

SILVERSTEIN v. FEDERAL BUREAU OF PRISONS, et al.
Civil Action No. 07-cv-02471-PAB-KMT

Exhibit 17

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-cv-02471-PAB-KMT

THOMAS SILVERSTEIN,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS, et al.,

Defendants.

DECLARATION OF DR. CRAIG HANEY

I, Craig Haney, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am a Professor of Psychology at the University of California, Santa Cruz, where I have worked since 1977. I have a Ph.D. in psychology from Stanford University, and also have a J.D. from the Stanford Law School, although I am not a practicing lawyer.
2. I have provided testimony in numerous cases, including more than twenty-five specifically dealing with prison and jail conditions. These cases are specifically listed on pages 28-30 of my curriculum vitae, which is attached to this declaration as Attachment 1.
3. I was contacted by counsel for the Plaintiff in this case, Thomas Silverstein, and was asked to state my professional opinion concerning the psychological effects of long-term confinement in solitary and "supermax"-type conditions. I was also asked to provide an opinion about the effects that Mr. Silverstein specifically has experienced during his nearly thirty years in

solitary confinement. Those opinions are contained in the Report that I filed in this case, a true and accurate copy of which is attached to this declaration as Attachment 2.

4. I am trained as a social psychologist. Social psychologists study human social behavior—the way that people respond to specific social contexts, situations, and settings. Early in my graduate school career, I became interested in the various ways in which persons were changed and affected by the time they spent in institutional environments, especially correctional institutions. Along with Philip Zimbardo, in 1971 I conducted what came to be known as the “Stanford Prison Experiment,” in which college student volunteers who were placed in a simulated prison environment experienced dramatic reactions in a very short period of time.¹ I have been studying the effects of living and working in real prison environments, including solitary confinement, ever since that time.

5. Counsel for Mr. Silverstein have recently asked me to review additional documents that pertain to their client’s case, and to comment on Dr. Harold Bursztajn’s Declaration. To do so, I have reviewed and relied on additional case-related documents that were provided to me since my own Report was issued. Those documents include: supplements to Mr. Silverstein’s prison and mental health files; the expert report, rebuttal reports, deposition and declaration of Dr. Harold Bursztajn; and portions of Defendants’ Motion for Summary Judgment and exhibits. Because it is an area of academic interest and specialization of mine, I also have kept abreast of any new literature pertaining to solitary confinement.

6. My original Report summarizes and discusses the available research and published literature on the psychological effects of solitary confinement. As I note in it, the

¹ For example, see Craig Haney, Curtis Banks & Philip Zimbardo, Interpersonal Dynamics in a Simulated Prison, 1 International Journal of Criminology and Penology 69 (1973).

overwhelming consensus among persons who have actually conducted research on the effects of solitary confinement is clear: severe and prolonged isolation—the deprivation of meaningful social contact and the other deprivations that commonly occur in conjunction with it—is psychologically painful and can have harmful psychological consequences. (See Att. 2, at 3-21; see also Att. 3, Haney, “Social Psychology of Isolation,” *Prison Service Journal*, Issue 181.)

7. Prisoners in solitary confinement are typically deprived of a number of things that even inmates who are housed in mainline maximum security prisons take for granted. Among other things, they are typically subjected to severe, involuntary idleness (i.e., there is little or nothing they are permitted to do), reduced environmental stimulation (i.e., there is little or no variation in their otherwise barren surroundings), extreme material deprivations (i.e., they have greatly limited access to property, reading material, and so on), and high levels of repressive or restrictive control (e.g., they are placed in physical restraints whenever they leave their cells and are under nearly constant surveillance).

8. Notwithstanding these other deprivations and restrictions, the essence of solitary confinement is the near total deprivation of meaningful human social contact. From a psychological perspective, this is what makes it so problematic and potentially dangerous.

9. Solitary confinement units limit meaningful social contact in a variety of ways. Opportunities for contact of any kind between prisoners and all other people are typically kept at an absolute minimum. For example, prisoners in solitary confinement do not eat meals, go to classes, conduct programming, or recreate together. In fact, they are often prohibited from standing side-by-side to have a conversation with each other. When contact with other persons

does occur, it is rarely face-to-face or direct contact. Instead it is typically mediated or impeded by the interposition of walls, bars, and security devices of various kinds.

10. Even the contact that solitary confinement prisoners have with correctional officers and staff members—including mental health staff—is restricted and constrained in these ways. That is, some physical impediment or barrier—a door, partition, or security device—is interposed to separate them. In fact, whenever prisoners in solitary confinement are taken out of their cells to be transported elsewhere, they are first placed in physical restraints—before their cell door is opened—and are kept that way until they arrive at their destination.

11. In addition to the physical barriers that are interposed, other factors distort and denature the contact that occurs between prisoners and staff members in solitary confinement that preclude “meaningful social interaction.” Most significant is the fundamental psychological divide that exists between prisoners and the persons whom they hold responsible for keeping them in their painfully deprived state (i.e., the correctional staff). This divide is unbridgeable. In addition to the undercurrent of resentment that permeates their contacts and interactions with staff, prisoners are acutely aware (and constantly reminded) of the vast power differentials between them. Most of them will have been physically subjugated or subdued by guards themselves—through “cell extractions” and the like—or they will have seen others treated in this fashion. Prisoners know that they must show deference and obedience to staff, or risk severe sanctions if they do not. The vast differences in power and the consequences of breaching those differences create additional distance between them.

12. In addition, the interactions between prisoners and staff in solitary confinement are typically brief and highly ritualized—staff deliver food trays, place prisoners in

uncomfortable physical restraints, peer into their cells as they go by, “count” them, and so on. These are “enactments” of institutional routines rather than spontaneous interactions. Moreover, there is an absolute bar against allowing these ritualized and role-bound enactments between prisoners and prison staff to become anything more than that. Thus, staff members who relate “too well” to prisoners are regarded with great suspicion and may be sanctioned by their peers; the same is true for prisoners.

13. Solitary confinement also typically subjects prisoners to severely restricted environmental stimulation.

14. Prisoners in these units are held inside their cells for very long periods of time. Indeed, it is common for them to spend, on average, 23 hours a day confined to their cells where, obviously, they are surrounded by the same immediate cell and cellblock environment. There is very little variation in what they can see or experience, where they can go, and what they can do. Moreover, solitary confinement units themselves tend to be sparse and barren. This includes the so-called recreation “yards,” which may consist of a concrete encased, walled-in area, or a cage-like apparatus that prisoners often refer to as “dog runs.” The unremitting sameness or constancy of their day-to-day existence can result in, or contribute to, depression and cognitive deterioration.

15. Some studies have found that even a few days of solitary confinement can shift the electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium.

16. Normal mental and cognitive functioning requires stimulation—including social stimulation—to maintain. The ability to focus attention, to concentrate, to shift one’s thoughts

appropriately from task to task, and to retrieve memories is grounded in a social context. If these skills are not used in meaningful ways over long periods of time they can atrophy. Thus, prisoners who are kept in isolation for long durations often complain about their impaired concentration and focus—in extreme cases, a kind of stupor or “mental fog” results in which prisoners cannot, for example, grasp concepts, recall information, think clearly, or process information effectively.

17. The lack of environmental stimulation also can result in, or contribute to, insomnia or sleeplessness. This is compounded by continuous exposure to artificial light and diminished opportunities to experience natural daylight.

18. Normal nighttime sleep cycles are frequently interrupted by the frequent intrusions that occur in solitary confinement—steel doors slamming shut, flashlights shining into the cells, noises from other prisoners, and so forth. Even in units that permit prisoners to control in-cell lighting, hall lights typically remain on around-the-clock, which means that cells are visibly lit throughout the night. For many prisoners, this further disrupts normal sleep patterns.

19. Thomas Silverstein has experienced severe forms of these conditions of isolated confinement, without interruption, for almost 30 years, a period that represents nearly half of his entire life. Experts for both sides of this case—Dr. Bursztajn, Dr. Friedman, Mr. Martin and I—all have reached the same basic opinion: the extreme restrictions to which Mr. Silverstein is subjected should gradually be lessened, and he should be allowed more communication with other people.

20. However, Dr. Bursztajn has opined that “the safest and most reasonable course...is for Mr. Silverstein to continue to negotiate the conditions of his confinement with

prison staff with whom he interacts on a daily basis” and suggested that this will “enhance his capacity for self-control and responsibility.” (Bursztajn Decl., Ex. N to Doc. 296, at ¶¶ 8, 22. (emphases added)).

21. I believe that this opinion is flawed in several important respects. For one, it attaches insufficient importance to the degree of suffering that Mr. Silverstein has already endured over the last nearly 30 years of his unprecedented isolation. As a result, it ignores the substantial risks that will be incurred by his continued confinement—his continued indefinite confinement—under these severe and potentially damaging conditions.

22. Moreover, Dr. Bursztajn’s opinion assumes that some sort of “negotiation” is currently taking place between Mr. Silverstein and the BOP. I find this assertion extraordinary and one that suggests a certain amount of naïveté about the psychology of imprisonment in general and confinement inside the kinds of units in which Mr. Silverstein has been (and is) housed in particular. Dr. Bursztajn has cited no authority for this assertion and, in my opinion, could not. In fact, Mr. Silverstein has not been permitted to “negotiate” or in any other way exercise control over the nature and amount of isolation, deprivation, or restrictions that have been imposed on him.

23. The record demonstrates very clearly that Mr. Silverstein has never known how long his isolation will last, and what, if anything he can do to modify or end it. Moreover, Mr. Silverstein’s BOP records clearly indicates that his inability to effect any change in his conditions of confinement has been a source of great frustration for him over the many years during which he has been held in isolation. Moreover, recent documentation suggests that the Bureau intends to hold Mr. Silverstein in isolation permanently. Thus, not only has Mr.

Silverstein never been permitted to participate in any “negotiation” with the Bureau of Prisons concerning his basic conditions of confinement but, Dr. Bursztajn’s suggestion to the contrary notwithstanding, the Bureau of Prisons clearly does not intend to allow him to do so in the future.

24. Of course, if negotiation between Mr. Silverstein and prison staff were possible, I would agree with Dr. Bursztajn that this could be an effective way to arrive at decisions about when and how Mr. Silverstein’s restrictions could be reduced. However, under the current system, Mr. Silverstein remains in a painfully uncertain position with respect to his present housing assignment and the restrictions that have been imposed upon him. He has not been informed about how long these restrictions will last, what he can do to change them, or how he can participate in this determination. This uncertainty continues to exacerbate the painfulness of his isolated confinement.

25. As I noted, Dr. Bursztajn also suggested that the continuation of Mr. Silverstein’s current regimen of severe isolation and deprivation—one to which he already has been subjected for nearly 30 years—would somehow provide him with a unique opportunity to “enhance his capacity for self-control and responsibility.” This is astonishing to me. Mr. Silverstein’s record of conformity and obedience under unprecedented conditions of isolation (ones that are extremely stressful, frustrating, and provocative) is clear evidence of his “self control and responsibility”—as much as he could possibly demonstrate in this environment. His only real opportunities to “enhance his capacity for self-control and responsibility” lie elsewhere—in significantly changed circumstances that will allow him increasingly greater contact with other people and access to other “enhancing” pro-social activities.

26. The instruction that Dr. Bursztajn provides to “Mr. Silverstein’s experts” about the distinction between “impulsive forms of aggression” and “planned, considered, instrumental aggression” is of course correct. The two kinds of aggression are very different. Yet the distinction is largely irrelevant in Mr. Silverstein’s case, and it does not undermine the significance of his many years of non-violent behavior. Mr. Silverstein engaged in neither form of violence—impulsive or planned—over the last several decades. Although it is true that much of Mr. Silverstein’s earlier violence required premeditated, planned actions, he spent the last several decades in solitary confinement units where he had nothing but time in which to engage in planful, premeditated behavior. Yet he remained non-violent. The high levels of security and control to which he was subjected are clearly not the only things that prevented him from acting violently; other prisoners certainly have managed to engage in violent behavior under similar circumstances. Mr. Silverstein did not. Thus, Dr. Bursztajn’s contention that this decades-long record of refraining from violence of any kind should be ignored or minimized because Mr. Silverstein’s earlier violence was of one type rather than another seems illogical and unsupportable to me.

27. During my interviews with Mr. Silverstein, he spoke about his remorse and regret for his past actions and his sincere desire not to engage in any violence in the future. His comments in this regard during my interviews with him seemed genuine. They also were consistent with his reports to other experts.

28. In addition, Mr. Silverstein’s expressions of remorse and intention to avoid future violent behavior were consistent with his deposition testimony, where he explicitly stated that he “has no desire for violence whatsoever,” (Silverstein Depo. Tr. at 264), and that “I’m just

through with it. You know, I don't want to hurt anybody. I don't want anybody to hurt me. I just want to do my time." (*Id.* at 261.)

29. Based on these statements, I was surprised and puzzled to read Dr. Bursztajn's characterization of Mr. Silverstein's deposition testimony as not "indicating that he rejects...violence-worshipping ideologies and cults." (Bursztajn Decl., Ex. N to Doc. 296, at ¶ 10.) Of course, Mr. Silverstein clearly said that he rejected violence, which seems to me to be at least a clear "indication" that he does. I would agree that what Mr. Silverstein (or anyone) says about their future behavior should not alone be taken as dispositive of what they will actually do at a later time; but, when such statements are sincerely and consistently made, they are at least an "indication." Dr. Bursztajn not only rejects it as such, but also ignores its significance in the context of Mr. Silverstein's decades-long record of non-violent behavior, a record established under highly stressful circumstances to which many prisoners have succumbed. Moreover, Dr. Bursztajn also for some reason ignores Mr. Silverstein's profession of non-violence as an extension of his Buddhist-influenced spiritual beliefs, ones that Dr. Bursztajn acknowledged he found to be sincere. (Bursztajn Report at 5.)

30. Dr. Bursztajn's relative inexperience with prisoners, especially those who are housed in solitary confinement units like the ones in which Mr. Silverstein has been kept, is reflected in another part of his declaration. Dr. Bursztajn attached great significance to Mr. Silverstein's statement that he (Silverstein) considers the government attorney who questioned him during his deposition to be working with others to keep him in isolation. Indeed, Dr. Bursztajn takes this to mean that an "antisocial orientation appears to be present in Mr.

Silverstein.” (Bursztajn Decl., Ex. N to Doc. 296, at ¶ 11.) I do not believe that it means any such thing.

31. Anyone who has spent any significant amount of time studying prisoners and trying to understand the beliefs that are developed in the course of long-term incarceration knows that such statements—assertions that representatives of “the government,” or “the system,” or “the corrections department” are operating in consort (even “conspiring”) to keep them imprisoned, or to deprive them of their rights—are commonplace. Of course, depending on which definition of “conspiracy” one uses, the assertions are not necessarily even factually incorrect. But, whether or not they are technically correct or wildly exaggerated, they are sentiments that have probably been expressed by most prisoners at some point in the course of their imprisonment. They hardly distinguish one prisoner from another. In Mr. Silverstein’s case, his willingness to admit to these feelings in the pressurized context in which he did reflects a surprising degree of candor on his part, but little else. The statement was certainly not indicative of an “antisocial orientation.”

32. In fact, a readiness to believe that “others”—prison officials or other prisoners—may be “out to get you” is especially prevalent in solitary confinement units like the ones in which Mr. Silverstein has been housed. Prisoners in general become “hypervigilant”—acutely aware of their surroundings and concerned about the motives of people within them. It is one of the ways that people adapt to the dangerous nature of prison life. In solitary confinement, this tendency is exacerbated by conditions of isolation. That is, isolated prisoners are more prone than most to attribute meaning and intentionality to events and behaviors that they do not necessarily have. This is an entirely “normal” adaptation to an “abnormal” environment. It

comes about because prisoners in solitary confinement are by definition isolated from normal social reality and lack the “reality checks” that we depend on our normal interactions with other people to provide. Lacking these sources of information to corroborate or disconfirm their suspicions, they form interpretations and make connections entirely within the only reality that they have access to—their own. This tendency is fundamentally situational and, as I say, is one of the problematic psychological adaptations that prisoners develop in isolation. (Att. 2 at 9.)

33. Dr. Bursztajn insists on calling this “paranoia” without appearing to appreciate the context in which it develops or its functionality in the isolated world in which Mr. Silverstein lives. Thus, he stated that Mr. Silverstein “exhibited some paranoid trends in his thinking” (Bursztajn Report at 5.), with no acknowledgement whatsoever of either how commonplace this thinking is in solitary confinement units or why someone with Mr. Silverstein’s unique history of imprisonment over the last nearly 30 years in the Bureau of Prisons might exhibit it.

34. In any event, Mr. Silverstein’s “paranoia” is a negative consequence of his long-term isolation; it should not be used as a justification for holding Mr. Silverstein even longer under the very conditions that created and exacerbated it. To do so would represent another one of several “Catch 22s” to which he has been subjected over the years.

35. Based on my review of the records in Mr. Silverstein’s case and my interviews with Mr. Silverstein himself, I concluded in my Report that—given the truly severe conditions under which he has lived since being placed in isolation nearly 30 years ago—Mr. Silverstein experienced significant psychological pain and distress, was negatively affected by his long-term isolation, and was placed at grave risk of more serious psychological harm. I continue to believe that.

