

Hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights,
and Human Rights on Solitary Confinement in U.S. Prisons
July 19, 2012

Statement by Alice and Staughton Lynd

“[W]e are satisfied that assignment to OSP imposes an atypical and significant hardship
under any plausible baseline.”

Wilkinson v. Austin, 545 U.S. 209, 223, 125 S.Ct. 2384, 2394.

As volunteer attorneys for the American Civil Liberties Union of Ohio
Foundation, we were two of the attorneys who represented the class of prisoners at the
Ohio State Penitentiary (OSP), a “high maximum security” institution built in reaction to
an uprising at Ohio’s maximum security prison in 1993. *See Austin v. Wilkinson*, 189
F.Supp.2d 719, 722-23 (N.D. Ohio 2002).

When we first learned that Ohio was planning to build its “supermax” prison in
Youngstown, not far from where we lived, we read articles by experts including Craig
Haney and Stuart Grassian, and cases such as *Madrid v. Gomez*, 889 F. Supp. 1146, 1265
(1995). We collected statements by prisoners who had experienced prolonged solitary
confinement. One of them wrote to us about the lingering effects of having spent two
years in solitary confinement:

This kind of treatment scars an individual for life. . . . To say that one loses his
self-esteem and dignity is a gross understatement. . . . I have never felt like the
same person since then, nor shall I ever, because I'm not the same person
anymore. . . .

Even after 13 or 14 years, I can still feel the anger, resentment, and the
hate. The loneliness and pain were at times more than I wanted to bear, and I
often contemplated death, but revenge drove me on. Bizarre thoughts abound in a

depraved and/or deprived mind--thoughts so scary that you dare not tell anyone else. At first, these thoughts scare you, but then through rationalization you justify them and they comfort you. Eventually you even start acting those thoughts out at any given opportunity. Your feelings become calloused and desensitized--you forget how to feel your pain and the pain of others as well.

You lose those human qualities and values that are so important to life. You stop punishing yourself with guilt, because what you did is far less than what is being done to you. You forget what compassion is, because none is shown to you. You're afraid to even dream, because all hope is gone. But worst of all, you lose your ability to forgive, and you learn how to hate with a passion that becomes your only driving force.

We corresponded with and became acquainted with men on Ohio's death row who were among the first prisoners to be transferred to OSP when it opened in May 1998. We made the first visit to any prisoner in that institution in June 1998.

By the summer of 1999, we had a list of one hundred prisoners at OSP who had written to us about conditions of confinement and lack of notice as to why they were placed at OSP or how they could appeal. From time to time we would contact the prison administration to raise concerns based on what we were hearing from the prisoners at OSP. We contacted the prison administration when we heard that Anthony Williams had been on suicide watch, was returned to his cell, and the guards were taunting him. A week later the Warden's Assistant phoned us to tell us Anthony Williams was dead. He asked us what OSP could do to give the prisoners more of a sense that life was worth living.

Alice Lynd sent a form letter to approximately 100 prisoners at the Ohio State Penitentiary, enclosing a form asking prisoners the following question: “If someone asked you, WHAT COULD OSP DO TO MAKE YOU FEEL YOUR LIFE IS MORE WORTH LIVING, what would you say?” Here are some of the responses we received.

- I don't know that anything (material) can be applied that would make me feel my life is more worth living. Every day I wake up with the knowledge that at some point during the day I am going to be humiliated, and that this little space in which I exist is going to be violated, and that whatever attempts I make towards maintaining my humanity will be challenged by an attitude of indifference that's designed to make me feel like an animal. And I would say, it doesn't matter if you gave me all the televisions and commissary in the world; none of those (things) will make a difference if the willingness isn't there to treat me like a human being.

- They could begin to let me feel as if I were alive, because this is a very dead feeling place. I feel like an undead zombie in this place.

- [T]he institution is geared toward devaluing one's self worth by reducing one's life to a level of constant frustration, depression and loneliness. . . . Locked in a cell alone and nothing is done to help me cope or prepare me to re-enter general population or society. One's entire time spent here is done constantly battling frustration, depression and loneliness and when one leaves here it's a guarantee that they'll depart with a extremely high build up of those negative feelings.

