

# Rights-in-between: Resident perceptions of and accessibility to rights within restricted housing units

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## Abstract

Prison laws and policies often do not explicitly state the rights and privileges for the individuals residing there. This space is a unique example of where the law-on-the-books meet the law-in-action—a place where “law-in-between” operates in the hands of street-level workers. Using data collected from interviews with restricted housing unit residents and staff in four men’s prisons, this paper examines how the law-in-between operates in a highly structured and punitive environment. Findings reveal agreement among residents and staff regarding general definitions and perceptions of rights, with some similarities regarding what rights are broadly. However, divergence exists in discussion of how rights are accessed in practice.

## INTRODUCTION

The following is a complex story to tell. The crux is this: While US prison staff and residents follow a strict set of legal, agency, and unit guidelines for day-to-day unit management within a tightly controlled carceral organizational environment, these laws and policies are often opaque and ambiguous for general prison units and are even less specific and discernable within specialty units such as restricted housing units (RHUs) regarding what goods, services, and treatment are mandated (*rights*) and possible (*privileges*). As a result, prison staff work, and residents live, within an organizational environment where the rules are open to interpretation and ever-changing. It is a unique example of where the law-on-the-books meet the law-in-action and in fact, a place where the “law-in-between” (Jenness & Grattet, 2005) thrives and flourishes in the discretionary decisionmaking of street-level bureaucrats (Lipsky, 1980) such as correctional staff. Nowhere in carceral contexts is this more prominently visible than in RHUs. This penal locale often exists beyond the reach or purview of judicial rulings that mostly consider prison in general, not the RHU specifically. It is a literal and figurative hole within penal institutions, where both staff and residents spend a great deal of time in a state of anomie, where the rules are unclear and often unobtainable. To remedy this, staff use their discretion to interpret policies to facilitate their own and residents’ safety and maintain control of the space. In doing so, the “routines they establish and devices they invent to cope with uncertainties and work pressures effectively become the policies they carry out” (Lipsky, 1980, p. xiii). Residents,

on the other hand, work feverishly to understand these unclear and fluctuating rules and policies, operate within them to benefit their own needs and desires, and find ways around them to ensure their needs are met. As a result, RHUs present as a space in some degree of limbo much where the “law-in-between” manifests and operates in real time with real-world consequences (Jenness & Grattet, 2005). This is not unlike prisons in general (i.e., in general population units), but this largely overlooked area of prison scholarship requires specific attention. While the percent of prison residents living in RHUs varies by state, the threat of RHU placement is present for all individuals in prison. Therefore, the daily operation of these units presents an inimitable and crucial carceral environment for study and reform.

This paper examines how the law-in-between operates in a space where rights are perceived, provided, and at times inaccessible, within RHUs in four US men’s prisons in one northeastern state. While an important direction for inquiry, this paper does not examine how residents mobilize to get rights. Instead, the focus here is on establishing a baseline for understanding how/why rights are denied in RHUs. We begin with a brief overview of the historical developments of prison residents’ rights and a discussion of the application of these litigated rights via staff decisionmaking. Next, we present information on our study site and our methods of data collection and analysis. We follow with a presentation of our key findings related to perceptions of rights in RHUs and the process for residents accessing their rights in these spaces. Finally, we provide a thorough discussion of the theoretical and practical implications of this work.

## Prison residents’ rights

Prison residents retain basic rights, like any other US citizen, but these rights are more restricted given their carceral status. Throughout history, prison residents’ rights expanded during some time points and were more constrained during others reflecting an almost a perfect example of the proverbial swinging pendulum. There are four distinct periods with each subsequent era operating in reaction to its predecessor. From the hands-off model (1950s through early 1960s) where courts had little interest in regulating industry rules and operations (Barkin, 1966; Vogelmann, 1968), to the equality model (mid 1960s through 1980) where courts were actively involved in how all individual persons accessed rights and set new precedents for using the federal court system to do so (*Robinson v. California* (1962); *Cooper v. Pate* (1964); Herman, 1998; Mushlin & Galtz, 2009; Reiter, 2012), to the accommodationist model (1980s through early 1990s) where courts intervened in numerous class-action lawsuits and the need for federal oversight, to today’s Eighth Amendment model (see Herman, 1998 for full review) (1996 through present) informed by the *Prison Litigation Reform Act of 1966* (Herman, 1998). In this current model, judicial and federal oversight is exceptionally constrained and prison administrators and their prisons operate with very little court and federal interference (Adlerstein, 2001; Schlanger & Shay, 2008). As a result, it is difficult for prison residents to challenge their living conditions and litigate their rights.

## Rights within the RHU

Throughout each of the eras, individuals predominately litigated their prison experience related to their time in *general population*, where they usually serve much of their sentence. However, under some conditions, individuals may spend some (or, under rare conditions—most) of their time living in RHUs, commonly known as solitary confinement.<sup>1</sup> These units operate in incredible isolation

<sup>1</sup>In this paper, we use the term Restricted housing units (RHUs) instead of other terms such as solitary confinement. This term is adopted both by the federal government and our study site. Additionally, solitary confinement no longer fairly represents these units as overcrowding and other policies (e.g., suicide watch) regularly double-bunk residents.

from the remainder of the institution due to limited movement schedules, routines, and policies. The dominant feature of these units includes strict control on movement where individuals spend nearly 23 h per day in their cell (American Civil Liberties Union, 2014; Cloud et al., 2015; Reiter, 2016)—making the unit characteristically different from general housing units.

Incarcerated individuals may receive RHU placement for a specified period due to an institutional misconduct or a rule violation known as disciplinary custody (i.e., fighting, misbehaving, refusing to stand for count) (Labrecque, 2016; Shames et al., 2015). Additionally, individuals who correctional officials feel need protection and/or are perceived as dangerous (e.g., escape risk, high-ranking gang member, notoriety) may also receive RHU placement via protective or administrative custody status (Labrecque, 2016; Shames et al., 2015). Placement in the unit, regardless of status, includes the rights to: meals, showers, recreational time usually 5–7 h per week total, and access mail—particularly legal mail. Individuals in the RHU are typically denied access to programming or work assignments and have limited or no visitation from family and friends (Ahalt et al., 2017). Institutions generally deem these unit conditions necessary for the safety and security of the institution, staff, and residents (Butler et al., 2013; Mears & Castro, 2006; O’Keefe, 2008). However, beyond safety and security, RHUs are institutionally designed as a harsh form of punishment for institutional misbehavior.

However, there is enormous legal amorphousness regarding *how* prisons must provide these rights within the RHU context. A nod to both the hands-off model and accommodationist models (Herman, 1998), the courts have left policies detailing accessibility of rights while living in RHUs to the states, and states largely leave day-to-day operational rules/practices to correctional departments and/or individual institutions. At a practical level, this means state policies dictating daily operations, procedures, and individual access to rights are at the mercy of frontline staff who are principally responsible for implementing policies on the ground (Lipsky, 1980; Rudes & Portillo, 2012). In this law-in-between locale, the law on the books is defined and redefined in action and operates within the stronghold of street-level discretionary decisionmaking. Here, frontline correctional staff hold incredible power within RHUs and this power is augmented by the reality that RHU residents are beholden to staff for access to almost all of their basic needs within the unit. RHU residents’ near-total reliance on staff within the RHU facilitates a type of carceral power unique to RHUs. How staff choose to exercise this power relates to both their willingness to follow policies as prescribed and the degree to which they perceive they have, and can use, discretion within the unit. The law-in-between comes to life in this temporal locale where individual discretionary decisions determine if/how RHU residents access their court/legally mandated rights.