36. The evidence showed that Mr. Silverstein suffered, and continues to suffer, numerous forms of psychological harm. That harm includes inter alia, pain and distress, extreme anxiety, sleeplessness, despair and hopelessness, depression, inability to concentrate and cognitive impairment.

37. In this regard, I should clarify that I am not using the term “harm” as synonymous with “impairment” or “disability” and do not believe that it is appropriate to do so. Psychological pain, distress, and anguish all represent forms of harm, whether or not the person who suffers them is impaired or disabled as a result.

38. I belabor this distinction because Dr. Bursztajn appears to use the terms interchangeably, and insists that persons who have not been impaired or disabled by an experience, set of circumstances, or form of treatment have not been harmed thereby. (Bursztajn Depo. Tr. at 64:8-65:18; 68:6-18.)

39. More specifically, Dr. Bursztajn seems to suggest that a person is not actually harmed by something unless his reaction to it results in an inability to engage in activities of daily living. (*Id.*) But this is akin to the legal definition of a “disability” [see, Title II, Americans with Disabilities Act, 42 U.S.C. § 12102 (defining “disability” as “a physical or mental impairment that substantially limits one or more major life activities of such individual”), not “harm.”

40. Thus, I interpret Dr. Bursztajn’s conclusion that “there is no indication that Mr. Silverstein’s lengthy period of segregation from the general prison population has been harmful,” (Bursztajn Decl., Ex. N to Doc. 296, at ¶ 17), to mean that there is no indication that Mr. Silverstein has suffered from a disability or an impairment to his daily functioning.

41. However, even if one were to apply Dr. Bursztajn's more narrow (and, in my opinion, incorrect) definition of harm, the record in Mr. Silverstein's case clearly conflicts with this conclusion. The record shows instead that Mr. Silverstein has repeatedly expressed difficulty performing daily tasks such as concentrating, learning, sleeping, and thinking, and that he has done so over a period of decades.

42. Of course, in order to determine the exact degree to which Mr. Silverstein was impaired in the course of the severe isolation to which he was subjected, it would have been necessary to provide him with further screening and testing. The Bureau of Prisons refused to do this.

43. Inexplicably to me, Dr. Bursztajn not only has ignored the repeated instances in the record where Mr. Silverstein expressed precisely the kinds of difficulties that Dr. Bursztajn himself identified as the hallmarks of "disability" (or, in his parlance, "harm"), but he also testified that he did not believe Mr. Silverstein ever merited a cognitive screening or psychological testing. This includes those instances in which Mr. Silverstein specifically requested such testing and where Dr. Denney explicitly noted symptoms indicating an inability to perform daily tasks. (See, e.g., Bursztajn Depo. Tr. at 126:18-129:21.)

44. Dr. Bursztajn criticized "Mr. Silverstein's experts" for what he implied was a paradox or contradiction—stating that Mr. Silverstein had both experienced harm and improved his self-control. (Bursztajn Decl., Ex. N to Doc. 296 at ¶ 19.) Perhaps I do not understand fully what Dr. Bursztajn means by this criticism, but I do not know of anything that precludes these two psychological processes from operating simultaneously. Mr. Silverstein appears to me (and others) to have been harmed by the unprecedented isolation and deprivations to which he has

been subjected, and the unprecedented amount of time during which he has experienced them. But he also has, in spite of this, managed to develop greater maturity, self-control and self-reflective skills. He now seeks an opportunity to enter more social environments that may promote rather than impede that growth, or at least one that does not seem so clearly inimical to its taking place.

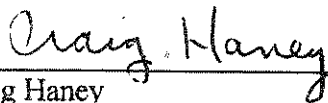
45. Some of Mr. Silverstein's improved maturity, self control, and self reflection is undoubtedly the result of the aging process. He was placed in solitary confinement while still in his thirties; he is now almost sixty years old. Not surprisingly, older people have a significantly lessened potential for violence. This certainly appears to be the case for Mr. Silverstein.

46. In fact, because of Mr. Silverstein's advanced age, there are some specific prisons, or some specific units within certain prisons, where it may be beneficial to place him. Some state prison systems—specifically in California, Pennsylvania, Florida, and Tennessee—operate such units. My understanding of these units is that they are often limited to prisoners who are disabled or are over 55 years of age, and that the violence rates in these units are extremely low.

47. In summary, as I have explained in more detail in my attached Report, Mr. Silverstein was subjected to the most isolated form of long-term confinement I have ever encountered. As a result, he has not had a remotely normal social interaction or touched another human being with affection for well over a quarter century. In addition to being completely deprived of normal social contact and other essential freedoms for an extremely long period of time, Mr. Silverstein has never known how long his isolation would last or what he could do to end it. This chronic uncertainty continues and it exacerbates the stress of his confinement.

48. In contrast to the earlier years in which Mr. Silverstein was incarcerated in the BOP, and in spite of the extraordinary pressures, stressors, and frustrations to which he was subjected while housed in isolation, Mr. Silverstein has been a model inmate over the last 28 years. I continue to believe that the very real risk of future harm from continued isolation, the physical and emotional maturity that he has attained, and the violence-free record he has maintained over the last several decades together provide a compelling justification for making significant, albeit graduated, changes in his conditions of confinement that allow him increasingly more meaningful social contact with others.

Executed on February 27, 2011, at Santa Cruz, California.



Craig Haney

SILVERSTEIN v. FEDERAL BUREAU OF PRISONS, et al.
Civil Action No. 07-cv-02471-PAB-KMT

Attachment 1

CURRICULUM VITAE

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PREVIOUS EMPLOYMENT

1985-present	University of California, Santa Cruz, Professor of Psychology
1981-85	University of California, Santa Cruz, Associate Professor of Psychology
1978-81	University of California, Santa Cruz, Assistant Professor of Psychology
1977-78	University of California, Santa Cruz, Lecturer in Psychology
1976-77	Stanford University, Acting Assistant Professor of Psychology

EDUCATION

1978	Stanford Law School, J.D.
1978	Stanford University, Ph.D. (Psychology)
1972	Stanford University, M.A. (Psychology)
1970	University of Pennsylvania, B.A.

HONORS AWARDS GRANTS

- 2011 Edward G. Donnelly Memorial Speaker, University of West Virginia Law School.
- 2009 Nominated as American Psychological Foundation William Bevan Distinguished Lecturer.
- Psi Chi "Best Lecturer" Award (by vote of UCSC undergraduate psychology majors).
- 2006 Herbert Jacobs Prize for Most Outstanding Book published on law and society in 2005 (from the Law & Society Association, for Death by Design).
- Nominated for National Book Award (by American Psychological Association Books, for Reforming Punishment).
- "Dream course" instructor in psychology and law, University of Oklahoma.
- 2005 Annual Distinguished Faculty Lecturer, University of California, Santa Cruz.
- Arthur C. Helton Human Rights Award from the American Immigration Lawyers Association (co-recipient).
- Scholar-in-Residence, Center for Social Justice, Boalt Hall School of Law (University of California, Berkeley).
- 2004 "Golden Apple Award" for Distinguished Teaching, awarded by the Social Sciences Division, University of California, Santa Cruz.
- National Science Foundation Grant to Study Capital Jury Decision-making
- 2002 Santa Cruz Alumni Association Distinguished Teaching Award, University of California, Santa Cruz.
- United States Department of Health & Human Services/Urban Institute, "Effects of Incarceration on Children, Families, and Low-Income Communities" Project.

- American Association for the Advancement of Science/American Academy of Forensic Science Project: "Scientific Evidence Summit" Planning Committee.
- Teacher of the Year (UC Santa Cruz Re-Entry Students' Award).
- 2000 Invited Participant White House Forum on the Uses of Science and Technology to Improve National Crime and Prison Policy.
- Excellence in Teaching Award (Academic Senate Committee on Teaching).
- Joint American Association for the Advancement of Science-American Bar Association Science and Technology Section National Conference of Lawyers and Scientists.
- 1999 American Psychology-Law Society Presidential Initiative Invitee ("Reviewing the Discipline: A Bridge to the Future")
- National Science Foundation Grant to Study Capital Jury Decision-making (renewal and extension).
- 1997 National Science Foundation Grant to Study Capital Jury Decision-making.
- 1996 Teacher of the Year (UC Santa Cruz Re-Entry Students' Award).
- 1995 Gordon Allport Intergroup Relations Prize (Honorable Mention)
- Excellence in Teaching Convocation, Social Sciences Division
- 1994 Outstanding Contributions to Preservation of Constitutional Rights, California Attorneys for Criminal Justice.
- 1992 Psychology Undergraduate Student Association Teaching Award
- SR 43 Grant for Policy-Oriented Research With Linguistically Diverse Minorities
- 1991 Alumni Association Teaching Award ("Favorite Professor")
- 1990 Prison Law Office Award for Contributions to Prison Litigation
- 1989 UC Mexus Award for Comparative Research on Mexican Prisons
- 1976 Hilmer Oehlmann Jr. Award for Excellence in Legal Writing at Stanford Law School

- 1975-76 Law and Psychology Fellow, Stanford Law School
- 1974-76 Russell Sage Foundation Residency in Law and Social Science
- 1974 Gordon Allport Intergroup Relations Prize, Honorable Mention
- 1969-71 University Fellow, Stanford University
- 1969-74 Society of Sigma Xi
- 1969 B.A. Degree Magna cum laude with Honors in Psychology
 Phi Beta Kappa
- 1967-1969 University Scholar, University of Pennsylvania

UNIVERSITY SERVICE AND ADMINISTRATION

- 2010-present Director, Legal Studies Program
- 2010-present Director, Graduate Program in Social Psychology
- 2009 Chair, Legal Studies Review Committee
- 2004-2006 Chair, Committee on Academic Personnel
- 1998-2002 Chair, Department of Psychology
- 1994-1998 Chair, Department of Sociology
- 1992-1995 Chair, Legal Studies Program
- 1995 (Fall) Committee on Academic Personnel
- 1995-1996 University Committee on Academic Personnel (UCAP)
- 1990-1992 Committee on Academic Personnel
- 1991-1992 Chair, Social Science Division Academic Personnel
 Committee
- 1984-1986 Chair, Committee on Privilege and Tenure

WRITINGS AND OTHER CREATIVE ACTIVITIES IN PROGRESS

Books:

Context and Criminality: Social History and Circumstance in Crime Causation
(working title, in preparation).

Articles:

"The Psychological Foundations of Capital Mitigation: Why Social Historical Factors Are Central to Assessing Culpability," in preparation.

PUBLISHED WRITINGS AND CREATIVE ACTIVITIES

Books

- 2006 Reforming Punishment: Psychological Limits to the Pains of Imprisonment, Washington, DC: American Psychological Association Books.
- 2005 Death by Design: Capital Punishment as a Social Psychological System. New York: Oxford University Press.

Monographs and Technical Reports

- 1989 Employment Testing and Employment Discrimination (with A. Hurtado). Technical Report for the National Commission on Testing and Public Policy. New York: Ford Foundation.

Articles in Professional Journals and Book Chapters

- 2011 "The Pains of Imprisonment: Prisonization and the Psychological Consequences of Incarceration," in J. Petersilia & K. Reitz (Eds.), Oxford Handbook of Sentencing and Corrections. New York: Oxford University Press, in press.
- "Where the Boys Are: Macro and Micro Considerations for the Study of Young Latino Men's Educational Achievement" (with A. Hurtado & J. Hurtado), in P. Noguera & A. Hurtado (Eds.),

Understanding the Disenfranchisement of Latino Males: Contemporary Perspectives on Cultural and Structural Factors.
New York: Routledge Press, in press.

2010 "Demonizing the 'Enemy': The Role of Science in Declaring the 'War on Prisoners,'" Connecticut Public Interest Law Review, 9, 139-196.

"Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the 'Empathic Divide,'" Law and Society Review, (with Mona Lynch), in press.

"Getting to the Point: Attempting to Improve Juror Comprehension of Capital Penalty Phase Instructions," Law and Human Behavior, (with Amy Smith), in press.

2009 "Capital Jury Deliberation: Effects on Death Sentencing, Comprehension, and Discrimination" (with Mona Lynch), Law and Human Behavior, 33, 481-496.

"The Social Psychology of Isolation: Why Solitary Confinement is Psychologically Harmful," Prison Service Journal UK (Solitary Confinement Special Issue), Issue 181, 12-20.

"The Stanford Prison Experiment," in John Levine & Michael Hogg (Eds.), Encyclopedia of Group Processes and Intergroup Relations. Thousand Oaks, CA: Sage Publications, in press.

"Media Criminology and the Death Penalty," DePaul Law Review, 58, 689-740. (Reprinted: Capital Litigation Update, 2010.)

"On Mitigation as Counter-Narrative: A Case Study of the Hidden Context of Prison Violence," University of Missouri-Kansas City Law Review, 77, 911-946.

"Persistent Dispositionalism in Interactionist Clothing: Fundamental Attribution Error in Explaining Prison Abuse," (with P. Zimbardo), Personality and Social Psychology Bulletin, 35, 807-814.

2008 "Counting Casualties in the War on Prisoners," University of San Francisco Law Review, 43, 87-138.

- "Evolving Standards of Decency: Advancing the Nature and Logic of Capital Mitigation," Hofstra Law Review, 36, 835-882.
- "A Culture of Harm: Taming the Dynamics of Cruelty in Supermax Prisons," Criminal Justice and Behavior, 35, 956-984.
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“Capital Constructions: Newspaper Reporting in Death Penalty Cases” (with S. Greene), Analyses of Social Issues and Public Policy (ASAP), 4, 1-22.

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- 1975 "The Blackboard Penitentiary: It's Tough to Tell a High School from a Prison" (with P. Zimbardo). Psychology Today, 26ff.
- "Implementing Research Results in Criminal Justice Settings," Proceedings, Third Annual Conference on Corrections in the U.S. Military, Center for Advanced Study in the Behavioral Sciences, June 6-7.
- "The Psychology of Imprisonment: Privation, Power, and Pathology" (with P. Zimbardo, C. Banks, and D. Jaffe), in D. Rosenhan and P. London (Eds.), Theory and Research in Abnormal Psychology. New York: Holt Rinehart, and Winston. [Reprinted in: Rubin, Z. (Ed.), Doing Unto Others: Joining, Molding, Conforming, Helping, Loving. Englewood Cliffs: Prentice-Hall, 1974. Brigham, John, and Wrightsman, Lawrence (Eds.) Contemporary Issues in Social Psychology. Third Edition. Monterey: Brooks/Cole, 1977. Calhoun, James Readings, Cases, and Study Guide for Psychology of Adjustment and Human Relationships. New York: Random House, 1978.]
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- "The Mind is a Formidable Jailer: A Pirandellian Prison" (with P. Zimbardo, C. Banks, and D. Jaffe), The New York Times Magazine, April 8, Section 6, 38-60. [Reprinted in Krupat, E. (Ed.), Psychology Is Social: Readings and Conversations in Social Psychology. Glenview, Ill.: Scott, Foresman, 1982.]
- "Interpersonal Dynamics in a Simulated Prison" (with C. Banks and P. Zimbardo), International Journal of Criminology and Penology,

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MEMBERSHIP/ACTIVITIES IN PROFESSIONAL ASSOCIATIONS

American Psychological Association

American Psychology and Law Society

Law and Society Association

National Council on Crime and Delinquency

INVITED ADDRESSES AND PAPERS PRESENTED AT PROFESSIONAL ACADEMIC MEETINGS AND RELATED SETTINGS (SELECTED)

- 2011 “Tensions Between Psychology and the Criminal Justice System: On the Persistence of Injustice,” opening presentation, “A Critical Eye on Criminal Justice” lecture series, Golden Gate University Law School, San Francisco, CA, January.
- “The Decline in Death Penalty Verdicts and Executions: The Death of Capital Punishment?” Presentation at “A Legacy of Justice” week, at the University of California, Davis King Hall Law School, Davis, CA, January.
- 2010 “The Hardening of Prison Conditions,” Opening Address, “The Imprisoned” Arthur Liman Colloquium Public Interest Series, Yale Law School, New Haven, CN, March.
- “Desensitization to Inhumane Treatment: The Pitfalls of Prison Work,” panel presentation at “The Imprisoned” Arthur Liman Colloquium Public Interest Series, Yale Law School, New Haven, CN, March.
- “Mental Ill Health in Immigration Detention,” Department of Homeland Security/DOJ Office for Civil Rights and Civil Liberties, Washington, DC, September.
- 2009 “Counting Casualties in the War on Prisoners,” Keynote Address, at “The Road to Prison Reform: Treating the Causes and Conditions of Our Overburdened System,” University of Connecticut Law School, Hartford, CN, February.
- “Defining the Problem in California’s Prison Crisis: Overcrowding and Its Consequences,” California Correctional Crisis Conference,” Hastings Law School, San Francisco, CA, March.
- 2008 “Prisonization and Contemporary Conditions of Confinement,” Keynote Address, Women Defenders Association, Boalt Law School, University of California, November.
- “Media Criminology and the Empathic Divide: The Continuing Significance of Race in Capital Trials,” Invited Address, Media, Race, and the Death Penalty Conference, DePaul University School of Law, Chicago, IL, March.
- “The State of the Prisons in California,” Invited Opening Address, Confronting the Crisis: Current State Initiatives and Lasting Solutions for California’s Prison Conditions Conference, University of San Francisco School of Law, San Francisco, CA, March.

"Mass Incarceration and Its Effects on American Society," Invited Opening Address, Behind the Walls Prison Law Symposium, University of California Davis School of Law, Davis, CA, March.