- They makes us feel less than a human being. They degrade us, take away our pride and break our spirits. They even take away our hope. What do we have left? Nothing.

- Since arriving at OSP I've been so humiliated, harassed, degraded, threatened, dehumanized that I have lost hope of getting out of prison until my maximum expiration date of 25 years. I may not even live to see my freedom.

- OSP is a high-tech dungeon designed not to rehabilitate, but to dehumanize and drain our very souls. OSP's voice declares that this prison is a controlled and stable environment, but it provides no clue to outsiders about the perpetual inner-turmoil and hostilities.

- I like most prisoners here at OSP am bored and fed up with the constant nothingness of our confinement, especially, considering that a lot of prisoners here at OSP have attempted to communicate with the administration [and] staff to develop more activities, programs, etc. Also to correct or adjust situations causing problems. And as in most of our communications, we've been spun, ignored, lied to, or simply put on perpetual hold. This is only adding to the frustration.

- I have not breathed fresh air or felt the sun in 1 year and 2 months. . . . The existence here is stifling, boxed-in, and the extensive "cabin-fever" is breaking people's minds. We have no door to the outside, physically or mentally. . . .

- They have me in a cell that has a wall right in front of it. I cannot see the sun, sky or anything. All I can see is that wall right in front of my cell

window. The administration calls this wall a light shaft. . . . My cell stays dark and gloomy at all times of the day.

This situation has me so depressed that it is like I can just feel myself slowly slipping down into what seems to me a bottomless black pit. This cell feels like a tomb to me. I don't know how much more of this I can take. . . . I just can't handle it. . . .

[W]hen a prisoner is involve[d] in an incident, if there is a cell open on the "wall side," it's highly likely they will be transferred to that cell. . . . It seems that the prisoners in those cells suffer from a higher level of despair and foreloneness [sic] than even the rest of us.

- [T]his is a really "spooky" place, . . . giving the strongest man a strong sense of utter hopelessness, dark and gloomy.

- OSP is Hell in [the] sense of living and dealing with guards' verbal and physical abuse and harassment every day.

- Since coming to OSP I've been treated more like a animal than a man. Often I'm treated ruff physically. I am very passive and will never give them trouble. The attitudes of most of the C.O.'s is such [a] one of hate The C.O.'s treat us like they are doing a big favor to take us to the shower or give us our mail, food, clean clothes. Serious harassment verbally. . . . They create a hostile environment with their actions. . . .

- You are treated like a dog. . . . They want you to respect them, when they are dehumanizing you. . . .

- I've been trapped here for over a year and I've seen the foul treatment that other inmates have received. When you keep beating a dog what's that dog going to do? Bite you. What would that dog do if he had no hope and nothing to do? I will be released from here in November and you know what, I'm a very bitter man. These people who work here at O.S.P. are told to play games to get inmates to "go off" so they can use their new "toys" like the shotgun that fires rubber rounds. We are nothing more than lab mice. . . .

- By nature if you hate me it's only natural I hate back. How you expect us to act when get out--love thy neighbor. Society don't understand the whole big picture so how you expect prisoners to get out and love someone who has hated us. . . .

- The current attitude of this place is very clear: We hate you inmates; you don't deserve anything, including being treated humanly; you're all just scum and we hope you never get out of here.

- All these things . . . build aggression & people handle it in different ways. Some take their life while others build up such a hate for them that later on it could all come out & someone could get hurt. They bring you here, separate you, & eliminate all contact, thinking that it will mentally break you down, but in all essence it's creating a person who could possibly become very dangerous to himself or others.

- I ask for the respect I give to the staff to be given back to me. Let me do my time in peace. That's all I need to do my time.

- Inmates should be allowed to share things with other inmates in the same block. That will help ease the tension, frustration and depression.

