

Dear Warden Outlaw:

I was on hunger strike here at Forrest City Low from 7-15-11 through 8-24-11. I was written an Incident Report (AKA "shot") for going on the hunger strike, and furthermore denied the rights accorded to me by the Program Statements and by other authorities.

This is contrary to your promise to me, that I would receive whatever rights I was entitled to. I asked you to sign my statement of rights of hunger strikers. You declined to sign this document on the grounds that it wasn't necessary.

The purpose of this BP9 is to request remedial action for the denial of my rights of expression and petition under the 1st Amendment to the Constitution, and the denial of other legal rights. Although these violations are manifested in various ways, it appears that they are all part of a common scheme or plan to deprive hunger striking inmates of their legal rights. I am submitting this document as an attachment to my BP9, to request that the "shot" be overruled, and also to ask for related relief with respect to specific wrongs associated with same.

#### STATEMENT OF MATERIAL FACTS

1) I went to the Lieutenant's office on the 9:00 move, on Friday, 7-15-2011, to inform the proper authorities of my hunger strike. I asked to be placed in Special Housing Unit (SHU) pursuant to the provisions of the Program Statements concerning hunger strikes. In particular but without limitation, Program Statement 549.60(1) (PS 549.60) provides that "The Bureau of Prisons provides guidelines for the medical and administrative management of inmates who engage in hunger strikes. It is the responsibility of the Bureau of Prisons to monitor the health and welfare of individual inmates, and to ensure that procedures are pursued to preserve life;" PS 549.60 (3) (a) "The health and welfare of any inmate on a hunger strike will be monitored."

2) I previously engaged in a hunger strike in February, 2011. This hunger strike was commenced in the same fashion and for similar purposes. No one wrote me a "shot" for having declared a hunger strike commenced February 2011.

3) I was committed to SHU, at my own request, for the previous hunger strike without incident. In the interim, I spoke with Warden Outlaw, Lieutenant (Lt.) Ricolcol, Regional Director Gerardo Maldonado, Jr., about the violations of my rights while on that hunger strike. All these individuals acknowledged my right to engage in hunger strike behavior, and to have all the rights set forth in the program statements. Warden Outlaw specifically stated that I would be accorded all rights that I was entitled to under the Program Statements, for persons in administrative detention in SHU under my circumstances.

4) On 7-15-2011, I was committed to SHU not for the specific reason of a hunger strike, but rather pending investigation for a violation of Bureau regulations. Specifically, the Administrative Detention Order (BPS308.052) stated that "You are being placed in Administrative Detention for violation of code 306, Refusing to accept work or accept programs. Behavior such as this jeopardizes security and will not be tolerated at this facility." The Order was signed by J. Sutton, Lieutenant, with a time stamp of 1:00 PM, some 4 hours after I had appeared at the Lieutenant's office.

5) At 5:35 PM the same day, an Incident Report signed by J. Sutton was delivered to me, accusing me of the 306 violation, and also of a 307 violation, by the following language:

On July 15, 2011, at approximately 12:00 PM, Inmate Stilley was at the Lieutenant's Office. I instructed inmate Stilley to return to his assigned housing unit. I gave inmate Stilley (sic) two direct orders to return to his housing unit and both times he refused. Inmate Stilley refused programs (general population) and my orders by stating "I'm not going back to the unit. Put me in SHU."

6) I was found guilty by the following language "Inmate found guilty based on the body of the Incident Report." Punishment was fixed at 30 days loss of phone and Trulincs. The findings were signed by R. Ortiz and L. Jackson.

7) Pursuant to PS 541.22(6), the reasons for administrative detention must be given in writing.

8) I was given a short mattress, about 5 feet long and about an inch thick, with 2 "half sheets" not more than half the width of a regular sheet for SHU inmates. I was given no blanket or pillow.

9) During the night, personnel on another shift saw that I was cold and miserable, and gave me a full size mattress, two full size sheets, a blanket, a towel and washcloth. SHU Lt. Wingfield confiscated the towel and washcloth the next day, over my vehement protest.

10) All my property was taken from me and put in inmate personal property in SHU, as I was booked into SHU.