2007 "The Psychology of Imprisonment: How Prison Conditions Affect Prisoners and Correctional Officers," United States Department of Justice, National Institute of Corrections Management Training for "Correctional Excellence" Course, Denver, CO, May.

"Statement on Psychologists, Detention, and Torture," Invited Address, American Psychological Association Annual Convention, San Francisco, CA, August.

"Prisoners of Isolation," Invited Address, University of Indiana Law School, Indianapolis, IN, October.

"Mitigation in Three Strikes Cases," Stanford Law School, Palo Alto, CA, September.

"The Psychology of Imprisonment," Occidental College, Los Angeles, CA, November.

2006 "Mitigation and Social Histories in Death Penalty Cases," Ninth Circuit Federal Capital Case Committee, Seattle, WA, May.

"The Crisis in the Prisons: Using Psychology to Understand and Improve Prison Conditions," Invited Keynote Address, Psi Chi (Undergraduate Psychology Honor Society) Research Conference, San Francisco, CA, May.

"Exoneration and 'Wrongful Condemnation': Why Juries Sentence to Death When Life is the Proper Verdict," Faces of Innocence Conference, UCLA Law School, April.

"The Continuing Effects of Imprisonment: Implications for Families and Communities," Research and Practice Symposium on Incarceration and Marriage, United States Department of Health and Human Services, Washington, DC, April.

"Ordinary People, Extraordinary Acts," National Guantanamo Teach In, Seton Hall School of Law, Newark, NJ, October.

- "The Next Generation of Death Penalty Research," Invited Address, State University of New York, School of Criminal Justice, Albany, NY, October.
- 2005 "The 'Design' of the System of Death Sentencing: Systemic Forms of 'Moral Disengagement in the Administration of Capital Punishment, Scholar-in-Residence, invited address, Center for Social Justice, Boalt Hall School of Law (Berkeley), March.
- "Humane Treatment for Asylum Seekers in U.S. Detention Centers, United States House of Representatives, Washington, DC, March.
- "Prisonworld: What Overincarceration Has Done to Prisoners and the Rest of Us," Scholar-in-Residence, invited address, Center for Social Justice, Boalt Hall School of Law (Berkeley), March.
- "Prison Conditions and Their Psychological Effects on Prisoners," European Association for Psychology and Law, Vilnius, Lithuania, July.
- 2004 "Recognizing the Adverse Psychological Effects of Incarceration, With Special Attention to Solitary-Type Confinement and Other Forms of 'Ill-Treatment' in Detention," International Committee of the Red Cross, Training Program for Detention Monitors, Geneva, Switzerland, November.
- "Prison Conditions in Post-"War on Crime" Era: Coming to Terms with the Continuing Pains of Imprisonment," Boalt Law School Conference, After the War on Crime: Race, Democracy, and a New Reconstruction, Berkeley, CA, October.
- "Cruel and Unusual? The United States Prison System at the Start of the 21st Century," Invited speaker, Siebel Scholars Convocation, University of Illinois, Urbana, IL, October.
- "The Social Historical Roots of Violence: Introducing Life Narratives into Capital Sentencing Procedures," Invited Symposium, XXVIII International Congress of Psychology, Beijing, China, August.
- "Death by Design: Capital Punishment as a Social Psychological System," Division 41 (Psychology and Law) Invited Address, American Psychological Association Annual Convention, Honolulu, HI, July.

"The Psychology of Imprisonment and the Lessons of Abu Ghraib," Commonwealth Club Public Interest Lecture Series, San Francisco, May.

"Restructuring Prisons and Restructuring Prison Reform," Yale Law School Conference on the Current Status of Prison Litigation in the United States, New Haven, CN, May.

"The Effects of Prison Conditions on Prisoners and Guards: Using Psychological Theory and Data to Understand Prison Behavior," United States Department of Justice, National Institute of Corrections Management Training Course, Denver, CO, May.

"The Contextual Revolution in Psychology and the Question of Prison Effects: What We Know about How Prison Affects Prisoners and Guards," Cambridge University, Cambridge, England, April.

"Death Penalty Attitudes, Death Qualification, and Juror Instructional Comprehension," American Psychology-Law Society, Annual Conference, Scottsdale, AZ, March.

2003

"Crossing the Empathic Divide: Race Factors in Death Penalty Decisionmaking," DePaul Law School Symposium on Race and the Death Penalty in the United States, Chicago, October.

"Supermax Prisons and the Prison Reform Paradigm," PACE Law School Conference on Prison Reform Revisited: The Unfinished Agenda, New York, October.

"Mental Health Issues in Supermax Confinement," European Psychology and Law Conference, University of Edinburgh, Scotland, July.

"Roundtable on Capital Punishment in the United States: The Key Psychological Issues," European Psychology and Law Conference, University of Edinburgh, Scotland, July.

"Psychology and Legal Change: Taking Stock," European Psychology and Law Conference, University of Edinburgh, Scotland, July.

"Economic Justice and Criminal Justice: Social Welfare and Social Control," Society for the Study of Social Issues Conference, January.

“Race, Gender, and Class Issues in the Criminal Justice System,” Center for Justice, Tolerance & Community and Barrios Unidos Conference, March.

2002 “The Psychological Effects of Imprisonment: Prisonization and Beyond.” Joint Urban Institute and United States Department of Health and Human Services Conference on “From Prison to Home.” Washington, DC, January.

“On the Nature of Mitigation: Current Research on Capital Jury Decisionmaking.” American Psychology and Law Society, Mid-Winter Meetings, Austin, Texas, March.

“Prison Conditions and Death Row Confinement.” New York Bar Association, New York City, June.

2001 “Supermax and Solitary Confinement: The State of the Research and the State of the Prisons.” Best Practices and Human Rights in Supermax Prisons: A Dialogue. Conference sponsored by University of Washington and the Washington Department of Corrections, Seattle, September.

“Mental Health in Supermax: On Psychological Distress and Institutional Care.” Best Practices and Human Rights in Supermax Prisons: A Dialogue. Conference sponsored by University of Washington and the Washington Department of Corrections, Seattle, September.

“On the Nature of Mitigation: Research Results and Trial Process and Outcomes.” Boalt Hall School of Law, University of California, Berkeley, August.

“Toward an Integrated Theory of Mitigation.” American Psychological Association Annual Convention, San Francisco, CA, August.

Discussant: “Constructing Class Identities—The Impact of Educational Experiences.” American Psychological Association Annual Convention, San Francisco, CA, August.

“The Rise of Carceral Consciousness.” American Psychological Association Annual Convention, San Francisco, CA, August.

- 2000 "On the Nature of Mitigation: Countering Generic Myths in Death Penalty Decisionmaking," City University of New York Second International Advances in Qualitative Psychology Conference, March.
- "Why Has U.S. Prison Policy Gone From Bad to Worse? Insights From the Stanford Prison Study and Beyond," Claremont Conference on Women, Prisons, and Criminal Injustice, March.
- "The Use of Social Histories in Capital Litigation," Yale Law School, April.
- "Debunking Myths About Capital Violence," Georgetown Law School, April.
- "Research on Capital Jury Decisionmaking: New Data on Juror Comprehension and the Nature of Mitigation," Society for Study of Social Issues Convention, Minneapolis, June.
- "Crime and Punishment: Where Do We Go From Here?" Division 41 Invited Symposium, "Beyond the Boundaries: Where Should Psychology and Law Be Taking Us?" American Psychological Association Annual Convention, Washington, DC, August.
- 1999 "Psychology and the State of U.S. Prisons at the Millennium," American Psychological Association Annual Convention, Boston, MA, August.
- "Spreading Prison Pain: On the Worldwide Movement Towards Incarcerative Social Control," Joint American Psychology-Law Society/European Association of Psychology and Law Conference, Dublin, Ireland, July.
- 1998 "Prison Conditions and Prisoner Mental Health," Beyond the Prison Industrial Complex Conference, University of California, Berkeley, September.
- "The State of US Prisons: A Conversation," International Congress of Applied Psychology, San Francisco, CA, August.
- "Deathwork: Capital Punishment as a Social Psychological System," Invited SPPSI Address, American Psychological Association Annual Convention, San Francisco, CA, August.

- “The Use and Misuse of Psychology in Justice Studies: Psychology and Legal Change: What Happened to Justice?” (panelist), American Psychological Association Annual Convention, San Francisco, CA, August.
- “Twenty Five Years of American Corrections: Past and Future,” American Psychology and Law Society, Redondo Beach, CA, March.
- 1997 “Deconstructing the Death Penalty,” School of Justice Studies, Arizona State University, Tempe, AZ, October.
- “Mitigation and the Study of Lives,” Invited Address to Division 41 (Psychology and Law), American Psychological Association Annual Convention, Chicago, August.
- 1996 “The Stanford Prison Experiment and 25 Years of American Prison Policy,” American Psychological Association Annual Convention, Toronto, August.
- 1995 “Looking Closely at the Death Penalty: Public Stereotypes and Capital Punishment,” Invited Address, Arizona State University College of Public Programs series on Free Speech, Affirmative Action and Multiculturalism, Tempe, AZ, April.
- “Race and the Flaws of the Meritocratic Vision,” Invited Address, Arizona State University College of Public Programs series on Free Speech, Affirmative Action and Multiculturalism, Tempe, AZ, April.
- “Taking Capital Jurors Seriously,” Invited Address, National Conference on Juries and the Death Penalty, Indiana Law School, Bloomington, February.
- 1994 “Mitigation and the Social Genetics of Violence: Childhood Treatment and Adult Criminality,” Invited Address, Conference on the Capital Punishment, Santa Clara Law School, October, Santa Clara.
- 1992 “Social Science and the Death Penalty,” Chair and Discussant, American Psychological Association Annual Convention, San Francisco, CA, August.

- 1991 "Capital Jury Decisionmaking," Invited panelist, American Psychological Association Annual Convention, Atlanta, GA, August.
- 1990 "Racial Discrimination in Death Penalty Cases," Invited presentation, NAACP Legal Defense Fund Conference on Capital Litigation, August, Airlie, VA.
- 1989 "Psychology and Legal Change: The Impact of a Decade," Invited Address to Division 41 (Psychology and Law), American Psychological Association Annual Convention, New Orleans, LA., August.
- "Judicial Remedies to Pretrial Prejudice," Law & Society Association Annual Meeting, Madison, WI, June.
- "The Social Psychology of Police Interrogation Techniques" (with R. Liebowitz), Law & Society Association Annual Meeting, Madison, WI, June.
- 1987 "The Fourteenth Amendment and Symbolic Legality: Let Them Eat Due Process," APA Annual Convention, New York, N.Y. August.
- "The Nature and Function of Prison in the United States and Mexico: A Preliminary Comparison," InterAmerican Congress of Psychology, Havana, Cuba, July.
- 1986 Chair, Division 41 Invited Address and "Commentary on the Execution Ritual," APA Annual Convention, Washington, D.C., August.
- "Capital Punishment," Invited Address, National Association of Criminal Defense Lawyers Annual Convention, Monterey, CA, August.
- 1985 "The Role of Law in Graduate Social Science Programs" and "Current Directions in Death Qualification Research," American Society of Criminology, San Diego, CA, November.
- "The State of the Prisons: What's Happened to 'Justice' in the '70s and '80s?" Invited Address to Division 41 (Psychology and Law); APA Annual Convention, Los Angeles, CA, August.

- 1983 "The Role of Social Science in Death Penalty Litigation." Invited Address in National College of Criminal Defense Death Penalty Conference, Indianapolis, IN, September.
- 1982 "Psychology in the Court: Social Science Data and Legal Decision-Making." Invited Plenary Address, International Conference on Psychology and Law, University College, Swansea, Wales, July.
- 1982 "Paradigms in Conflict: Contrasting Methods and Styles of Psychology and Law." Invited Address, Social Science Research Council, Conference on Psychology and Law, Wolfson College, Oxford University, March.
- 1982 "Law and Psychology: Conflicts in Professional Roles." Invited paper, Western Psychological Association Annual Meeting, April.
- 1980 "Using Psychology in Test Case Litigation," panelist, American Psychological Association Annual Convention, Montreal, Canada, September.
- "On the Selection of Capital Juries: The Biasing Effects of Death Qualification." Paper presented at the Interdisciplinary Conference on Capital Punishment. Georgia State University, Atlanta, GA, April.
- "Diminished Capacity and Imprisonment: The Legal and Psychological Issues," Proceedings of the American Trial Lawyers Association, Mid-Winter Meeting, January.
- 1975 "Social Change and the Ideology of Individualism in Psychology and Law." Paper presented at the Western Psychological Association Annual Meeting, April.

SERVICE TO STAFF OR EDITORIAL BOARDS OF FOUNDATIONS, SCHOLARLY JOURNALS OR PRESSES

- 2011-present Editorial Consultant, Social Psychological and Personality Science.

2008-present	Editorial Consultant, <u>New England Journal of Medicine</u> .
2007-present	Editorial Board Member, <u>Correctional Mental Health Reporter</u> .
2007-present	Editorial Board Member, <u>Journal of Offender Behavior and Rehabilitation</u> .
2004-present	Editorial Board Member, American Psychology and Law Society Book Series, Oxford University Press.
2000-2003	Reviewer, Society for the Study of Social Issues Grants-in-Aid Program.
2000-present	Editorial Board Member, <u>ASAP</u> (on-line journal of the Society for the Study of Social Issues)
1997-present	Editorial Board Member, <u>Psychology, Public Policy, and Law</u>
1991	Editorial Consultant, Brooks/Cole Publishing
1989	Editorial Consultant, <u>Journal of Personality and Social Psychology</u>
1988-	Editorial Consultant, <u>American Psychologist</u>
1985	Editorial Consultant, <u>American Bar Foundation Research Journal</u>
1985-2006	<u>Law and Human Behavior</u> , Editorial Board Member
1985	Editorial Consultant, Columbia University Press
1985	Editorial Consultant, <u>Law and Social Inquiry</u>
1980-present	Reviewer, National Science Foundation
1997	Reviewer, National Institutes of Mental Health
1980-present	Editorial Consultant, <u>Law and Society Review</u>
1979-1985	Editorial Consultant, <u>Law and Human Behavior</u>
1997-present	Editorial Consultant, <u>Legal and Criminological Psychology</u>
1993-present	<u>Psychology, Public Policy, and Law</u> , Editorial Consultant

GOVERNMENTAL, LEGAL AND CRIMINAL JUSTICE CONSULTING

Training Consultant, Palo Alto Police Department, 1973-1974.

Evaluation Consultant, San Mateo County Sheriff's Department, 1974.

Design and Training Consultant to Napa County Board of Supervisors, County Sheriff's Department (county jail), 1974.

Training Consultation, California Department of Corrections, 1974.

Consultant to California Legislature Select Committee in Criminal Justice, 1974, 1980-1981 (effects of prison conditions, evaluation of proposed prison legislation).

Reviewer, National Science Foundation (Law and Social Science, Research Applied to National Needs Programs), 1978-present.

Consultant, Santa Clara County Board of Supervisors, 1980 (effects of jail overcrowding, evaluation of county criminal justice policy).

Consultant to Packard Foundation, 1981 (evaluation of inmate counseling and guard training programs at San Quentin and Soledad prisons).

Member, San Francisco Foundation Criminal Justice Task Force, 1980-1982 (corrections expert).

Consultant to NAACP Legal Defense Fund, 1982- present (expert witness, case evaluation, attorney training).

Faculty, National Judicial College, 1980-1983.

Consultant to Public Advocates, Inc., 1983-1986 (public interest litigation).

Consultant to California Child, Youth, Family Coalition, 1981-82 (evaluation of proposed juvenile justice legislation).

Consultant to California Senate Office of Research, 1982 (evaluation of causes and consequences of overcrowding in California Youth Authority facilities).

Consultant, New Mexico State Public Defender, 1980-1983 (investigation of causes of February, 1980 prison riot).

Consultant, California State Supreme Court, 1983 (evaluation of county jail conditions).

Member, California State Bar Committee on Standards in Prisons and Jails, 1983.

Consultant, California Legislature Joint Committee on Prison Construction and Operations, 1985.

Consultant, United States Bureau of Prisons and United States Department of the Interior (Prison History, Conditions of Confinement Exhibition, Alcatraz Island), 1989-1991.

Consultant to United States Department of Justice, 1980-1990 (evaluation of institutional conditions).

Consultant to California Judicial Council (judicial training programs), 2000.

Consultant to American Bar Association/American Association for Advancement of Science Task Force of Forensic Standards for Scientific Evidence, 2000.

Invited Participant, White House Forum on the Uses of Science and Technology to Improve Crime and Prison Policy, 2000.

Member, Joint Legislative/California Department of Corrections Task Force on Violence, 2001.

Consultant, United States Department of Health & Human Services/Urban Institute, "Effects of Incarceration on Children, Families, and Low-Income Communities" Project, 2002.

Detention Consultant, United States Commission on International Religious Freedom (USCIRF). Evaluation of Immigration and Naturalization Service Detention Facilities, July, 2004-present.

Consultant, International Committee of the Red Cross, Geneva, Switzerland, Consultant on international conditions of confinement.

Member, Institutional Research External Review Panel, California Department of Corrections, November, 2004-present.

Consultant, United States Department of Health & Human Services on programs designed to enhance post-prison success and community reintegration, 2006.

Consultant/Witness, U.S. House of Representatives, Judiciary Committee, Evaluation of legislative and budgetary proposals concerning the detention of aliens, February-March, 2005.

