

Time-In-Cell: Isolation and Incarceration

Judith Resnik, Sarah Baumgartel & Johanna Kalb

What is solitary confinement, and what has been constitutional law's relationship to the practices of holding prisoners in isolation? One answer comes from *Wilkinson v. Austin*,¹ a 2005 U.S. Supreme Court case discussing Ohio's super-maximum security ("supermax") prison, which opened in 1998 to hold more than five hundred people.

Writing for the unanimous Court in *Wilkinson*, Justice Kennedy detailed a painful litany of conditions.²

[A]lmost every aspect of an inmate's life is controlled and monitored. Inmates must remain in their cells, which measure 7 by 14 feet, for 23 hours per day. A light remains on in the cell at all times . . . and an inmate who attempts to shield the light to sleep is subject to further discipline

Incarceration [in supermax] is synonymous with extreme isolation. In contrast to any other Ohio prison . . . [the] cells have solid metal doors with metal strips along their sides and bottoms which prevent conversation or communication with other inmates. All meals are taken alone Opportunities for visitation are rare It is fair to say [that] inmates are deprived of almost any environmental or sensory stimuli and of almost all human contact [P]lacement . . . is for an indefinite period of time, limited only by an inmate's sentence.³

The specifics were in service of meeting the exacting test that the Court had crafted about when constitutional law has a role to play in protecting prisoners. In an earlier case, *Sandin v. Conner*, the Supreme Court held that a prisoner could challenge his placement in segregation only if the change worked an "atypical and significant hardship" which, thereby, infringed a prisoner's

1. 545 U.S. 209 (2005).

2. *Id.* at 223-24.

3. *Id.* at 214-15.

liberty interests and triggered due process obligations under the Fourteenth Amendment.⁴

In *Wilkinson*, the Court concluded that placement in Ohio's supermax qualified as a significant hardship, since "almost all human contact [was] prohibited, even . . . conversation . . . from cell to cell."⁵ Nonetheless, the Court held that Ohio's procedures sufficed to buffer against "arbitrary decisionmaking."⁶ The approved procedures included an in-person hearing that the prisoner can attend; the provision of a written "brief summary of the factual basis for the classification;" "a rebuttal opportunity" at two levels of internal review (each authorized to reject the placement); "a short statement of reasons;" and another review thirty days after the initial placement.⁷ The *Wilkinson* Court thus required some process but did not discuss whether subjecting individuals to such conditions was itself constitutionally impermissible.

Ten years after *Wilkinson*, Justice Kennedy returned to the topic of solitary confinement in a 2015 concurrence in *Ayala v. Davis*.⁸ Justice Kennedy noted that Hector Ayala, who had been sentenced to death in 1989, had spent most of "his more than 25 years in custody in 'administrative segregation' or, as it is better known, solitary confinement."⁹ If following "the usual pattern," Mr. Ayala had been held for decades "in a windowless cell no larger than a typical parking spot for 23 hours a day . . . [and] allowed little or no opportunity for conversation or interaction with anyone."¹⁰

Relying on data collected in the late 1990s, Justice Kennedy observed it was likely that about "25,000 inmates in the United States" were living in such conditions, "many regardless of their conduct in prison."¹¹ Justice Kennedy

4. *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995).

5. *Wilkinson*, 545 U.S. at 227.

6. *Id.*

7. *Id.* at 224-226.

8. *Davis v. Ayala*, 135 S. Ct. 2187, 2208 (2015) (Kennedy, J., concurring). That decision rejected a habeas petitioner's claim that the exclusion of his lawyer from a hearing about racially prejudiced jury selection violated his constitutional rights.

9. *Id.*

10. *Id.*

11. *Id.* at 2208-09 (citing *Entombed: Isolation in the U.S. Federal Prison System*, AMNESTY INT'L 2 n.3 (July 2014), <http://www.amnestyusa.org/sites/default/files/amr510402014en.pdf> [<http://perma.cc/CYD4-4DPT>]). The Amnesty International report relied on the article by Daniel P. Mears, *A Critical Look at Supermax Prisons*, CORRECTIONS COMPENDIUM, Sept.-Oct. 2005, which in turn used research from the late 1990s. See also Daniel P. Mears, *Evaluating the Effectiveness of Supermax Prisons*, URB. INST. 4, app. 74 tbl.1 (Mar. 2006), <http://www.urban.org/research/publication/evaluating-effectiveness-supermax-prisons> [<http://perma.cc/AT77-HPZ2>] (including a chart borrowed from Roy D. King that identified states in 1997-1998 that had supermax facilities).

