

SKATZES/LUCASVILLE FIVE SUPPORT BULLETIN NO. 13. JULY 1998

Ed. All of the Lucasville Five were transferred from Death Row at Mansfield Correctional Institution to the Ohio State Penitentiary (OSP), the new State "supermax" prison in Youngstown, Ohio. In commemoration of the fifth anniversary of the Lucasville riot that began on Easter Sunday 1993, the new supermax was opened for tours on Easter weekend 1998. Prisoners began to arrive on May 4, even though construction was not completed and in other ways the prison was not ready to open. The Lucasville Five were among the first to arrive. In this bulletin we will tell you about some of the conditions there and some of the issues that are of most concern to prisoners at OSP. Information comes from more than twenty of the 110 prisoners already at OSP, plus other sources.

Criteria for selection of prisoners to go to the supermax

Upon arrival at OSP, prisoners were given an Inmate Handbook that begins by saying:

An inmate is placed at the Ohio State Penitentiary because of their assaultive, predatory, or other dangerous criminal conduct while in any institution, or because of the inmate's serious threat to the security of the institution in which the inmate currently resides. The placement at the Ohio State Penitentiary is for an indefinite period of time with scheduled reviews by the Administrative Behavior Review Committee.

However, prisoners were selected and sent to OSP before any written guidelines were available. Even after the first prisoners arrived at OSP, prisoner advocates were told that policies and forms were still being written.

Not until some time in July did several OSP prisoners obtain copies of a memo to "All Wardens" from the Department of Rehabilitation and Correction's regional directors for the northern and southern parts of Ohio dated April 15, 1998 re "High Maximum Classification."

This memo says a departmental policy is being written which will formalize the distinction between high maximum security and other security levels. The Ohio State Penitentiary will house inmates assigned to high maximum security status. This status is a security classification, not a special management status such as administrative control.

Criteria for high maximum security status include these and other factors: The nature of the inmate's criminal offense indicates that the inmate poses a serious threat to the physical safety of any person, or to the security of the prison (i.e., convicted of aggravated murder during the Lucasville riot); the inmate functions as a leader or enforcer of a security threat group (i.e., a gang leader); and the inmate has demonstrated an ability to compromise the integrity of staff (vague). Inmates who present the highest level of security threat will be recommended to high maximum security status.

"The department's general procedures for rating an inmate's security risk factors will have application as will procedures for appeals of security assignments." Specifically, assignment of inmates to high max shall be in accordance with procedures for security classification and reclassification review. One of those regulations says that if an institutional transfer is recommended it is to be done as set forth in the regulation on institutional transfer, which provides for administrative transfer if the presence of the inmate in the transferring institution constitutes an immediate and probable danger to the security of the institution, to inmates, staff, institutional property, or the inmate himself.

Lack of notice

The institutional transfer regulation says that an inmate to be transferred shall be given at least twenty-four hours notice when practicable. None of the Death Row prisoners were given notice. Some prisoners from other prisons were given notice, or were told to pack and send home property prior to transfer.

The reclassification regulation says that whenever a change in supervision level or a material change in program is undertaken, a conference between the inmate and at least one member of the institution classification committee shall be held, with 48 hours prior notice and an opportunity to submit written statements. A number of prisoners say they had a review of their status in administrative control (AC) shortly before they were sent to OSP, and some were told they were to be released from AC to general population. As far as we know, no prisoners received any notice that they were being reclassified to high maximum security, or any opportunity to submit oral or written statements. One man was specifically told at his AC review that he would not be going to OSP.

The reclassification regulation provides for appeals. To the best of our knowledge, no prisoners were notified of their right to appeal their change of status or their transfer to OSP.

Mental health

Prisoners were to be screened so that inmates with serious mental illness would not to be sent to OSP. However, there are numerous reports of prisoners now at OSP who have a history of mental illness or mental retardation and suicide attempts. There is an unconfirmed report that at one institution the doctor was told to remove some prisoners from the mental health case load so that they could be transferred to OSP. This issue will probably turn on what is defined as "serious."

There is helpful legal precedent. In a case considering the constitutionality of supermax confinement at Pelican Bay in California, a federal judge wrote that restrictive and even harsh conditions are permissible unless they are "so extreme as to violate basic concepts of humanity and deprive inmates of a minimal level of life's basic necessities." However, for inmates who are "already mentally ill, as well as persons with borderline personality disorders, brain damage or mental retardation,

impulse-ridden personalities, or a history of prior psychiatric problems or chronic depression," placing them in a supermax is "the mental equivalent of putting an asthmatic in a place with little air to breathe." [Madrid v. Gomez, (N.D. Cal. 1995).]