Invited Expert Witness to National Commission on Safety and Abuse in America's Prisons (Nicholas Katzenbach, Chair); Newark, New Jersey, July 19-20, 2005.

Testimony to the United States Senate, Judiciary Subcommittee on the Constitution, Civil Rights, and Property Rights (Senators Brownback and Feingold, co-chairs), Hearing on "An Examination of the Death Penalty in the United States," February 7, 2006.

National Council of Crime and Delinquency "Sentencing and Correctional Policy Task Force," member providing written policy recommendations to the California legislature concerning overcrowding crisis in the California Department of Corrections and Rehabilitation.

Trainer/Instructor, Federal Bureau of Prisons and United States Department of Justice, "Correctional Excellence" Program, providing instruction concerning conditions of confinement and psychological stresses of living and working in correctional environments to mid-level management corrections professionals, May, 2004-present.

Invited Expert Witness, California Commission on the Fair Administration of Justice, Public Hearing, Santa Clara University, March 28, 2008.

PRISON AND JAIL CONDITIONS

EVALUATIONS AND LITIGATION

Hoptowit v. Ray [United States District Court, Eastern District of Washington, 1980; 682 F.2d 1237 (9th Cir. 1982)]. Evaluation of psychological effects of conditions of confinement at Washington State Penitentiary at Walla Walla for United States Department of Justice.

Wilson v. Brown (Marin County Superior Court; September, 1982, Justice Burke). Evaluation of effects of overcrowding on San Quentin mainline inmates.

Thompson v. Enomoto (United States District Court, Northern District of California, Judge Stanley Weigel, 1982 and continuing). Evaluation of conditions of confinement on Condemned Row, San Quentin Prison.

Toussaint v. McCarthy [United States District Court, Northern District of California, Judge Stanley Weigel, 553 F. Supp. 1365 (1983); 722 F. 2d 1490 (9th Cir. 1984) 711 F. Supp. 536 (1989)]. Evaluation of psychological effects of

conditions of confinement in lockup units at DVI, Folsom, San Quentin, and Soledad.

In re Priest (Proceeding by special appointment of the California Supreme Court, Judge Spurgeon Avakian, 1983). Evaluation of conditions of confinement in Lake County Jail.

Ruiz v. Estelle [United States District Court, Southern District of Texas, Judge William Justice, 503 F. Supp. 1265 (1980)]. Evaluation of effects of overcrowding in the Texas prison system, 1983-1985.

Atascadero State Hospital (Civil Rights of Institutionalized Persons Act of 1980 action). Evaluation of conditions of confinement and nature of patient care at ASH for United States Department of Justice, 1983-1984.

In re Rock (Monterey County Superior Court 1984). Appointed to evaluate conditions of confinement in Soledad State Prison in Soledad, California.

In re Mackey (Sacramento County Superior Court, 1985). Appointed to evaluate conditions of confinement at Folsom State Prison mainline housing units.

Bruscino v. Carlson (United States District Court, Southern District of Illinois 1984 1985). Evaluation of conditions of confinement at the United States Penitentiary at Marion, Illinois [654 F. Supp. 609 (1987); 854 F.2d 162 (7th Cir. 1988)].

Dohner v. McCarthy [United States District Court, Central District of California, 1984-1985; 636 F. Supp. 408 (1985)]. Evaluation of conditions of confinement at California Men's Colony, San Luis Obispo.

Invited Testimony before Joint Legislative Committee on Prison Construction and Operations hearings on the causes and consequences of violence at Folsom Prison, June, 1985.

Stewart v. Gates [United States District Court, 1987]. Evaluation of conditions of confinement in psychiatric and medical units in Orange County Main Jail, Santa Ana, California.

Duran v. Anaya (United States District Court, 1987-1988). Evaluation of conditions of confinement in the Penitentiary of New Mexico, Santa Fe, New Mexico [Duran v. Anaya, No. 77-721 (D. N.M. July 17, 1980); Duran v. King, No. 77-721 (D. N.M. March 15, 1984)].

Gates v. Deukmejian (United States District Court, Eastern District of California, 1989). Evaluation of conditions of confinement at California Medical Facility, Vacaville, California.

Kozeak v. McCarthy (San Bernardino Superior Court, 1990). Evaluation of conditions of confinement at California Institution for Women, Frontera, California.

Coleman v. Gomez (United States District Court, Eastern District of California, 1992-3; Magistrate Moulds, Chief Judge Lawrence Karlton, 912 F. Supp. 1282 (1995). Evaluation of study of quality of mental health care in California prison system, special mental health needs at Pelican Bay State Prison.

Madrid v. Gomez (United States District Court, Northern District of California, 1993, District Judge Thelton Henderson, 889 F. Supp. 1146 (N.D. Cal. 1995). Evaluation of conditions of confinement and psychological consequences of isolation in Security Housing Unit at Pelican Bay State Prison, Crescent City, California.

Clark v. Wilson, (United States District Court, Northern District of California, 1998, District Judge Fern Smith, No. C-96-1486 FMS), evaluation of screening procedures to identify and treatment of developmentally disabled prisoners in California Department of Corrections.

Turay v. Seling [United States District Court, Western District of Washington (1998)]. Evaluation of Conditions of Confinement-Related Issues in Special Commitment Center at McNeil Island Correctional Center.

In re: The Commitment of Durden, Jackson, Leach, & Wilson. [Circuit Court, Palm Beach County, Florida (1999).] Evaluation of Conditions of Confinement in Martin Treatment Facility.

Ruiz v. Johnson [United States District Court, Southern District of Texas, District Judge William Wayne Justice, 37 F. Supp. 2d 855 (SD Texas 1999)]. Evaluation of current conditions of confinement, especially in security housing or “high security” units.

Osterback v. Moore (United States District Court, Southern District of Florida (97-2806-CIV-MORENO) (2001) [see, Osterback v. Moore, 531 U.S. 1172 (2001)]. Evaluation of Close Management Units and Conditions in the Florida Department of Corrections.

Valdivia v. Davis (United States District Court, Eastern District of California, 2002). Evaluation of due process protections afforded mentally ill and developmentally disabled parolees in parole revocation process.

Ayers v. Perry (United States District Court, New Mexico, 2003). Evaluation of conditions of confinement and mental health services in New Mexico Department of Corrections “special controls facilities.”

Disability Law Center v. Massachusetts Department of Corrections (Federal District Court, Massachusetts, 2007). Evaluation of conditions of confinement and treatment of mentally ill prisoners in disciplinary lockup and segregation units.

Plata/Coleman v. Schwarzenegger (Ninth Circuit Court of Appeals, Three-Judge Panel, 2008). Evaluation of conditions of confinement, effects of overcrowding on provision of medical and mental health care in California Department of Corrections and Rehabilitation.

SILVERSTEIN v. FEDERAL BUREAU OF PRISONS, et al.
Civil Action No. 07-cv-02471-PAB-KMT

Attachment 2



SANTA CRUZ, CALIFORNIA 95064

PSYCHOLOGY DEPARTMENT

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April 13, 2009

Professor Laura Rovner
Sturm College of Law
University of Denver
Denver, Colorado 80208

Dear Professor Rovner:

This letter contains my Federal Rules of Civil Procedure "Rule 26 Report," written at your request. You have asked me to state my professional opinion concerning the psychological effects of long-term confinement in solitary and "supermax"-type conditions. In addition, you have asked me to state my opinion of the effects of specific conditions of solitary confinement on Mr. Thomas Silverstein, who is currently housed in the General Population (D Unit) in the federal Administrative Maximum Facility ("ADX"), at Florence, Colorado, but who was housed under even more restrictive conditions at this and different facilities from November, 1983 to April, 2008. Those opinions are contained in this letter. Several additional components of the Rule 26 requirement, including my current curriculum vitae, are attached to this letter in the form of appendices.

I. Basis for Opinion

The opinions that are expressed in this letter are based on my review of a number of pertinent materials. I have relied on my reading and knowledge of the published literature that pertains to the psychological effects of solitary-type confinement and my own extensive experience with and research on these effects. In addition, I examined a number of case specific documents that I requested and your office supplied me, including extensive materials from Mr. Silverstein's BOP "Central File." That file contained numerous documents and observations that chronicled Mr. Silverstein's penal isolation over the last twenty-five plus years, including many "Psychology Services Intake Screenings," "Psychological Screening Reviews," "SHU Reviews," "Ninety Day Status Reports," "Quarterly Reports," "Periodic Reviews," and a six-page, undated Draft Report titled "Special Housing Review: Thomas Silverstein & Clayton Fountain." I also reviewed the Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and Damages and Jury Demand (April 9, 2009), a June 28, 2005 Memo from Section Chief Mike Heimbach to S.A. Todd Blessing and BOP official Les Smith, a March 31, 2009 Memo from Supervising Attorney Chris Synsvoll entitled "Summary Time Line, Thomas Silverstein, Federal Register Number 14634-116," and a BOP letter dated July 31, 2008 and attached documents responding to a FOIA request filed by Mr. Silverstein. I also reviewed deposition testimony from Donald Denney (hereafter "Denney Deposition"), BOP Regional Director Michael Nalley (January 21, 2009, hereafter "Nalley Deposition"), and Case Manager Tena Sudlow (January 15, 2009, hereafter "Sudlow Deposition").

In addition, I conducted two personal interviews with Mr. Silverstein (on October 19, 2008 and November 25, 2008), and on October 26, 2008 I toured and inspected both the Range 13 Special Housing (Z Unit) where Mr. Silverstein was held for nearly three years after arriving at ADX and the General Population (D Unit) at the ADX facility where Mr. Silverstein is currently being housed.

Finally, I was provided with and reviewed photographs of the two units where Mr. Silverstein has been housed at ADX, and photographs of the special unit where he was confined at USP Leavenworth, as well as floor plans of those housing units.

I should note that my opinion may be supplemented with additional information, if and when it becomes available. For example, it is my understanding that a request to conduct a site visit at USP Leavenworth is still pending. If granted, it would provide me with an opportunity to directly observe the conditions in the housing unit where Mr. Silverstein was confined between December 1, 1987 until July 12, 2005. It is also my understanding that a request to conduct a site visit of the “step down” units at ADX facility that Mr. Silverstein may be considered for transfer into is also pending. If granted, it would provide me with an opportunity to directly observe the conditions in these housing units and form an opinion concerning his possible placement in them. Those site visits and any other additional information acquired after the filing of this report may be used to supplement the opinions expressed herein.

II. Summary of Opinion

The psychological effects of solitary or isolated confinement are well understood. Knowledge of these effects is based on literature developed over many years, by researchers and clinicians from diverse backgrounds and perspectives. The literature is empirically consistent—virtually every one of the studies conducted has documented the psychologically precarious state of persons confined under conditions of penal isolation, and many address in detail the pain and suffering that isolated prisoners endure. It is also theoretically sound; there are numerous reasons why one would expect long-term isolation,

the absence of meaningful social interaction and activity, and the other severe deprivations that are common under conditions of solitary confinement to have harmful psychological consequences.

Not surprisingly, and in part because of the substantial and consistent nature of the documented harmful effects, the use of long-term solitary confinement in prison settings has been roundly condemned by international human rights organizations, domestic groups concerned with the humane treatment of prisoners, and prominent correctional, penological, and mental health experts.

Mr. Thomas Silverstein is a 57 year old man who has been incarcerated continuously since the age of 20. Since 1983 until the present—a 26-year period—he has been subjected to truly severe forms of solitary confinement. For most of this period he was confined in specially constructed prison housing that was explicitly designed to minimize or eliminate his contact with other human beings. I have seen official documentation confirming the fact that Mr. Silverstein was subject to what was termed a “no human contact” order imposed by the BOP that set the terms of his solitary confinement.¹ His was the most isolated form of long-term confinement I have ever encountered. As a result, Mr. Silverstein has not had a remotely normal social interaction or touched another human being with affection for more than a quarter century. In addition to being completely deprived of normal social contact and other essential freedoms for an extremely long period of time, Mr. Silverstein never knew how long his isolation would last or what he could do to end it. This chronic uncertainty exacerbated the stress of his confinement.

Not surprisingly, given the truly severe conditions under which he lived, Mr. Silverstein experienced significant psychological pain and distress, was

¹ See Memo from Section Chief Mike Heimbach to S.A. Todd Blessing and BOP official Les Smith, dated June 28, 2005.

negatively changed as a result of his long-term isolation, and was placed at grave risk of more serious psychological harm. The evidence of his pain and distress, negative change, and risk of harm is reflected in his current self-reports and contemporaneous accounts of his mental status and attempts to adjust to his confinement accumulated over a period of more than two decades. The uncertainty that surrounded his confinement—the lack of a clearly articulated justification for retaining him under such extremely onerous conditions and the apparent absence of any coherent plan to remove him from these conditions—is also well documented.

In contrast to his earlier years incarcerated in the BOP, and in spite of extraordinary stressors to which he was subjected during his unprecedented isolation, Mr. Silverstein has been a model inmate over the last 26 years. His conforming behavior over this period of time and his physical and emotional maturity insure that he no longer poses a significant risk of future danger. Thus, I believe that a graduated program of transition back into mainline maximum security (as opposed to continued, indefinite ADX) housing should be implemented.

However, notwithstanding Mr. Silverstein's psychological resiliency and his remarkable ability to survive these harrowing experiences, apparently without becoming profoundly debilitated or developing a serious mental illness, the full-range of long-term, future consequences that may stem from his extraordinary treatment over the last 26 years remain to be seen. For this reason, it is critically important to take the nature and potential consequences of his history of confinement explicitly and carefully into account into deciding when and how to transition him back into normal prison life.

III. The Psychological Consequences of Solitary Confinement

“Solitary confinement” is a term of art in correctional practice and scholarship. For perhaps obvious reasons, total and absolute solitary confinement—literally complete isolation from any form of human contact—does not exist in prison and *never* has.² Instead, the term is generally used to refer to conditions of extreme (but not total) isolation from others. I have defined it elsewhere, in a way that is entirely consistent with its use in the broader correctional literature, as:

[S]egregation from the mainstream prisoner population in attached housing units or free-standing facilities where prisoners are involuntarily confined in their cells for upwards of 23 hours a day or more, given only extremely limited or no opportunities for direct and normal social contact with other persons (i.e., contact that is not mediated by bars, restraints, security glass or screens, and the like), and afforded extremely limited if any access to meaningful programming of any kind.³

Presumably designed to limit and control violence by keeping prisoners isolated from one another, long-term solitary confinement subjects prisoners to especially harsh and deprived conditions of confinement that comes with a significant risk of psychological harm. As a general matter, psychologists know from studies of behavior and adjustment in free society that social isolation in general is potentially very harmful and can undermine overall psychological well

² Thus, when BOP Regional Director Michael Nalley suggested that “[t]here’s no solitary confinement in the Bureau of Prisons” (Nalley Deposition, p. 10), he was simply incorrect, at least with respect to the common use of the term in correctional contexts with which I am familiar. In fact, most of the housing units in the ADX facility at Florence, Colorado impose what are ordinarily regarded as classic conditions of solitary confinement on the prisoners who are housed there. Moreover, the conditions to which Mr. Silverstein was subjected in USP Atlanta, USP Leavenworth, and Range 13 at ADX not only constitute what is commonly understood as “solitary confinement” but are the most isolating conditions of long-term confinement of which I am aware in operation in the United States.

³ Craig Haney, The Social Psychology of Isolation: Why Solitary Confinement is Psychologically Harmful, *Prison Service Journal* 12 (January, 2009), at n.1.

being.⁴ Its effects are no less harmful in prison. Thus, there is substantial evidence of the negative psychological effects of isolated prison confinement that comes from a variety of sources, including personal accounts, descriptive studies, and systematic research on solitary and “supermax”-type units. The data that establish these harmful effects have been collected in studies conducted over a period of several decades, by researchers from several different continents who had diverse academic backgrounds and a wide range of professional expertise.⁵

For example, mental health and correctional staff who have worked in disciplinary segregation and isolation units have reported observing a range of problematic symptoms manifested by the prisoners confined in these places.⁶ The

⁴ For example, see: Graham Thornicroft, Social Deprivation and Rates of Treated Mental Disorder: Developing Statistical Models to Predict Psychiatric Service Utilisation, 158 *British Journal of Psychiatry* 475-484 (1991). Cf. Margaret K. Cooke & Jeffrey H. Goldstein, Social Isolation and Violent Behavior, 2 *Forensic Reports* 287-294, 288 (1989):

A socially isolated individual who has few, and/or superficial contacts with family, peers, and community cannot benefit from social comparison. Thus, these individuals have no mechanism to evaluate their own beliefs and actions in terms of reasonableness or acceptability within the broader community. They are apt to confuse reality with their idiosyncratic beliefs and fantasies and likely to act upon such fantasies, including violent ones.

⁵ For example, see: Christopher Burney, *Solitary Confinement*. New York: St. Martin's Press (1961); Frank Rundle, The Roots of Violence at Soledad. In Erik Olin Wright, (Ed.), *The Politics of Punishment: A Critical Analysis of Prisons in America* (pp. 163-172). New York: Harper (1973); Robert Slater, Psychiatric Intervention in an Atmosphere of Terror, 7(1) *American Journal of Forensic Psychiatry* 5-12 (1986); Robert Slater, Abuses of Psychiatry in a Correctional Setting, 7(3) *American Journal of Forensic Psychiatry* 41-47 (1986).