11) I requested and received most of my legal material, including but not limited to stamps, envelopes, and addresses. I also requested the remainder of my property, consisting of 1) Radio and spare batteries, 2) My personal bible, 2) A Russian language instruction book and a Russian-English dictionary, designed for an English speaker, 3) Thermal underwear. This additional personalty was not provided.

12) On Tuesday, 7-19-2011, Warden Outlaw acknowledged that I was entitled to my personal property pursuant to the Program Statements. My notes do not reflect any discussion about whether or not my Russian language learning books were included therein.

13) On Monday, 7-25-2011, Lt. C. Chatters came to my cell, (SHU cell 124) ransacked the cell, and took my stamps, envelopes, addresses, my incoming mail (except that day's mail) and all legal material except an Ibico bound document including, among other things, the Program Statements on hunger strikes.

14) On 8-12-2011, Warden Outlaw again told me that I would receive what that to which I was entitled under the Program Statements. This time, Warden Outlaw specifically agreed that I was entitled to 1) The radio and batteries, 2) Personal bible, 3) Lights out from 10:00 PM to 6:00 AM, or thereabouts, in the same manner as other inmates and 4) Legal material confiscated by Lt. Chatters. Warden Outlaw said that I would not be permitted to have my Russian language books, saying that such books were a "security issue."

15) Warden Outlaw, Lt. Wingfield, and Captain Howard came by my cell on 8-19-2011. I told Warden Outlaw that I hadn't gotten my property, and that the lights still stayed on 24/7, except for very limited times when guards would turn off the lights until some other guard turned the lights back on, and explained the policy of lights 24/7. Lt. Wingfield said the radio was not in my property. I responded that it was on the receipt papers for my property, and that I had seen it in my property when the property officer initially brought me certain portions of my property.

Captain Howard said the policy (per Program Statements) called for lights 24/7 for persons on suicide watch, and indicated uncertainty whether lights 24/7 were part of the policy for hunger strikers. Warden Outlaw and his entourage walked away while I was pleading my case concerning my rights to "lights out" in the same manner as other inmates in SHU.

Correctional Officer Halk came to my cell about 10 minutes later with my personal Bible (NIV bible from chapel). I asked, and he responded that this was all the property that I could expect to receive.

16) COs Thompson and Van Landingham routinely confiscated my salt from food trays presented in the evenings. Mr. Thompson admitted that he was motivated by the hope that "something bad" would happen to me, so that I would stop the hunger strike. My notes include one reference to CO Huddleston taking salt, on Wednesday evening, 7-27-2011.

17) The deprivation of salt is a de facto if erratic policy in this prison at least, for the purpose of causing the dehydration and injury of prisoners who hunger strike. There is a serious risk of death or permanent physical injury from the practice of denying salt to hunger striking inmates, inasmuch as the lack of salt naturally and probably tends to result in serious dehydration.

18) Dehydration is reasonably easy to diagnose, both from excessive weight loss and from an increase in the mean difference between blood pressure readings in the prone position versus blood pressure readings taken in the standing position.

19) Personnel from Education brought language learning materials to other inmates in SHU, which fact was perceived by the conversations overheard by Stilley.

20) On one occasion I was required to trade one periodical for a previously received periodical of the same kind. Also, one letter was not delivered until after the conclusion for the hunger strike. On information and belief, this prison maintains a policy of withholding periodicals from inmates held in SHU.

#### GROUNDS FOR RELIEF

1) THE SHOT IS A MANIFESTLY UNREASONABLE ATTEMPT AT PUNISHING STILLEY FOR EXERCISING HIS RIGHT TO HUNGER STRIKE, UNDER THE US CONSTITUTION, 1ST AMENDMENT, AND OTHER AUTHORITIES

J. Sutton wrote an Administrative Detention Order (BPS308.052) that assigned as the reason for my detention in SHU as:

"You are being placed in Administrative Detention for violation of code 306, Refusing to accept work or accept programs. Behavior such as this jeopardizes security and will not be tolerated at this facility."