called for more “public inquiry or interest” in prisons. And in a vivid protest, he suggested that when imposing a capital sentence, a judge tell such a defendant that “during the many years you will serve in prison before your execution, the penal system has a solitary confinement regime that will bring you to the edge of madness, perhaps to madness itself.”¹²

Justice Kennedy raised the prospect that solitary confinement violated substantive constitutional rights.¹³ “[T]he judiciary may be required . . . to determine whether workable alternative systems for long-term confinement exist, and, if so, whether a correctional system should be required to adopt them.”¹⁴ Within a month, Justice Kennedy’s distress was echoed by Justice Breyer, who joined by Justice Ginsburg, condemned the “dehumanizing effect of solitary confinement;” their dissent in *Glossip v. Gross* argued the unconstitutionality of the death penalty.¹⁵

When these Justices were writing, the question of the constitutionality of profound isolation was en route to the Court in a *certiorari* petition on behalf of Alfredo Prieto.¹⁶ Under Virginia’s policy that offenders “sentenced to Death will be assigned directly to Death Row,”¹⁷ Prieto was automatically placed in conditions that a federal district court judges described as “eerily reminiscent”¹⁸ of those in *Wilkinson v. Austin*. Prieto argued that *Wilkinson* required an

12. *Davis*, 135 S. Ct. at 2209.

13. *Id.* The constitutional predicates include that such confinement violates the Eighth Amendment by imposing serious harms or denying basic needs to which prison officials were deliberately indifferent. See *Wilson v. Seiter*, 501 U.S. 294 (1991).

During the past few decades, a few lower courts have declined to hold long-term isolation unconstitutional, but the law has been shifting since those rulings. Further, given that Eighth Amendment law is sometimes predicated on the obligation to protect a person’s dignity, see, e.g., *Trop v. Dulles*, 356 U.S. 86, 100 (1958), and given Justice Kennedy’s identification of dignity as central to the substantive meaning of due process and to equal protection, see, e.g., *Obergefell v. Hodges*, 135 S. Ct. 2584, 2597 (2015), challenges to isolation can be focused on the deprivations of dignity that solitary confinement imposes. See generally Laura L. Rovner, *Dignity and the Eighth Amendment: A New Approach to Challenging Solitary Confinement* (Univ. of Denver Sturm Coll. of Law, Working Paper No. 15-55, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2675228 [<http://perma.cc/K73K-VMQ4>]. In addition, statutory claims include violations of the Americans with Disability Act. See Brittany Glidden & Laura Rovner, *Requiring the State To Justify Supermax Confinement for Mentally Ill Prisoners: A Disability Discrimination Approach*, 90 DENVER U. L. REV. 1 (2012).

14. *Davis*, 135 S. Ct. at 2210.

15. *Glossip v. Gross*, 135 S. Ct. 2726, 2765 (2015) (Breyer, J., dissenting, joined by Ginsburg, J.).

16. Petition for Writ of Certiorari, *Prieto v. Clarke*, 2015 WL 4100302 (2015) (No. 15-31), *cert. dismissed*, 2015 WL 4105028 (2015).

17. VA. DEP’T OF CORR. OPERATING PROCEDURE 830.2(D)(7), 460.A, CAJA-941 (2015).

18. *Prieto v. Clarke*, 780 F.3d 245, 248 (4th Cir. 2015) (quoting *Prieto v. Clarke*, No. 12-1199, 2013 WL 6019215, at *6 (E.D. Va. Nov. 12, 2013), *cert. dismissed*, 2015 WL 4105028 (2015)).

individualized determination of the need for such segregation.¹⁹ Over a dissent, the Fourth Circuit rejected that claim: Imprisonment in conditions that the trial court had found to be “dehumanizing” and “undeniably severe” did not rise to a constitutional violation.²⁰ Former corrections officials and mental health professionals urged the Court to take up the question and detailed the harms of isolation and the alternatives available.²¹ But the petition became moot when, on October 1, 2015, Virginia executed Mr. Prieto.²²

Such potential for developments in the law *on* isolation cannot be understood *in* isolation, for the legitimacy and legality of solitary confinement is under siege in several quarters. The source of the growing distress comes in part from the chilling description provided in *Wilkinson*, written as the post-9/11 detention of hundreds of people at Guantánamo Bay made visible the starkness of totalizing control. Detainees there and prisoners in California’s supermax at Pelican Bay mounted protests, including hunger strikes.²³ By 2010, the ACLU’s National Prison Project had launched its “Stop Solitary” campaign, producing reports of horrific conditions for thousands of prisoners held in Texas and in “the box” in New York State.²⁴ As suicides and violence brought media attention to the suffering and deaths,²⁵ the Vera Institute worked with prison officials to create alternatives.²⁶

19. *Prieto*, 2015 WL 4100302, at *2.