⁶ For detailed reviews of all of these psychological issues, and references to the many empirical studies that support these statements, see: Craig Haney and Mona Lynch, Regulating Prisons of the Future: The Psychological Consequences of Supermax and Solitary Confinement, 23 *New York University Review of Law and Social Change* 477-570 (1997); and Craig Haney, Mental Health Issues in Long-Term Solitary and “Supermax” Confinement, 49 *Crime & Delinquency* 124-156 (2003).

authors of one of the early studies of solitary confinement summarized their findings by concluding that “[e]xcessive deprivation of liberty, here defined as near complete confinement to the cell, results in deep emotional disturbances.”⁷

A decade later, Professor Hans Toch’s large-scale psychological study of prisoners “in crisis” in New York State correctional facilities included important observations about the effects of isolation.⁸ After he and his colleagues had conducted numerous in-depth interviews of prisoners, Toch concluded that “isolation panic” was a serious problem in solitary confinement. The symptoms that Toch reported included rage, panic, loss of control and breakdowns, psychological regression, a build-up of physiological and psychic tension that led to incidents of self-mutilation.⁹ Professor Toch noted that although isolation panic could occur under other conditions of confinement it was “most sharply prevalent in segregation.” Moreover, it marked an important dichotomy for prisoners: the “distinction between imprisonment, which is tolerable, and isolation, which is not.”¹⁰

More recent studies have identified other symptoms that appear to be produced by these conditions. Those symptoms include: appetite and sleep

⁷ Bruno M. Cormier & Paul J. Williams, Excessive Deprivation of Liberty, 11 *Canadian Psychiatric Association Journal* 470-484 (1966), at p. 484. For other early studies of solitary confinement, see: Paul Gendreau, N. Freedman, G. Wilde, & George Scott, Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement, 79 *Journal of Abnormal Psychology* 54-59 (1972); George Scott & Paul Gendreau, Psychiatric Implications of Sensory Deprivation in a Maximum Security Prison, 12 *Canadian Psychiatric Association Journal* 337-341 (1969); Richard H. Walters, John E. Callagan & Albert F. Newman, Effect of Solitary Confinement on Prisoners, 119 *American Journal of Psychiatry* 771-773 (1963).

⁸ Hans Toch, *Men in Crisis: Human Breakdowns in Prisons*. Aldine Publishing Co.: Chicago (1975).

⁹ *Ibid.* at 54.

¹⁰ *Ibid.*

disturbances, anxiety, panic, rage, loss of control, paranoia, hallucinations, and self-mutilations. Moreover, direct studies of prison isolation have documented an extremely broad range of harmful psychological reactions. These effects include increases in the following potentially damaging symptoms and problematic behaviors: negative attitudes and affect, anxiety, withdrawal, hypersensitivity, ruminations, cognitive dysfunction, hallucinations, loss of control, irritability, aggression, and rage, paranoia, hopelessness, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behavior.¹¹

¹¹ For example, see the numerous studies cited in the articles referenced *supra* at note 6. In addition to those direct studies, and the many studies summarized in the literature reviews to which I have referred, there is a significant international literature on the adverse effects of solitary confinement. For example, see: Henri N. Barte, *L'Isolement Carcéral*, 28 *Perspectives Psychiatriques* 252 (1989). Barte analyzed what he called the "psychopathogenic" effects of solitary confinement in French prisons and concluded that prisoners placed there for extended periods of time could become schizophrenic instead of receptive to social rehabilitation. He argued that the practice was unjustifiable, counterproductive, and "a denial of the bonds that unite humankind." In addition, see: Reto Volkart, *Einzelhaft: Eine Literaturübersicht* (Solitary confinement: A literature survey), 42 *Psychologie - Schweizerische Zeitschrift für Psychologie und ihre Anwendungen* 1-24 (1983) (reviewing the empirical and theoretical literature on the negative effects of solitary confinement); Reto Volkart, Adolf Dittrich, Thomas Rothenfluh, & Paul Werner, *Eine Kontrollierte Untersuchung über Psychopathologische Effekte der Einzelhaft* (A controlled investigation on psychopathological effects of solitary confinement), 42 *Psychologie - Schweizerische Zeitschrift für Psychologie und ihre Anwendungen* 25-46 (1983) (when prisoners in "normal" conditions of confinement were compared to those in solitary confinement, the latter were found to display considerably more psychopathological symptoms that included heightened feelings of anxiety, emotional hypersensitivity, ideas of persecution, and thought disorders); Reto Volkart, et al., *Einzelhaft als Risikofaktor für Psychiatrische Hospitalisierung* (Solitary confinement as a risk for psychiatric hospitalization), 16 *Psychiatria Clinica*, 365-377 (1983) (finding that prisoners who had been kept in solitary confinement were overrepresented as compared to other prisoners who were hospitalized in a psychiatric clinic); Boguslaw Waligora, *Funkcjonowanie Człowieka W Warunkach Izolacji Wieziennej* (How men function in conditions of penitentiary isolation), *Seria Psychologia I Pedagogika* NR 34, Poland (1974) (so-called "pejorative isolation" of the sort that occurs in prison strengthens "the asocial features in the criminal's personality thus becoming an essential cause of difficulties and failures in the process of his resocialization"). See, also, Ida Koch, *Mental and Social Sequelae of Isolation: The Evidence of Deprivation Experiments and of Pretrial Detention in Denmark*,

In addition, there are correlational studies of the relationship between housing type and various kinds of incident reports in prison. They show that self-mutilation and suicide are more prevalent in isolated, punitive housing units such as administrative segregation and security housing where prisoners are subjected to solitary-like conditions of confinement. For example, clinical researchers Ray Patterson and Kerry Hughes attributed higher suicide rates in solitary confinement-type units to the heightened levels of “environmental stress” that are generated by the “isolation, punitive sanctions, [and] severely restricted living conditions” that exist there.¹² These authors reported that “the conditions of deprivation in locked units and higher-security housing were a common stressor shared by many of the prisoners who committed suicide.”¹³ In addition, signs of deteriorating mental and physical health (beyond self-injury), other-

in *The Expansion of European Prison Systems, Working Papers in European Criminology* No. 7 119 (Bill Rolston & Mike Tomlinson eds. 1986) who found evidence of “acute isolation syndrome” among detainees that occurred after only a few days in isolation and included “problems of concentration, restlessness, failure of memory, sleeping problems and impaired sense of time an ability to follow the rhythm of day and night” (at 124). If the isolated confinement persisted—“a few weeks” or more—there was the possibility that detainees would develop “chronic isolation syndrome,” including intensified difficulties with memory and concentration, “inexplicable fatigue,” a “distinct emotional lability” that can include “fits of rage,” hallucinations, and the “extremely common” belief among isolated prisoners that “they have gone or are going mad” (at 125). See, also: Michael Bauer, Stefan Priebe, Bettina Haring & Kerstin Adamczak, Long-Term Mental Sequelae of Political Imprisonment in East Germany, 181 *Journal of Nervous & Mental Disease* 257-262 (1993).

¹² Raymond Patterson & Kerry Hughes, Review of Completed Suicides in the California Department of Corrections and Rehabilitation, 1999-2004, 59 *Psychiatric Services* 676-682 (2008), at p. 678.

¹³ *Ibid.* See, also: Lindsay M. Hayes, National Study of Jail Suicides: Seven Years Later. Special Issue: Jail Suicide: A Comprehensive Approach to a Continuing National Problem, 60 *Psychiatric Quarterly* 7 (1989); Alison Liebling, Vulnerability and Prison Suicide, 36 *British Journal of Criminology* 173-187 (1995); and Alison Liebling, Prison Suicide and Prisoner Coping, 26 *Crime and Justice* 283-359 (1999).

directed violence, such as stabbings, attacks on staff, and property destruction, and collective violence are also more prevalent in these units.¹⁴

The painfulness and damaging potential of extreme forms of solitary confinement is underscored by its use in so-called “brainwashing” and certain forms of torture. In fact, many of the negative effects of solitary confinement are analogous to the acute reactions suffered by torture and trauma victims, including post-traumatic stress disorder (“PTSD”) and the kind of psychiatric sequelae that plague victims of what are called “deprivation and constraint” torture.¹⁵

¹⁴ For example, see: Howard Bidna, Effects of Increased Security on Prison Violence, 3 *Journal of Criminal Justice* 33-46 (1975); K. Anthony Edwards, Some Characteristics of Prisoners Transferred from Prison to a State Mental Hospital, 6 *Behavioral Sciences and the Law* 131-137 (1988); Elmer H. Johnson, Felon Self-Mutilation: Correlate of Stress in Prison, in Bruce L. Danto (Ed.) *Jail House Blues*. Michigan: Epic Publications (1973); Anne Jones, Self-Mutilation in Prison: A Comparison of Mutilators and Nonmutilators, 13 *Criminal Justice and Behavior* 286-296 (1986); Peter Kratcoski, The Implications of Research Explaining Prison Violence and Disruption, 52 *Federal Probation* 27-32 (1988); Ernest Otto Moore, A Prison Environment: Its Effect on Health Care Utilization, *Dissertation Abstracts*, Ann Arbor, Michigan (1980); Frank Porporino, Managing Violent Individuals in Correctional Settings, 1 *Journal of Interpersonal Violence* 213-237 (1986); and Pamela Steinke, Using Situational Factors to Predict Types of Prison Violence, 17 *Journal of Offender Rehabilitation* 119-132 (1991).

¹⁵ Solitary confinement is among the most frequently used psychological torture techniques. In D. Foster, *Detention & Torture in South Africa: Psychological, Legal & Historical Studies*. Cape Town: David Philip (1987), Psychologist Foster listed solitary confinement among the most common “psychological procedures” used to torture South African detainees (at 69), and concluded that “[g]iven the full context of dependency, helplessness and social isolation common to conditions of South African security law detention, there can be little doubt that solitary confinement under these circumstances should in itself be regarded as a form of torture” (at 136). See, also: Matthew Lippman, The Development and Drafting of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 27 *Boston College International & Comparative Law Review* 275- (1994); Tim Shallice, Solitary Confinement—A Torture Revived? *New Scientist*, November 28, 1974; F.E. Somnier & I.K. Genefke, Psychotherapy for Victims of Torture, 149 *British Journal of Psychiatry* 323-329 (1986); and Shaun R. Whittaker, Counseling Torture Victims, 16 *The Counseling Psychologist* 272-278 (1988).

The prevalence of psychological symptoms (that is, the extent to which prisoners who are placed in these units suffer from these and related symptoms) is often very high. For example, in a study that I conducted of a representative sample of one hundred prisoners who were housed in the Security Housing Unit at Pelican Bay Prison, in California, I found that every symptom of psychological distress that I measured but one (fainting spells) was suffered by more than half of the prisoners who were interviewed.¹⁶ Many of the symptoms were reported by two-thirds or more of the prisoners assessed in this isolated housing unit, and some were suffered by nearly everyone. Well over half of the Pelican Bay isolated prisoners in this study reported a constellation of symptoms—headaches, trembling, sweaty palms, and heart palpitations—that is commonly associated with hypertension.

I also found that almost all of the prisoners whom I evaluated reported ruminations or intrusive thoughts, an oversensitivity to external stimuli, irrational anger and irritability, difficulties with attention and often with memory, and a tendency to socially withdraw. Almost as many prisoners reported a constellation of symptoms indicative of mood or emotional disorders—concerns over emotional flatness or losing the ability to feel, swings in emotional responding, and feelings of depression or sadness that did not go away. Finally, sizable minorities of the prisoners reported symptoms that are typically only associated with more extreme forms of psychopathology—hallucinations, perceptual distortions, and thoughts of suicide.

Although these specific symptoms of psychological stress and the psychopathological reactions to isolation are numerous and well-documented, and certainly provide one index of the magnitude of the risk of harm this kind of experience presents, they do not encompass all of the psychological pain and

¹⁶ Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, *supra* note 6.

dysfunction that such confinement can incur, the magnitude of the negative changes it may bring about, or even the full range of the risk of harm it represents. Among other things, such extreme deprivation of social contact can undermine an individual's social identity and destabilize his sense of self. Like the rest of us, of course, prisoners are social beings who, although they vary in their levels of sociability, are nonetheless dependent on social context and interaction with others to remain psychologically grounded in their thoughts, feelings, and actions.¹⁷ Long-term isolated prisoners are literally at risk of losing their grasp on who they are, of how and whether they are connected to a larger social world.

Depriving people of contact with others for long periods of time is psychologically hurtful and potentially destabilizing for another, related set of reasons. The importance of "affiliation"—the opportunity to have contact with others—in reducing anxiety in the face of uncertain or fear-arousing stimuli is long-established in social psychological literature.¹⁸ In addition, one of the ways that people determine the appropriateness of their feelings—indeed, how we establish the very nature and tenor of our emotions—is through contact with others.¹⁹ Harry Stack Sullivan once summarized the clinical importance of social

¹⁷ There is a long line of research in social psychology that confirms the centrality of social interaction in establishing and maintaining self-knowledge and anchoring personal attitudes and beliefs through social comparison processes. For example, see: Leon Festinger, *A Theory of Social Comparison Processes*, 7 *Human Relations* 327-346 (1954); Symposium, 12 *Personality and Social Psychology Bulletin* 261-299 (1986).

¹⁸ For example, see: Stanley Schachter, *The Psychology of Affiliation: Experimental Studies of the Sources of Gregariousness*. Stanford, CA: Stanford University Press (1959); Irving Sarnoff & Philip Zimbardo, Anxiety, Fear, and Social Affiliation, 62 *Journal of Abnormal Social Psychology* 356-363 (1961); Philip Zimbardo & Robert Formica, Emotional Comparison and Self-Esteem as Determinants of Affiliation, 31 *Journal of Personality* 141-162 (1963).

¹⁹ For example, see: A. Fischer, A. Manstead, & R. Zaalberg, Social Influences on the Emotion Process, in M. Hewstone & W. Stroebe (Eds.), *European Review of Social Psychology* (pp. 171-202). Volume 14. Wiley Press (2004); C. Saarni, *The Development of Emotional Competence*. New York: Guilford Press (1999);

contact by observing that “[w]e can’t be alone in things and be very clear on what happened to us, and we... can’t be alone and be very clear even on what is happening in us very long—excepting that it gets simpler and simpler, and more primitive and more primitive, and less and less socially acceptable.”²⁰

Solitary confinement is a socially pathological environment that forces long-term inhabitants to develop their own socially pathological adaptations—ones premised on the absence of meaningful contact with people—in order to function and survive. As a result, prisoners gradually change their patterns of thinking, acting and feeling to cope with their largely asocial world and the impossibility of relying on social support or the routine feedback that comes from normal contact with others. Clearly, then, these adaptations represent “social pathologies” brought about by the socially pathological environment of solitary confinement. However, although they are functional and even necessary under these circumstances, they can become especially painful and disabling if taken to extremes, or if and when they are internalized so deeply that they persist long after time in solitary confinement has ended.

For example, some prisoners cope with the asociality of their daily existence by paradoxically creating even more. That is, they socially withdraw further from the world around them, receding even more deeply into themselves than the sheer physical isolation of solitary confinement and its attendant procedures require. Others move from initially being starved for social contact to eventually being disoriented and even frightened by it. As they become

Stanley Schachter & Jerome Singer, Cognitive, Social, and Physiological Determinants of Emotional State, 69 *Psychological Review* 379-399 (1962); L. Tiedens & C. Leach (Eds.), *The Social Life of Emotions*. New York: Cambridge University Press (2004); and S. Truax, Determinants of Emotion Attributions: A Unifying View, 8 *Motivation and Emotion* 33-54 (1984).

²⁰ Harry Stack Sullivan, The Illusion of Personal Individuality, 12 *Psychiatry* 317-332 (1971), at p. 326.

increasingly unfamiliar and uncomfortable with social interaction, they are further alienated from others and made anxious in their presence.²¹ In extreme cases, another pattern emerges: this environment is so painful, so bizarre and impossible to make sense of, that they create their own reality—they live in a world of fantasy instead.²²

Not surprisingly, long-term isolated prisoners often report that these adaptations to asociality are painful, and that they feel their lives have been drained of meaning and happiness. John Bowlby characterized intimate attachments with others as the “the hub around which a person’s life revolves,” and elaborated that “[f]rom these intimate attachments a person draws his strength and enjoyment of life and, through what he contributes, he gives strength and enjoyment of others.”²³ Prisoners who cannot manage without such

²¹ For evidence that solitary confinement may lead to a withdrawal from social contact or an increased tendency to find the presence of people increasingly aversive or anxiety-arousing, see: Cormier, B., & Williams, *supra* note 7; Haney, *supra* note 6; H. Miller & G. Young, Prison Segregation: Administrative Detention Remedy or Mental Health Problem?, 7 *Criminal Behaviour and Mental Health* 85-94 (1997); Scott & Gendreau, *supra* note 6; Toch, *supra* note 7; and Waligora, *supra* note 11.

²² For example, compare the description in: M. Cooke & J. Goldstein, Social Isolation and Violent Behavior, 2 *Forensic Reports* 287-294 (1989), at p. 288:

A socially isolated individual who has few, and/or superficial contacts with family, peers, and community cannot benefit from social comparison. Thus, these individuals have no mechanism to evaluate their own beliefs and actions in terms of reasonableness or acceptability within the broader community. They are apt to confuse reality with their idiosyncratic beliefs and fantasies and likely to act upon such fantasies, including violent ones.