## Decisionmaking, discretion, and the law-in-between

Street-level bureaucracy theory describes frontline staff as the true implementers of policy, and their decisionmaking, or discretionary behaviors, as foundational to how laws and policies operate in action (Lipsky, 1980). Other work concurs, suggesting agencies and organizations often operate as “little legislatures” (Breyer, 1982, p. 346) when they both create laws, policies, and rules and subsequently enforce them. A large body of research expands this work across many social service settings emphasizing the importance of how staff interpret, negotiate, and use their decision-making authority in their work (Feldman, 1992; Maynard-Moody & Musheno, 2009). This scholarship expands to justice settings including policing (Klockars, 1985; Mastrofski et al., 1987), the judiciary (Bushway & Piehl, 2001; Ulmer et al., 2007; Ulmer & Kramer, 1996), and community corrections (Kras et al., 2019; Lynch, 1998; Rudes, 2012; Viglione et al., 2015). However, research on *carceral* staff decisionmaking and discretion is incredibly scant (Liebling, 2000; Santos et al., 2012) due to both limited researcher access to prisons broadly and the preference of quantitative methodologies in prison work specifically (Rudes & Magnuson, 2018). Just a few studies, and none very recently, explicitly explore correctional staff discretion. This work yields findings about the role of power

(Liebling, 2000), the systemic and structural inadequacies to fully limit discretion (Gilbert, 1997), and the strong commitment or re-commitment to institutional goals/procedures correctional officers (COs) use to manage role/performance stress (Poole & Regoli, 1980). Across literatures detailing decisionmaking and discretion in justice settings, research suggests that personal beliefs/opinions about individuals served, perceptions of safety broadly, and resource constraints inform how front-line justice staff make decisions.

Workers within the criminal legal system frequently rely on “perceptual shorthand” or schemas when making decisions about individuals they work with. These sensemaking mechanisms provide guiding principles that workers may use when making decisions about similar individuals, especially in similar situations (Kras et al., 2019; Steiner et al., 2011). In the carceral context, the social distance between correctional staff and the population they serve may sharpen staff preference for these strategies. Staff working within RHUs meet the daily realities of residents who could/did not behave in either/both the community and in an institutional setting. This potentially antagonizes the “short-hand” approach staff craft for supervising individuals living in the unit. It is unclear how these perceptions may interact with the role staff play in providing individuals access to their rights.

On the other hand, environmental contexts may also affect individual and organizational decisionmaking about rule/policy enforcement. For Jenness and Grattet (2005), this question of how organizational perviousness (the influence of environmental concerns and organizational alignment) guides or interferes with the implementation of an innovation (or law/rule) matters greatly. While these scholars rigorously detail how the law-in-between works in law enforcement agency settings by considering the constitutive space between legal reform and officer discretion, their work largely relies on environmental forces having a strong and prominent role in policy/practice reform. Within RHUs, or a prison within a prison (Browne et al., 2011), environmental factors may play some role as these units are removed from the larger penal institution. RHUs are out of view of the larger external community and the broader institutional environment. However, within RHUs, individual discretion may trump external environmental or community pressures as, for the most part, no one is watching, and correctional staff possess near total autonomy and discretion to interpret laws, policies, rules, and guidelines.

Research considers how correctional staff make decisions about safety by way of informal sanctioning. Santos et al. (2012) find correctional staff exercise informal social control to facilitate institutional safety. For instance, in their study prison residents regularly experienced rushed mealtimes, shortened access to yard, reduced access to the canteen/commissary, and denied or limited access to phones, among other reduced privileges (Santos et al., 2012). Interestingly for RHU staff, their menu of informal disciplinary options for individuals who misbehave within the RHU is often nonexistent, or considerably limited—the unit is already severely punitive and there are no (or, very few) other things to take away. Currently, there is a gap in understanding about how RHU staff negotiate the more nuanced decisions regarding behaviors by individuals that necessitate discipline, but do not meet perceived thresholds for formal sanctions.

Administrative/resource constraints also contextualize how justice staff make decisions in daily work. Intense paperwork demands, large caseloads, and limited resources often are cited as factors in decisionmaking by social workers (Emerson, 1983) and probation and parole officers (Kras et al., 2019; Viglione, 2017). In such instances of extreme resource constraints, Feldman (1992) and Kramer and Ulmer (2002) discuss the inevitability of discretionary, and at times inappropriate, behaviors. Similarly, prisons experience understaffing and rising populations—many with severe mental health needs (Fazel et al., 2016; Martin et al., 2012). These types of organizational pressures and resource deprivations may produce “satisficing” decisions or behaviors deemed “good enough” (Simon, 1945) to not disrupt the pace and rigidity of prison schedules. This is especially germane to RHU staff working within a unit operating on a fixed, steady, and rigid timeline. While resource constraints may only partially explain discretionary decisions in RHUs, they likely play an important role in day-to-day unit management and impact residents’ rights accessibility. For example, in prisons generally, and RHUs specifically, broken showers, insufficient hygiene products, and/or

inadequate space for indoor recreation/yard on rainy or cold days means staff may regularly interpret policies/guidelines that may not directly align with legal mandates, state agency rules, or institutional guidelines for providing residents access to their rights.

Collectively, scant research explains much of the contextual nuance of correctional decisionmaking in prisons broadly, and the literature is absent in explaining how RHU staff make decisions in their daily work, specifically. It is unclear how much, if any, discretion correctional staff have in these units, and how this discretion complicates the unique power dynamic inherent in the structure of the unit itself. Of greatest importance is the collision of these conditions for individuals living in the RHU and what it means for individuals to secure access to rights while living in even more tightly controlled units than general population residents. This study is the first of its kind to consider RHU staff and residents' policy interpretations of rights by considering how structural policies, staff perceptions, and resource deprivations interact with these interpretations to create a place where the law-in-between becomes a dominant feature of the environment. In short, this study begins to unpack the conditions under which individuals living within RHUs struggle to understand and secure access to their rights.

## STUDY SITE AND CONTEXT

The study site is a large state correctional agency responsible for caring for over 40,000 across more than 20 institutions. Each institution includes a designated RHU with two distinct placement pathways. First, agency administrators may deem an individual a threat to themselves or the safety and security of the institution. These individuals are placed in the RHU under "administrative custody" or AC status and can serve an indefinite amount of time in the unit under this status. Second, an individual may violate institutional rules and incur a formal misconduct triggering an internal hearing where an examiner makes both a placement and sentence decision. If the hearing examiner determines placement is appropriate, the individual lives in the RHU for the specified number of days under disciplinary custody, or DC status. The status of "protective custody" does not explicitly exist in the state of study; however, individuals may speak with their facility's administration to secure AC placement within the RHU and then request a transfer to another prison to separate themselves from the perceived threat. Across the state, roughly 6% of the institutional population lives in RHUs on any given day, above the national average of 4.4% (Beck, 2015).

COs who work in the RHU undergo initial training for the unit during the final rotation of the first year of employment. Then, COs experience on-the-job training when assigned to the unit and can receive enhanced RHU training during a week-long intensive workshop facilitated by the state's training academy. This enhanced training focuses on the practices/policies of the unit, de-escalation tactics, and when/how to use/escalate force. Although the state highly encourages completion of the enhanced training prior to officers working in the unit full-time, the limited space and availability of the course itself often means officers work in the unit before going to the training. Typically, COs who excel in the RHU during their first year rotation are asked to work in the unit full time and are closely supervised by a sergeant (direct supervisor) and a lieutenant or captain assigned to oversee all correctional staff in the unit. Additionally, the lieutenant or captain is responsible for interpreting state and unit policy and implementing changes as directed by state administrators when appropriate.