20. *Id.* at 254-55. Judge Wynn, dissenting, rejected the view that “Prieto’s automatic, permanent, and unreviewable placement” was constitutional. *Id.* at 255-56.

21. See Brief of Amici Curiae Corrections Experts in Support of Petitioner, *Prieto v. Clarke*, 2015 WL 4720277, at *7 (2015) (No. 15-31); Brief of Amici Curiae Professors and Practitioners of Psychiatry and Psychology in Support of Petitioner, *Prieto v. Clarke*, 2015 WL 4720278 (2015) (No. 15-31).

22. *Prieto*, 2015 WL 4105028 (dismissing the petition for certiorari); see also Associated Press, *Appeals Exhausted, Alfredo Prieto, Serial Killer, Is Executed*, N.Y. TIMES (Oct. 1, 2015), <http://www.nytimes.com/2015/10/02/us/appeals-exhausted-alfredo-prieto-serial-killer-is-executed.html> [<http://perma.cc/4VEB-FNZ6>].

23. See Neil A. Lewis, *Guantánamo Prisoners Go on Hunger Strike*, N.Y. TIMES (Sept. 18, 2005), <http://www.nytimes.com/2005/09/18/politics/guantanamo-prisoners-go-on-hunger-strike.html> [<http://perma.cc/BY7Q-Z56U>]; Ian Lovett, *Hunger Strike by Inmates Is Latest Challenge to California’s Prison System*, N.Y. TIMES (July 7, 2011), <http://www.nytimes.com/2011/07/08/us/08hunger.html> [<http://perma.cc/6PDJ-J6YJ>].

24. See Burke Butler, Matthew Simpson & Rebecca L. Robertson, *A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas*, ACLU TEXAS (2015), <http://www.aclutx.org/2015/02/05/a-solitary-failure> [<http://perma.cc/2LMB-BM99>]; Scarlet Kim, Taylor Pendergrass & Helen Zelon, *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons*, N.Y. CIVIL LIBERTIES UNION (2012), http://www.nyclu.org/files/publications/nyclu_boxedin_FINAL.pdf [<http://perma.cc/T2G9-PEXY>].

25. See, e.g., Kevin Johnson, *More Than a Decade After Release, They All Come Back*, USA TODAY (Nov. 4, 2015), <http://www.usatoday.com/story/news/nation/2015/11/04/solitary-confinement-prisoners-impact/73830286> [<http://perma.cc/G9AS-RM5V>]; Michael Schwartz & Michael Winerip, *Kalief Browder, Held at Rikers Island for 3 Years Without*

The Supreme Court has not yet faced Justice Kennedy's substantive constitutional question, and lower courts have rejected some claims by individuals held for decades in isolation.²⁷ Yet a few courts have concluded that placement of seriously mentally ill individuals in isolation is unconstitutional.²⁸ Further, within the past two years, courts have approved settlements in class actions in Arizona, California, and Pennsylvania, each focusing on subsets of detainees such as the seriously mentally ill, juveniles, or individuals with disabilities, and specifying the predicates to and limits on the use of isolation.²⁹

Legislators have likewise weighed in. In some states, including Colorado and Massachusetts, have imposed limits on isolation for the mentally ill.³⁰ On the federal level, Senators Chuck Grassley, Richard Durbin, John Cornyn, Sheldon Whitehouse, Mike Lee, Chuck Schumer, Lindsey Graham, Patrick Leahy, and Corey Booker have joined forces to co-sponsor new legislation, a Sentencing Reform and Corrections Act, proposing a sharp curtailment of isolation for the few juveniles in the federal system.³¹

The developments in the United States need also to be placed in a transnational context. In the spring of 2015, proposed U.N. provisions (aptly styled the Mandela Rules and drafted with input from U.S. correctional leaders) defined confinement of prisoners for twenty-two hours or more per day for a period exceeding fifteen days to be "cruel, inhuman or degrading treatment."³² The rules call for banning isolation of vulnerable prisoners,

Trial, Commits Suicide, N.Y. TIMES (June 8, 2015), <http://www.nytimes.com/2015/06/09/nyregion/kalief-browder-held-at-rikers-island-for-3-years-without-trial-commits-suicide.html> [<http://perma.cc/475A-KXY6>]; Erica Goode, *Solitary Confinement: Punished for Life*, N.Y. TIMES (Aug. 3, 2015), <http://www.nytimes.com/2015/08/04/health/solitary-confinement-mental-illness.html> [<http://perma.cc/WFZ4-D5TT>].