²³ John Bowlby, *Attachment and Loss: Loss, Sadness, and Depression*. New York: Basic Books (1980), at p. 442.

a “hub” may find themselves becoming increasingly joyless, depressed, and even suicidal.²⁴

Although social deprivation is at the core of solitary confinement, and what seemingly accounts for its most intense psychological pain and the greatest risk of harm, prison isolation units also deprive prisoners of more than social contact. Thus, there are characteristically high levels of repressive control, enforced idleness, reduced environmental stimulation, and physical deprivations that also lead to psychological distress and can create even more lasting negative consequences. Indeed, most of the things that we know are beneficial to prisoners—such as increased participation in institutional programming, visits with persons from outside the prison, and so on²⁵—are either functionally denied or greatly restricted to prisoners housed in solitary confinement. In addition to the social pathologies that are created by the experience of solitary confinement, as I say, these other stressors also can produce their own negative psychological effects.

For example, we know that psychological health, adjustment, and well-being depend in part on attaining and maintaining a sense of autonomy and purpose, or a modicum of what Albert Bandura broadly termed “self-efficacy.”²⁶

²⁴ In addition to the references cited at *supra* notes 12-14, see: T. Benjamin & K. Lux, Constitutional and Psychological Implications of the Use of Solitary Confinement: Experience at the Maine Prison, 9 *Clearinghouse Review* 83-90 (1975).

²⁵ J. Wooldredge, Inmate Experiences and Psychological Well-Being, 26 *Criminal Justice and Behavior* 235-250 (1999).

²⁶ For example, see: Albert Bandura, *Self-Efficacy: The Exercise of Control*. New York: Freeman (1997); E. Karademas & A. Kalantzi-Asisi, The Stress Process, Self-Efficacy Expectations, and Psychological Health, 37 *Personality and Individual Differences* 1033-1043 (2004); J. Maddux, J. (1991). ‘Self-Efficacy’, in C. Snyder & D. Forsyth (Eds.), *Handbook of Social and Clinical Psychology: The Health Perspective* (pp. 57-78). New York: Pergamon (1991). See, also: L. Goodstein, D. MacKenzie & L. Shotland, Personal Control and Inmate Adjustment to Prison, 22 *Criminology: An Interdisciplinary Journal* 343-369 (1984).

When people are placed in environments or situations where little that they do seems to make a difference, or their plight seems beyond their control, they are likely to become despondent, lethargic, and eventually depressed. Years ago Martin Seligman coined the term “learned helplessness” to describe the consequence of being kept in environments where negative outcomes appeared unavoidable²⁷ or environmental stressors could not be controlled or reduced.²⁸ In analogous ways, the inability of long-term solitary confinement prisoners to control their fate and overcome the painfulness of their day-to-day existence may lead to a disabling sense of helplessness and even debilitating depression.²⁹

Solitary confinement also constricts and constrains the already limited opportunities that prisoners have to initiate behavior. Since they can *do* very little—much less than in mainstream prison settings—they are hard pressed to exercise meaningful autonomy or self-efficacy.³⁰ Prisoners in solitary confinement are forced to become highly dependent on the surrounding institution to authorize, organize, and oversee even the most minute and mundane aspects of their daily life. Not surprisingly, then, these prisoners may find themselves struggling to initiate behavior on their own, in part because they

²⁷ Martin Seligman, *Helplessness: On Depression, Development, and Death*. San Francisco: Freeman (1975). See, also: A. Collins & M. Kuehn, The Construct of Hope in the Rehabilitation Process, in A. Dell Orto & P. Power (Eds.), *The Psychological and Social Impact of Illness and Disability* (pp. 427-440). 5th Edition. New York: Springer (2007).

²⁸ G. Evans, & R. Stecker, Motivational Consequences of Environmental Stress, 24 *Journal of Environmental Psychology* 143-165 (2004).

²⁹ For example, see: L. Abramson, M. Seligman, & J. Teasdale, Learned Helplessness in Humans: Critique and Reformulation, 87 *Journal of Abnormal Psychology* 49-74 (1978).

³⁰ This is especially true for prisoners who are serving “indeterminate” solitary confinement terms in settings where they do not know what if anything they can do that will lead to their release, or find the stated requirements arbitrary or unreachable.

have been stripped of the opportunity to organize their lives around meaningful activity and purpose. They often report being unable to begin even mundane tasks or to follow through once they have begun them. They also often find it difficult to focus their attention, to concentrate, or to organize sustained activity. In extreme cases prisoners may literally stop behaving.³¹

Also, because almost every aspect of their day-to-day existence is so carefully controlled, some prisoners lose the ability to set limits for themselves or to regulate their own behavior through internal mechanisms. As a result, they may become uncomfortable with even small amounts of freedom because they have lost confidence in their own ability to behave in the absence of constantly enforced restrictions, the tight external structure that surrounds them, and the ubiquitous physical restraints into which they are repeatedly placed.

In addition, of course, people require a certain level of mental and physical activity in order to remain healthy. Yet, apart from the profound social deprivation and nearly complete undermining of self-efficacy that long-term solitary confinement can produce, prisoners housed in these units experience prolonged periods of monotony and idleness. Many of them experience a form sensory deprivation—there is an unvarying sameness to the physical stimuli that surround them, they exist within the same limited spaces and are subjected to the same repetitive routines, and there is little or no external variation to the experiences they are permitted to have or can create for themselves. This loss of perceptual and cognitive or mental stimulation may result in the atrophy of important related skills and capacities.

³¹ For examples of this range of symptoms, see, for example: S. Brodsky & F. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 *Forensic Reports* 267-280 (1988); Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 *American Journal of Psychiatry* 1450-1454 (1983); Haney, *supra* note 6; Miller & Young, *supra* note 21; and Volkart, Dittrich, Rothenfluh & Werner, *supra* note 11.

Not surprisingly, then, prisoners subjected to the emptiness of isolated confinement for long periods of time report becoming concerned (even obsessed) about their own potential physical and mental deterioration. In addition, they may suffer from lethargy, a loss of direction and purposefulness, hypersensitivity or a tendency to overreact to certain stimuli, ruminations, and certain forms of cognitive dysfunction (such as an inability to concentrate, focus, and remember).³²

In many solitary confinement units, whenever prisoners are escorted to any other area of the prison they are first cinched up in elaborate security devices and hardware—handcuffs, leg irons, restraint chains or the like—and this process begins even before their cell doors are opened (i.e., through use of a tray or cuff slot on the cell doors themselves). Although prison officials regard these procedures as necessary, they can have psychological consequences when practiced over a long period of time. That is, when prisoners are repeatedly subjected to them over a period of years, they may infer that they are no longer capable of being in the presence of another human being without being restrained. Other prisoners report feeling that this kind of treatment is degrading, and undermines their sense of dignity, value, and worth.

I hasten to add that not every isolated prisoner experiences all or even most of the range of adverse reactions I have described. But the nature and magnitude of the negative psychological consequences themselves underscore the stressfulness of this kind of confinement, the lengths to which prisoners must go to adapt and adjust to it in ways that will allow them to emerge psychologically and physically intact, and the risk of harm that is created by long-term isolation and its broad range of severe stressors and deprivations.

³² For examples of this range of symptoms, see: Brodsky & Scogin, *supra* note 31; Grassian, *supra* note 31; Haney, *supra* note 6; Miller & Young, *supra* note 21; and Volkart, et al., *supra* note 11.

Put somewhat differently, I believe that the accumulated weight of the scientific evidence I have cited to and summarized above about the importance of meaningful social contact and interaction establishes it as an identifiable human need that, on a long-term basis, is as essential to a person's psychological well-being as adequate food, clothing, and shelter are to his or her physical well-being. Indeed, in large part out of a common, implicit recognition of this fact, a consensus has emerged among international human rights and domestic prison oversight organizations that prisoners should not be denied opportunities to satisfy this need except when absolutely necessary and, even then, for briefest amounts of time.

Thus, given the painfulness of the experience of long-term solitary confinement, the negative changes it can precipitate, and the risk of serious psychological harm that it poses, national commissions and human rights organizations have now called for severe limits on its use and some have suggested that it may be time for the practice to end. For example, Human Rights Watch concluded that "state and federal corrections departments are operating supermax in ways that violate basic human rights" because solitary confinement and related deprivations in these facilities "are unduly severe and disproportionate to legitimate security and inmate management objectives; impose pointless suffering and humiliation; and reflect a stunning disregard of the fact that all prisoners... are members of the human community."³³ Similarly, in a separate report based in part on a series of fact-finding hearings that addressed a wide range of prison issues, the bipartisan Commission on Safety and Abuse in America's Prisons termed these kind of units "expensive and soul

³³ Human Rights Watch. Out of Sight: Super Maximum Security Confinement in the United States. New York: Human Rights Watch (2000), at p. 2. Available online at: <http://www.hrw.org/reports/2000/supermax/index.htm#TopOfPage>.

destroying”³⁴ and recommended that prison systems “end conditions of isolation.”³⁵

More recently, an international task force of mental health and correctional experts meeting in Istanbul, Turkey issued a joint statement on “the use and effects of solitary confinement” in which they acknowledged that its “central harmful feature” is the reduction of meaningful social contact to a level that it is “insufficient to sustain health and well being.”³⁶ Citing various statements, comments, and principles that had been previously issued by the United Nations—all recommending that the use of solitary confinement be carefully restricted or abolished altogether—the Istanbul group concluded that “[a]s a general principle solitary confinement should only be used in very exceptional cases, for as short a time as possible and only as a last resort.”

Finally, just a few months ago, the United Nations Special Rapporteur on Torture, Manfred Nowak, issued a formal statement in conjunction with the 60th Anniversary of the Universal Declaration of Human Rights, that included a special section on the humanitarian challenges that are presented by the use of solitary confinement. Among other things, Mr. Nowak noted that:

The weight of accumulated medical and psychological evidence, to date, points to the serious and adverse health effects of the use of solitary confinement: from insomnia and confusion to hallucinations and mental illness. The key adverse factor of solitary confinement is that socially and psychologically meaningful contact is reduced to the absolute minimum, to a point that is insufficient for most detainees to remain mentally well functioning... [T]he prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment. I, therefore, recommend that the use of

³⁴ Gibbons, John, and Katzenbach, Nicholas. Confronting Confinement: A Report of the Commission on Safety and Abuse in America’s Prisons. New York: Vera Institute of Justice (2006), at p. 59.

³⁵ *Id.* at p. 57.

³⁶ International Psychological Trauma Symposium, Istanbul Statement on the Use and Effects of Solitary Confinement. Istanbul, Turkey (December 9, 2007).

solitary confinement be kept to a minimum...³⁷

IV. Summary of the Specific Conditions of Solitary Confinement to Which Mr. Silverstein Has Been Subjected

Thomas Silverstein has been subjected to a range of conditions of solitary confinement that are truly severe. In fact, in my experience—as someone who has inspected, studied, and written about such conditions in prison systems throughout the United States over the last 30 years—they are unprecedented. As I noted earlier, it appears he has lived under a “no human contact” order for more than a quarter century. Not only has he been subjected to the most extreme forms of isolation I have ever seen—placed in housing units that were literally designed to isolate him as completely as possible from other human beings—but he also has been confined in these places for an extraordinary length of time. The specific characteristics of the units in which he has lived for this critical 26-year period bear on the amount of psychological pain he has endured, the changes that he has been forced to undergo in order to survive in them, and the magnitude of the risk of harm to which he was exposed.

With these general things in mind, I believe it is useful to explicitly summarize some aspects of the environments in which he has been kept.

USP Atlanta: Mr. Silverstein was housed under very severe conditions of solitary confinement in USP Atlanta for a little more than 4 years—from November 2, 1983 to December 1, 1987.³⁸ While at USP Atlanta, he was housed in

³⁷ Statement by Manfred Nowak, Special Rapportuer on Torture, made to the 63rd Session of the United Nations General Assembly, October 23, 2008. Available at: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1749/>

³⁸ It is my understanding that a fire at USP Atlanta destroyed all of Mr. Silverstein’s BOP records. It is also my understanding that the unit in which he

“Special Assigned Cell Status.” A BOP report described the purpose of this housing this way: “Special quarters were designed and constructed at Atlanta... to eliminate inmate contact and minimize staff contact.”³⁹

Those quarters required Mr. Silverstein to be housed in Building 63, where correctional officers periodically moved him back and forth between three different cells—what were referred to as “side pocket” cells—that were small enough that Mr. Silverstein could touch their walls and ceiling with his outstretched arms. His access to indoor recreation, which occurred in an area just outside his cell, was limited to four times a week, and he was allowed outdoor recreation once a week. The cells in which he was housed were windowless, and they lacked air conditioning or proper heat. He could not control the lights in the cell and they were left on all of the time. He also was not allowed to have a watch or clock for approximately his first year of confinement there, which resulted in significant disorientation, and distortions of time and sleep patterns.

For the first year of his USP Atlanta confinement Mr. Silverstein wore only boxer shorts, and had nothing in his cell (not even toilet paper, squares of which he had to request from correctional officers as needed). He was not permitted to have books or television, to make phone calls, or to receive visits, and was allowed only to write letters to family members. After the first year of his confinement at USP Atlanta, he was given religious material to read and cassette tapes that could be played on a tape player kept in the hallway of the unit. He was eventually given phone, writing, and visitation privileges as well as additional clothing. Just before the riot that took place in November, 1987, Mr. Silverstein was permitted to have art supplies in his cell.

was housed no longer exist. Thus, I have relied largely on Mr. Silverstein’s description of the conditions of his confinement at USP Atlanta.

³⁹ Draft Report titled “Special Housing Review: Thomas Silverstein & Clayton Fountain,” p. 2 (undated).

During the approximately four-year period he was kept at USP Atlanta, Mr. Silverstein received only one disciplinary violation (possession of a razor blade on July 5, 1985).

USP Leavenworth—“The Silverstein Suite”: Not long after the November, 1987 riot that occurred in USP Atlanta, Mr. Silverstein was transferred to USP Leavenworth on December 1, 1987. While at Leavenworth, he was held in “Special Cell Status” and held in a “Special Housing Unit.” Virtually all of the time was spent in a cell that appears to have been constructed for the sole purpose of housing him; indeed, it was dubbed “the Silverstein Suite.” The specially designed cell at Leavenworth varied along a number of dimensions from the ones he had lived in while at Atlanta. However, they were designed to achieve the same common purpose—as the BOP draft report had put it, to “eliminate inmate contact and minimize staff contact.”⁴⁰

For approximately the first year after he arrived at Leavenworth, Mr. Silverstein was housed in a basement cell whose walls and ceiling were made of thick steel. Sometime during this first year, the cell was divided and physically modified to create a self-contained exercise and visiting area. Cameras were trained on his cell to monitor his behavior around-the-clock, and floodlights shined on the cell at all times. Mr. Silverstein was never allowed outside and had no access to fresh air during the time he was housed in the basement cell.

Once a special cell that had been designed especially to hold him was completed, of course, Mr. Silverstein was housed there instead—in the “Silverstein Suite.” He spent more than a decade and a half living in this cell. The cell itself was located in a separate building that was at the end of Leavenworth’s regular segregation unit. It was outfitted with a television and, eventually, Mr.

⁴⁰ See *supra* note 38.

Silverstein was given a VCR and a radio/tape player in addition. The cell had no window that looked to the outside, and inside lights were kept on in the cell at all times. Mr. Silverstein's isolation from other prisoners was complete—none were housed near him and he could not see or hear any others. All direct communication with Mr. Silverstein—including his psychological “evaluations”—occurred cell front, either through the crack of the cell door or through the tray slot (through which his food was also delivered).

On rare occasions Mr. Silverstein was brought into the hallway in full restraints so that staff could conduct “team meetings” with him present.⁴¹ He was permitted outdoor recreation 5 days per week, usually for about an hour, in his own separate “yard,” completely isolated from others. It, too, had no view of the outside (except the sky above). The yard contained a stationary bicycle but no other equipment. At first, Mr. Silverstein was permitted to make only one phone call per month, but this was gradually increased over the years that he was confined Leavenworth. However, he was never allowed any contact visits—all visitors communicated with him through a glass partition in a special visiting booth that adjoined his cell.

During the nearly 18 years he spent at Leavenworth (from December 1, 1987 to July 12, 2005) Mr. Silverstein had only one disciplinary write up—for altering government property (issued March 29, 1988). His Monthly Reviews routinely indicated that, other than this minor incident, “no significant problems have developed with Mr. Silverstein's interactions with staff.” (e.g., May 2, 1988).

⁴¹ Mr. Silverstein told me that, when this happened, a special group of specially-equipped officers were brought to his cell, he was placed in two sets of handcuffs (the “black box” and another set), was placed in two sets of leg irons, and was chained to a wheelchair so that he could be moved. He explained that this was why he sometimes refused to participate the 6-month reviews that required this onerous procedure.

Sometimes staff added the comment that: “His behavior has not been disruptive” (e.g., September 5, 1988).

Mr. Silverstein told me that one morning at Leavenworth that he was told without warning or explanation that he would be moving to another federal prison. In fact, after some 18 years at Leavenworth, he was moved to the federal “supermax”—the ADX facility at Florence, Colorado. Among other things, Mr. Silverstein said that he was forced to relinquish his only real possessions—a substantial amount of artwork, Buddhist and other meditation tapes he used for “therapy,” and some other property items that he had accumulated during this long stay in his Leavenworth cell.