Although case law sets the standards for many rights individuals maintain in prison, historic preference allows states to decide how these rights operate in practice. This is evident in the statewide policy manual. For example, the statewide policy specifies the frequency and timing of meals. However, at times, the statewide policy only vaguely resembles the broad case law requirements. Presumably, this broad language is used to accommodate the local needs of the institutions operating in various geographic locations, and with custody levels, populations, and population characteristics. In addition to the state policy, each institution authors and maintains their own RHU policy manual

**TABLE 1** Federal, state and local policies for resident rights

<i>Meals</i>	
Federal policy	Inmates must be provided with “reasonably adequate food” ( <i>Newman v. State of Alabama</i> , 1977) or “a well-balanced meal, containing sufficient nutritional value to preserve health” ( <i>Smith v. Sullivan</i> , 1977). Further, <i>Foster v. Runnels</i> (2009) ruled that meals cannot be denied as retaliation
DOC policy	“Three meals will be made available to all inmates during each 24-h period...Food shall not be used as a disciplinary measure. However, Alternative Meal Service may be approved for individual residents whose current behavior is such that regular menu tray service or use of service would present a danger to the inmate or staff...”
RHU policy	“All cell lights must be turned on and windows cleared prior to the cell door and/or the feeding aperture being opened. Failure to comply with this direction will be considered a refusal on your part to participate in the activity or function. This will also include meal periods when trays are being handed out and collected.”
<i>Showers</i>	
Federal policy	<i>Toussaint v. McCarthy</i> (1984) concluded that “minimum standards of decency require that lockup inmates without hot running water in their cells be accorded showers three times per week...”
DOC policy	“A DC status inmate...shall be permitted a minimum of three showers per week”
RHU policy	“The Officer will make an announcement for shower sign-ups upon entering the pod. If you want to shower, you must be standing at your door with the cell light on and answer, “shower” when the Officer approaches your cell. If you do not answer when approached by the Officer, it will be marked as a refusal and you will not be permitted to shower that day. Each inmate will be given the opportunity to shower three times per week. You are required to be at your cell door with the light on and in your undershorts only in preparation for the strip search procedure. You will wear your undershorts to the shower. T-shirts or undershirts are not permitted to be taken to, or worn to and from the shower. You may wear your towel around your waist to and from the shower. Failure to follow any part of the mandatory procedures may result in forfeiture of your privilege to shower that day”
<i>Yard</i>	
Federal policy	In <i>Delaney v. DeTella</i> (2001), the court ruled to uphold “the district court’s injunction requiring Stateville officials to provide segregated inmates ‘with at least 5 h of exercise per week in order to comply with the Eight Amendment’”
DOC policy	“A DC status inmate shall receive 1 h of exercise per day, 5 per week”
RHU policy	“An exercise period will be provided 1 h per day, 5 days per week, on each. The officers assigned to each unit will go to each cell prior to the beginning of the exercise period and ask if you wish to sign up for exercise that day. If you sign-up for exercise, you must be prepared to be escorted when the officers come back to your cell. If you wish to participate in yard, you are required to be at your cell door with the light on, and be in your boxer shorts only, with all other items in hand for preparation of the strip search procedure. Failure to follow any of the above procedures may result in forfeiture of your privilege to attend yard that day”

Abbreviation: DOC, department of corrections; RHU, restricted housing unit.

detailing the structure and routines of the unit. These unique RHU manuals localize both federal and statewide policies to fit the needs of the unit (Taxman & Belenko, 2011). Table 1 presents an example of these policy layers, or where the law/policy-in-between exists, grows, and thrives regarding rights relevant to the findings presented below. Table 1 presents the RHU policy most representative of the policy manuals collected from the study sites.

## METHODS

### Data collection

This study relies on an existing relationship between the lead author and study state. Findings from previous and separate research projects indicated a need to more accurately understand the living/

working RHU experience to contextual the broader prison experience. As a result, data for this paper come from a 2-year qualitative research endeavor examining perceptions of risk, punishment, and policies from those living and working in RHUs. After preliminary analysis of Year 1 data, the researcher team formulated interview questions and observational foci for year 2 based on key themes from Year 1 (see Constant Comparative Method, Glaser, 1965). This paper uses only data collected during Year 2.

Fieldwork for Year 2 began in June 2018 and concluded in December 2018. Researchers selected four male institutions located across the state using a maximum variation sampling (Coyne, 1997; Palinkas et al., 2015) strategy to ensure inclusion of different institutions based upon institutional demographics, including: institutional and RHU population, security level, and institutional age. The research team consisted of approximately 13 researchers with generally 10 researchers on each data collection trip. Researchers visited each institution once for a total of 4 days, totaling 1017 h of fieldwork. Researchers dedicated the first half-day to participant recruitment, then interviewed and observed residents and staff across the remaining days. Researchers interviewed and observed residents and staff on three of the four institutional shifts (6 a.m.–2 p.m., 8 a.m.–4 p.m., and 2 p.m.–10 p.m.). The team elected not to interview/observe staff on the 10 p.m.–6 a.m. shift for this project as most residents are sleeping during this time and resident movement for interviews is not possible due to a small staff team and institutional policies.

To select residents for the study, the research team approached each cell—if the occupant(s) was inside, awake, spoke English, and was mentally capable of giving consent—and asked if they were interested in participating in an interview. Researchers followed a specific recruitment script emphasizing the voluntariness of the research and explained that declining participation would not impact their RHU placement or standing in any way. During interviews, residents were reminded of the voluntariness of the interview and that they could end the interview at any time. If a resident agreed, researchers added their name to a hand-written list (agreement rate 90%; completion rate 45%). The research team then worked with correctional staff to begin selecting residents from the list (randomly) to ensure correctional staff did not choose interviewees.

In most institutions, interviews occurred within a previously agreed upon locale within the RHU including the visiting rooms, strip/psychiatric pods/cages, or in the supervisor's office. To ensure resident confidentiality, interviews were visible to correctional staff via eye or camera for safety of research staff, but staff were unable to hear the content of the interviews. Additionally, in accordance with prison policies, recording devices were not present in any of the interview locations. Researchers took brief handwritten notes over the course of the interviews. The research team developed a staggering strategy to interview participants, ensuring a break in-between interviews, allowing interviewers to add detail to their notes immediately after each interview. The researcher used the interview protocol to structure their interview notes and would use paragraph breaks within the notes to signal asking a new interview question. If researchers asked a follow-up question that was not specifically on the interview protocol, they would record a shortened version of the question in their notes. During the first visit, prior to new researchers interviewing alone, they would sit in on interviews with seasoned researchers to observe the interview and how the interviewer took notes. Periodically, the interviewer would pause to write, or ask the participant to repeat, a quote to ensure they captured it accurately. At the end of data collection each day, researchers typed handwritten notes into detailed field and interview notes. Interviews typically lasted 45–60 min each. All research protocols received approval from the researchers' IRB and the state's Department of Corrections.

To recruit correctional staff, researchers began by building a rapport with all staff on each shift. To build rapport, researchers spent time with staff in the unit and engaged in discussion about their jobs (e.g., length of time working in prison/unit), assisted with tasks (e.g., making rounds on the unit, delivering trays/commissary, separating/documenting property), accompanied staff to meals, and relied on institutional jargon to “blend in” (e.g., “going to chow [lunch],” “how do you like the bubble [the control room],” “describe the leadership of your L-T [nickname for lieutenant in charge]”). The rapport building occurred informally over the course of the staff's daily work on the first day of

data collection and presented an organic opportunity to participate in an interview on their next shift. While the staff interviews also lasted 45–60 min in total, they often did not occur in one block of time. Instead, staff would answer a few questions, do a bit of work, and return to the researcher as they could to answer more questions. Staff declined participation from lack of interest or due to time constraints (interview rate 54%). Researchers took brief handwritten notes during interviews, added detail after the interview, and then typed detailed field notes as soon as possible after leaving the field.

Across the four prisons in both RHUs and restricted/specialty units, researchers interviewed 177 residents and 59 staff (including COs, and noncustodial, but ancillary, staff including psychological staff, unit managers, and counselors). Of the 55% of residents who agreed to an interview but were not interviewed, reasons include: researchers ran out of time during fieldwork (75%); resident changed their mind about participating (11%), COs deemed the resident too much of a risk to pull out (e.g., the resident was verbally combative or recently assaulted a staff member) (10%); resident left RHU after placing their name on the list but before being interviewed (3%); resident spoke too limited English to continue interview (0.5%), or resident asked to stop the interview prior to completion (0.5%).

