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Op-Ed Contributor

## A Cell of One's Own

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LAST month, Gov. George Pataki vetoed a bill that would have prevented mentally ill prisoners from being placed in solitary confinement. More than a decade ago, as a judge, I would have been concerned with the legal implications of the treatment of prisoners diagnosed as mentally ill, but my concern is more personal now.

You see, in 1993, I pleaded guilty to harassment, was found to be suffering from bipolar disorder and was sentenced to serve 15 months in a mental health unit of a federal prison. While incarcerated, I was stabbed by another inmate. For my protection I was locked down in what the state calls a “special housing unit” — and what prisoners call “the box,” “the hole,” or simply “solitary confinement” — which is used to manage the approximately 8,000 mentally ill inmates in the New York prison system.

I spent 40 days in the box while prison guards tried to determine who my assailant was. They failed, and because of my physical and mental deterioration, I was shackled from head to foot and taken to another prison where I was again placed in a special housing unit — this time for 10 days of observation.

The special housing unit is a seemingly endless row of small claustrophobic cells — mine was about seven feet by eight feet — each with its own steel sink and toilet. Against one wall there is a metal rack covered by a thin oil-cloth-covered pad. This is the bed. The door is solid steel with a vertical slot that allows for a guard to peer in. A small, knee-high horizontal slot is used to deliver and return food trays. The walls are made of concrete cement blocks. Light comes in from a very small barred window and a large fluorescent light that is on all day and part of the night.

When you are in the box, you are confined for 23 hours a day, and although you are allowed one hour in the daylight, that hour is spent in an outdoor zoo-like cage where you are often taunted by other prisoners. I, like most of the inmates in the box, opted to stay inside for the full 24-hour period, hoping to sleep — because sleep at night is next to impossible. That’s when the noises begin.

I heard them all night long. One of my neighbors, called “dogman” by the guards, howled until dawn like a wounded canine; another kept shouting “shut up”; still another sang a tuneless melody with words that spoke of “silver threads and golden needles”; and some engaged in loud conversations with voices that only they could hear. After several weeks, of not being able to separate night from day, I too began to hallucinate.

The mind-bending conditions of these units in New York that house the mentally ill has been documented by the Correctional Association of New York, which has interviewed men “who were weeping in their cells, who mutilated their own flesh, who hadn’t left their cell in months, who smeared feces on themselves or repeatedly attempted suicide.”

An estimated 12 percent of the overall prison population in New York is seriously mentally ill, and those who are disruptive and placed in these housing units become even more so. From 1998 to 2004, hundreds of mentally ill prisoners have tried to kill themselves, and at least 52 of those who were in solitary confinement succeeded.

The Urban Justice Center, an advocacy group, estimates that today there are 700 mentally ill prisoners in solitary confinement in New York State, many of whom have been incarcerated for nonviolent, drug-related crimes.

One does not have to be a trained penologist or psychiatrist to know that a mentally ill person should not be treated this way. Not only is such internment uncivilized, it is also counterproductive. Most of these inmates will one day return to the streets in a worse state than they were when they were arrested.

There is a solution. Psychiatrists or medical professionals should oversee mentally ill inmates, not prison guards. The guards themselves realize this. In fact, the New York State Correctional Officers and the Police Benevolent Association supported the bill that Mr. Pataki vetoed to allow for alternative confinement for disruptive mentally ill prisoners. This bill, which also said that mentally ill inmates should be given treatment in secure hospital wards, was passed, almost unanimously, by both the State Senate and the Assembly. And several states, including California, Connecticut, Florida, New Jersey and Texas have passed similar legislation.

In vetoing the legislation, Governor Pataki said, among other things, that putting mentally ill prisoners in separate hospital wards would cost too much.

When I was on the Court of Appeals, I wrote a decision for the court in which I observed: “Merely confining an inmate in a segregated cell does not constitute cruel and unusual punishment. There are, of course, some cells that are so subhuman as to constitute such punishment even for a very brief confinement. One day in some cells might be constitutionally intolerable.” When I wrote those words I never dreamed that I would discover such a cell by living in one. No mentally ill person should have to endure that kind of suffering.

*Sol Wachtler, a former chief judge of the New York State Court of Appeals, is the author of “After the Madness,” a memoir.*