Mr. Sutton wrote these words at 1:00 PM, according to the face of the order. The Incident Report (AKA "shot") lists the time the incident as 12:00 noon the same day. The "Description of Incident" reads as follows:

On July 15, 2011, at approximately 12:00 P.M., inmate Stilley was at the Lieutenant's Office. I instructed inmate Stilley to return to his assigned housing unit. I gave inmate Stilley (sic) two direct orders to return to his housing unit and both times he refused. Inmate Stilley refused programs (general population) and my orders by stating, "I'm not going back to the unit. Put me in SHU."

Note please that this incident report does not mention that I was on hunger strike, or the fact that as of noon on 7-15-2011, I had just spent 3 hours trying to talk my way into the SHU. It would take another hour of committed persistence before I was taken to the SHU pursuant to the Program Statements relating to hunger strikes. From the face of the shot it appears that the shot was delivered to me at 5:35 PM. Thus I had been in SHU for about 4 1/2 hours before the record reflects any suggestion that I had disregarded an order from staff. The 307 shot, accusing me of refusing a "direct order" bears all the earmarks of that which is known in the law as a "recent fabrication."

Why can't this administration simply order a hunger striking inmate to eat, and then issue a shot, with punishment to follow, for refusing a direct order? If an inmate truthfully criticizes you for the performance of your public duties, why can't you simply order the inmate to retract the statement, disavow it, and cease any commentary critical of the operations of the prison?

It should be obvious that such orders would be in contravention of the 1st Amendment, facially void, and unauthorized. Yet the accusations in this case are at best indirect attempts to punish me for the exercise of my 1st Amendment rights, and thus unlawful for the same reasons. If you dispute this analysis, please explain.

I've already served the sentence of 30 days loss of phone and Trulincs. I asked Mr. Ortiz and Ms. Jackson if a motion for a "stay" of my punishment would be well received, so that I could litigate the issue before suffering punishment. The response was in the negative, and punishment was immediately administered.

According to Program Statement (PS) 541.22(6), the reasons for an administrative detention must be documented in writing. Since the written Administrative Detention Order says nothing about any refusal to obey an order, that charge should be dismissed out of hand.

I didn't make the rules. The US Department of Justice-Federal Bureau of Prisons (BOP) makes certain rules, known as Program Statements. I'm entitled to the benefit of those rules. I'm asking that you enforce the rules on my behalf. Common decency and reasonable respect for written rules and the established social order require no less.

This leaves the charge of "failure to program." That's a laughable cheap shot. I challenge you or anyone else to show me a single inmate in this facility who has gotten credit merely

for being in "general population." The term "programming" refers to educational classes. "General population" is hardly an educational class, as that term is ordinarily used. Even if it is, how can anyone suggest that I will be sufficiently educated by 12 months of "general population" each year, but I WILL NOT be adequately educated with, say, 9 months of the year in "general population."

I didn't do anything differently this time from last time, in February of this year. Why am I punished for this hunger strike and not for the other one?

Mr. Sutton apparently called in every prison employee that he thought might have enough referent power to talk me out of the hunger strike. I was polite and pleasant but refused to be dissuaded.

Hunger striking is protected both by the speech and petition clauses of the 1st Amendment. See *FTC v. Super. Ct. Trial Lawyers' Assn.*, 493 US 411, 450 (1990) (Concurrence and dissent by Brennan and Marshall)

[A boycott, like a hunger strike, conveys an emotional message that is absent in a letter to the editor, a conversation with the mayor, or even a protest march. *CF. Cohen v. California*, 403 US 15 26, 29L Ed 2d 284, 91 S Ct 1780 (1971) (First Amendment protects not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well").]

Justice Brennan went on to explain that:

[Another reason why expressive boycotts are irreplaceable as a means of communication is that they are essential to the "poorly financed causes of little people." *Martin v. Struthers*, 319 US 141, 146, 87 L Ed 1313, 63 S Ct 862 (1943). It is no accident that boycotts have been used by the American colonists to throw off the British yoke and by the oppressed to assert their civil rights. See *Claiborne Hardware*, *supra*. Such groups cannot use established organizational techniques to advance their political interests, and boycotts are often the only effective route available to them.]

