, degrading or cruel treatment:

- The Virginia Department of Corrections (DOC) is assigning to Red Onion men who are not the incorrigibly dangerous for whom super-maximum security confinement may be warranted. Inmates who pose no extreme security or safety risk are subjected to unnecessarily restrictive controls and are arbitrarily deprived of the activities and freedoms available ordinarily even in maximum security prisons. In a blatant effort to fill large super-maximum security facilities whose capacity exceeds the state's needs, officials are apparently planning to dilute even further the criteria for admission to Red Onion and its newly-opened twin, Wallens Ridge State Prison.
- Prison staff use force unnecessarily, excessively, and dangerously. Inmates are fired at with shotguns and have been injured for minor misconduct, non-threatening errors, or just behavior that guards have misinterpreted. These inmate actions should—and in most other prisons would—be handled by staff without weapons. Although physical force is never justifiable as punishment, inmates at Red Onion report staff's punitive use of electric shock stun devices.
- Conditions at the facility are unnecessarily harsh and degrading. General population inmates are confined in their cells more than twenty hours a day. In segregation, inmates are isolated twenty-three hours a day. All are subjected to remarkable levels of control and forced to live in oppressive and counterproductive idleness, denied educational, behavioral, vocational and work programs and religious services. These conditions exceed reasonable security precautions for inmates who have not engaged in chronically violent or dangerous behavior behind bars.
- Correctional officers and other prison staff threaten inmates with abuse and subject them to racist remarks, derogatory language and other demeaning and harassing conduct. Facility administrators and supervisory staff appear to condone such unprofessional conduct.

¹ Human Rights Watch has reported on prison conditions and assessed the extent to which prisoners' internationally guaranteed human rights are protected in numerous countries including Brazil, Egypt, Hong Kong, India, Indonesia, Israel and the Occupied Territories, Japan, Mexico, Poland, South Africa, the former Soviet Union, Spain, Turkey, the United Kingdom, the United States, and Venezuela, among others.

It is politically fashionable in many places to disregard mistreatment of inmates and to assume criminals by their conduct have forfeited all claim to public concern. Human Rights Watch (HRW) believes the public—and officials who are its servants—should not tolerate abusive treatment of prisoners solely because they have committed crimes against others. As one inmate at Red Onion wrote to HRW, “I don’t pretend that prisoners are saints. Most can be real idiots, but their idiocy doesn’t justify abuse, physical or mental.”² We agree. Inmates must be treated with respect for their dignity as human beings and for their fundamental rights, whatever their crimes. Sound correctional practice mandates such treatment, as it is essential to safe, orderly and humane prisons. But it is also required by international human rights treaties signed by the United States and binding on state as well as federal officials.

Even if it is politically difficult, state officials and elected representatives have a duty not to condone abusive prison conditions. The concerns raised about Red Onion warrant careful investigation and full disclosure. The public should be fully informed about policies and practices at Red Onion—as at any prison—and should be able to subject them to critique and debate. Unfortunately, the DOC uses the walls of Red Onion to keep the public out, as well as prisoners in. It routinely denies the press access to facility staff and provides scant information about practices and policies there.

In March it denied Human Rights Watch permission to tour Red Onion and to interview staff. The DOC claimed that security considerations precluded it from granting Human Rights Watch access to Red Onion. Security, however, has not prevented other state and the federal corrections departments from permitting Human Rights Watch access to their super-maximum security facilities. When pressed to justify his refusal, Director of Corrections Ronald Angelone simply asserted to Human Rights Watch in a telephone conversation that permitting us to tour Red Onion was not in the state’s “best interest.” He insisted that since Red Onion was operated consistent with state and federal law, there was no need for scrutiny by an independent human rights organization. The secretary of public safety, who has authority over the DOC, never responded to our letter of February 22, 1999 requesting reconsideration of Angelone’s decision.

We believe Mr. Angelone interprets the state’s interests too narrowly. As detailed below, there are many aspects of the facility that warrant public concern. Moreover, openness to scrutiny, information-sharing and engaging in informed, constructive discussions about policies and procedures are indispensable to continual improvement of operations in corrections as in any other public endeavor. The unwillingness to let Human Rights Watch tour Red Onion, coupled with the DOC’s notorious reluctance to give the press access to the facility and its inmates,³ suggests the DOC is uncomfortable in letting the public acquire a fuller picture of operations there.

This report reflects our attempt to give the public some of that fuller picture about certain aspects of conditions at Red Onion. Our description is based on communication with inmates and their families, information from the DOC and from press accounts and other public sources. Unfortunately, it is incomplete and despite our best efforts may fail to reflect all conditions accurately, because the DOC has prevented us from directly observing the facility and has also refused to provide some of the information we requested.⁴

²Throughout this report, we include information and quotes from the more than thirty inmates whom we have interviewed or from whom we have received written communications. To protect their privacy and to prevent the possibility of reprisals, we do not attribute information to specific inmates, nor do we identify any of our sources by name. We also do not include the names of individual officers identified by inmates as having engaged in abusive conduct. The purpose of our research into conditions at Red Onion has not been to “name names” or to document in detail individual instances of alleged misconduct by staff but to alert the DOC of the need to take more seriously its obligations to ensure humane conditions through appropriate policies, staff supervision, and internal disciplinary investigations and procedures.

³ There was widespread media attention in Virginia to the DOC’s refusing Human Rights Watch access to Red Onion. Shortly thereafter, the DOC granted a reporter from *The Washington Post* the opportunity to interview the warden and speak with some inmates there.

⁴A Human Rights Watch representative met with Gene Johnson, the DOC’s deputy director of operations, and a

representative from the DOC's legal staff on February 24, 1999. They were unable, however, to give specific answers to many questions about policies and procedures at Red Onion. The DOC responded to an initial document request by passing on a few department-wide policy statements; other information was denied, including a description of use of force policies and principles and a profile of inmates at Red Onion. We have still not received a response to a second request for documents sent on March 17, 1999 to Director Ronald Angelone.

II. RECOMMENDATIONS

There is great potential for misuse of authority and abuse in super-maximum security facilities. Informed and principled leadership and oversight can mitigate these dangers. We call on Virginia to demonstrate its commitment to respect international human rights in the operation of Red Onion. Specifically, we recommend:

1) Use of Force

The governor should establish a committee of experts in the use of force in prisons who are independent of the DOC to review use of force at Red Onion and to make recommendations based on their findings. The review should include an assessment of existing use of force policies, including the advisability and need to have firearms within the prison perimeter; training received by staff in use of force policies; the existence of adequate guidance for staff in appropriate use of force; and the extent to which internal investigation and disciplinary procedures are effective in controlling improper use of force. The committee should also review each incident in which weapons were discharged at Red Onion to ascertain whether the use of force was justified. Results of the independent review should be provided to the DOC, the governor and the legislature and the public.

2) Assignment to Red Onion

The DOC should not subject inmates to more restrictive conditions than is reasonably necessary for their safe, secure and humane confinement. Inmates should not be assigned to Level 6 (super-maximum security confinement) unless they have demonstrated that they are chronically violent or assaultive, present a serious escape risk, have demonstrated a capacity to incite disturbances or otherwise pose a serious and present danger to the orderly operation of a less secure institution. Length of sentence alone should not be the basis for assignment to a Level 6 facility.

Inmates who maintain good conduct for one year (or a shorter fixed period) should be eligible for transfer to a less secure facility absent particularized and serious security concerns. Decisions to retain inmates at Red Onion should be reviewed by central headquarters staff. If an inmate is retained at Red Onion, he should be given the reasons for that decision and told of specific steps he can take to secure a future transfer.

3) Public Reporting

The DOC should produce annually, and make available to the public, a statistical analysis of inmates at Red Onion and their security scores. For all inmates held at Red Onion who do not have the designated security score stipulated in DOC criteria for assignment to a level 6 facility or for whom the discretionary overrides have increased their security level by more than one level, the DOC should provide a detailed explanation of the reasons for placement at Red Onion (with inmate names withheld for privacy reasons).

4) Segregation

Specific criteria for placement in segregation at Red Onion should be established and communicated to inmates. Decisions regarding placement in and release from segregation should be reviewed by central administration staff to minimize the potential for arbitrariness and abuse and to demonstrate the seriousness of such placements. After a fixed period of good conduct, e.g. six months, inmates should be released from administrative segregation unless there is a specific finding, based on objective factors and following a hearing, that the inmate continues to constitute a serious danger to prison safety and security.

If inmates are segregated for their own safety, they should be provided the same privileges, programs and activities as general population inmates.