Security or punishment?

Prisoners at OSP are kept in individual cells, 7' x 14' feet less space occupied by plumbing and fixtures (smaller than a space in a parking lot). On most days they are allowed a shower and recreation in an empty indoor space smaller than the cell, some of which have a grating to permit outside air to come in. When out of the cell but within his pod, each inmate is cuffed with his hands behind his back, one officer holding each arm and another with a stick walking directly behind him. If he leaves his pod for a visit or for any other reason, he is strip searched before and after, and his bare ankles are shackled.

Visits are by appointment only, and only on Wednesdays and Thursdays (prohibitive for some working relatives). The prisoner, in shackles, is escorted to a visiting booth by three officers, and sits on a fixed stool. Visitors sit in chairs on the other side of a glass partition. The prisoner's hands are cuffed to his waist with the left palm down, right palm up, and a rigid box holding his hands a few inches apart, which prisoners describe as too tight, unnatural and uncomfortable. The prisoner is locked into the booth on one side and the visitors are locked into the booth on the other side of the glass. Sound travels through a molding around the edges of the glass. Guards sit near the visitors or walk up and down the corridor.

Prisoners are supposed to have access to their legal work but there have been many complaints of delay in receiving it, some of it improperly sent home, or never found. When received, all binders, staples, paper clips and rubber bands have been removed. Cells are searched every time a prisoner goes out for recreation or a shower, so papers become disarranged. Legal books such as law dictionaries and self-help litigation manuals have been removed from their legal property, and requests to have hard covers torn off those books so they could have them have not been successful. The prison library is not yet up and running. Requests for copies of specific cases, and requests for photocopying, are met after long delays or not at all. Phone calls with attorneys must be initiated by the attorney.

After a 28-day period of orientation and assessment, most prisoners are moved to general population level 1. Possession limits at level one allow for one soft cover Holy book, four small photographs (which may not be attached to the cell wall), four personal letters, 1 roll of toilet paper, 1 pair of rubber shower shoes (requests for medically-prescribed orthopedic shoes or gym shoes have been denied), 2 pairs of underwear (but as yet no T-shirts or socks), etc. They are not allowed any clothing, food or mail order packages from outside.

Except for one Holy book, they are not allowed to possess any books or printed material--no newspapers, no magazines, no calendars, no radios, no cassette players, no typewriters, etc. Catholics cannot have both a Catechism and a Bible, Muslims and

Catholics cannot have prayer beads, Muslims (and Jews if there are any at OSP) cannot have prayer caps, etc. (The inmate population is predominantly African American.)

No educational programs are available for anyone who has a high school education or GED, and we have heard of no one who has begun a GED program. Two inmates reported they were given crossword puzzles.

Under these circumstances, prisoners at OSP remark that the conditions of their confinement in "general population" at OSP are far more restrictive than in local control or administrative control ("the hole") in any other prison. Prisoners at OSP are allowed less than a regulation specifies as minimum cell privileges available to death row inmates. Prisoners argue, they are doing their time (or facing death) as the sentence for their crimes (or whatever they were convicted of doing). But if they are in general population, why are they being treated so punitively? They do not see any security reason for many of the restrictions.

When do they get out of the supermax?

The April 15 memo to All Wardens says that OSP inmates who no longer require high maximum security status will be moved to SOCF (Lucasville). But what are the criteria for determining that a prisoner no longer requires high maximum security status?

The Department of Rehabilitation and Correction uses a Supervision Classification Form that assigns a certain number of points for various factors such as the severity of current offense, prior felony or misdemeanor commitments, history of escapes or attempted escapes, history of violence (major or minor and how many years ago), etc. There are boxes at the bottom of the form corresponding to different security levels. On an old form, 0-6 points is Minimum, 7-13 points is Medium, 14-24 points is Close, 25-38 points is Maximum.

We are told that two new classifications are to be added: High Close and High Maximum. But since there are no new forms (or were none at the time the Lucasville Five and other prisoners arrived at OSP in May), no one seems to know how many points it takes to be rated High Maximum, or, based on his own record, whether a prisoner in High Maximum could ever have few enough points to drop down to Maximum.

The theory underlying supermax confinement is "behavior modification" (otherwise known as carrots and sticks). Each prisoner was to receive an individualized behavior modification plan. Here is an example of a Behavioral Management Plan that seems to be typical.

Problem: Discipline

Goal: Improve Discipline

Objectives: Follow all Rules and Regulations while at OSP.
Reduce the number of Conduct Reports from your prior Institution.