26. Alison Shames, Jessa Wilcox & Ram Subramanian, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, VERA INST. JUST. (May 2015), <http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report.pdf> [<http://perma.cc/U8T7-B9MB>].
27. See, e.g., *Silverstein v. Bureau of Prisons*, 559 F. App'x 739 (10th Cir. 2014).
28. See *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995); *Jones'El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001). See generally Elizabeth Alexander, "This Experiment, So Fatal": Some Initial Thoughts on Strategic Choices in the Campaign Against Solitary Confinement, 5 U.C. IRVINE L. REV. 1 (2015).
29. Stipulation, *Parsons v. Ryan*, No. CV 12-00601-PHX-DJH (D. Ariz. Oct. 14, 2014), ECF No. 1185; Settlement Agreement, *Ashker v. Gov. of Cal.*, No. C 09-05796 CW (N.D. Cal. Sept. 1, 2015), ECF No. 424-2; Settlement Agreement, *Disability Rights Network of Pa. v. Wetzel*, No. 1:13-cv-006535-JEJ (M.D. Pa. Jan. 9, 2015), ECF No. 59.
30. See COLO. REV. STAT. ANN. § 17-1-113.8(1) (West 2015); MASS. GEN. LAWS ANN ch. 127 § 39A(b) (West 2015).
31. S. 2123, 114th Cong. § 212 (2015).
32. U.N. Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), U.N. Econ. & Soc. Comm. on Crime Prevention and Criminal Justice, 24th Sess., U.N. Doc. E/CN.15/2015/L.6/Rev.1 (May 21, 2015), <http://www.unodc.org/documents>

limiting isolation's use to exceptional circumstances, and ensuring visiting opportunities for those in isolation.³³

Yet to look only at pressures from *outside* prisons is to miss the action *within*. During the last few years, directors of several state prison systems revamped their policies to constrain the use of isolation.³⁴ Their national organization, the Association of State Correctional Administrators (ASCA) – whose members are the directors of state and federal prison systems – chartered a special committee on the topic and adopted best practices.³⁵ In the fall of 2015, ASCA issued a statement that prolonged isolation represents a “grave problem” and called for its reduction or elimination.³⁶ In January of 2016, the American Correctional Association will hold hearings on its new proposed standards for “restricted housing” that, likewise, reflect prison leaders efforts to set limits on the use of isolation.

To know if this sense of urgency and the many *cris de coeur* from across the political spectrum will have a transformative effect requires a baseline. The questions are whether the “usual pattern” that Justice Kennedy described (placement in windowless parking-lot size cells for twenty-three hour days) are commonplace; how many people live under such conditions; the criteria for entry and exit; and whether the degrees of isolation vary. Answers come from two reports, *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies*, published in 2013,³⁷

/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6_Rev1/ECN152015_L6Rev1_e_V1503585.pdf [http://perma.cc/VTV5-DFT9].

33. *Id.*

34. See Erica Goode, *After 20 Hours in Solitary, Colorado's Prisons Chief Wins Praise*, N.Y. TIMES (Mar. 15, 2014), <http://www.nytimes.com/2014/03/16/us/after-20-hours-in-solitary-colorados-prisons-chief-wins-praise.html> [http://perma.cc/X392-SQ6T] (reporting Colorado's change to “sending inmates to solitary confinement for specific lengths of time instead of indefinite periods”); Timothy Williams, *Prison Officials Join Movement To Curb Solitary Confinement*, N.Y. TIMES (Sept. 2, 2015), <http://www.nytimes.com/2015/09/03/us/prison-directors-group-calls-for-limiting-solitary-confinement.html> [http://perma.cc/3NKH-YVUC] (describing Washington's success in “reduc[ing] the number of inmates in restrictive housing by developing special placement programs for the mentally ill and by launching a 16-week training program for guards”).