5) Programs, Privileges and Security

The DOC should carefully scrutinize policies regarding programs and privileges and routine security procedures for inmates to determine the extent to which the harsh regimen at Red Onion can be ameliorated without jeopardizing legitimate security considerations. It should implement a system of increased programs and privileges and diminished security controls for inmates who maintain good behavior.

Programs should be implemented that will increase the humaneness of confinement at Red Onion and that will promote inmates' ability to be placed in a less restrictive facility and to adjust to prison life. Educational, vocational, behavioral, substance abuse, religious and other programming should be instituted consistent with legitimate security purposes.

6) **Mental Health**

The DOC should establish policies excluding from prolonged confinement in super-maximum security facilities inmates who suffer from serious mental illnesses. It should review the treatment of mentally ill inmates at Red Onion and take necessary steps to ensure they are provided adequate care and that all inmates receive the mental health screening and monitoring that is appropriate in extended control facilities.

7) **Staff Issues**

Red Onion staff should be trained in and continually reminded of the importance of proper, respectful treatment of inmates. Abusive conduct and displays of racism by staff, including derogatory remarks, should not be tolerated.

8) **Public Access**

Red Onion should be as accessible to the public as security permits. Policies should be established to grant the press, independent citizen groups and other members of the public ready access to Red Onion's warden to discuss conditions at the facility and should facilitate their ability to quickly secure interviews with inmates. Documents reflecting conditions at Red Onion should be readily available to the public, even if disclosure is not required under Virginia law. Information should be withheld only if its release would jeopardize security and with names deleted to protect privacy interests.

III. RED ONION STATE PRISON: BACKGROUND

In the mid-1990s, as part of a massive prison building effort launched by then-Governor George Allen, the DOC decided to construct two 1,200-bed facilities to house the state's most dangerous criminals, inmates who require extraordinary security measures. The first of the two identical super-maximum security facilities to come on line, Red Onion State Prison, located in remote Wise County, began accepting inmates in August 1998 and currently holds approximately 1,000.⁵ Ceremonies to inaugurate its twin, Wallens Ridge State Prison in Big Stone Gap, were held on April 9, 1999. Both facilities are Level 6, the most secure in the DOC's prison system. Little information was ever provided to the public to substantiate the projected existence of 2,400 chronically dangerous inmates in Virginia. The idea of supermax prisons was appealing—or at least tacitly unquestioned—in a “tough on crime” political climate in which parole was abolished and sentences lengthened.

In constructing Red Onion and Wallens Ridge, Virginia participated in a national trend. Across the country, corrections departments have chosen to create special super-maximum security facilities for the confinement of dangerous or disruptive prisoners.

Traditional prisons have had cells or units in which inmates who were repeat or very serious violators of critical institutional rules could be isolated and segregated from the general population. An inmate might be segregated either as punishment following a disciplinary hearing (disciplinary segregation, in Virginia called isolation) or segregated administratively as a management measure for an indefinite period until authorities believed he could be safely returned to general population (administrative segregation). Although administrative segregation ostensibly is not a punitive measure, conditions have been almost invariably as harsh and restrictive as in disciplinary segregation.

⁵ Seventy of the inmates are from the District of Columbia, pursuant to a contract between the Virginia and District of Columbia departments of corrections.

Nowadays, segregation of inmates who engage in assaultive, dangerous, disruptive or escape-related or predatory behavior behind bars increasingly takes place in super-maximum security facilities, of which there are thirty-six in the U.S., including two in Virginia. Assignment to these uniquely restrictive facilities is ordinarily not based on the inmate's underlying offense but on his conduct behind bars. Although conditions and policies vary somewhat from facility to facility, their common characteristics are extreme social isolation, reduced environmental stimulation, scant recreational, vocational, or educational opportunities and extraordinary levels of surveillance and control.

Proliferation of these "supermax" prisons reflects in part the belief of some corrections professionals that they are necessary to prevent serious misconduct by the "worst of the worst" in their inmate population and that concentrating dangerous inmates away from the rest of the prison population makes it possible to provide safer, more secure facilities elsewhere.

But supermax prisons also play a symbolic role. Their highly restrictive nature is appealing in a conservative climate in which retribution is the principal response to crime. Unfortunately, this attitude can make it easy to uncritically embrace harsh conditions and policies that are in fact not justified by legitimate security needs or other penological purposes. It encourages or condones supermax placement of inmates who do not in fact require such restrictive controls for their proper management. It also can promote an indifference or blind eye to abusive conduct and a failure to adequately supervise staff and hold them accountable for abuse.

There is considerable debate even within the corrections profession over the cost, cost-benefit, operating and ethical/moral issues raised by super-maximum security confinement. The constitutionality of supermax isolation and other extreme restrictions remains unclear.⁶ Super-maximum security confinement also raises important human rights questions.⁷ Governments must respect the inherent dignity and basic rights of all people, including inmates. The United States has ratified international human rights treaties that are binding on state as well as federal officials. These treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT), prohibit the abuse of prisoners, including treatment that constitutes torture or is cruel, inhuman or degrading. Additional international documents, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), provide authoritative guidance on how governments may comply with their human rights obligations with regard to prisoners. While super-maximum security confinement does not automatically violate protected human rights, it can if conditions are unnecessarily harsh, if prisoners are unnecessarily subjected to them, or if periods of solitary confinement are unduly long. Deprivations that are disproportionate to reasonable correctional goals are inconsistent with the fundamental touchstone of all human rights—respect for the inherent dignity of all human beings. Physical abuse—e.g. corporal punishment in the form of beatings or unjustified violence—is prohibited in a supermax as in any prison.

IV. A DAY IN THE LIFE: BASIC CONDITIONS AT RED ONION

⁶National Institute of Corrections (NIC), *Supermax Prisons: Overview and General Considerations*, (Washington, D.C.: U.S. Department of Justice (DOJ), April 1999), p.2. The National Institute of Corrections is preparing a publication that will address legal issues raised by super-maximum security facilities.

⁷Human Rights Watch is currently researching an analysis of the human rights implications of super-maximum security confinement nationwide. See also: *Cold Storage*. Human Rights Watch, *Cold Storage: Super-Maximum Security Confinement in Indiana* (New York: Human Rights Watch, 1997).

Red Onion houses inmates in both “general population” and segregation.⁸ Regardless of which category an inmate is in, he spends most of the day in a small cell: general population inmates spend about 140 out of 168 hours in a week confined to their cells; segregation inmates spend 162½ hours so confined. Inmates in general population are held two to a cell.⁹ In segregation they are single-celled.

The cells at Red Onion contain steel slabs with a thin mattress for a bed; a steel desk and shelf and a toilet/sink combination. They have solid metal doors with tray slots for passing food and handcuffing inmates and a piece of glass for viewing. The cells are configured so that inmates cannot see each other from their cells. Communication of sorts is possible by yelling. Each cell has a single narrow window that cannot be opened but which allows some natural light to enter. Windows facing the parking lots of the facility have been treated so inmates cannot see out. Inmates cannot regulate the lights in their cells. The lights shine sixteen hours a day. At night, they are reduced to a dim glow that is, according to inmates, bright enough to read by. The two inmates in each cell in general population share one electrical outlet.

Guards armed with shotguns are stationed inside the perimeter of the prison. There are gunports overlooking the recreation yard and in the housing units. Virginia’s use of firearms is atypical: most states rely “on higher numbers of staff as their primary means of physical control, supplemented by a variety of nonlethal weapons.”¹⁰

General Population

Conditions for general population inmates at Red Onion are remarkably harsh and restrictive, far more so than at maximum security facilities. Inmates are stringently limited in their movement, social interaction, access to programs and ability to make ordinary day-to-day choices. Certain aspects of Red Onion are, however, an improvement over supermax prisons elsewhere: inmates are allowed recreation in limited groups and also to eat together.

General population inmates are locked in the cramped cells twenty hours or more a day with another person. Double-celling exacerbates the strain of living in confinement most of the day and increases tension between inmates. Inmates find it difficult to spend most of their waking (and sleeping) hours in close quarters with a stranger.¹¹ The lack of privacy is unrelenting. The men find it humiliating to use the toilet in the presence of another person.¹² Double-celling is also inconsistent with the premise that inmates at Red Onion are so dangerous or violent that they cannot be safely confined elsewhere. If they are dangerous, how can it be safe to confine them in a small cell with another person? We do not know if DOC officials screen inmates placed in double cells to reduce the potential for conflict and violence.