USP ADX-Z Unit, Range 13: Mr. Silverstein arrived at ADX-Z Unit, Range 13, on July 12, 2005. His art supplies and religious materials had been taken from him and were only returned at a later time. Range 13 is the most isolated and restrictive housing unit at the already highly restrictive ADX federal supermax (e.g., Sudlow Deposition, p. 19). The specially designed cells in this unit are configured so that the prisoner housed in them can (and, by prison regulations, must) sleep, eat, exercise, shower, and receive visits without ever leaving his cell. During the time he was housed in Range 13, Mr. Silverstein was rotated between two cells, in a unit that was inhabited by only one other prisoner (who was housed at the opposite end of the range and beyond the reach of sight and sound). There is a sallyport area at the entrance to each of the cells in which Mr. Silverstein was housed in Range 13; although he could control the lights that are located inside the cell itself, sallyport lights remained on at all times.

The cells contained a bunk, a concrete desk with a writing surface, and a shower. Mr. Silverstein also was given a television. For the first several years he was housed in Range 13, he had no mirror in the cells in which he was confined,

which made personal hygiene (especially shaving) difficult. A mirror was installed in the cells several years ago. There were occasions when his cell flooded during heavy rainstorms. He was permitted a total of four phone calls per month.

Each of the two cells in which Mr. Silverstein was housed on Range 13 had one narrow window that looked out on the concrete enclosed recreation area that was attached to the cell itself. The mesh covering these windows had been painted, making it more difficult to see out. Mr. Silverstein had access to this adjoining concrete "yard" five days a week, for approximately an hour each day. His movement to the yard was controlled by staff, through the use of electronic door locks; there were no correctional officer escorts with whom Mr. Silverstein directly interacted when he went to the yard. The outdoor recreation area itself consisted of a concrete floor that was surrounded with a high concrete wall, and an overhead covering of mesh wire. It was not possible for Mr. Silverstein to see the surrounding terrain or any other persons, and the distance and other physical barriers between the yards made communication with the other prisoner on Range 13 (or any others for that matter) virtually impossible.

Virtually all communication between Mr. Silverstein and prison staff members occurred through two doors, one of which was solid steel (i.e., staff typically did not enter the sallyport to his cell to converse with him). This procedure was followed by the psychology staff members as well as others when they made their rounds past Mr. Silverstein's Range 13 cell. As at Leavenworth, a small area adjoining his cell had been constructed for visitation. All visits were conducted on a non-contact basis, through a glass partition that lacked a "pass through" slot (making it impossible to exchange documents). There were video cameras that kept Mr. Silverstein under around-the-clock surveillance, all or at least some portion of which was played on a video monitor in the unit lieutenant's office. (Sudlow Deposition, p. 120).

During the nearly 3-year period Mr. Silverstein was housed under these conditions, he was only removed from Range 13 for his bi-annual reviews and to receive haircuts. Whenever he was removed from his cell, correctional staff shut down all movement and activity in the area.

USP ADX D-Unit: On April 7, 2008, Mr. Silverstein was moved to D Unit inside the ADX facility. Although D Unit is considered “general population” housing at ADX, it would be considered a form of highly restrictive “supermax” solitary confinement in any other prison system with which I am familiar. D Unit houses approximately 48 prisoners. On Range 1 in D Unit where Mr. Silverstein is confined, there are 8 cells on the range. The cells have a sallyport, shower, toilet, and a television set. Anytime Mr. Silverstein leaves D Unit, he is fully shackled (which includes a black box, Martin chain, wrists, ankles).

When he was first moved to D Unit, he was placed on a range that had no other prisoners housed on it. A BOP memorandum directed that he be placed in that cell, one that the memorandum explicitly noted was next to a cell that had “a strap down bed in it” (Sudlow Deposition, p. 78). The same memorandum required that he be escorted by three correctional officers, including a lieutenant, any time he was moved from his cell, that his mail be reviewed and approved by the prison’s security team before being processed, that he would not be permitted to use the unit law library, his visiting days would be restricted to Monday through Wednesdays, that no other visits were permitted in the prison visiting area when Mr. Silverstein was having a visit, and that he would be returned to Range 13 if he required administrative detention or disciplinary segregation.

Mr. Silverstein has reported that some of these conditions have recently been relaxed. For example, there are now other prisoners housed on the same range as him, he has been permitted recreation under essentially the same

conditions as other prisoners in his unit, and he has at times been escorted by two correctional officers (one of whom was a lieutenant).

V. The Long-Term Solitary Confinement Effects Reflected in Mr. Silverstein's Central File

The question of whether Mr. Silverstein suffers from a major mental illness is one that should be deferred to others with more clinical experience and expertise than I. I saw no direct evidence of major mental illness either reflected in Mr. Silverstein's BOP Central File or in the course of my two interviews with him. However, it would be a mistake to infer from that fact that Mr. Silverstein did not suffer greatly in the course of his more than 25 years in solitary confinement, that he has not been negatively changed in some very important ways, or that he was not placed at substantial risk of psychological harm (the long-term prognosis for which remain to be seen). The evidence of that suffering and those changes and risks was surfaced in my interviews with him. But it was also reflected in the contemporaneous records of his mental state that appears in his Central File. I will review each of these different sources of information in turn, beginning with his voluminous Central File.

Mr. Silverstein used a variety of coping mechanisms as he struggled to maintain his sanity and emotional stability while confined in near total isolation for so many years. He became deeply involved in artistic endeavors, with the limited materials he was permitted to have. He had brief contact—typically no more than a few minutes a few times a month—with psychology staff members, often taking place through the food slot of his cell. However limited in nature and number—strained, superficial, and at times contentious—they at least provided

him with some form of minimal human contact. He had rare social visits, a social phone call per month (which was gradually increased over time), and an occasional visit from an attorney or journalist.

One of the mechanisms on which he relied was to impose a semblance of order and structure on an otherwise completely empty existence. As Dr. Donald Denney (a psychologist with whom Mr. Silverstein had repeated albeit brief contacts at Leavenworth)⁴² observed in a Psychological Screening Review filed on November 1, 1992, “[a]n analysis of the daily living habits of Mr. Silverstein reveals a rather regimented and organized flow of activities.” However, there also were many times when this coping mechanism—maintaining this “regimented and organized flow”—eluded him, in large part because he had to create and impose entirely on his own. When this happened, as his BOP Central File makes clear, Mr. Silverstein struggled to find meaning in the otherwise bleak, degrading, and deprived environment in which he was required to live.

Despite the fact that his contact with the BOP psychology staff was exceedingly limited and superficial, and compromised by high levels of mistrust, it did produce a clearly documented record of how Mr. Silverstein struggled with the emotional consequences of his isolation. The numerous written observations that have been logged over the years in Mr. Silverstein’s Central File—even though they are “based upon a narrowly focused and necessarily brief interview,” as the report writers themselves repeatedly characterized their contact with him—give unmistakable indications of some of the ways that he suffered throughout the course of this unprecedented level and duration of solitary confinement. Although he does not appear to be “driven crazy” by this ordeal, it is clear that his mental health was repeatedly placed at grave risk.

⁴² In fact, almost all of my references to “psychology staff” at Leavenworth refer to Dr. Denney, who was assigned to monitor Mr. Silverstein and who authored the overwhelming majority of the entries from which I quoted.

Largely because Mr. Silverstein's Central File is so voluminous, I have chosen a representative 10-year period—from the late 1980s through the late 1990s—and focused on the many behavioral observations documented in that time frame to illustrate the many problems he was experiencing. The entries also show that Mr. Silverstein was acutely aware of the many psychological problems from which he was suffering. Indeed, he often brought his concerns to the psychology staff, and even voiced frustration to them over their unwillingness to help him address these things. For the most part, however, the concerns that he expressed and even the staff's own observations about troublesome signs and symptoms in his affect and behavior were simply recorded and little or nothing more. There was little or no evidence in the file of any actions having been taken or recommendations being made to alleviate the severe isolation to which Mr. Silverstein was being subjected. But the concerns that were raised, the observations that were made, and the complaints that were voiced were recorded at the time they occurred. They provide a useful window into what Mr. Silverstein was experiencing during these years.

To be sure, even at the outset of this time period, the psychology staff seemed to me to be unusually quick to reach conclusions about Mr. Silverstein's positive mental health, resiliency and overall adjustment, and to do so based on what staff members openly acknowledged was a limited amount of information. One "Psychological Screening Report" (dated December 2, 1988) is typical of the way these entries were structured. Thus, despite the fact that Mr. Silverstein was "responding in a very limited manner in what was an obvious effort not to engage in any type of meaningful interaction," and despite the examiner knowing that this lack of responsiveness was based on Mr. Silverstein's "feelings that [the examiner] could not obtain enough information from [his] interviews to make an accurate assessment of [Mr. Silverstein's] emotional stability," the staff member

went on to make one anyway: "Despite his limited interaction, there was no overt behavioral indications to suggest the presence of debilitating emotional distress which would warrant a change in his housing status at this time."

A year later, Dr. Donald Denney noted in the file that "Mr. Silverstein had not performed his daily grooming and hygiene activities and some disorder was evident in his personal belongings," and that there was evidence in his affect of "underlying frustration" from the pitch of his voice, its volume, and "his facial gestures," but still no mental health intervention was "warranted at this time." (Periodic Screening Evaluation, December 6, 1989)

Mr. Silverstein complained about the deprivation of social contact to which he was subjected, and from time to time the psychology staff acknowledged the legitimacy of his concerns. Thus, as Dr. Denney wrote in 1991: "he is soliciting additional non-contact social visits to disrupt the solitary nature of his housing status. Supplementing Mr. Silverstein's visiting list would likely decrease the possibility of regressive psychological behaviors in the future" (Psychological Screening Review, April 9, 1991).

This recommendation was not followed and, not long after this, Mr. Silverstein deteriorated considerably. Dr. Denney's observations on June 14, 1991, are worth quoting at length:

He stated that since the removal of the shades he had constructed (several weeks prior), his sleep had been disrupted and unsettled. He further states that he has not had a reprieve from his room lights in a long time. He noted that it is necessary for him to cover his face with a towel in order to sleep which makes sleeping difficult. His appearance and hygiene did not show the typical level of personal attention to these matters as previously noted. His mood and affect evidenced anger with depressive contents. His thoughts had a prevailing focus of hopelessness and a sense of futility in working with the Federal Bureau of Prisons. In particular, he noted his frustration in explaining to Bureau staff the impact caused by his loss of contact with society. This deprivation is due in part to the continued denial of his requests for overseas telephone calls and the addition of new individuals to his visiting list.

He noted that people with whom he had contact in society no longer wished to communicate with him; the result being a complete severing from meaningful interpersonal contacts.

Despite this, however, no mental health intervention was found to be “warranted” at that time.

On July 9th, Dr. Denney noted that Mr. Silverstein continued “to express anger and frustration related to institutional restrictions on his contact with society and friends” and that he was “beginning to withdraw from personal contact with this writer due to the limited periods of time spent interacting” with him.

A short time later, on July 31, 1991, Mr. Silverstein was described in a Psychological Report written by Dr. Denney as “tense and angry related to his helplessness.” A few months later, in October of that year, Dr. Denney reported that when Mr. Silverstein “approached the food slot” so that Denney could converse with him, “he appeared to be very depressed and withdrawn.” Denney concluded that “indications were present in his speech, thought content and behavior that are suggestive of a mild depression.” Mr. Silverstein complained directly about “the bright yellow lights that shine on him 24 hours per day” and he “commented that his eyes were beginning to hurt from the exposure and that he was having trouble reading,” as well as other vision problems (Psychological Screening Review, October 29, 1991).

The next year, Mr. Silverstein complained to psychology staff about his “declining ability to recall historical information” (Psychological Screening Review, June 19, 1992), and shortly thereafter was described as “adjusting as well as can be expected to his current housing status” while at the same time posing “the complex question determining who will determine the conditions of his future confinement and what changes does he need to produce” in order to demonstrate his suitability for different housing (by adequately abiding BOP rules) (July 2, 1992, emphasis added).

During the Special Housing Review that occurred the next week, Mr. Silverstein questioned Dr. Denney about the repetitive nature of his reports and the use of boilerplate language they contained, and Dr. Denney's failure to recommend his release from "special cell status" (and was told that the purpose of the reports "was not to indicate whether or not the inmate should be released"). He was also told that his confinement in the cell was "indefinite." (Special Housing Review Report, July 15, 1992).

By January 22, 1993, Denney's Psychological Screening Review indicated that Mr. Silverstein was continuing to clearly express the psychological pain of this kind of confinement.

His mood was markedly angry and despondent. Themes of helplessness were frequently noted in his presentation concerning the effects on his personality due to his indeterminant placement in solitary confinement. It is likely that his mood and presentation are directly related to his frustration concerning his uncertain future.

A February 24, 1993 memo to the BOP Director reiterated these observations, indicating that he was manifesting "signs of anger and helplessness associated with his uncertain future" but that there were nonetheless "no significant concerns or plans by staff to modify his program" (per Calvin Edwards to Kathleen Hawk).

A few months later, in his May 14, 1993 Psychological Screening Review, Dr. Denney acknowledged a number of psychological problems that Mr. Silverstein was experiencing. Although he asserted that there were "no behavioral signs his mental health has declined," Denney went on to note that:

[Mr. Silverstein's] cognitive and social skills appear to have been impacted by his isolation. He appears to relate well to a small, select group of people and poorly to those he does not know well. In the future mental health staff will need to provide significant attention to these details of daily living."

He also made reference to "[a]dditional programming efforts in this area" being planned by the Leavenworth staff" but provided no further details.

By December of that year, his “general level of activity and demeanor appear[ed] to have declined” (Psychological Screening Review, December 19, 1993). Less than a month later his affect was “angry and depressed,” and Dr. Denney noted that “[s]igns are present of an affective disorder, namely depression; however, the severity of this condition is deemed to be nominal at this time. The prognosis for the development of a more serious depression is dependent upon the development of hopelessness and helplessness” (Periodic Review, January 10, 1994).

By April, 1994, Dr. Denney was expressing concerns about Mr. Silverstein’s “grooming and hygiene,” and that he “refused to make verbal contact during the screening.” He was eventually prevailed upon to talk with Denney, during which time he expressed the feeling that he was being “persecuted by the local [prison] administration and the Bureau of Prisons” (Periodic Review, April 28, 1994). By July “[h]is affect and mood varied between angry and flat,” and the “tone of his voice had a hard edge to it.” He also “expressed thoughts of significant helplessness concerning his ability to positively impact his living situation.” (Periodic Review, July 26, 1994).

In November, Mr. Silverstein “declined to engage in any meaningful conversation” with Dr. Denney, who nonetheless noted “[h]is mood and affect were blunted,” his voice was “hushed,” his movements were “slow and methodical,” and there was “some decline in his typical maintenance” of his cell. (Psychological Screening Review, November 3, 1994). Later in the month the situation had worsened. At noontime on a day when Dr. Denney arrived at Mr. Silverstein’s cell, “[h]is room was dark and it was difficult to see him,” and he “answered most questions with a shake of his head or very short phrases,” and “his grooming show[ed] some signs of inattention.” (Periodic Review, November 29, 1994).

Two months later, his January 31, 1995 Psychological Screening Review noted that Mr. Silverstein “discontinued eye contact” when approached by psychology staff, and he was “asked several open-ended questions which were met with silence.” His demeanor had not improved three months later, when he continued to respond silently, and “[h]is affect and mood were flat and solemn.” (Psychological Screening Review, April 28, 1995).

On June 13, 1995, Dr. Denney described Mr. Silverstein’s behavior at the “periodic review” meeting this way: “He never spoke during the entire review. His hair was messy, his face was long and drawn, and his cell did not appear to show signs of attention to orderliness. The light over his writing/art area was draped with a sheet to minimize the light.”

On July 28, 1995, Dr. Denney reported that Mr. Silverstein was frustrated over his continued confinement in solitary: “Mr. Silverstein again asked what he had to do to change his housing status... He continues to struggle to understand why ‘12 years without a shot’ have not resulted in any change in his status at U.S.P. Leavenworth.” Denney also observed that Mr. Silverstein “exhibited some difficulty expressing himself interpersonally. It appears that he has trouble engaging in complex and higher-order reasoning and conversation, i.e., he struggles to find the right words to ‘make his case’... Anxiety was provoked during the administrative panel as considerable sweat developed on his forehead and his face flushed.” Nonetheless, Dr. Denney saw “no indications” that mental health intervention was warranted.

By September, 1995, Mr. Silverstein’s mood and affect had been so consistently flat that the psychology staff actually took his expressed criticism of them to be a “positive” sign. Thus:

Mr. Silverstein noted that he still could not understand the review process nor his continued confinement in isolation. He again challenged the role that psychology plays in his continued

confinement, as well as, the impact that his present housing assignment has on his mental health. In the last month, Mr. Silverstein has begun to voice his frustration to Psychology Services staff which is seen as a positive dynamic. (Psychological Screening Review, September 22, 1995)

By February, 1996, however, this “positive dynamic” was becoming more problematic. Mr. Silverstein continued his suspicions about and alienation from the psychology staff, and was declining to speak with them. He also began to sleep during the day and stay up through the nighttime hours. (Psychological Screening Review, February 14, 1996). A few weeks later Dr. Denney observed that Mr. Silverstein had covered the light fixture in his cell and was “choosing to live in ‘near-darkness’” and “again refused to become engaged in any meaningful conversation with Psychology Services staff.” But Denney nonetheless dutifully noted that no “mental health intervention for Mr. Silverstein is warranted at this time...” (Psychological Screening Review, March 6, 1996). Warden True’s March 15th memo to Regional Director Kane indicated that “Mr. Silverstein did voice a complaint about his mental health status and alluded that his mental health is deteriorating” but Dr. Denney’s view—that he had “not seen any overall changes in his mental health”—was also noted.