You have two charges, one of which wasn't raised when your own rules required it to be raised, the other of which, while remarkably creative, is also manifestly without merit. The obvious object of the disciplinary charges was to punish me for exercising my constitutional right to hunger strike.

If you wish reasonable accommodation from me, for example advance notice, (to the extent reasonably practicable) you should say so. I spoke with you personally before the hunger strike. You said that I would be accorded all of my legal rights, but refused to sign my written statement of rights. You never suggested that you thought you could prevent or punish the hunger strike itself. Lt. Ricolcol, and Regional Director Gerardo Maldonado, Jr., likewise expressed the position that I had the right to hunger strike. Yet these charges amount to nothing less than the punishment of the hunger strike.

2) DENIAL OF ELECTROLYTES, ACTS TENDING TO CAUSE DEHYDRATION AND DANGER TO HUNGER STRIKERS

Your treatment with respect to electrolytes (salt and potassium) on this hunger strike was a vast improvement over what took place in the first hunger strike. This time, I got the salt from my food tray each morning and noon. In the evening, I was denied salt on a routine basis. Mr. Thompson admitted that he hoped that "something bad" would happen to me, to stop me from hunger striking.

"Something bad" can be death or permanent disability, up to and including a coma. You need to make it very clear to your personnel that such misconduct will be dealt with severely. No one has the right to cause the injury of an inmate, especially when the "provocation" is nothing more than simply the exercise of 1st Amendment rights.

I suspended the midwinter hunger strike, and promised to resume same at an appropriate time. This time, I'm going to put the monkey on your back. You decide if you wish to persist in the provocations to hunger striking.

No punishment or threat to the person or legal rights of a hunger striker will be tolerated. Hunger itself is a powerful motivator, more than adequate for your lawful purposes. If hunger strikers have no legitimate complaints, then you will always win, because the public will side with you in patiently waiting out the hunger strike, ever vigilant against any potential threats to the life or health of the hunger striker.

The power of hunger striking is described by Justice Brennan as "...the resolute acceptance of pain [which] may communicate dedication and righteousness more eloquently than words ever could." If a hunger striker is willing to suffer pain in protest of some policy or practice of this prison, then you should either 1) change the policy or practice, or 2) outwait the hunger striker.

This time, you held me incommunicado or virtually so from 7-25-2011 through 8-19-2011, and unlawfully diminished my ability to communicate through 8-25-11, when I returned to the compound. You sent Lt. C. Chatters, (a female person) commonly referred to as "bulldog" to ransack my cell, and take all my envelopes and postage. That's an illegal tactic. I am entitled to the same correspondence privileges as any other inmate. PS 541.31 (i)

You know that Lt. Chatters has such severe mental and emotional problems that she should not be employed in direct contact with any inmates. Yet you use her as an "enforcer" much as hockey teams use an "enforcer" to hurt opposing players. This is cruel to her and cruel to the inmates. You sent her in shortly after the commencement of the midwinter 2011 hunger strike, and again in the hunger strike this summer, and thus bear full responsible for her behavior. She is routinely called in when the "need" arises for someone without conscience or empathy, to commit all sorts of unlawful acts against inmates.

### 3) LIGHTS 24/7 IS A VIOLATION OF FUNDAMENTAL RIGHTS

You kept me under lights 24/7 for 40 days. On the 41st night, after I started eating, you turned the lights off at night. Yet you told me before the hunger strike, and on 7-19-2011, that I would be accorded everything I was entitled to under the law. On 8-12-2011 you specifically told your personnel to turn my lights off at night.

One week later, on 8-19-2011, you walked away while I was pleading with you to enforce the promise you had made to me the previous week. You and others waved your hands dismissively and walked away.

Captain Howard said that BOP policies called for lights 24/7 on inmates on suicide watch. He expressed uncertainty with respect to the application of such policy to hunger strikers.

Lights 24/7 is unnecessary and cruel for anyone, including persons on suicide watch. Persons on suicide watch are plainly suffering mental problems. If in fact BOP policies call for lights 24/7 on such persons, they are virtually guaranteeing that such mental problems will only get worse. If that's the policy, I want to see it in writing, so that I can attack it.