Inmates in general population are allowed out of their cells, one housing “pod” at a time, to eat in the mess hall. They are also allowed outside their cells in limited groups for one hour of outside recreation in a bare yard with a basketball hoop and one hour of indoor recreation daily. There is little or no athletic or sports equipment. The recreation yard is supervised by officers armed with shotguns. Inmates are also allowed to leave their cells three times a week for ten-minute showers. The showers do not have curtains or doors; inmates are thus forced to involuntarily expose their genitals to female staff as well as other men when they shower.

⁸We understand that the facility is also supposed to have “transition units” but that many of the cells in the transition pods are being used for segregation.

⁹The predominant view in the corrections field is that inmates who are so dangerous or disruptive as to require being confined in their cells most of the day should not be double-celled. Virginia, like some other states, has nonetheless used double cells at Red Onion to save expenses. This is ironic, perhaps, given that many question the need for the combined number of supermax beds available at Red Onion and Wallens Ridge.

¹⁰ NIC, *Supermax Prisons*, p. 14.

¹¹Some inmates apparently pass on recreation simply to be able to have some time alone without their cellmates.

¹²According to inmates, toilet paper is rationed: two people receive two rolls that must last for seven days. “If you run out you’re out of luck.”

Maintaining contact with families is extremely difficult for prisoners at Red Onion. They are allowed two fifteen-minute calls per month if the privilege has not been removed because of misconduct. Telephone calls must be collect and are expensive, posing a financial burden for the mostly low-income families of inmates. Prisoners are allowed four two-hour non-contact visits per month. The amount of visiting time is particularly meager given that most inmates at Red Onion come from areas that are hours away.¹³ Inmates and their families visit in a small cubicle with a solid glass partition between them; conversation is through an intercom phone. During visits inmates are in leg shackles and waist chain, with one hand free.

Personal property is extremely limited, and only small quantities of reading material are permitted in the cells. Publications are permitted only with prior approval and only if purchased from an inmate's prison account. A family, for example, cannot give their son a subscription to *Time* magazine. Prison rejection of reading material is hard to fathom. One inmate has been denied *Plowshares* newsletter, a Catholic devotional booklet *Living Faith*, and an alternative newspaper, the *New River Free Press*. Incoming letters can be of any length, but there is a maximum of ten pages allowed for photocopied enclosures, which restricts an inmate's ability to receive information and maintain contact with the outside world.¹⁴

Inmates at Red Onion are denied the group and individual programs and activities available in most prisons, even though the DOC's policies acknowledge the importance of programming at all facilities. According to *Division of Institutions Operating Procedure (DOP) 832*, programming at Red Onion should "promote inmates' appropriate in-prison behaviors and coping skills and identify their inappropriate maladaptive behaviors. Programming may have the result of helping inmates develop positive, stable behavior records for eventual transition to a lower level facility."¹⁵ The policy identifies appropriate programming to include anger management, substance abuse, wellness, behavior management, impulse control, and basic academic programming. Seven months after Red Onion opened, most inmates' days are marked by forced idleness. The DOC told HRW in March that they were working on developing programs.

Currently, the only educational program available to inmates are GED (high school equivalency) courses over the television. There are no group religious services or activities. Religious programs are also, apparently, limited to some television tapes.¹⁶ There are no vocational or skill training programs. Indeed, the physical plant of the facility contains no space for classrooms or workshops. Job opportunities are few, e.g., kitchen duty, sweeping housing units, cleaning showers. After seven months, the library is not yet operating.

¹³It takes eight hours, for example, to drive to Red Onion from Richmond. Roanoke, the closest city, is almost four hours away by car.

¹⁴In other words, an inmate can receive a hundred-page letter, but he cannot receive a one-page letter with fifteen pages of photocopied material enclosed.

¹⁵VA DOC, *DOP 832: Programs*, August 1, 1998.

¹⁶A Catholic inmate was denied access to a priest and the sacraments because it was deemed a "security risk".

Red Onion may lack programs because Director of Corrections Ron Angelone is dismissive of rehabilitation: “What are they going to be rehabilitated for? To die gracefully in prison?”¹⁷ Such comments may please part of the political spectrum, but they ignore several realities. Many Red Onion inmates will not be dying in prison. According to the Washington Post, one in five are scheduled for release in the next ten years.¹⁸ Rehabilitation programs serve the DOC’s mission of promoting safe and orderly prisons. And, finally, rehabilitation is mandated by respect for the fundamental dignity of each inmate—whatever his crime.¹⁹

Segregation

Segregation is the modern form of solitary confinement; segregated inmates are almost completely deprived of the commonplace incidents and routines of prison life. In theory, administrative segregation is not a punitive measure. In practice, it can only be described as punishing. The more than 200²⁰ segregated inmates at Red Onion live in conditions designed to impose long-term social isolation and restricted environmental stimulation. Their world is austere, cramped and claustrophobic. Security procedures imposed on all inmates in segregation exceed those reasonably necessary for safety; their real purpose may be simply to intimidate and degrade. Prisoners’ minimal physical requirements—food, shelter, clothing, warmth—are met, but little more. The facility offers nothing but bleak isolation to encourage or enable an inmate to return to general population or to enhance his ability to live peaceably once he has.

With minor exceptions, all of a segregated prisoner’s waking hours are circumscribed within the four walls of his cell. He is fed in his cell, the food brought on a tray that is pushed through the door slot. He is allowed to leave his cell to shower three times a week. And he is permitted one hour of out-of-cell recreation five days a week. All the recreation is outside, rain or shine. Inmates are not provided with (or allowed to use their own) gloves or hats in cold weather nor to come inside early if the weather turns bad while they are out. The recreation yard is surrounded by two-story-high concrete walls and covered with a chain link grate. In an important departure from the practice at many super-maximum security facilities, at Red Onion segregated inmates are allowed to spend recreation period together three at a time. This interrupts the otherwise unrelenting isolation. Inmates in segregation are also allowed to leave their cells for visits.

¹⁷Margaret Edds, “Punishing Crime; ‘Supermaxes’ Deserve Super Scrutiny,” *The Virginian-Pilot*, January 10, 1999.

¹⁸Craig Timberg, “At Va.’s toughest Prison, Tight controls,” *Washington Post*, April 18, 1999.

¹⁹The ICCPR requires the “the reform and social readaptation of prisoners” to be the essential aim of any prison system. ICCPR, Article 10(3). According to the Standard Minimum Rules, prison systems “should utilize all the remedial, educational, moral, spiritual, and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.” Standard Minimum Rules, Article 59.

²⁰We do not have a precise figure for the number of inmates in segregation at Red Onion. We have been told variously that the figure is anywhere from 200 to over 300.

Every time an inmate in segregation leaves his cell he is subjected to extreme security measures. First he must strip, permit a visual search of his body (opening his mouth, lifting his genitals, bending over and spreading his buttocks), and hand his uniform out the food slot to be checked. After dressing, he backs up to the door, extends his hands through the cuff slot and is cuffed. Shackles are then placed on his legs, and a lead is attached. Two officers then escort the inmate to recreation, the shower or wherever he is being taken, one holding the lead and one holding an electronic stun device (an Ultron II) against the inmate's body. The cuffs and shackles are removed for recreation and showers and then replaced to return the inmate to his cell. These extensive security measures are taken even for inmates with no records of violence and, apparently, will be utilized for however long an inmate is kept in segregation, regardless of his good conduct.²¹

Nurses employed by a private contractor make rounds in segregation every day, speaking with inmates through the cell doors to determine if medical attention is needed. A visit with a doctor cannot be scheduled unless the nurse decides it is necessary. If a doctor visit is scheduled, the doctor comes to the cell. After a routine search and restraints procedure on the inmate the doctor conducts the examination. At no time are the restraints removed, and the examination is conducted in the presence of guards, precluding any privacy.

The social isolation, the absence of stimulation, that segregated inmates at Red Onion experience is profound. For all but five hours a week they are cut off from all other inmates, unable to see anyone other than staff who bring them their food or provide escort service or the fleeting periodic visits of medical staff or other prison personnel. There are no programs or activities other than the GED course or religious tapes on television. Inmates who are literate can read—if they can obtain books (there is no functioning library yet at the facility). They can write letters. If they are able to afford it, they may purchase a 5" (no bigger) television—which can be taken away for misconduct—and a radio. Their visits are restricted to one visit per week for one hour.

In many super-maximum security facilities across the country, segregated inmates are able to acquire additional privileges and freedoms through periods of good behavior or by completing program requirements (e.g., anger management or substance abuse courses). No such system exists at Red Onion. Inmates who maintain perfectly clear conduct records at Red Onion are subject to the same harsh regime as those who continue to violate disciplinary rules.