35. *Policy: Resolutions, Legislation & Legal Issues: Administrative Segregation Sub-Committee*, ASS'N ST. CORRECTIONAL ADMINS. (Jan. 25, 2013), <http://www.asca.net/projects/16/pages/203> [http://perma.cc/QC6N-SY96].

36. Press Release, Ass'n of State Corr. Admin., *New Report on Prisoners in Administrative Segregation Prepared by the Association of State Correctional Administrators and the Arthur Liman Public Interest Program at Yale Law School* (Sept. 2, 2015), <http://www.asca.net/system/assets/attachments/8895/ASCA%20LIMAN%20Press%20Release%208-28-15.pdf?1441222595> [http://perma.cc/V8TF-BRCG].

37. Hope Metcalf, Jamelia Morgan, Samuel Olikier-Friedland, Judith Resnik, Julie Spiegel, Haran Tae, Alyssa Roxanne Work & Brian Holbrook, *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies* (Yale

and *Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison*, released in the fall of 2015, both of which were based on research jointly sponsored by ASCA and Yale Law School's Liman Project.³⁸

The goals of the reports were to create a shared understanding of isolation and to enable cross-jurisdictional comparisons on rules and practices. The challenges of doing so came from the array of terms and rules governing what is variously called “administrative confinement,” “administrative segregation,” “close supervision,” “behavior modification,” “departmental segregation,” “enhanced supervision housing” (ESH), “inmate segregation,” “intensive management,” “special management unit” (SMU), “security (or special) housing units” (SHU), “security control,” and “maximum control units.” Such placements are predicated on one of three reasons - discipline, protection, or generic fears that a prisoner will cause harm.

Given this array, we—Liman and ASCA—began by focusing on a subset of the governing rules; in 2012 we asked directors of state and federal corrections systems, to provide their policies on “administrative segregation,” defined as removing a prisoner from general population to spend twenty-two to twenty-three hours a day in a cell for thirty days or more. The resulting 2013 Report, based on responses from forty-seven jurisdictions, taught us that at the formal level of policies, getting into segregation was relatively easy, but few policies focused on getting people out.

The criteria for entry were broad. Many jurisdictions permitted moving a prisoner into segregation if that prisoner posed “a threat” to institutional safety or a danger to “self, staff, or other inmates.”³⁹ Constraints on decision-making were minimal; the kind of notice provided and what constituted a “hearing” varied substantially.⁴⁰ The hopes expressed in 2005 in *Wilkinson v. Austin*—that minimal due process safeguards would suffice to buffer against arbitrariness—did not appear to be reflected in the policies, which invested prison officials with enormous discretion.

Law Sch., Pub. Law Working Paper No. 301, 2013) [hereinafter *Liman Administrative Segregation Policies 2013 Report*], <http://ssrn.com/abstract=2286861> [<http://perma.cc/DBU3-P48H>].

38. Sarah Baumgartel, Corey Guilmette, Johanna Kalb, Diana Li, Josh Nuni, Devon E. Porter & Judith Resnik, *Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison* (Yale Law Sch., Pub. Law Working Paper No. 552, 2015) [hereinafter *ASCA-Liman Time-In-Cell 2014*], <http://ssrn.com/abstract=2655627> [<http://perma.cc/QJ9X-RLSN>]. The Liman Project is part of the Arthur Liman Program at Yale Law School. See *Arthur Liman Public Interest Program*, YALE LAW SCH., <http://www.law.yale.edu/centers-workshops/arthur-liman-public-interest-program> [<http://perma.cc/J7SC-H5ZU>].

39. *ASCA-Liman Time-In-Cell 2014*, *supra* note 38, at 4-5; see also *2013 Liman Administrative Segregation Policies 2013 Report*, *supra* note 37, at 5-11.

40. *ASCA-Liman Time-In-Cell 2014*, *supra* note 38, at 4-5; see also *Liman Administrative Segregation Policies 2013 Report*, *supra* note 37, at 11-13.

In 2014, the Liman Program and ASCA took the next step by asking prison directors more than 130 questions—this time about the people in restricted housing and the conditions in which they lived. Responses came from forty-six jurisdictions (albeit not all jurisdictions answered all the questions). The result—*Time-In-Cell*—offers a unique interjurisdictional window into segregation. We summarize some of its findings below.