## Sample for this analysis

This paper considers staff and DC status resident perceptions of rights within RHUs. Although a larger discussion of the rights of administrative custody (AC) status residents in these punitive units is important, they are afforded many privileges not guaranteed to DC status residents (e.g., phone calls, visitation, specialized commissary, kiosk/tablet access, television/radio, and work details). Staff and residents both consider the experiences of AC status residents characteristically different than DC status residents. Researchers removed AC status residents from this analysis. Similarly, residents located in specialized RHU units such as for those with severe mental illness were excluded from the analysis. Researchers removed these residents/units from the analysis because they receive specialized programming and extended time-out-of-cell not afforded to their counterparts in traditional RHUs. Table 2 provides the sampling consort chart for final analysis.

Additionally, although the perspectives of ancillary staff in the unit (unit managers, psychology and counselors) are important, these roles are not responsible for day-to-day routines guiding meal dissemination, or yard and shower movement. Instead, COs are responsible for these tasks. In addition COs also provide materials (e.g., pens, envelopes, mail) to residents and act as the primary liaison between residents and other prison staff (e.g., medical personnel, psychologists). Thus, the present staff analysis includes only COs assigned to the RHU.

**TABLE 2** Study institutional characteristics and resident sample consort chart

	SCI1	SCI2	SCI3	SCI4	Total
Security level	Medium	Medium	Medium	Maximum	—
General population	2297	2577	2056	1814	8744
Traditional RHU population <sup>a</sup>	73	112	106	135	426
Agreed to participate <sup>a</sup>	54	62	95	77	288
Total interviewed <sup>a</sup>	14	30	38	49	131
Total RHU residents on DC status interviewed (this analysis)	12	24	26	27	<b>89</b>

Abbreviations: DC, disciplinary status; RHU, restricted housing unit.

<sup>a</sup>These numbers exclude residents in specialized RHUs. Consequently, the total interviewed residents presented here (131) is lower than the total number of residents interviewed for the overall project (177).



	SCI1	SCI2	SCI3	SCI4	Total
Race					
White	3	5	7	10	25
Black	8	14	16	16	54
Hispanic	1	4	3	1	9
Unknown	0	1	0	0	1
Average age	36	30	36	37	35
Average RHU time (days)	35	99	49	67	63

**TABLE 3** Demographic profile of disciplinary status resident subsample (residents = 89)

Abbreviation: RHU, restricted housing unit.

The total number of interviews used for this analysis includes 89 DC status residents and 25 COs (including frontline COs (N = 22) and frontline supervisors (N = 3)). Most staff in the sample are male (96%) and White (92%), consistent with nationwide (Camp & Steiger, 1995; Gandy, 2015) and statewide CO demographics. Compared to all incarcerated residents within the state prison system at the end of 2018, residents in our subsample were slightly younger (35 vs. 40 years old) and more likely to be Black (61% vs. 48%). On average residents in our subsample spent 63 days living in the unit as of the day of the interview. Tables 3 and 4 show the demographic profile of the resident and CO subsample discussed in this paper.

## Analysis

To begin analysis, the team linked all interview and observational notes to ATLAS.ti (a qualitative data management software). One researcher coded the data using an inductive, open-coding, line-by-line technique to first assess emergent themes about residents' rights in the RHU (Charmaz, 2006). Following this initial open coding, the researcher then coded interviews for examples of rights, instances when these rights and/or privileges were inaccessible, and rationales explaining why individuals could not access their rights. At the end of coding, a total of 147 codes were used for resident and staff interviews combined. The following section details the study findings.<sup>2</sup>

## FINDINGS

### Perceptions of residents' rights and access to rights in practice

RHU residents and staff overwhelming agree on the definition of rights within this restricted carceral space. Of the 70 RHU residents who offered a definition of rights, 70% described rights as "something you constitutionally have" or "something staff or the institution *have* to provide." RHU residents also described rights as something you are "entitled to," "guaranteed," and "something you are supposed to have regardless of if you are in trouble." Likewise, of the five RHU COs who offered a definition of rights, 80% described resident rights as "constitutionally granted" or "guaranteed by policy." RHU staff also noted that rights are "something that is required to be given and can't be taken away." Both RHU staff and residents refer to organizational, institutional, and unit rules, and the US Constitution as the origins of residents' rights.

When asked to cite examples of individuals' rights within the RHU, nearly 24% of RHU residents suggested they had *no rights* within the RHU while every staff member interviewed listed at least one

<sup>2</sup>All names used in the findings are pseudonyms to protect resident and staff identities.

**TABLE 4** Demographic profile of staff subsample (correctional officers [COs] = 25)

	Total	%
Institution		
SCI1	8	32
SCI2	10	40
SCI3	1	4
SCI4	6	24
Gender		
Male	24	96
Female	1	4
Role		
Frontline CO	22	88
Frontline CO supervisor	3	12
Shift <sup>a</sup>		
6 a.m.–2 p.m.	12	48
8 a.m.–4 p.m.	4	16
2 p.m.–10 p.m.	6	24
Military background <sup>a</sup>		
Yes	14	56
No	9	36
Race		
White	23	92
Hispanic	2	8
Average age	39	—
Average time in DOC (months)	95	—

<sup>a</sup>Percentages may not equal 100% due to missing data.

RHU resident right. Staff and residents collectively described 25 distinct rights (interviewees could list as many as they wanted). Table 5 outlines these perceived rights. Among these, the most cited rights by both staff and residents include meals, shower, and yard.

While most RHU residents listed or discussed perceived rights, they often did so in context with how/when they can expect them, reflecting the schedule of the unit. For example, RHU resident, Mikhail notes, “We get [yard] at least one hour a day, shower three times a week, psych treatment as needed, and three meals a day.” Similarly, RHU resident Daniels reports, “Linen exchange, it’s supposed to be on Tuesday. Yard is Monday through Friday, and we’re supposed to get an hour.” Likewise, staff also discussed RHU resident rights with the unit’s schedule in mind. For example, CO Ault notes, “Inmates in the RHU get five yards a week, three showers a week, three meals a day, bed, roll of toilet paper and basic cosmetics and clothing.” Similarly, CO Sorrell reflects, “Rights: Eat every day. Shower every day...wait, to be offered a shower every day.” However, the story is much deeper than baseline perceptions about what residents can have and when they can get it. For both RHU staff and residents, the story of distributing rights and accessing rights is about discretion and ambiguity.

Despite overwhelming agreement between RHU staff and residents that residents have several rights within the RHU, both groups report several instances and conditions under which residents struggle to access these rights. These conditions are so common within RHUs, both staff and residents name the practice: *burning*. A RHU resident might say, “I was burned for yard” or a CO might say, “I had to burn him for yard because he wasn’t standing at his door when I came by.” All told, RHU residents describe 115 occurrences of “getting burned” across 17 rights, as shown in Table 6.

**TABLE 5** Cited examples of resident rights in the restricted housing unit by residents and staff

Cited right	% Staff cited as right (N = 25)	% Resident cited as right (N = 89)
Meals	44	48
Showers	28	44
Yard	24	30
Mail	8	13
Hygiene products	12	6
Psychological services	12	2
Clothes	12	6
Law library	8	8
Medical care	8	6
Commissary	8	1
Grievance system	8	2
Bed	4	4
Property	4	4
Television	4	2
Writing materials	4	1
Linens	0	4
Phone	0	4
Sanitation	0	3
Water	0	2
Visits	0	1
Books	0	1
Winter clothes	0	1
School	0	1
Heat	0	1
Working toilet	0	0

Analysis reveals 71% of all instances of “burning” concentrate among three rights: yard (25%), showers (24%), and meals (22%). We focus the remaining findings exclusively on these specific rights, the reasons why burning occurs, and the conditions under which burning occurs.