Social isolation and confinement in a small space can be physically and mentally dangerous and destructive to the persons subjected to it, particularly if endured for protracted periods.²² Even persons who are mentally healthy can be damaged or incapacitated in segregation and can lose their ability to function in ordinary settings, to govern their behavior and make positive choices, and to interact with other people. Prolonged confinement in isolation can also provoke symptoms usually associated with psychosis or severe disorders— including perceptual distortions and hallucinations, delusional states, hypersensitivity to external stimuli, difficulties with thinking, and panic attacks. Such symptoms can be provoked in healthy personalities, but prisoners who enter segregation with preexisting psychiatric disorders are at even higher risk of suffering psychological deterioration and psychiatric harm. The periods of recreation with other inmates undoubtedly offset the harm somewhat, but to an unknown extent.

Mentally Ill Inmates

²¹ In some super-maximum security facilities, security measures are decreased for inmates who demonstrate good conduct over a period of time. Carrying stun devices during routine escort procedures is unusual and violates international standards See Standard Minimum Rules, Article 54 (3), "Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use."

²² See, e.g., Human Rights Watch, *Cold Storage*; Haney, Craig and Mona Lynch, "Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement," *New York University Review of Law & Social Change*, XXIII, no. 4 (1997); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995)(court rules super-maximum security confinement of mentally ill is unconstitutional as cruel and unusual punishment).

Mentally ill inmates should not be confined for prolonged periods in super-maximum security conditions, particularly those that exist in segregation at Red Onion. The conditions of isolation, enforced idleness, surveillance and control pose serious risks of aggravating their symptoms and precipitating psychiatric decompensation.²³ “Although some mentally ill offenders are assaultive and require control measures, much of the regime common to extended control facilities may be unnecessary, and even counterproductive, for this population,” according to the National Institute of Corrections.²⁴

Inmates with serious mental illness are nonetheless sent to Red Onion and are housed both in general population and segregation.²⁵ Due to the DOC’s non-cooperation we do not have reliable figures on the number of mentally ill inmates at the facility. One inmate told us that in his pod of twenty-two men, three were on psychotropic medication, and he thought at least two more acted in ways that, as a lay person, seemed to him to indicate mental health problems.

Proper mental health screening and monitoring are crucial for inmates sent to supermax confinement.²⁶ It is our understanding, however, that no special mental health evaluations are undertaken for each inmate sent to Red Onion. Nor, apparently, is there monitoring that would permit the prompt identification of new or exacerbated mental health problems and timely intervention.

Treatment of mental illness at Red Onion consists primarily of psychotropic medications. Once a week a psychologist checks in on inmates receiving medication. Privacy and confidentiality are nonexistent: the conversation take place at the cell front, with guards and other inmates listening. The visits are generally fleeting, consisting of a question “How are you doing, any problems?”, and then the psychologist is on to the next cell. For inmates in segregation there is no therapy other than medication. Although placement in segregation is for an indefinite period and can last for years, mental health personnel have told inmates that because “this is a behavioral control unit, there is no mental health treatment here.”

V. ADMISSION AND RELEASE

Physical conditions and policies at Red Onion were ostensibly designed with “superpredators” in mind—violent, incorrigible inmates who cannot be safely confined in less secure facilities. Yet it appears that the DOC has diluted the concept of who requires assignment to Red Onion. The DOC is in fact willing to send men there who could and should be housed in less restrictive environments. Every indication is that this trend will accelerate now that the state is also trying to fill Wallens Ridge. Governor James Gilmore stated on April 9, 1999 that felons caught with guns who qualify for a five-year mandatory sentence would be eligible for incarceration in Red Onion or Wallens Ridge. Public officials in Virginia thus appear to be adjusting supermax housing criteria not to reflect genuine security and management needs but simply to fill what would otherwise be half empty—but very expensive—facilities.

²³International standards provide that mentally ill inmates should be treated in specialized institutions under medical management. Standard Minimum Rules, Article 82 (1).

²⁴ NIC, *Supermax Prisons*, p. 13. “Extended control facility” is another term for “supermax prison”.

²⁵DOC policy permits the placement of mentally ill inmates in Level 6 facilities with the exception of inmates with “severe” impairments. We do not know how the DOC defines “severe” in practice.

²⁶Human Rights Watch, *Cold Storage*. NIC, *Supermax Prisons*.

A basic premise of contemporary corrections is that every prisoner should be housed in the lowest security and custody level suitable for adequate supervision and the protection of staff, other inmates and the community. Indeed, the DOC operating procedures provide that “no inmate will be maintained in a more secure status than that which his behavior, risk potential and treatment needs indicate.”²⁷ Ensuring that inmates are not subjected to restrictions that are not reasonably necessary for safety or security is cost-efficient and consistent with common sense and legitimate correctional objectives. It is counterproductive to use supermax facilities for “inmates for whom lesser levels of control may be satisfactory [when to do so] may deprive them of freedoms, education, treatment, and work opportunities from which they could reap significant benefits and which may subject them to pressures detrimental to their physical and psychological health.”²⁸

Avoiding the unnecessary use of supermax confinement is also dictated by fundamental human rights principles. As stated in the Standard Minimum Rules, prisons should be operated with “no more restriction than is necessary for safe custody and well-ordered community life.”²⁹ To subject inmates to extremely harsh conditions depriving them of freedoms and privileges ordinarily available in prison without adequate justification constitutes treatment that violates the basic dignity of inmates and their right to be free of cruel, inhuman or degrading treatment. We do not consider the DOC’s desire to fill expensive prisons a sufficient justification for sending men to Red Onion (or Wallens Ridge, for that matter) if they do not otherwise require stringent controls.

The DOC instituted a new six-tiered classification system in November 1998 and is currently reclassifying inmates under the new system.³⁰ Level 6 facilities—Red Onion and Wallens Ridge—are the most restrictive and secure. Inmate custody levels are determined through a scoring system that assigns points for such factors as history of institutional violence, severity of current commitment offense, escape history, length of time remaining to serve, and age, among others. According to the new classification procedures, assignment to Red Onion requires a score of thirty-four points or more. A discretionary override for certain factors is permissible that would increase (or decrease) the security level. (According to classification experts, discretionary overrides should only increase/decrease a security level by one class.) According to the DOC’s Institutional Assignment Criteria, the profile of an inmate classified for a Level 6 facility is “disruptive, assaultive; severe behavior problems; predatory-type behavior; escape risks.”³¹

Once an inmate has been sent to Red Onion he can be confined there indefinitely. DOC classification criteria provide that inmates must maintain at least twenty-four months with “no disruptive behavior” prior to consideration for a transfer to a less secure facility.³² There is no guarantee, however, that even maintaining clear conduct will enable an inmate to be reclassified to a lower security level facility and to be transferred from Red Onion. The decision is at the discretion of the warden.

²⁷VA DOC, *DOP 823-4.0*.

²⁸ NIC, *Supermax Prisons*, p. 6.

²⁹ Standard Minimum Rules, Article 27.

³⁰Most jurisdictions today have adopted objective classification systems by which prison authorities determine, based on an inmate’s prior behavior and other relevant factors, the level of supervision and control the inmate requires. Length of sentence and even nature of commitment offense are factors that are considered, but they are by no means the sole factors. Indeed, although the public often is unaware of this fact, many persons who have committed serious crimes and who have long sentences are not dangerous or problem inmates, e.g., inmates who assault or prey upon other inmates or staff.

³¹VA DOC, *Institutional Assignment Criteria*, October 1998.

³²“Disruptive” is defined as conviction for the most serious disciplinary offenses, an attempt at one of these violations or a pattern of convictions that indicate “significant suitability”. *Ibid.*

The DOC has not publicly released information on the statistical profile of the men who have been sent to Red Onion. We have not seen, for example, any summary of the classification results or other data on the institutional history and security and custody requirements of Red Onion's inmates. The DOC has stated that approximately 50 percent are there because of their behavior. We do not know whether those inmates have in fact accumulated the thirty-four points required in the classification system or have demonstrated that behind bars they are chronically violent or assaultive or otherwise severely threatening to the orderly operation of less secure institutions.³³ The DOC has not indicated, for example, how many have assaulted staff or inmates.