A basic question is the number of prisoners in isolation. In the 2015 *Ayala* concurrence, Justice Kennedy cited the figure of 25,000 by relying on research about supermax facilities from the late 1990s. But we tallied 66,000 prisoners in thirty-four jurisdictions in restricted housing in 2014, and those prison systems housed about 73% of the 1.5 million people incarcerated in U.S. prisons. Extrapolating, an estimated 80,000 to 100,000 people were in such segregation in 2014, or about one in every six or seven prisoners. And neither the reports from the 1990s nor ours included people in local jails, juvenile facilities, or in military and immigration detention.

Time-In-Cell also focused on conditions in administrative segregation. While the numbers of people are much higher than the figure Justice Kennedy mentioned in *Ayala*, the pictures he painted in 2005 and in 2015 are not out-of-date but mirror prisoners' current experiences. The cells are small, ranging from 45 to 128 square feet, sometimes for two people. In the majority of jurisdictions, prisoners spend twenty-three hours in their cells on weekdays and forty-eight hours straight on weekends. In many of the systems reporting, blacks and Hispanics were over-represented in isolation, when compared to the prison population in general.

Opportunities for social contact, such as out-of-cell time for exercise, visits, and programs, are limited, ranging from three to seven hours a week in many jurisdictions. Phone calls and social visits could be as infrequent as once per month; a few jurisdictions provided more opportunities. The reminder is that what we could chronicle was the *potential* for social contact and activities. But in most jurisdictions, prisoners' access to social contact, programs, exercise, as well as what prisoners were allowed to keep in their cells could be limited as sanctions for misbehavior.

Administrative segregation generally had no fixed endpoint. Further, several systems did not keep track of the numbers of continuous days that a person remained in isolation, and in the twenty-four jurisdictions reporting on this question, a substantial number indicated that prisoners were in segregation for more than three years. As to release and reentry, in thirty jurisdictions tracking the numbers in 2013, a total of 4,400 prisoners went directly from the isolation of administrative segregation to release in the community.

Unsurprisingly, the running of administrative segregation units posed many challenges for prison systems, and the problems – coupled with the surge of concerns – have created incentives for change. Some jurisdictions

required staff to have additional training and offered flexible schedules, rotations, or provided extra benefits for the assignment. Further, prison directors also cited prisoner and staff wellbeing, pending lawsuits, and costs as reasons to revise their rules. A few directors added that change was important because it “is the right thing to do.”

As noted, the *ASCA-Liman Report* relies on answers from those who run prisons. In the fall of 2015, the Bureau of Justice Statistics (BJS) released a survey drawn from another source—prisoners.⁴¹ Based on responses during 2011–2012 from 91,177 inmates in 233 state and federal prisons and in 357 jails, BJS found that almost 20 percent of those detainees had been held in restricted housing within the prior year.⁴² The individuals more likely to have been placed in restricted housing were younger, lesbian, gay, bisexual, or mentally ill, and without a high school diploma.⁴³ The BJS study found that expansive use of restrictive housing correlated with institutional disorder, such as gang activity and fighting, rather than with calmer environments.⁴⁴

Time-In-Cell provides both a window into the pervasive use of isolation and a baseline from which to assess whether the many efforts to limit isolation will have an impact. The practices of isolation have become entrenched in the past forty years; unraveling them will require intensive work. The twin questions on the ground are whether the number of persons held in such settings is diminishing and whether the conditions in which they live are less isolating. And coupled with *Wilkinson*, *Ayala*, and *Prieto*, *Time-In-Cell* should prompt inquiry into why this form of confinement has not already been understood to be unconstitutional.

Judith Resnik is the Arthur Liman Professor of Law, Sarah Baumgartel is the Senior Liman Fellow in Residence, and Johanna Kalb is a Visiting Associate Professor of Law and the Director of the Liman Program at Yale Law School. All rights reserved. Thanks are due to the Yale Law Journal Forum under the guidance of Michael Clemente; to current and former Yale Law students Corey Guilmette, Devon Porter, Josh Nuni, and Diana Li; to George and Camille Camp, A.T. Wall, Gary Mohr, Rick Raemisch, and Bernie Warner of ASCA; to Denny Curtis, David Fathi, and Hope Metcalf; and to the many other people in and outside prisons working to change conditions of confinement.

41. Allen J. Beck, *Use of Restrictive Housing in U.S. Prisons and Jails, 2011-12*, BUREAU JUST. STAT. (Oct. 2015), <http://www.bjs.gov/content/pub/pdf/urhuspj1112.pdf> [<http://perma.cc/4V2B-YB64>].

42. *Id.* at 1.

43. *Id.* at 1 & fig.1.

44. *Id.* at 10.

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