## Describing and defending discretion

To further examine these three specific rights, we then considered the reported rationales or contextual circumstances present when staff burn residents. Across our data, nearly 60% of RHU residents (N = 53) describe a reason they or a fellow resident was burned for yard, shower, and/or meals, and 52% of staff (N = 13) describe a reason they personally burned or a reason a fellow staff member burned a resident for yard, showers, and/or meals.<sup>3</sup> Analysis suggests two primary rationales for burning. The first set of rationales includes burning for *expressive reasons* (33% of residents and 19% of staff described instances). This rationale includes denial or inaccessibility of rights based on personal characteristics (i.e., attitude, race/ethnicity, prior/current behaviors) or the relationship

<sup>3</sup>We cannot get more specific about the percent of residents who were burned or the percent of staff who burned. This was methodologically intentional. We asked questions about rule/policy violations in a way that allowed staff and residents to talk about themselves or others to avoid staff having to willingly admit rule-breaking and residents having to admit what they might perceive as their own weakness. In heavily bureaucratic and hyper-masculinized prison environments, self-protection is often crucial (for more on prison masculinity, see Toch, 1998).

**TABLE 6** Concentrations of reported instances of inaccessible rights

Right	Reported instances % of inaccessible rights (N)	Cumulative % of reported burning instances
Yard	25.44 (29)	25.44
Showers	23.68 (28)	49.12
Meals	21.93 (25)	71.05
Medical services	7.02 (8)	78.07
Sanitation	6.14 (7)	84.21
Hygiene products	2.63 (3)	86.84
Psychological care	2.63 (3)	89.47
Law library	2.63 (3)	92.11
Phone	1.75 (2)	93.86
Clothes	1.75 (2)	95.61
Heat	1.75 (2)	97.37
Mail	0.88 (1)	98.25
Visits	0.88 (1)	99.12
Winter clothes	0.88 (1)	100.00
Linens	0.00 (0)	100.00
Water	0.00 (0)	100.00
Working toilet	0.00 (0)	100.00
Total	100.00 (115)	—

**TABLE 7** Discretionary rationales for burning yard, shower, and meals according to restricted housing unit residents and staff

Rationale <sup>a</sup>	% of reasons residents cite (N = 53)	% of reasons staff cite (N = 13)
<i>Expressive reasoning</i>	33	19
Staff laziness	16	0
Emotional and interpersonal dynamics	16	20
<i>Instrumental reasoning</i>	67	81
Resource constraints	2	6
Informal individual/unit discipline	6	53
Policy enforcement	50	22

<sup>a</sup>Rationales cited by residents and staff are not mutually exclusive.

between a particular RHU resident and a particular staff member. The second rationale for burning stems from *instrumental reasoning*. This category of burning logic emerges from enforcement of policy, organizational challenges (i.e., efficiency, resources), and/or in pursuit of changing residents' behavior (i.e., deterrence/punishment). RHU residents report instrumental rationales present in 67% of burning instances while staff express using an instrumental logic in 81% of instances (Table 7).

## Expressive discretion

Inconsistent accessibility of RHU rights is regularly the product of staff behaviors. A sub-category of the expressive rationale for burning includes residents' perceptions of staff laziness. However, when

residents describe staff laziness as a rationale, it was exclusive to stories of yard or shower time (not meals). When asked why he did not receive his allotted yard time, RHU resident Carlos explains,

Sometimes I'll get burnt for yard because sometimes they've already ran yard, and there's three or four guys left [who haven't had yard time yet], and the guards think, "Oh, fuck 'em," because the guards don't feel like it. They don't feel like finishing up running for yard.

Carlos perceived his yard time on that particular day as inaccessible because of CO laziness. Other RHU residents concur with statements regarding CO laziness as an expressive rationale by noting, "When they [CO's] don't wanna work...be actin' lazy" and another resident notes, "They [COs] don't want to do their jobs." Although staff do not share the view they are lazy, both supervisors and frontline correctional staff (COs) corroborated the occurrence of dislike for individual RHU residents, or individuals in prison more generally, as the reason they, their peers, or subordinates occasionally burn residents. In many instances, this expressive burning may appear personal, but also serves the street-level bureaucrats' purpose of (hopefully) reducing resident behaviors that irritate and frustrate them.

For example, one supervisory correctional staff member, Vock, noted, "I observe certain officers...they have the wrong mindset." [What does that mean?] "A God mentality, they burn the [residents] intentionally." In more specific examples, several COs noted their burning occurred for expressive reasons when residents "whined." CO Clemons states, "A lot of what happens here I can relate to home...the guys act like my kids...I'm like a giant babysitter of adults...they whine when they don't get their way, at home I can ground my kids, here I can burn a shower." Similarly, CO Dunn says, "Officers burn guys for no reason at all, burn them in the wrong ways.... [for example, a] guy on [unit]G: the inmates know they get the kiosk [for e-mail, tablet] on Thursdays...but, the guy whines every day for the kiosk, so on Thursday the officer burns him for the kiosk."

There are, however, other COs who contend they personally follow the rules and provide rights, even if others on the unit do not. For example, CO Thurman notes,

If an inmate is supposed to have it, they get it. If not, then they don't. If you say you're going to do it, then do it. The only thing COs have to leverage around here is their word and their rapport with residents. The issue is when COs continue to burn inmates for stupid ass shit and then continue to burn them even when an inmate changes their behavior.

In this example, CO Thurman's personal RHU philosophy is to abide by policy without providing extra allowances to RHU residents. However, he notes that in the tightly controlled RHU environment with no "carrots" to incentivize good behavior, some COs use burning as a mechanism for discipline even after a resident's behavior improves. In his statement, CO Thurman recognizes that following policy *is* his leverage for eliciting good behavior. This provides residents with a level of consistency they can count on, especially in a unit where residents rely on staff for everything. However, CO Thurman also recognizes that other staff, at times, allow residents who instigate confrontation to dictate both immediate and continued inaccessibility of rights, potentially contributing to a level of inconsistency or erraticism of daily life that he does not support in the unit. In this way, CO Thurman's consistency for following policy operates, in practice, as an exception to the rule, rather than common practice.

Residents' narratives align with CO Thurman as they perceive staff behavior as flippant and inconsistent at best. RHU residents Alexander says, "The COs are disrespectful, they feel like they can do anything. They will burn you out for shower or yard because they want to" and resident Jamie echoes, "One time, I was waiting for my shower, standing half naked at my door [per policy],

and they still burned me for a shower. No reason.” Similarly, RHU resident Antwan notes the interpersonal dynamics at play, “Sometimes guys get burned. Even when they’re standing at the right time for sign-up. If the CO doesn’t like you, you get burned no matter what you do.” Another RHU resident, Anthony, concurs saying, “A CO will push the food cart right past a person because he doesn’t like him.” In a more thorough explanation, RHU resident Ollie states,

They burn you every chance they have. If you’re standing at the door with clothes, they abuse their power to avoid work. They don’t feed us, so I get hungry and don’t want to miss trays...The petty stuff they do I laugh about. They take advantage of us beyond reason, to avoid work. Food is less than in population [smaller quantities]. Inmates lose a lot of weight. [It’s] uncontrollable and unreasonable. [COs] don’t have to do that. Inmates are punished enough.

Ollie’s commentary speaks to the variability and inconsistency of staff discretion, and the larger resident perception that staff glibly select when they will and will not follow unit protocols to ensure residents access to their rights. Although staff narratives indicate agreement that this happens by their peers or subordinates, staff also offer more directive, intentional, and instrumental reasons for burning.

## Instrumental discretion

RHU residents and staff report most burning occurs for instrumental reasoning. We categorize these as instrumental reasoning because of the intentional nature of the rationale, including: policy enforcement, disciplining individuals/unit, resource constraints, and in pursuit of changing residents’ behavior or managing RHU workflow.

As mentioned, the RHU operates under a rigid, structural control model complete with specific timelines and policies defining movement, housing, and conditions. There are barely enough staff to maintain the flow for each shift according to regimented practices and rarely can the unit ask for supplemental staff to help get their work done. Staff are constantly moving in the unit because of the nearly nonexistent wiggle room for timing between yard, showers, count, property intake/exit, unit intake/exit, meals, and a list of other core unit responsibilities. Although not described often, both residents and staff recognize how resources constraints contribute to rights inaccessibility. For example, one RHU resident indicates yard may be canceled “because [the unit] might only have one CO available for yard” when policy requires two. CO Carvajal states, “I get it, inmates get upset when they can’t get the things they want and they can have. I’d be upset, too. But we just don’t have the man power to get it done with all the movement that happens.” CO Lerch further adds, “Inmates have a right to a shower and to go out to yard, as long as there’s enough staff and nothing else is going on.” His addition of “and nothing else is going on” speaks to the events that disrupt the unit’s routine and strict timetable (e.g., an attempted suicide or an assault on staff). These disruptive events further exacerbate the units’ limited resources (Lipsky, 1980) and potentially place staff in a position between facilitating access to yard/shower and meeting the eminent security needs of the unit.