Several dozen men were sent to Red Onion when the facility opened to serve as a work "cadre" providing inmate labor. Although these inmates did not require Level 6 security, they have nevertheless been subjected to the same restrictions as all other inmates at Red Onion, and they do not have the privileges, freedoms, activities and freedom of movement they had at their previous facilities. The DOC told Human Rights Watch that it did not have a definite timetable for removing these men from Red Onion and returning them to more appropriate facilities, although this could possibly occur in the next few months.³⁴

Based on Mr. Angelone's comments as reported in the press, it appears that about half the population at Red Onion has been sent there simply on the basis of a lengthy (eighty-five or more years) sentence. We understand that men who enter the custody of the DOC with lengthy sentences are being sent directly to Red Onion from the receiving facility regardless of their security score.³⁵ We consider this practice indefensible, particularly in a state in which lengthy sentences are commonplace.

Mr. Angelone has stated, "[F]or such an inmate you don't need to find out if his behavior is good or bad."³⁶ This view is not shared by most of his profession. Indeed, corrections professionals know that many—perhaps most—inmates who have been sentenced to long prison terms even for violent crimes are not management problems. (Indeed, most inmates in prison systems are well-behaved; they want to do their time and get on with their lives.) The usual practice in many jurisdictions is to place inmates in the general population of maximum security facilities if they have been convicted, for example, of murder and have life sentences. They are then reclassified after a year or so, and depending on their behavior may be transferred to less restrictive facilities.

The decision to use length of sentence as a basis for assignment to Red Onion is particularly difficult to justify in the case of inmates who were already behind bars before Red Onion opened and who have demonstrated by their actual behavior that they are not violent or difficult inmates requiring the extensive controls of a supermax. Yet we have received various complaints from inmates in just this situation. One inmate with a life sentence, for example, had spent six infraction-free years in prison only to be transferred to Red Onion. One inmate told HRW that he was sent to Red Onion even though he had a classification score of eighteen and had gone years without any infractions. Another said he had been behind bars for twenty years on a life sentence and had no record of violent conduct, yet he too was sent to Red Onion. Another inmate told HRW he was sent to Red Onion even though he had an "impeccable" institutional record. When he asked DOC personnel why he had been transferred "they merely told me because of the length of my sentence (life plus fifty years) and also because I was an 'in-fill' inmate. In other words, they did not have enough assaultive disruptive inmates in the prison system to fill Red Onion. They have lied to the public about the need for these prisons in Virginia."

³³We have noted a tendency in other jurisdictions with supermax facilities for prison officials to use them for nuisance inmates, for inmates who commit frequent but minor disciplinary infractions or others who do not reasonably require such extensive restrictions on their movement and activities.

³⁴HRW meeting with Gene Johnson at the DOC on February 24, 1999.

³⁵The security-level classification procedures and criteria issued in October and November of 1998 contain a requirement that any inmate with more than twenty years to serve must be classified to at least a Level 3 facility. DOP 823 823-7.1. They do not provide the for the automatic designation of persons with long sentences to a Level 6 facility. VA DOC, DOP 823.

³⁶ Laurence Hammack, "ACLU Questions Inmate Placement at Red Onion," *The Roanoke Times*, Jan 3, 1999.

That Virginia does not have enough inmates who have displayed dangerous conduct to fill Red Onion and Wallens Ridge should come as no surprise. Virginia has never had a particularly violent inmate population. In fiscal year 1997, the DOC had only 72 assaults on staff and 86 on inmates out of a total prison population of 28,034.³⁷ The total beds at Red Onion and Wallens Ridge constitute 6 to 8 percent of Virginia's projected prison population.³⁸ We are not aware of any DOC analysis that indicated such a high percentage of the state prison population could reasonably be expected to need super-maximum security confinement. On January 1, 1997, for example, Virginia had 852 inmates in administrative segregation, or 3.5 percent of its total prison population.³⁹

Before Red Onion opened, the DOC retained a national expert in classification systems, James Austin, to undertake a classification review of its prison population. The study analyzed such factors as history of institutional violence, severity of current and prior offenses, escape history, and institutional disciplinary records.⁴⁰ The study showed that while a relatively large number of Virginia inmates have been convicted of crimes that earn long sentences (in large part because of the abolition of parole), few engage in institutional violence or escapes. According to Mr. Austin, "Virginia does not have a prison population with high levels of assaultive behavior. It is the length of sentences that gives Virginia its high proportion of maximum security inmates."⁴¹ Austin's analysis showed that only .9 percent of male inmates who had been in prison a year or longer had prison histories of assault and battery with a weapon; only .7 percent had escape histories. Only 1.6 percent would be reclassified to maximum security because of institutional misconduct (as opposed to other factors such as severity of commitment offense).

VI. THE USE OF SEGREGATION

Traditionally, segregation has been a punitive measure imposed for a set period of time, after a disciplinary hearing, as punishment for misconduct. In Virginia, as in all other states, authorities are increasingly utilizing indefinite "administrative" segregation as a custodial management tool. Whether in disciplinary or administrative segregation, the conditions for inmates are the essentially the same. Administrative segregation, however, provides prison administrators with much greater flexibility, and decisions to impose it are subject to little scrutiny from the courts.

³⁷VA DOC, *Offender Statistical Summary FY 97*.

³⁸ At one point, officials were predicting a total prison population of 40,000. Thirty thousand is now considered a more reasonable estimate.

³⁹ Camille Graham Camp and George M. Camp, *The Corrections Yearbook*, (South Salem, NY: Criminal Justice Institute, Inc., 1997) Virginia had the tenth-highest percentage of inmates in administrative segregation. The national average was 2.8 percent.

⁴⁰The DOC provided a copy of the classification analysis to Human Rights Watch in response to our request.

⁴¹Telephone conversation with James Austin, professor, Institute on Crime, Justice and Corrections, George Washington University, Washington, D.C. on April 14, 1999. According to the DOC's *Offender Statistical Survey FY 1997*, as of June 30, 1997 Virginia had a maximum security population of 34 percent of the prison system. The national average was 12.3 percent. The percentage of Virginia's inmate population in maximum security was the third-highest in the country. Camille and George Camp, *Corrections Yearbook*, p.16.

Because of the potential for abuse and the hardship on inmates, it is essential that careful standards and safeguards for the use of administrative segregation be developed and applied. The DOC's segregation policy does not enumerate clear criteria. It gives wide latitude to facility administrators to determine whom they choose to place in segregation, stating merely: "Examples of inmates assigned to segregation ordinarily include inmates presenting chronic behavior problems or those who present a serious threat to themselves or to others. They may be severe escape risks or seriously aggressive individuals."⁴² This statement would permit, for example, the placement in segregation of mentally ill inmates as well as nuisance inmates who are nonviolent but who repeatedly violate minor rules. It is our understanding that placement in segregation at another facility does not automatically mean placement in segregation upon transfer to Red Onion. Similarly, prior placement in general population is not a guarantee that transfer to Red Onion will be to general population there. The decision about whether an inmate is placed in segregation is made at the institution.

The DOC has not made public any information on the profile of inmates in segregation at Red Onion. We are aware of at least one inmate who does not meet reasonable criteria for being confined in prolonged social isolation with extreme security controls. Although a due process hearing is supposed to be held prior to assignment to segregation—and inmates may apparently grieve segregation decisions—the lack of any clear criteria preclude successful inmate challenges.

Segregation in Virginia is indefinite. DOC policies provide no guidance on permissible length of time in segregation. Inmates do not know what, if anything, they can do to secure their release to general population. While the DOC's operating procedure mandates periodic reviews of an inmate's placement in segregation, it does not specify criteria for guiding the institution's decision-making process. Nor does it affirm the goal of safely transferring inmates to lesser custody as soon as feasible.

During the first sixty days of confinement in segregation at Red Onion, an inmate is reviewed once a week by the treatment program supervisor who acts as the Institutional Classification Authority (ICA). After that the review is every thirty days. In practice, the "review" consists of a brief meeting at the cell door. The ICA makes a recommendation to the warden, who has final decision over whether an inmate will be released to general population. Inmates assert that they are not told and do not know what -- if anything -- they can do to hasten release from segregation. Inmates in theory can appeal the decision through the grievance procedure, but such grievances go nowhere.

Ordinarily, prison inmates prefer general population to segregation. At Red Onion, however, inmates find it a close call. Inmates in general population are double-celled, the amount of out-of-cell time in general population is not that much greater than for segregation, and in general population inmates are exposed to "trigger happy" guards. As one inmate wrote to Human Rights Watch, "Frankly, in many ways, it is safer to be in the segregation unit than in the so-called general population. Inmate on inmate violence virtually does not exist [at Red Onion]. Inmate on guard violence virtually does not exist here. Guard on inmate violence is high."