Hygiene articles

The Inmate Handbook says, "You will be issued: a toothbrush, toothpaste, soap, shampoo, deodorant, and toilet

tissue as needed. Empty containers will be turned in to receive new ones." However, on June 6, 1998, prisoners received the following notice:

UPON YOUR ARRIVAL AT THE OHIO STATE PENITENTIARY YOU ARE ISSUED A RECEPTION PACKET. THIS PACKET DOES INCLUDE THE FOLLOWING ITEMS: TOOTHBRUSH, TOOTHPASTE, DEODORANT, ALL IN ONE SOAP. AFTER YOUR INITIAL ISSUE OF THESE ITEMS YOU ARE REQUIRED TO PURCHASE THESE ITEMS FROM THE COMMISSARY. IF YOU ARE AN INDIGENT STATUS INMATE THESE ITEMS WILL BE PROVIDED. YOUR INDIGENT STATUS WILL BE VERIFIED THRU THE CASHIERS OFFICE.

These hygiene items are issued by the State at no charge to prisoners in other Ohio institutions. Prisoners report that their state pay while at OSP ranges from \$3.00 to \$9.00 per month. If a family member is working and sends money, the prisoner is not regarded as indigent.

A 4-ounce tube of All-in-One liquid soap (to be used for shower, shampoo, and shaving) costs \$1.00 and lasts about four days. Because of commissary and possession limits, prisoners could not buy enough to last from one commissary date to the next, resulting in their inability to wash with soap after tending to bodily functions or before eating. Prisoners pleaded unsuccessfully for a bar of soap that would cost less and last longer.

Although the Inmate Handbook says "toilet paper as needed," it is only available on Mondays, Wednesdays and Fridays on first shift. A prisoner who had a half roll on Friday was told he could not get another roll before Monday. Problems have arisen for men who have frequent bowel movements.

There are also many complaints as to the quality of the hygiene articles. At first the toothbrush is only a small cylindrical piece of plastic that slips over a finger and has a one bristly edge. Later they receive a mini-toothbrush, made in Thailand, that one prisoner says is worthless after a few uses. Another prisoner wrote that the toothpaste doesn't last, doesn't clean the tartar from your teeth, and if you turn your toothbrush upside down the toothpaste will drip off.

Grievance procedure

Prisoners complain about a "do-nothing" grievance procedure: kites (notes to someone higher up) come back marked "noted"; there is no response to complaints or the response does not address the issue; they promise you things you never get; the Institution Inspector does not investigate complaints; and when you request a grievance form you get the run-around. Inmates are required to attach their only copy of the ICR [Informal Complaint Resolution form] when they submit a grievance. The Institution Inspector wrote in reply to one request for grievance forms: "If you do not have a copy of ICR with response, explain in your kite what issue you want to grieve and what transpired with the ICR. If appropriate, I'll send you a grievance form."

In addition to the cost, limited quantity, and inferior

quality of the hygiene articles available from the commissary, prisoner complaints cover a long list of topics: no hot water in the cells; cold food, insufficient food (hungry all the time, portions small for a 5-year old), no extras, commissary food has pork in it; prisoners can't have tobacco (want cigarettes to reduce hunger and stress) but smell smoke from guards smoking; can't go outside, no exposure to direct sunlight, no equipment in recreation cages; time in shower may be held strictly 5 minutes which is not enough to undress, shower, and be ready to get out, or prisoner may be left standing in the shower for an hour or more; it takes 5 minutes for the water in the shower to get warm; showers are not cleaned, or are cleaned at the end of the day so men scheduled for afternoon showers never get clean showers, floors but not walls of showers are cleaned; mop water is not changed from one pod to the next, etc., etc.

These may seem like trivial complaints, but they are not easy to live with when you are cut off from contact with the outside world and cannot take care of anything for yourself.

Changes

Things change from day to day and week to week. The following changes for the better have occurred, partly in response to objections raised by prisoners and their advocates. During visits, prisoners hands are cuffed in front of them rather than behind their backs. There is no time limit on legal visits. Inmates can bring paper and a security pen to a legal visit (this after a prisoner was admonished for having brought a list of topics he wanted to discuss and two legal citations to an attorney visit--he had requested permission one day before the visit and was told when challenged that he should have allowed more time for his request to be granted).

The limit on commissary purchases has been raised from \$12.50 to \$20.00 every two weeks. Prisoners can now buy disposable razors, nail clippers, and drinking cups at the commissary. The razor and nail clippers are kept in a bag that is given to them for five minutes to shave. The drinking cups were necessary because the water pressure is too low for them to drink from the faucet. According to one prisoner, it takes 12 seconds to fill a cup with water.