There is no logical reason to keep lights on 24/7 for hunger strikers. Yet your patient rooms in Medical have no light switches. On 8-15-2011 I offered to cease the hunger strike, if the prison would simply put switches on the lights in the patient rooms. Your administration not only refused this offer, but furthermore administered Ensure by force when I refused to accept it voluntarily.

4) THE FORCIBLE ADMINISTRATION OF MEDICAL CARE, WHERE LESS INTRUSIVE MEANS ARE AVAILABLE TO SATISFY THE STATE'S LEGITIMATE INTERESTS, IS UNCONSTITUTIONAL AND AMOUNTS TO A BATTERY

You knew full well about my offer to drink Ensure if light switches were installed in the patient rooms, before you approved the forcible administration of Ensure. I also, separately, offered to drink fruit or vegetable juice, in order to satisfy your desire to raise my blood sugar to a level satisfactory to medical personnel. You, Warden Outlaw, rejected both these offers and directed your personnel to put a tube down my nose, to administer Ensure against my will.

This is illegal. I am not entitled to fruit or vegetable juice. Whether I get that is your call. But you are forbidden by well established case law to administer medical care against my will, so long as I express my willingness to drink fruit or vegetable juice. *Washington v. Glucksberg*, 521 US 702, 777 (1977) (collecting cases). You have a right to administer medical care by force, against my will, only if such force is the least intrusive means reasonably available to protect the state's interest.

5) THE HARASSMENT OF HUNGER STRIKERS, HOLDING THEM INCOMMUNICADO, AND DEPRIVATION OF MEANINGFUL EDUCATIONAL OPPORTUNITIES, IS RETALIATION FOR CONSTITUTIONALLY PROTECTED CONDUCT, AND MUST BE STOPPED

I was accused of "failure to program" because of my request to leave the compound, or general population, for SHU. Basically, I'm thus accused of having refused to occupy my prison time with learning or some other useful pursuit.

Yet on 8-12-2011 you refused to allow me to have my Russian language books, claiming it was a security issue, and that you would ensure that I had other programming options. That's laughable. I heard your personnel from Education helping other inmates with their language learning lessons. Your decision was motivated solely by a desire to harass me and punish me for exercising a constitutional right.

You denied me the opportunity to study my own educational material, simply because you knew the information therein was meaningful to me. No one ever offered me any other educational opportunities. Furthermore, your personnel confiscated my English-Russian dictionary, which has not been returned as of the submission of this BP9.

Lt. C. Chatters confiscated my legal material, stamps, etc., on 7-25-2011. I was held either totally or virtually incommunicado from that date to 8-19-2011, when I was allowed a phone call to my mother. Your administration refuses to let me have a "SHU pen" and otherwise interferes with my ability to communicate while in SHU. This violates 541.31 (i), which entitles persons in SHU to correspondence or mail rights equal to those of the general population.

PS 541.22 (d) (applicable through March 1, 2011) provides that administrative detainees have visiting, mail, and phone privileges commensurate with persons in general population. The current authorities, PS 541.31(i), (j), and (k) provide that administrative detainees have correspondence, phone, and visiting privileges respectively, commensurate with those of inmates in general population.

I understand that you withhold periodicals from persons in SHU as a general policy. This is illegal and must be stopped immediately. You don't have the right to withhold periodicals or other written material from SHU inmates, simply to increase their boredom and stress.

Likewise for visitation. You limited me to one hour visits on Mondays simply because I am in administrative detention on hunger strike. Remember that I was not sentenced to any time in SHU for the bogus 306 and 307 charges. I was free to leave at any time I chose to quit the hunger strike.

In combination, it appears that your policies work together for the purpose of holding hunger strikers incommunicado, to the extent that you can. This is a flagrant violation of the 1st Amendment and should be stopped immediately.

## 6) SUMMARY AND CONCLUSION

This administration is far more fearful of hunger strikes than any competent and legitimate prison administration has a right to be. Unless you are guilty of lawlessness that would pose a material threat to you if exposed, you have little to fear from a hunger strike. The rational, level headed approach to a hunger striker is to simply offer fruit and vegetable juice, and wait the hunger striker out. The public will respect such an approach. As you are doubtless aware, I seek vindication in the court of public opinion at least as much as I seek vindication through your office and through the BOP "administrative process," in which I place scarcely any faith.