The most commonly cited reasoning under the instrumental rationale by staff includes disciplining RHU residents. Interestingly, staff discuss burning residents for both serious unit violations *and* nonserious unit violations. For example, many COs reflect on burning residents for yard, showers, or meals when they act egregiously by throwing urine, feces, or assaulting an officer. Staff report burning instead of submitting a formal misconduct, and at times, in addition to submitting a formal misconduct. However, in other less-serious cases, staff also describe withholding access to shower or yard as a form of discipline. Across staff interviews, over half (53%) cite instrumental disciplinary reasons for burning residents on their rights. CO Gunther explains,

Why might an inmate not get to shower or go to yard? The only way they wouldn't get those is if they had an incident involving one of them. If an inmate had acted up during a shower...the officer might deny him a shower next time.

CO Gunther's statement illustrates that when residents misbehave while using the shower it often results in loss of that right. Although CO Gunther is nondescript regarding what an "incident" might mean, CO Fakhoury clarifies, "They get things depending on how they act. They behave, they'll get shower and yard. But, if they take shower hostage [refuse to leave it], then they aren't going to get the shower for the next few days." Together, COs Fakhoury and Gunther's explanations suggest an informal disciplinary mechanism at work within the unit—denying *future* access to rights. However, it is unclear in their narratives how many times the resident might lose the shower or if a resident might receive other disciplinary action and/or additional burned rights. However, CO Garcia offers this perspective, "In here you don't have no rights until you earn them back. Privileges are taken away so much because of inmate actions." CO Garcia's commentary aligns with earlier staff perceptions about denying rights access in pursuit of discipline and, importantly, changing residents' behavior. However, DC status RHU residents do not formally receive any privileges. Although "earning them back" for CO Garcia presumably means following the rules, this confluence of rights and privileges may speak to why both staff and residents believe rights are potentially *given* instead of *guaranteed*. Regardless, these disciplinary measures may reflect staff perception that burning is a necessary and proportional response for nonserious behaviors, but formal discipline (i.e., writing a resident up) is not necessary to take control of situations. In this way, staff invoke a specific deterrence approach to managing the unit (Stafford & Warr, 1993).

Some residents also recognize that staff deny rights access for disciplinary reasons (6%). For example, RHU resident Larnell (and others) explains why a CO denied him access to the shower noting, "I wasn't allowed to take a shower because I had a line hanging in my cell." Cell lines are makeshift clothing lines residents construct to dry their wet clothes or towel after yard or shower. Often, residents make these lines using materials from their sheets and mattresses. Building and hanging a line means a resident is breaking two unit rules: destruction of property and the explicit rule not to hang lines. Larnell recognizes his blocked access, an informal punishment, to the shower for the day was in direct response to his rule breaking.

While the most frequent instrumental rationale staff use entails disciplinary reasons, RHU residents most often perceive policy enforcement as a primary rationale for inaccessibility of rights (50%). Although it may seem policy enforcement is a form of discipline (and would justify collapsing the two categories in analysis), RHU residents insist policy enforcement is categorically different from discipline. In these examples, RHU residents do not believe they committed an infraction of prison rules worthy of discipline, as Larnell described. Rather, they simply believe they did not meet the conditions (formal or informal) necessary for accessing their rights. For example, RHU resident Vladimir describes the process to ensure access to shower and yard.

In order to get your shower and yard, there's a sign up. [Staff] come around in the morning before breakfast with the sign-up sheet for yard and shower. They aren't going to knock on your door to wake you up to sign up. You need to have your light on and be at the door for sign up [when they come by].

Vladimir's description of the process to access shower and yard reflect the conditions outlined in the RHU handbook provided to residents at intake to the unit. He suggests residents may be burned for yard or shower if they are not awake; as staff will not knock on their doors to elicit participation or ensure sign-up. At times, meeting RHU conditions for yard, shower, and meals is cumbersome for residents. For example, if they are new to the unit, have never been in a RHU before or are transferring from another prison, they may not know about or understand a particular unit's conditions for rights' access. RHU resident Henderson explains his difficulties with these conditions,

[Staff] say, "Showers." Then, they come around with a list. You have to be at the door with your shirt off. It's different everywhere. Some jails go cell-by-cell. At this jail, it's light on, no jumpsuit, but [wearing your] t-shirt. They come by with a list and then come around again [to escort you to the shower]. They try to burn you the second time. They say, "Showers," but not loud, so other residents call it louder, "SHOWERS!" "TRAYS!" If you're asleep, [COs] will walk right past you.

Like resident Vladimir, resident Henderson explains the requirement for signing up; however, he specifies the additional conditions for access that are different from other RHUs across the state, including the specific attire and cell light requirements. While these conditions for access are defined in this unit's handbook, they differ from the specific requirements for access to shower at other institutions. Although some level of *fit* or localization is expected per institution, access to and frequency of showers is standard across institutions. These additional and varied conditions contribute to the ambiguity of access to rights in action. Among residents who speak about this ambiguity, many recognize their legal rights, but perceive them—in action—as privileges. RHU resident Morgan details what this looks like for him, "It's a right to have physical activity for at least an hour. They treat it as a privilege because you gotta be up at 6 a.m., standing by your door, with the light on." Additionally, resident Carter explains, "[COs] try to confuse things sometimes....they treat rights like privileges, like they are doing you a favor, they get the two mixed up." Morgan and Carter's language suggests both the handbook policies and staff behaviors collectively transform rights into privileges, as described by CO Garcia, by forcing residents to earn the opportunity for access, instead of defaulting to guaranteed access. In fact, Henderson's narrative describes a unit camaraderie ensuring all residents are prepared to access yard, showers, and meals. Other residents also indicate how they help each other in the RHU with accessing rights. Some indicate they take turns with their cellmate to wake each other up and listen for the "med line" nurse (who dispenses needed prescriptions and who usually arrives about 15 min before sign-up). They also educate their neighbors by talking through air vents or toilets regarding the rules for sign-up. This collective action may suggest two reinforcing ideas. First, residents understand the importance of following the detailed conditions because they perceive not following a small part of the series of conditions is leveraged by staff as a rationale for denying their access. Second, and perhaps as a result, burning for this reason is so pervasive it requires group mobilization to overcome.

Staff also discuss the importance of residents following certain conditions for rights access. On average, each of the four institutions maintains about 137 RHU residents, all of whom must receive meals and access to yard and shower time. This places an incredible daily burden on the six to eight frontline staff and supervisors within each unit, especially during unforeseen and unplanned events that may take time away from daily, routine activities. Reliance on policy enforcement, cited by 22% of staff, helps them streamline this intense workload. CO DeCastro describes why enforcement is necessary,

There are times when inmates don't get these things [yard, shower, meals]. It happens that we burn them. I know I've burned guys, but I'm only burning guys by policy. An inmate needs to be at the door for him to receive his tray, or be pulled for yard or shower. If he isn't at the door when it's his turn, I can't be arguing with him, or waiting on him to get up and get ready. He and everyone else knows the drill. So, if he's not ready, then I'm going to keep walking. That's me burning him because he's not following policy, but not because I'm not willing to give him a tray, or bring him out for shower or yard.