VII. STAFF-PRISONER RELATIONS

Conditions in super-maximum security prisons tend to foster unusually hostile relations between prisoners and guards. The simple fact that prisoners have been labeled the "worst of the worst" and are subject to extreme controls and have minimal and highly structured interaction with staff encourages correctional officers to view them in a dehumanizing way and to treat them more harshly.

⁴²VA DOC, *DOP 822-7.4: Isolation, Segregation, and Detention*, April 16, 1992.

The quality of staff in a super-maximum security facility is, therefore, “the single most important factor in ensuring safe, secure, and humane operations.”⁴³ In addition to personal qualities, it is important that the facility have a diverse workforce with an appropriate racial, ethnic and gender balance. “Racial and ethnic balance is critical in the minimization of anger, creation of perceptions of fairness, providing equity in interpersonal dialogue with under-represented inmate groups in the population, and maintaining cultural sensitivity.”⁴⁴

The preponderance of inmates at Red Onion are black, and the staff is almost entirely white, drawn from the rural coal-mining area in which the prison is located. Many of the staff have family or community ties with each other. They have had little or no direct contact with blacks before beginning work at Red Onion.

We do not know what selection process or special training the DOC has provided staff at Red Onion. Inmates assert that many of the staff are respectful and professional. But they also describe some officers as determined to show “they can be badder than we are.” These officers are quick to use derogatory terms and slurs, quick to use force, quick to impose their authority unnecessarily and capriciously. One inmate described to HRW the relations between staff and inmates as follows: “The guards are young—for the most part—and possess the mentality of juveniles—as do most of the prisoners—and they are into the macho mentality—as are most of the prisoners. The two do not mix well.”

Tensions and misunderstandings perhaps inevitably arise from a clash of cultures in which both black prisoners and white staff hold misconceptions and believe in caricatures about the other. But in a well-run facility with appropriate staff selection, training and supervision, those tensions can be minimized and kept from escalating into provocation, confrontations and violence. Unfortunately, white and black inmates alike at Red Onion describe an atmosphere of pervasive and blatant racism. Inmates claim that officers routinely use such terms as “boy” and “nigger”. One white inmate told HRW that an officer said to him, with reference to a black inmate with a reputation for sexual misbehavior, “What do you expect from a fucking nigger?” Another white inmate wrote to HRW that he had talked with an officer escorting him about a shooting. He described the officer as “so excited about being able to shoot ‘niggers...’[H]e couldn’t wait to shoot some of them black bastards.” A black inmate wrote HRW the following:

One night...this sergeant on the mid-night shift knocks on my door. He stated that he had found my baby picture, and being that I was locked-up [in segregation unit] and my personal property was badly handled I asked for it. What he revealed was a computer like print out of a doctor holding a black male child by the feet with a very large penis.

Another black inmate wrote to a family member:

The treatment of brothers is inhuman and words alone cannot explain it. Imagine, if you can, creating an atmosphere of so-called criminals (mostly black) who is considered less than human, who has no outside support to hear his cry. Place him in an environment where he is governed by staff (all whites) whose only contact of blacks has been through media propaganda etc.

A third black inmate describes staff-inmate relations as follows:

⁴³ NIC, *Supermax Prisons*, p. 16. “[S]taff should possess the characteristics of maturity, intelligence and good judgment, and—at least for custody positions—be physically capable of performing the rigorous duties required of them. They should be even-tempered, consistent, and capable of respecting diversity in the inmate population...a mismatch of skill, experiences, interests, and temperament can negatively impact the operation of the facility and can create a dangerous situation, [and] hinder the adjustment of the inmates to difficult conditions....” Ibid.

⁴⁴Ibid., p. 17.

White guards constantly try to provoke black prisoners into physical altercations by calling them boys, hollering at them to get their attention, pointing the gun at their backs, threatening them. These guards have shot more black prisoners, more warning shots for the least little actions by black prisoners....

VIII. USE OF FORCE

Inmates learn the role use of force plays in the management of Red Onion as soon as they arrive:

When I was taken out of the transport van I had two stun guns placed against my body and was told that if I didn't do what I was told, I would be shot from one of the gun posts located throughout Red Onion. I was told by [a lieutenant], "We will kill you here, so don't mess up."

To date, nobody has been killed at Red Onion. But Red Onion is a facility that appears to be managed by reliance on the continual threat and actual use of physical force, including firearms, electronic stun devices, chemical sprays and restraints. From the information available to us, it seems that physical force is used unnecessarily and excessively at Red Onion. Inmates claim that they are shot at, shocked with electronic stun devices, beaten, and strapped down for trivial nonviolent actions, e.g., moving slowly on the yard, yelling in the cells, refusing to return a paper cup. Instances of use of force at Red Onion do not appear to reflect a realistic evaluation of the actual need for a particular level of force. One inmate described to Human Rights Watch the prevailing ethos at Red Onion in the following terms: "You will do as you are told, when you are told, how you are told, forever as long as you are told or you will be shocked, shot, beaten or otherwise maimed, injured or killed, do you understand, Boy?"

Some of these use of force incidents occur under the pretext of addressing legitimate security concerns but appear, in fact, to be calculated efforts to punish or deter misconduct—neither of which is a permissible reason for using force.⁴⁵ Similarly, we have been told of instances in which an application of force is initiated for legitimate reasons but then escalates to a level that is out of proportion to the objective risks presented by the inmate.⁴⁶

⁴⁵ Corporal punishment is prohibited by the U.S. constitution and international human rights treaties. As a noted expert on prisons and use of force has noted, however, "Physical force applied under the guise of a necessary security control tactic can be—and is—employed to circumvent the constitutional prohibition on such physical punishments." Steve Martin, "Sanctioned Violence in American Prisons," a chapter in the forthcoming John May, ed., *Building Violence: How America's Rush to Incarcerate Creates More Violence* (Sage Publications).

⁴⁶ One inmate speculated that much of the abuse of force is due to inexperienced officers. As he wrote to Human Rights Watch:

These "one-stripe" officers haven't the experience with prisoners, and problem solving is nonexistent. These guys are young and think they have a free hand in the use of force because superiors will back them up. They are looking for "action" and disregard any communication skills they may have learned. I have noticed that older "one-strippers" get more respect from inmates because they are not as cocky as the younger "one-strippers" and don't act as if they have to prove they are bad-asses. I often think that the younger c/os [officers] come off as trying to be a bad ass because of fear. They have been told we're the meanest that Virginia has to offer and they are scared.

The use of physical force to control prisoners is an inevitable part of prison administration. Sound and widely accepted corrections principles sanctioned by law, however, mandate that force be used only when necessary, and only to the degree necessary, to bring an inmate or inmates under control or to restore order to a facility.⁴⁷ The goal should be to minimize harm to inmates and staff by using the least amount of force that will be effective. Lethal force, in particular, should not be used except as a last resort, when less life-threatening alternatives do not or cannot be expected to succeed and when there is an immediate threat of death or great bodily injury or dangerous escape.

A well-run prison with adequate numbers of trained and properly supervised staff and adequate policies should not have to resort to physical force as frequently as appears to be the case at Red Onion. The DOC has not released the number and kinds of use of force incidents that have occurred at Red Onion since it opened. It also refused to provide Human Rights Watch with a copy of its use of force policies. We thus do not know whether staff at Red Onion are following or ignoring DOC policies when they use force as the primary means of addressing inmate misconduct. Statements by DOC spokesmen suggest the DOC believes that at Red Onion breaking the rules—any rule—is sufficient justification for use of force, including use of firearms.⁴⁸ Such a discredited philosophy has no place in modern corrections.

Firearms

Most states prohibit firearms within prison facilities, even within super-maximum security prisons. As one noted corrections expert has stated, “While firearms are appropriate and necessary in the perimeter towers to deter escape, firearms are neither appropriate nor necessary within the prison yard, and are especially inappropriate within...housing units...[T]he use of firearms within prison walls increases, rather than decreases, the risk of serious injury or death to both inmates and staff...”⁴⁹ Mainstream American corrections has rejected the use of firearms within prison walls because they are almost always unnecessary—staff rarely need firearms to restore order, even when confronting prisoners who are fighting. It is also extremely difficult to shoot accurately at moving inmates, particularly under intense or traumatic circumstances.

Virginia is one of three states in the nation in which firearms are routinely carried or deployed within the prison perimeter.⁵⁰ At Red Onion, officers carry shotguns in the control rooms within the housing units and in gunports overlooking the recreation yard. The first shot is supposed to be a warning shot and is a blank. Live rounds are then utilized. Red Onion officers fire rubber pellet “stingers,” rounds which are considered non-lethal although they can inflict injury, particularly if fired at close range or to the head. Inmates have claimed—but we have not been able to confirm—that the officers are also equipped with No. 8 birdshot.⁵¹ Shotguns firing birdshot are considered lethal weapons, even though birdshot is typically only lethal if fired at close range.