As I have told you before, I am not your enemy except to the extent that you make me one. When you violate the written rules applicable to hunger strikers, you make me your enemy. When you engage in conduct that threatens the life or health of ANY hunger striker, you make me into a motivated and determined enemy.

I am asking that you grant relief from the "shot" and also from the unlawful conduct committed against me during the hunger strike. If you think I overstate my rights, you should

say so in writing and set forth the authority upon which you rely. This claim is made and prosecuted without prejudice to any contention that I am entitled to immediate access to the courts, for your refusal to honor previous commitments to respect my rights as a hunger striker.

#### RELIEF REQUESTED

- 1) A written promise, or other satisfactory assurances, that all hunger strikers will receive the benefit of all rights and privileges in the Program Statements and other relevant authorities, including but not limited to case law.
- 2) Reversal of the finding of guilt, and money or other damages for the punishment inflicted for the alleged violations reflected in the "shot" for refusal to program (306) and refusing a direct order (307). Free phone and Trulincs for the duration of my stay in federal custody is satisfactory. If the damages are fixed in US currency, I request \$25,000.
- 3) A written memo to all personnel, to the effect that all hunger strikers will be permitted reasonable quantities of electrolytes, including both salt and potassium, that hunger strikers will be informed of the availability of reasonable quantities of such electrolytes, and that all hunger strikers be promptly informed of medical data indicating an unsafe loss of hydration, and of the dangers of dehydration, and of the benefits of electrolytes, in the maintenance of adequate hydration.
- 4) A written memo to all personnel to the effect that all SHU inmates shall be promptly provided with all personal property to which they are entitled.
- 5) A written memo to the effect that all inmates, (including those on suicide watch) shall be entitled to at least 8 hours of darkness for purposes of sleeping, subject only to the minimum lighting necessary for the legitimate purposes of the BOP.
- 6) A written memo to the effect that all patient rooms in Medical facilities shall be promptly outfitted with light switches on the outside of the room.
- 7) A written memo to the effect that inmates in SHU shall be not be denied envelopes, legal materials, stamps, "SHU pens" (small flexible pens) without written authorization from the Warden, for good cause shown and specifically stated in writing.
- 8) A written memo to the effect that SHU inmates shall be given their property reasonably promptly after arrival at SHU, and shall not be deprived of possession of same without good cause, and only after full compliance with PS 541.25, requiring that the reasons for denying SHU inmates possession of property must be set forth in writing and provided to the inmate.
- 9) A written memo to the effect that all inmates in SHU shall receive a regular mattress, 2 sheets, 2 blankets, and a pillow, except upon written order of the Warden, for good cause shown and specifically stated in writing. PS 541.31(h)(1).
- 10) A written memo to the effect that inmates in SHU on hunger strike, or otherwise in SHU on Administrative Detention, shall be allowed programming opportunities, visits, and phone privileges commensurate with inmates on the compound.

11) Return of the Russian dictionary confiscated from me without good cause, or payment of damages.

12) A written memo to the effect that no hunger striker will be force fed unless said hunger striker refuses both Ensure and fruit or vegetable juice. By this I do not intend to exclude the possibility of force feeding solid food, if a doctor makes written findings that the hunger strike has progressed to the point that such is medically necessary.

13) A written memo to the effect that all inmates in SHU will be allowed to receive all mail, including magazines and periodicals, promptly upon their receipt by the prison.

14) Agreement that the BOP, or such other US government instrumentality as may be appropriate, is liable both for prospective remedial relief, and for reasonable money damages to be subsequently determined, for its refusal to honor its previous agreements, made subsequent to midwinter 2011 hunger strike, to ensure that all of the rights of all hunger strikers are fully respected and honored.

15) Agreement that Stilley has satisfied all prerequisites for suit for prospective injunctive relief, and to file a tort claim. If the prison is unwilling to agree in writing, please state the reasons.

Sincerely yours,

/s/ Oscar Stilley,

Oscar Stilley, 10579-062  
os – 09/19/11