CO DeCastro's commentary speaks to the need to enforce the conditions of access to manage workflow. In doing so, it places the responsibility of access to rights *on residents*, contributing to this larger unit narrative that *access* to rights is earned, the rights themselves are not guaranteed. This



shift in responsibility appears to run counter to how both RHU DC-status residents and staff first defined rights: “something they have to provide you with” or “something that is required.” However, in practice, not following conditions of access as outlined in the RHU manual may present as staff making rational choices to deny residents opportunities for rights access. Within RHUs, staff interpretations of law/policy and resident behavior collide. This perhaps allows staff to justify denied access as both policy enforcement and streamlining workflow. In this way, the context of the RHU’s structure, schedule, and resources plays a large part in how and when residents can access their rights to meals, yard, and shower.

## DISCUSSION

This paper considers the perceptions of rights and accessibility of these rights within four male RHUs and presents analysis in a unique context where the law-in-between operates via street-level bureaucrats’ discretionary decisionmaking. Data analysis of interviews with both RHU staff and residents suggests tightly aligned agreement regarding general *definitions/perceptions* of rights, with some fairly aligned thinking regarding what rights are (or should be) *available* within RHUs (rights on-the-books). Importantly, there is strong agreement from both residents and staff that staff use their discretion to *manage, distribute, and facilitate access* of residents to rights in in practice (rights-in-action). Their narratives diverge, however, about the more specific reasons *why* staff discretion operates as it does, but both perceive the larger rationales of decisionmaking as functions of expressive and instrumental reasoning. Both the expressive and instrumental rationales align with the core building blocks of Lipsky’s (1980) street level bureaucracy theory that posits street-level bureaucrats’ work is shaped by the nature, conditions, and context of the work and the inherent need to manage the complexity. When residents’ rights fall in-between formal law/policy and institutional/unit discretionary implementation, court-ordered and mandated rights hang in the balance at the whim of correctional staff interpretations of institutional policies. These findings suggest some similarities to other literature linked to the law-in-between, street-level bureaucrats’ discretionary decisionmaking, implementation of policies/practices/laws, and the amorphous nature of the law in practice. We discuss these points below.

If both residents and staff overwhelmingly agree on the definition of rights (at least as a concept) *and* both groups also mostly agree on the rights available within RHUs, why and how do residents experience burning (blocking access to rights) in this environment? We suggest this happens because in the RHU as staff are responsible for providing residents with everything and staff have the discretionary power to burn with little/no organizational oversight. That is, residents are not fed, clothed, showered, or allowed exercise without staff providing and overseeing these activities and no one is checking whether these things occurred. This places a tremendous occupational burden on a small crew of staff members (e.g., on a day shift, typically six to eight staff) who supervise an average of 137 residents daily. This creates multiple resource constraints for staff that may interfere with their ability or willingness to provide steady access to residents’ rights. Further, rights distribution includes the complex and sometimes cumbersome processes involved with providing residents access to showers, yard, and meals. Our data suggest staff rely heavily on one institutional goal—that of control—perhaps at the expense of others, including doling out access to resident rights.

Streamlining work processes is part-and-parcel of street-level bureaucracy theory and an abundant literature describes this process (Bjerregaard & Klitmoller, 2010; Brodtkin, 2011; Kras et al., 2019). Lipsky’s (1980) seminal work considers how street-level staff perform contrary to organizational rules and goals. He posits, “Decisions of street-level bureaucrats, routines they establish, and devices they invent to cope with uncertainties and work pressures effectively become the public policies they carry out” (1980, p. xii). Within RHUs, there are very few staff supervising a large number of residents (roughly 23:1). This, as Lipsky (1980) notes, creates a staffing resource constraint. Additionally, the work day is also incredibly packed with “must dos.” All these actions must happen

quickly and efficiently for the smooth running of the RHU. Combined with time constraints, RHU staff also face limited information (from their physical separation from the larger prison environment and inaccessibility to other prison staff), limited capacity to absorb information (in part, due to their tight and rigid work schedules and/or limited training or relative temporal distance from training to practice), and uncertainty (which includes the ever-changing RHU residents, the unpredictability of the day-to-day experiences on the unit, and staff capacity to make frequent and speedy decisions regarding RHU residents given all that is happening in the unit). To add to this, Lipsky also suggests that in street-level bureaucratic organizations, goals and performance measures are often unclear. As a result, street-level workers often ration services, work to control their clients by reducing uncertainty, protect their own resources, and attempt to manage the consequences of routine workplace practices. This is precisely the organizational environment correctional staff working within RHUs face. It is also a primary reason why correctional staff make discretionary decisions involving a variance between the rights-on-the-books versus the rights-in-action...yielding rights-in-between.

In RHUs, disciplinary status (DC) residents (like the ones we examine in this paper) are re-housed in RHUs for violating prison rules. They endangered themselves or others by not following established rules and procedures. They are remanded to RHUs as a disciplinary sanction. For RHU staff, this means they supervise a large group of individuals whose behavior in general population suggests they cannot control themselves and must now be controlled. Discipline is a primary and traditional mechanism for control in penal institutions. Privileges are used in a carrot/stick approach to both incentivize and deter prison residents to behave according to rules. However, once a resident moves from general population to the RHU and are placed on DC status, they no longer receive privileges. This means the carrot, or incentive, is removed from the RHU staff toolbox for managing resident behavior.

Within RHUs, there is no additional formal discipline other than issuing a misconduct report (that will usually result in extended RHU time) for managing behavior. And, at that point, the RHU does not act as a much of a deterrent because residents are already living there; taking more away is not possible as they already lost everything. This means unit policy violations (i.e., covering up a window, passing notes between cells) are virtually unmanageable because there are no formal/systematized ways for handling these behaviors/actions informally (in general population, residents can receive an informal write-up). Instead, staff must rely on what they have as leverage to try and encourage, or at times demand, rule-following behavior.

Burning residents may seem practically unavoidable given the resource constraints and discretion involved with RHU decisionmaking. However, what is it about yard, showers, and meals that specifically yields higher rates of burning than other rights? We posit meals, showers, and yard are the rights our respondents discussed most for a few reasons. First, their necessity: the need to eat and the desire to get clean and exercise—the only real opportunity for residents to leave their cells in the RHU—make them of higher regard to residents, and staff know this. Staff are trying to find the illusive carrot (incentive) in an environment devoid of carrots; they only have sticks to rely on (punitive measures). So, taking away rights is all that is available to them if they depend on punitive measures for behavioral control. Their necessity also provides a greater return-on-investment (ROI) to staff who deny these rights to residents. That is, burning RHU residents for these particular rights has a higher likelihood of affecting residents and a perceived higher likelihood of changing residents' behavior to align with formal or informal rules/policies.

Second, the sheer number of times these rights are theoretically distributed might explain why they are most frequently inaccessible. Residents receive meals three times a day, yard five times a week, and shower every other day (generally). That means these rights, in practice, occur more often. This gives staff a greater number of opportunities to deny accessibility; however, the story is deeper than that. The way these rights are handled procedurally within RHUs provides greater opportunity for staff to exploit these rights compared to others. RHU staff generally conduct sign-ups for yards/showers alone, meaning only one CO conducts "rounds" to have residents sign up for these rights. A CO may be able to skip a resident's door or just not write their name on the sign-up list without much oversight from other COs or supervisors. Meals are also delivered in a similar fashion with one CO moving a cart

across the top floor tier and one on the bottom floor tier handing out meals to residents individually. The number of conditions residents must follow to access meals, yards and showers means they have more metaphorical hoops to jump throughout at high volume throughout the day, with the sole discretionary power to instantaneously or spontaneously interpret policy regarding rights resting in the hands of one CO. This too, is perhaps best explained via Lipsky's (1980) street-level bureaucracy theory where street-level workers operate with vast autonomy and limited oversight to make discretionary decisions regarding the implementation of laws, policies, and rules.