After the third suicide attempt, we assembled a team of lawyers and filed a class action claiming violations of the Eighth and Fourteenth Amendments to the Constitution of the United States. The cruel and unusual punishment claims pertaining to medical and mental health care and lack of outdoor recreation were settled. The due process claims were tried, appealed, and affirmed in part and reversed in part in a unanimous decision by the Supreme Court of the United States in *Wilkinson v. Austin, supra*.¹ Before a prisoner can be placed in supermax confinement, he must be given notice, hearing, and the opportunity for two levels of appeal. The decisionmaker must provide a short statement of reasons that can serve as a guide for future behavior. *Wilkinson*, 125 S.Ct. at 2396.

Imbedded in the classification policy that the District Court found acceptable upon remand, binding in Ohio and of relevance to other states, are the following due process rights.

- An inmate may not be referred for placement on level 5 (Ohio's highest security level) unless he has been found guilty by either a court or a Rules Infraction Board of one of a limited number of specified offenses.

- Before a prisoner is placed on level 5, he must be given a Notice of Hearing that states "at a minimum, notice of the conduct or other factual basis giving rise to the inmate's proposed placement at level 5" and the Rules Infraction Board disposition or the sentencing entry for the triggering misconduct should be attached to the notice. A

¹ Cost was among the interests considered both by the District Court and the Supreme Court. "The cost of keeping a single prisoner in one of Ohio's ordinary maximum-security prisons is \$34,167 per year, and the cost to maintain each inmate at OSP is \$49,007 per year. See *Austin I, supra*, at 734, n.17." *Wilkinson*, 125 S.Ct. at 2397.

boilerplate statement that he “poses the highest level of threat to security” or comparable language is not sufficient.

- The inmate must be given the opportunity to appear and be heard by a Classification Committee at which he can present any relevant information, explanation, or objections to level 5 placement.

- The inmate must be given a copy of the Classification Committee’s written recommendation providing the reason(s) for its recommendation and the sources of information relied on. This statement must include every basis for the recommendation. It may not be merely conclusory. The inmate then has fifteen days within which to send written objections to the Warden. Similarly, the Warden must make a recommendation and must articulate the reason(s) for the recommendation and list the sources of information relied on, including every basis for the recommendation.

- If the Classification Committee recommends against placement on level 5, the process terminates unless the Warden gives the inmate notice, the reason for reversal [such as a new and serious offense], an opportunity to respond, and a reasoned decision for reversing the Classification Committee’s recommendation against placement on level 5.

- After the Warden’s recommendation, the inmate has fifteen days within which to file formal objections with the Chief of the Bureau of Classification. The Bureau of Classification makes the final decision, and the inmate must be served with a copy of the Bureau’s decision prior to transfer to level 5 at the Ohio State Penitentiary.

- If the Classification Committee, the Warden, or the Bureau of Classification intends to rely on a statement not previously known to the inmate, the substance of the

information must be disclosed to the inmate and the inmate must be given a reasonable opportunity to respond with a written statement or documentary evidence.

- All level 5 inmates have their security level classification reviewed at least annually. The procedures for retention on level 5 are comparable to the procedures for placement on level 5: notice, hearing, written notice of reasons and sources of information relied on, and appeal from the recommendation of the Classification Committee to the Warden and then to the Bureau of Classification.

Despite these procedural improvements, it remains the case that some prisoners have been retained at OSP for more than a decade without the opportunity to be in the same space at the same time with any other prisoner. Too often the security level review is meaningless inasmuch as there is nothing the prisoner can do to convince the decisionmakers that he can be safely housed at a lower security level.

We have received letters from supermax prisoners in other states where conditions of confinement and classification procedures are worse than at OSP. While cells at OSP have a narrow window (as one prisoner put it, you look out first with one eye and then with the other), some supermax prisons have no windows.

Prisoners do not learn how to “cage their rage” by watching programs on the institutional TV channel and filling out paperwork. They need normal human contact and feedback. They need hope! One prisoner wrote to his mental health counselor asking for a copy of *Man’s Search for Meaning*.