⁴⁷e.g., Standard Minimum Rules, Article 54 (1), “Officers who have recourse to force must use no more than is strictly necessary.”

⁴⁸Frank Green, “7 Fighting Inmates Fired On; Most Wounds at Red Onion Minor,” *The Richmond Times Dispatch*, April 7, 1999.

⁴⁹ Declaration of Charles Fenton provided in *Madrid v. Gomez*. Fenton is a retired federal warden and frequent expert witness for departments of corrections defending against prison conditions lawsuits. In *Madrid v. Gomez*, however, he was an expert for plaintiffs.

⁵⁰ California and Nevada are the other two. Firearms were introduced into Virginia’s prisons by Director Angelone, who before coming to Virginia had been head of the Nevada Department of Corrections.

⁵¹ The DOC has not responded to our April 9 inquiry regarding the alleged use of birdshot.

According to the press, Red Onion officers fired their weapons 63 times in the nine months since the facility opened.⁵² Ten inmates have been injured. As of December, the rate of gunfire was five times that of the rest of the state's prisons *combined*.⁵³ The DOC claims most of the shots were warning shots. Reports from inmates and family members indicate that the level of gunfire may have slowed down after widespread negative publicity in December 1998⁵⁴ but that the frequency has picked up again. In March there were several incidents in which weapons were fired.

Anytime a firearm is discharged in the direction of a human being the potential for injury or death is unleashed. Because of the danger, use of force policies normally require that all reasonable means of apprehension and control should be exhausted before even "non-lethal" weapons are discharged. At Red Onion, however, officers discharge weapons in fairly routine non-threatening situations. The use of force policy appears to be: if an inmate disobeys an order, a warning shot is fired. If the inmate continues to disobey, the inmate is fired at.

Inmates believe they may be shot for talking over the wall that separates one recreation yard from another, for crossing the red line that is used to mark areas of permissible inmate presence, for leaning against a wall, for not moving quickly enough.⁵⁵ Whether true or not, this belief is fostered by staff. An attorney who visited a client at Red Onion recounted the following to Human Rights Watch: "When I was being escorted through the yard, the counselor noted some red lines painted on the concrete and told me that, if any inmate crosses a red line, he is shot. She said that as matter of factly as it she were telling me that they have lunch at noon."

The DOC has acknowledged described three instances in which staff fired shotguns at inmates during March 1999. According to press accounts based on DOC information, on March 5, three inmates were fighting in a recreation yard; they ignored an order to stop and ignored a warning round and further verbal warnings. The gun post officer then fired a total of seven rounds at the inmates' lower extremities. On March 17, an officer fired at the "lower extremities" of two inmates who were fighting in the segregation recreation yard who had ignored verbal warnings and a warning shot. March 25, 1999 two inmates were fighting in the recreation yard. After they ignored verbal warnings and a warning shot, an officer fired a stinger round at their "lower extremities". The inmates then stopped fighting but refused to follow an order to lie on the ground. The officer then fired another stinger round. One inmate had superficial wounds; the other inmate had pellets lodged in his face and had to be sent to a medical center.⁵⁶

What is remarkable about each of these incidents is the lack of any apparent justification for firing at the inmates or for failing to use lesser means of force to resolve the situation. Fights between unarmed inmates are commonplace, everyday occurrences in prisons; across the country such fights are usually quickly resolved through the simple intervention of unarmed staff. In the March 25 incident, the shots were fired not only to secure an end to the fight but to make inmates who were no longer fighting lie down on the ground. Staff in the yard could have intervened at that point (if not earlier) and obviated the need for additional use of firearms. The incidents also show how easily injury can result from the inaccurate shots that are almost inevitable in a volatile situation.

⁵² Craig Timberg, "At Va.'s Toughest Prison, Tight Controls," *The Washington Post*, April 18, 1999. See also, Frank Green, "7 Fighting Inmates Fired On," *The Richmond Times Dispatch*, April 7, 1999.

⁵³ Frank Green, "Inmates, Critics Question Firearm Use at Red Onion Supermax Prison," *The Richmond Times Dispatch*, December 24, 1998.

⁵⁴ One inmate told Human Rights Watch: "When the place first opened, they were shooting a lot of inmates for petty reasons or no reasons at all and beating up inmates right when they arrived. But there was some bad media coverage on this place so now it's pretty quiet here."

⁵⁵ One inmate wrote to HRW, "I have witnessed them shooting guns for no reason other than someone did not respond to an order quickly enough to suit them. In two months, in my pod alone...they have fired the gun three times—not one of those instances being to prevent or stop an assault."

⁵⁶ Frank Green, "7 Fighting Inmates Fired On." Inmates have also written to HRW describing these incidents.

We quote below from letters inmates have sent us describing incidents which firearms were used at Red Onion.⁵⁷ In each case, there is no apparent justification for the force that was used.

- I witnessed another shooting incident...where the officer fired shots because inmates didn't go to their rooms fast enough to suit the officer. During this incident after firing the shotgun the staff then came in and picked at random people to lock up for no reason. They proceeded to handcuff and shackle these inmates, bodily carried them out by their arms and legs, took them to the pod next door, threw them in the floor face first and beat, kicked and shocked these inmates with stun guns.⁵⁸
- Today, another incident happened where there was again no probable cause to shoot their guns...D6-pod was outside for recreation and playing basketball, the inmates were struggling for the ball and one fell to the ground and all of a sudden [the officer who was in the kitchen tower] shot his gun and stated they were fighting. There were no punches thrown nor was there any inmate harmed and/or bruised. Also the guard in D0-1 tower shot his gun just for the sake of shooting.
- The entire D-6 pod was outside for recreation and [the officer] was stationed in D&C unit tower, he called completion of recreational period, in the process of inmates moving toward the unit, there were four and five inmates slowly moving from the card tables, but they were off the white concrete platform and on the grass moving to building D. All of a sudden [the officer] shot the gun and then [an officer in another tower] sticks his gun out and shoots, therefore two-three shots was fired simply because inmate were not walking fast enough to their bldg.
- I and another inmate were on rec yard A-2&3 when an inmate on rec yard A-4, 5, 6 told us of an assault that was about to happen against another inmate. About fifteen minutes later we hear the assault/fight start. After ninety seconds to two minutes we hear a gun fired. As you know the first shot is supposed to be a warning shot. After the first shot no others are fired. We then heard officers enter the yard and handcuffs clicking as the three inmates are removed. When my rec time was over I was escorted back to my cell by [an officer]. The [officer] told me they knew about the possibility of the assault before hand and gave me an account of how it unfolded. He told me that they waited to fire the gun until one of the inmates was down and not able to fight anymore.
- While there I was shot at, or let's say a shot was fired because I was gathering my deck of playing cards. Instead of the 8:00 pm lock down it was called at 7:30 catching us off guard.

⁵⁷We have quoted verbatim the language used by the inmates, but have deleted names and corrected misspelling.

⁵⁸Ibid.

- [An inmate] was jogging around the yard, he was wearing closed headphones with walkman listening to a cassette while jogging. The order to move to the opposite side of the yard did not come over any loud speaker or megaphone device—it was a shouted order from a gun port. The man never heard the order. The first shot knocked him down. He jumped up not knowing why he was shot and was shot again. No one's life was in danger. No staff or prisoner was threatened by this man. In less than one minute he would have been on the other side of the yard where other prisoners would have gotten his attention. The man was jogging in a circle. Had he stopped, turned around, and jogged in the opposite direction he would not have gotten to the other side of the yard any faster!⁵⁹

Inmates have also told Human Rights Watch about the following instances when weapons have been used unnecessarily:

- An inmate was shot for refusing to allow himself to be cuffed and taken from the shower. His ten minutes allotted shower time had expired but he had not finished showering. He finished before the order to shoot was given, but it was too late.
- An inmate had an asthma attack in the mess hall. His roommate bent over to help him. An officer started hollering—although it was hard to understand his words—and fired his gun a couple of times. Everyone lay down. The roommate was subsequently beaten and the asthmatic inmate kicked by officers.
- An inmate was in the recreation yard doing exercises. When the officers called the end of recreation, the inmate was not finished his jumping jacks and did not want to stop. Officers fired at him, although he was not hit.
- On the way to the shower a new arrival stopped to talk with an inmate in his cell. The officer told him to move on. He apparently did not move, or did not move fast enough, and he was shot at.
- An inmate waiting for the doors of his cell to be opened got some tobacco from another inmate nearby. An officer fired his weapon at him.
- Two inmates were fighting in their cell. An officer shot at the door to stop them.