Within the organizational and law and society scholarship, this study provides several important contributions. First, it shows us an example of what implementation of law, rules, and policies regarding rights looks like in practice; or akin to Jenness and Grattet (2005) the law-in-between (or in this case, rights-in-between). It provides fuel for the rights-on-the-books versus rights-in-action debate. It also provides illustrative examples of discretion in practice, reaffirms street-level bureaucracy theory, and further extends this theory into a unique carceral space. Additionally, it opens an important conversation about reasonable conditions for rights access. In this conversation, it is important to consider how the structure and operations of the RHU may make it even more cumbersome for residents to follow the long list of conditions (e.g. for shower; sign-up at 6 a.m., return to door at 9 a.m. with light on, towel around neck, wearing boxes and with toiletries in hand), many of which they do not understand, do not know about, and/or learn through trial-by-error or from other residents. Given established literature regarding the physical and mental health effects of RHUs (see Haney, 2003), a deliberate and thoughtful attention to "reasonableness" of the volume of conditions and the conditions themselves is required.

While our analysis relies on a theoretical framework bolstered by Jenness and Grattet's (2005) law-in-between argument, there are some discrete and noteworthy distinctions worth discussing. Our analysis expands or extends the law-in-between ideology beyond law and into the implementation of *rights* access in a way that differs from Jenness and Grattet's (2005) conceptualization of hate crime law enforcement. Although in both analyses organizational actors interpret the law on the books while residing in the middle between mandated laws/policies and the implementation of those laws/policies, the RHU does not present the same organizational structure present in their analysis of hate crime enforcement by police. For Jenness and Grattet (2005), law enforcement agencies may be influenced to interpret law via *perviousness*, which includes the sub-components of susceptibility (exposure to the law), alignment (likelihood to adopt a law based on agency/staff/leader characteristics), and ability (knowledge/capability to implement). However, the RHU context is decidedly different in several ways. First, RHUs may have a high degree of *perviousness* possessing the exposure, alignment, and ability to implement residents' rights access and possessing the required resources (e.g., showers, food, outdoor caged cells) necessary, but this may not be enough. In RHUs, *withholding rights IS itself a resource*. In a carceral unit with virtually no way of garnering behavioral compliance, staff seemingly operate in ways that redefine and transform rights into privileges—as though residents must "earn them back" or "lose them" in response to other maladaptive behavior. In the United States, conditions of confinement in the RHU have not been well-defined via case law, leaving correctional institutions and their staff with some leeway regarding how to interpret policy and law (the law-in-between). In theory, then, the protocols for access may not seem in violation of the law, but the implementation of policy may verge on a constitutional violation. However, this is yet untested. To international readers, this might be challenging to comprehend given the *United Nations Standard Minimum Rule (SMR) for the Treatment of Prisoners* (1955/1957/2015) states, among other standards, solitary confinement should only be used in extreme cases as a last resort and for no more than 15 days. However, the United States has not committed to the SMR (now called the *Nelson Mandela Rules*) and what we present in this paper is normative in the American carceral context. Second, while Jenness and Grattet (2005) suggest that policies may be merely symbolic (not influential on behavioral choices), or instrumental (help law enforcement officers make decisions), our analysis suggests a third option. In RHUs, correctional staff use rights-laws/policies differently than formally intended and make regular decisions to burn residents on these rights. In

this way, the law/policy is more than symbolic, but less than instrumental. Perhaps it is *functionally instrumental*, where denial of rights achieves a larger organizational or unit goal (control) at the expense of resident access to rights.

There are also distinct and crucial policy/practice implications for this research. This study's findings suggest a need to detail the policies regarding rights available to residents and work to ensure both staff and residents fully understand the formal policies/practices/rules around these rights. Where all staff and residents understood rights conceptually as something that is guaranteed and cannot be taken away, three basic rights: yard, showers, and meals are regularly denied or inaccessible to RHU residents. In an organizational environment like RHUs where residents are stripped of all creature comforts and are sanctioned/punished in extremely depriving conditions, some rights *must* be guaranteed—not guaranteed *access*, but the right itself: meals, showers, and yard, with no exceptions, *guaranteed*.

## Practical recommendations

While this study's contribution to organizational, legal, and policy literature (detailed above) represents important considerations for present thinking and future scholars, there is more this study can do at a practical level. Our study findings suggest a need for institutional reform within RHUs that better achieve institutional goals, works within existing resource constraints and routines/practices, and yields rights accessibility for RHU residents. To this end, we make two main recommendations. First, within the Eight Amendment model of current legal oversight, US prisons with RHUs should fervently consider whether current policies and practices ensure RHU residents receive their constitutionally guaranteed rights, including rights to meals, shower, and yard/exercise. While there are many such akin codes of conduct, the American Bar Association (ABA) (2011) notes the following regarding general population and RHU residents' treatment: (1) correctional authorities should provide sufficient access to showers at an appropriate temperature to enable each prisoner to shower as frequently as necessary to maintain general hygiene; (2) correctional authorities should not withhold food or water from any prisoner, and (3) correctional authorities should provide all prisoners daily opportunities for significant out-of-cell time and for recreation at appropriate hours that allows them to maintain physical health and, for prisoners not in segregated housing, to socialize with other prisoners. Each prisoner, including those in segregated housing, should be offered the opportunity for at least 1 h per day of exercise, in the open air if the weather permits (ABA 2011).

Second, to achieve adequate reforms in RHUs, we recommend re-designed practices that improve RHU residents' accessibility to all rights, but specifically including meals, shower, and yard. In the prisons in this study, this might include re-thinking how RHU residents sign up for showers and yard and receive meals. Instead of layering administrative processes where RHU residents sign up to receive their rights, RHU staff may consider working from the underlying assumption that everyone desires yard and showers on any particular shift/day. Opting-out, rather than opting-in, leaves the power of choice to RHU residents, rather than with their custodial guardians. Regarding meals, institutions should re-design meal delivery to ensure everyone gets a meal regardless of circumstances. This is not easy in many regards due, in part, to tight timelines, small numbers of staff, and the litany of other tasks that must conclude each shift/day. A meal policy redesign might include meal substitution bars or bagged meal options so that hot food does not get cold, and perhaps go bad, during periods when it is delivered, but not immediately consumed. However, again, viewing meals as a right includes giving residents access to that right *always*—even when a resident is sleeping, out of cell, or disruptive.<sup>4</sup>

<sup>4</sup>These are just "tip-of-the-iceberg"/baseline suggestions offered as a starting place for reform conversations within institutional spaces. None of the researchers on this project are (or have ever been) employed by a DOC, nor do any of the researchers claim expertise regarding policies and practices for supervising RHU residents. This small recommendation section of the paper is simply meant to offer some beginner-level practical suggestions to highlight the need for RHU rights reform.

## STUDY LIMITATIONS AND CONCLUSION

This study is not without limitations. First, the study presented in this paper only considers four of one state's prisons. It is not meant to be generalizable to other state systems or even other prisons within this state system. Rather, its inherent value is that it provides a detailed and pronounced glimpse into daily RHU life for both staff and residents and in doing so, signals important considerations other research neglects or ignores. Second, our data do not include interviews with every RHU staff member in each RHU. Our research protocols are built to ensure a good representation of custodial and noncustodial (supervisory, psychiatric, etc.) staff, but again, it does not provide a complete picture. Rather, it is a representative picture of the staff in the RHU units in only these four institutions who were available to speak with our team. Third, because our data are primarily interview data with staff and residents, it does not adequately provide information about the interpersonal dynamics between COs and residents that might cause or contribute to individual COs to ebb and flow with their rationales for burning. For example, COs may have a connection with a resident who may not get burned for the same actions/behaviors that another resident may get burned for if that relationship does not exist or is weak(er). Our data cannot show the consistency of rationale use among residents, shifts, days, or with varying staff crews. While we can show some of the conditions producing "burning" according to residents and staff, more information is needed regarding the frequency and consistency of burning and the scope of this issue more generally. We also do not know with certainty, from current data, how long burning for a particular right lasts for particular residents. Future research must consider the ways residents mobilize to achieve their rights. Some work on this topic exists (Reiter, 2016) regarding collective action such as hunger strikes, protests, riots, and the like. However, at the micro-level, we know little about individualized, day-to-day behaviors/actions to access carceral rights. Regardless of several shortcomings, our robust data suggest an important misalignment between perceptions and actions, or rights-on-the-books versus rights-in-action that requires additional research on these crucial rights-in-between.

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