After more than two months of only closed circuit TV between 8 am and 3 pm, knobs for black and white TV sets have been provided so prisoners can change the channel and watch ABC and CBS broadcasts around the clock. Some prisoners say, without an antenna they can only watch if they can gerry-rig the TV. Another says, only those prisoners who agreed to participate in institutional programs got the knobs.

A couple of prisoners report being offered paperback books to read. One said he was offered a choice of two books and took one.

However, another wrote:

The Warden came around talking to inmates today and stated that now inmates can only get radios once they're in Level

3. Well this blew me away because prior to this there was only Level 1 and Level 2, now there's a Level 3.

Medical treatment

Prisoners received a written notice with information about sick call, \$3.00 co-payments for medications, a 10-step procedure for taking a pill while the nurse observes, and stating with regard to seeing a foot doctor, eye doctor, dentist, or other specialty service, "You will be placed on a waiting list."

One prisoner says he is diabetic and should see a foot doctor and an eye doctor regularly, but OSP has neither. Another prisoner says the doctor at the prison where was before OSP had ordered orthopedic boots for him, but at OSP, he was informed, no special shoes will be given. A couple of prisoners report that they have been denied medically approved gym shoes. Another man says he has gum disease and his teeth are rotting but OSP has no dentist. Several prisoners have reported difficulty getting their prescribed medications, and one who bought medication had it taken away from him by the nurse after four days. A man with a history of surgery for stomach ulcer, now having stomach pain, says he has been denied ulcer medication. An inmate who had hip replacement surgery is not allowed to use a cane to go to the shower.

One prisoner who had cornea transplants requiring him to wear glasses and to be seen by a specialist every month or two, was told when they took him for a medical round trip that he could not wear his glasses.

Another prisoner, who had had three back surgeries, said he was sent to Columbus for a medical appointment. He told the guard he had a bad back.

But that didn't stop the C/Os [correctional officers] of tightly placing the waist chain on me and pulling and twisting me while walking with me. I was leg-iron, handcuffed with a black box and belly chain, and C/Os still found the need to grab my arms while a C/O on the back walked behind me with his stick drawn like he's holding a shotgun.

When he told the doctor how he had been treated, the doctor said he would not do anything against security.

This anecdote is the more believable because something similar is described by another prisoner:

This is just one example of the power of officers here. Their any whim or game is unresistable because it's backed in force by their superiors because they want it known, "this is a spot where we are boss. We say 'jump' you say 'how high.' We are in total control and you'll bend to our whims." Even when you are being escorted, some cops will walk you real fast so that you actually have to lean back to try and brace yourself and maintain balance; the whole time your ankles are getting torn up because of no socks. Or they will each--one on each arm--swing their arms as they walk so that your body is jerked forward, backward, forward,

backward, and you can not even walk; you simply stumble along, ashamed at your inability to walk upright and embarrassed that you can't do anything to resist it because there is an officer walking behind you with a stick drawn. The whole time they whistle a jovial "ain't this fun inmate?" tune. My rising hatred is shocking even to me. We are here to be secured and confined away from other inmates, not to be antagonized.

Attitudes

The following are excerpts from letters by different prisoners:

"C/Os come in with attitudes, calling inmates names, and or ignoring us altogether."

"Staff talks to us really nasty. . . . I'm discriminated against. I don't get no commissary sheet to order things. Last night they passed the sheets out. I asked why I did not get one, told your ass is out!"

"I have to say that over the years I've read and witnessed things that inmates called 'cruel & unusual punishment' and 'dehumanizing' when in reality it was just a bunch of whining. But this place--this place is practicing actions that have no security purpose, and their only purpose is meant to degrade and embarrass and shame the inmate. The officers enjoy taunting us, and the contempt and hatred they display is just unreal."

"Muslims are still denied religious rights, prayer rugs, prayer caps, and religious books. No publications, no programs, what are we suppose to do? Sit back and just watch TV for the rest of our stay here? The main reason we are here is to correct our aggressive, and or predatory behavior but yet these people provide no positive structured programs.

"Instead we are locked up like circus animals, forced to do what they want, which only makes the inmates build up anger, and the result is a bomb waiting to blow up. But that's what the C/Os want! They love to get suited up, and do cell extractions so they can get their licks in. . . . It's a battle for me to not go crazy, and i'm always stressed out because i want to just go off but i know if i do they win, and if they win i never get out. It's hard, very hard!!"

"Basically the custody staff with their actions and or inactions seem to want prisoners to react extreme to further justify use of force teams, write-ups and extended confinement in a place without guidelines for entry or exit of OSP."

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