Misuse of Electronic Stun Devices and Other Abuses

Uniformed staff at Red Onion carry electronic stun devices that give painful electric shocks either when pressed to the body (the Ultron II) or, in the case of tasers, through fired darts.⁶⁰ Inmates have asserted to HRW that they have been subjected to taser shocks when fully restrained and for a wide range of minor misconduct that poses no physical threat, e.g. verbal insolence. As alleged, the incidents suggest that electronic stun devices are being used as punishment, rather than for legitimate control purposes.

- One inmate told HRW that immediately upon arrival at Red Onion in September 1998, he and other inmates were told to strip and permit a visual body search, including by spreading their buttocks. Female staff were

⁵⁹ DOC's version of incident reported by Frank Green, "Inmates, Critics Question Firearm Use at Red Onion Supermax," *The Richmond Times Dispatch*, December 24, 1998. The inmate who described the incident to Human Rights Watch noted that the press was unable to obtain a complete understanding of what happened because the DOC would not let them interview the inmates involved.

⁶⁰ A taser is an electrical gun that shoots darts up to a range of 15 feet. The darts can deliver up to 50,000 volts and temporarily incapacitate the victim. The extremely painful shock from a taser has been described as "resembling being hit on the back with a 'four-by-four' by Arnold Schwarzenegger." *Madrid v. Gomez*, 889 F. Supp. at 1175.

present—indeed one was taking a video of the proceedings—and the inmate was reluctant to do as ordered in front of them. A captain shot him with the taser in the presence of the warden, associate warden and a major. After the inmate had been tasered, the major screamed in his ear, “Boy, you’re at Red Onion now” and then told the other officers to “get that nigger out of here.” The inmate filed a grievance because he felt—correctly—that he should not have had to submit to a visual body search strip in front of female staff.

The inmate’s grievance was denied. The warden acknowledged that a taser had been used because the inmate hesitated to strip and thus “was failing to obey instructions.” The denial was upheld by the regional director without comment “based on the information provided.” There was no effort to suggest that application of physical force was warranted by any possibility of danger or that non-physical efforts to persuade the inmate had been attempted and failed.⁶¹ The use of the taser appears more likely to have been a deliberate and malicious excessive use of force calculated to intimidate new arrivals to the facility.⁶²

In denying the inmate’s grievance, Warden George Deeds stated that post orders at Red Onion permit females to work at any post—in this case, assignment to the video camera. It is widely recognized, however, that cross-gender strip searches violate inmates’ individual dignity and right to privacy. The warden’s policy at Red Onion ignores basic correctional principles and international standards prohibiting cross-gender strip searches unless in an emergency.⁶³

Other examples of the use of electronic stun devices that inmates have recounted to Human Rights Watch include:

- One man was shot with a taser while in his cell for refusing to return a paper cup when ordered to do so. Restraints were then placed on his arms and legs, securing and immobilizing him on his bed. (The use of four-point restraints is discussed below.)
- An inmate with a reputation for “pissing people off” was in his cell when he told an officer that he wanted to have sex with her. The officer tasered him through the food slot.
- An inmate was tasered because he had his arm hanging through the food slot and did not remove it fast enough when told to do so.
- An inmate was kicking on his cell door because he wanted to make a phone call. An officer came and told him to be quiet. The inmate said, “Bring it on.” Officers suited up for a cell extraction came to the cell front and told the inmate to cuff up. The inmate complied. After he was handcuffed, and while still in his cell, one of the officers then told him to step back away from the door and shot him with a taser.
- An inmate in segregation was kicking on his cell door and yelling. A sergeant told him that if he “didn’t stop kicking they’d fix it so he couldn’t kick no more.” The inmate kicked and yelled a bit more and then stopped.

⁶¹ Copies of the inmate’s grievance and official responses are on file at Human Rights Watch.

⁶² Other inmates also described to HRW the treatment they received upon immediate arrival at Red Onion, including being yelled at, threatened, and shoved, all in an atmosphere calculated to impress upon them that they were “at Red Onion now.”

⁶³ American Correctional Association (ACA), *1998 Standards Supplement*, (ACA: Laurel, MD, 1998), Standard 3-4186, p. 29. General Comment 16 to Article 7, “Compilation of General Recommendations Adopted by Human Rights Treaty Bodies,” U.N. Document HRI/GEN/Rev.1, July 29, 1994. (So far as personal and body searches are concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body searches by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.) Most courts have recognized that inmates should be protected from unwarranted intrusions on their privacy by guards of the opposite sex. See, generally, Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons*. (New York: Human Rights Watch, 1996), pp. 28-30 and *passim*.

A team of officers suited up for a cell extraction came to his cell door and asked if he would cuff up. When he refused, the officers sprayed him with mace and tasered him. They then entered his cell and restrained him. The inmate claims that after he was on the ground, handcuffed and not resisting, he was shocked twice more. He was then placed in a shower, which is the proper procedure after use of a chemical weapon subsequently put in a strip cell with no mattress for twenty-four hours.

In this incident, the taser was used as part of a cell extraction, a use of force procedure in which a team of officers forcibly restrain an inmate and remove him from his cell. Staff at Red Onion—as at any prison—are entitled to let inmates know that rules cannot be ignored without consequence and to enforce prison rules through disciplinary procedures. Cell extractions are security measures, not disciplinary mechanisms, and should be used only because of an imminent serious risk to the safety and security of the institution. When cell extractions are used to respond to relatively minor infractions that do not present imminent security risks—as would appear in the incident described above—staff are simply inflicting physical punishment under the guise of a security operation.

We have received a few complaints of beatings at Red Onion. One case was brought to our attention by several inmates: an elderly inmate reportedly threw a balled-up piece of paper at one of the sergeants, striking him on his pants leg. That officer and several others rushed into the inmate's cell and beat him so badly that he had to stay at a hospital for a couple of days. Upon his return he was placed in restraints.⁶⁴

Verbal threats are reportedly commonplace at Red Onion. For example, an inmate wrote to HRW that in January, some inmates were verbally “disrespecting the nurse” and she finally yelled loudly, “Shut the fuck up.” Several minutes later four officers came to the inmate's cell, told him to cuff up, and then entered his cell. They pushed him down onto his bed, and one of the officers stated “that if I bothered the nurse again he will come back and break every bone in my body and if I think he was lying look into his eyes because he would eat my eyeballs out of their socket.”

Inmates also claim Red Onion staff abuse restraint equipment and strip cells, using them maliciously as punishment even though such use is prohibited. Four- and five-point⁶⁵ restraints immobilize an inmate on a bed. They should only be used in extreme circumstances—when an inmate left unrestrained poses a serious risk of injury to himself or to others and when other types of restraints are ineffective—and for no more time than is absolutely necessary.⁶⁶ Inmates assert, however, that staff at Red Onion place men in restraints as retaliation for misbehavior, e.g. throwing juice on an officer. “[E]veryone here knows it's for punishment.” They also assert that inmates are kept in restraints for arbitrary time periods—eight hours, seventy-two hours—regardless of the inmates' condition or the need for such control. Inmates have similarly complained that strip cells containing no furnishings, bedding or equipment are used as punishment. The degrading nature of unnecessary strip cell confinement is heightened by officers' refusal to provide toilet paper when needed.

When an HRW attorney met with inmates at Red Onion, the inmates had to wear 50,000-volt stun belts even though they were shackled and handcuffed. They were told that if they stood up the belts would be activated by a remote transmitter. Prison staff felt the belts were necessary because the HRW representative was meeting with inmates in a room without presence of officers and with no physical barrier between her and the inmates. Given the restraints on the inmates and the presence of guards immediately outside the room who were watching the meeting through a window in the door, the use of stun belts seems excessive. One inmate believed they were used deliberately to

⁶⁴Some of the inmates identified the precipitating event differently, e.g. that the beating followed the inmate's refusal to return a cup from his food tray.

⁶⁵ Four-point: arms and legs are secured. The fifth restraint used at Red Onion is a chest strap.

⁶⁶See Standard 3-4183-1 in *ACA, 1998 Standards Supplement*. *ACA, 1996 Standards Supplement*, (ACA: Lanham, MD, 1996).

intimidate inmates who were speaking with HRW. An inmate who had wanted to meet with HRW did not because he was too upset by the prospect of wearing the stun belt.

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