When the Psychological Screening Review was conducted by Dr. Denney on March 21, 1996 to “determine if [Mr. Silverstein] is psychologically capable of remaining in his present housing status” (i.e., to be kept totally isolated), Mr. Silverstein expressed apparent displeasure with Denney and with the evaluation process itself. Dr. Denney speculated on the reasons for Mr. Silverstein’s demeanor: “It appears that Mr. Silverstein remains angry and hostile towards Psychology Service staff since he believes the department should write reports that indicate that long-term placement in solitary conditions is not conducive to positive mental health.”

A month later Mr. Silverstein was still spending “a considerable amount of time each day with his light off which results in a dimly lit area.” (Psychological Screening Report, April 15, 1996). He appeared completely alienated from the psychology staff. On May 22, 1996 Dr. Denney reported that Mr. Silverstein refused to speak with him, was continuing to keep his cell “very dark,” and noted that the “sensory deprivation is not a positive indicator.”

A few months later, Regional Director Kane reported to Director Hawk that Mr. Silverstein now “chooses not to engage in meaningful dialogue with Psychology staff.” Psychology Services also had reported to Kane that Mr. Silverstein’s “written correspondence does reference a sense of helplessness; however, this theme is consistent with his writing over the years.” Despite acknowledging Mr. Silverstein’s “clear conduct record,” Kane’s memo noted that “no modifications to current security programs are recommended” (Memorandum, July 11, 1996).

A week later, a Detention Review acknowledged that Mr. Silverstein “reported that his mental health continues to be negatively impacted by his housing assignment” in isolation. Indeed, he had “reiterated his position the Psychology Services staff should document the adverse effects his housing assignment is having on him.” However, while seeming to dismiss this “position,” the report did accurately describe the very limited, psychologically painful options that were available to Mr. Silverstein in the face of his continued confinement under these harsh and deprived conditions—literally, a choice between a living with a “sense of despair” or one of “bitterness.” Specifically:

He remains cynical, pessimistic and presents in a somewhat helpless manner when he spoke with the team. It appears he uses a strategy of “why go into... since you won’t do anything about it” when dealing with staff. From prior discussions with him, this tactic prevents an emotional reaction when his requests are denied. Rather than developing a sense of despair, it appears that he uses these emotions/cognitions to become more bitter. (July 19, 1996)

By August, Mr. Silverstein's "mood and affect" were characterized by staff as being "consistent with his verbal messages"—namely, that he remained "sullen and pessimistic about his future." (Detention Review, August 27, 1996).

At the time of his next Detention Review (October 28, 1996), Mr. Silverstein "avoided eye contact and gazed at the floor" when mental health staff approached him. Indeed, the Psychology Services staff expressed this concern:

The degree of regimentation and repetitiveness [Mr. Silverstein] has developed does not foster positive mental health. His cognitive and interpersonal skills have become "lazy" and "predictable" in response to these current "routines." Staff will be encouraged to foster more interpersonal communication/interaction and aspects of responsibility.

Unfortunately, this recommendation did not include a plan for convincing Mr. Silverstein, who had become so fundamentally suspicious of and alienated from BOP staff over the preceding decade—indeed, many of whom he suspected of actively persecuting him—to communicate and interact more with them.

Lacking a viable plan for intervening in the life of a prisoner who was deteriorating under conditions of confinement that they were unable or unwilling to alleviate, the psychology staff had come to an impasse with Mr. Silverstein. For example, Dr. Denney's January 7, 1997 SHU Review contained this entry:

When asked how things were going he glared back with no response. When asked if had anything he wanted me to include in my report he responded that he wanted to "know why I can't get a visit." We discussed the past refusals to permit special visiting and he became angry. He responded with comments like "how can you know what it is like to not see anyone but your keepers for 14 years?" He then proceeded to request a mental health review by an independent mental health expert to ascertain the level of impairment "caused" by his long term confinement in isolation.

Dr. Denney filed a January 29, 1997 report describing Mr. Silverstein's behavior in the course of a "semi-annual review" that included him in what was described as a "team meeting." It described behavior that is very consistent the

kind of interpersonal problems that prisoners who have experienced long-term isolation often experience. Thus, Dr. Denney reported that Mr. Silverstein:

[D]eclined to speak and only spoke when prompted by the Warden. He then showed his art work to those present; however, it appeared that the attention being paid to him “caused him” to become uncomfortable. This resulted in his request to end the meeting and remain in his cell. He was observed after this cell door had been secured and the restraints were removed. He appeared to be more relaxed compared to his appearance during the team meeting.

By March, 1997, although Mr. Silverstein had apologized to Dr. Denney for having become upset with him during their January 7th exchange, he was still “declin[ing] to say more than just a couple of words” when approached by psychology staff. Dr. Denney noted that Mr. Silverstein had “indicated that his thinking has been distorted and negatively influenced by his continued presence in solitary confinement.” (SHU Review, March 11, 1997)

For the next several months, Mr. Silverstein continued to be so troubled by his solitary confinement and alienated from the Leavenworth psychology staff that he “refused to engage in any meaningful verbal interaction” with them. Indeed: “When asked how he was doing, his typical response was to shrug his shoulders and make no verbal comment.” His June 2, 1997 SHU Report went on to note: “Other than his reluctance to speak with mental health staff, Mr. Silverstein appears ‘only’ to be experiencing from (sic) an affective disorder (dysthymia).”

The SHU Review a short time later indicated that, perhaps as part of this affective disorder, Mr. Silverstein had chosen to live in relative darkness—he had covered his light”—and, “[w]hen asked if he was alright he waved his hand towards the door. Additional questions and comments failed to elicit any response from him.” Dr. Denney was concerned enough to note: “A psychiatric consult will be proposed to Mr. Silverstein to assess his affective conditions and possible treatment alternatives,” but there was no indication of this having been

done. (SHU Review, June 23, 1997) (Note: I found no record in the Central File of any comprehensive psychiatric or psychological evaluation having been done of Mr. Silverstein during his entire 26 years of isolation, and no indication that such an evaluation had been proposed and refused by Mr. Silverstein.)

Later in the year, at the time of his November 24, 1997 SHU Review, Mr. Silverstein's distress had not subsided: "Inmate Silverstein continues to complain about the conditions of his confinement" including the BOP's failure to "establish conditions for his release or change of his situation. He also continues to belittle the mental health review practice as lacking integrity." Remarkably, for its part, the mental health staff (per Dr. Denney) opined that "Inmate Silverstein remains resilient to the conditions of his confinement."

As evidence of this resiliency, Dr. Denney noted that "[t]here are no indications that he has lost hope, has become helpless, or that his cognitive orientation towards his condition has changed." (SHU Review, November 24, 1997) Taken at face value, however, this assessment was problematic, placing Mr. Silverstein in one of several "custodial Catch 22s" that were applied to him and from which he could not extricate himself in the course of his isolation. Note that according to Dr. Denney, Mr. Silverstein's alleged "resiliency" was what had prevented him from becoming hopeless and helpless. Yet it was this same resiliency that Denney believed had allowed his "cognitive orientation towards his condition" to remain "unchanged"—precisely what Dr. Denney identified as the reason he continued to regard Mr. Silverstein's level of threat toward others as "high."⁴³ In effect, this foreclosed Mr. Silverstein from pursuing any psychologically healthy option—he could either relinquish his resiliency but

⁴³ Thus: "Assessment of his level of threat is based upon his past conduct and the absence of any meaningful change in his cognitive orientation..." SHU Review, December 29, 1997.

presumably become hopeless and helpless, or continue to maintain that resiliency at the price of being regarded a dangerous threat to others.

A few months later, another BOP psychologist, Dr. Thomas White, noted that “Mr. Silverstein has become increasingly upset about the restricted conditions of his confinement.” Yet, White also repeated what had become a boilerplate conclusion that appeared throughout these records, one to the effect that “no serious psychological deterioration has occurred which would require his removal from controlled housing for mental health purposes” (Psychological Screening Review, January 4, 1998),

A memo that Regional Director Hershberger wrote to Director Hawk a few months later appeared to ignore signs of potential problems, reporting that “[t]here are no obvious of deterioration, and his adjustment to his conditions of confinement is satisfactory,” even though Hershberger acknowledged that “there has been a ‘dark tone’ to his outgoing correspondence lately” and that Mr. Silverstein expressed the unusual fear that, if he was honest and open with BOP personnel about his problems, “the Bureau would publish non-fiction works about him” (Memorandum, Hershberger to Hawk, April 16, 1998).

A SHU Review was conducted on September 21, 1998, some 12 years after Mr. Silverstein arrived at Leavenworth. Although there was no record of any violent behavior or aggressive outbursts in the face of the truly extreme form of isolation to which Mr. Silverstein had been subjected, Dr. Denney characterized his level of “threat to others” as “high.” Denney stated the basis for his opinion in the vaguest terms (“the inmate’s history, existing conditions, and other information available at the time”), and supplied no additional specific facts to support it.

However, he did elaborate on the rationale by which he reached this conclusion. Dr. Denney said that Mr. Silverstein was “deemed to be a high risk to

others based upon the dearth of recent experiences coping with 'day to day' hassles, stresses, and interpersonal conflict" and that "he is believed to have little insight into the thoughts/actions/ intentions of others." If true, of course, this lack of "insight" presumably originated in (or was exacerbated by) his preceding 15 years of isolation, which deprived Mr. Silverstein of the kind of contact with "others" that would have allowed him to develop or maintain it. Nonetheless, Dr. Denney described Mr. Silverstein's "coping strategies to manage his current surroundings" in positive terms: "There are no apparent indications that he has developed a helpless nor hopeless approach to dealing with his life situation."

Dr. Denney nonetheless reported in December 8, 2000 that Mr. Silverstein appeared to be "adjusting well to his surroundings," but that he "continues to struggle against the conditions he is subjected to, i.e., segregated housing." In spite of this, Denney as noted, Mr. Silverstein "remains compliant with staff, he has been incident report free for a number of years, and he has demonstrated a willingness to argue points in a socially appropriate manner in comparison to those who make vague/subtle threats."

Summary: This sample of entries from Mr. Silverstein's BOP Central File, covering just a 10-year period (during which his isolated conditions of confinement were representative of the ones to which he was subjected for a far longer time) provide a contemporaneous record of a man in psychological pain, suffering under the conditions of his confinement and struggling to adapt and adjust to the extraordinarily severe deprivations that they imposed on him. Indeed, at times Mr. Silverstein appeared to come dangerously close to—and perhaps sometimes to cross over into—suffering from serious psychological problems that could incur disabling long-term consequences.

Thus, despite the admittedly superficial contact that the BOP psychology staff had with Mr. Silverstein and the lack of any systematic, in-depth psychological evaluation having been conducted by them of him during this entire period, and despite Mr. Silverstein's own reluctance to trust BOP staff members or open up to them fully about his problems, he was nonetheless described by them during this single 10-year period as: suffering "disrupted and unsettled" sleep, having a "prevailing... hopelessness," showing "anger with depressive contents," appearing "tense and withdrawn," experiencing "helplessness," acting "depressed and withdrawn," being worried about his "declining ability to recall historical information," appearing "markedly angry and despondent," expressing "frustration over his uncertain future," showing signs that his "cognitive and social skills... [were] impacted by isolation," expressing feelings of being "persecuted," having "thoughts of significant helplessness," showing "blunted" and "flat and solemn" mood and affect, appearing to have "difficulty expressing himself interpersonally," having "trouble engaging in higher-order reasoning and conversation," showing a preference for "sensory deprivation" that was "not a good indicator," appearing at times uncharacteristically disheveled and unkempt, avoiding eye contact, being "sullen and pessimistic about his future," functioning with a "degree of regimentation and repetitiveness... [that] does not foster positive mental health," suffering from "an affective disorder (dysthymia)," manifesting "a dark tone" and seeming paranoia that any honest expression his personal problems would be publicly exploited by the BOP and, finally, that he "continued to struggle against the conditions he is subjected to."

Even a cursory comparison of this long list of symptoms with my earlier brief review of the literature on the adverse psychological effects of solitary confinement indicates that Mr. Silverstein has experienced most of the classic adverse reactions to the pain of his isolation. Moreover, the BOP psychology staff

was clearly on notice that he was in such pain and saw him struggling under the weight of these extraordinary conditions of confinement and the hardships they imposed. Not only did their own numerous observations quoted above document this, but Mr. Silverstein himself also repeatedly voiced concerns about his mental health and stability, which concerns the staff often recorded in his Central File.

Thus, Mr. Silverstein complained repeatedly and explicitly about the extreme deprivations to which he subjected, and he told mental health staff that he was deteriorating because of the severe regime that had been imposed on him. He asked the psychology staff to intervene on his behalf. Specifically, Mr. Silverstein told them about “the impact caused by his loss of contact with society,” that he had to “cover his face with a towel in order to sleep,” and that “his eyes... [were] beginning to hurt” from the lights that were being shined on him around the clock. He also worried aloud to them about “the effects on his personality due to his indeterminant placement in solitary confinement,” told them that “his mental health status and... his mental health [are] deteriorating,” and he expressed concerns about “the adverse effects his housing assignment is having on him.” He told the psychology staff further that “his thinking has been distorted and negatively influenced by his continued presence in solitary confinement,” and that he was “becom[ing] increasingly upset about the restricted conditions of his confinement.” Yet they apparently did nothing to reduce the severe conditions of isolation to which he was subjected.

In this regard, I should note that I find Dr. Denney’s deposition testimony that the BOP failed to ever conduct “a complete psychological evaluation” of Mr. Silverstein in the course of his extraordinary solitary confinement because “[i]t was never clinically indicated” (Denney Deposition, p. 90) to be frankly incredible. Indeed, the very nature of Mr. Silverstein’s unprecedented level of isolation per se should have precipitated periodic comprehensive evaluations.

This was, after all, a level of long-term isolation to my knowledge unprecedented anywhere in the United States. I would have expected its potential psychological effects to have been a matter of serious concern on the part of responsible psychology staff members. Passing observations through a cell door or brief contacts through a tray slot do not substitute for careful, in-depth, systematic evaluations.

In addition, as I have recounted at some length above, there were numerous observations of Mr. Silverstein's psychological pain and suffering that were duly recorded in his Central File—many of which were recorded by Dr. Denney himself. In addition, as I have also noted above, there were numerous instances in which Mr. Silverstein himself voiced concerns about his own mental health. To take just one poignant example, recall that in his January 7, 1997 SHU Review of Mr. Silverstein, Dr. Denney recounted that Mr. Silverstein was frustrated and upset over the way he was being treated, and then elaborated:

[Mr. Silverstein] responded with comments like “how can you know what it is like to not see anyone but your keepers for 14 years?” He then proceeded to request a mental health review by an independent mental health expert to ascertain the level of impairment “caused” by his long term confinement in isolation.

But, notwithstanding all of this, it is important to reference the time period in which this unprecedented amount and duration of isolation was being imposed, when the signs of psychological pain and suffering were being recorded, and when Mr. Silverstein's complaints about his own deteriorating mental health and requests for help were being voiced. Specifically, between 1995 and 2001, three highly publicized and closely watched constitutional challenges to conditions of confinement in long-term solitary or supermax facilities were decided by federal courts. I testified as an expert witness in two of them. All three opinions emphasized the profound psychological risks and dangers that such confinement represented and, in each, judges ordered elaborate safeguards—in

the form of psychological screening procedures and exclusion orders for prisoners who showed signs of mental illness or vulnerability to becoming mentally ill during such confinement.

The language used in the opinions could not have provided a starker set of warnings to mental health professionals working in these units (let alone ones working in a unit that placed a prisoner with a “no human contact” order inside what were likely the most isolated conditions in operation anywhere in the country). In Madrid v. Gomez,⁴⁴ perhaps the highest profile and most closely watched (if only because it was the first of its kind), Judge Thelton Henderson acknowledged that “[s]ocial science and clinical literature have consistently reported that when human beings are subjected to social isolation and reduced environmental stimulation, they may deteriorate mentally and in some cases develop psychiatric disturbances.”⁴⁵ Indeed, he concluded that conditions of confinement in the California prison at issue—conditions that I can attest were less onerous than those Mr. Silverstein was subjected to—inflicted treatment on prisoners that, in his words, “may well hover on the edge of what is humanly tolerable for those with normal resilience, particularly when endured for extended periods of time.”⁴⁶

In the second case, Ruiz v. Johnson,⁴⁷ Judge William Wayne Justice concluded that “[m]ore than mere deprivation” the prisoners in isolation units in Texas “suffer actual psychological harm from the almost total deprivation of human contact, mental [stimulation], personal property and human dignity.”⁴⁸

⁴⁴ Madrid v. Gomez, 889 F. Supp. 1146 (1995).

⁴⁵ *Id.* at p. 1230.

⁴⁶ *Id.* at p. 1280.

⁴⁷ Ruiz v. Johnson, 37 F. Supp. 2d 855 (1999).

⁴⁸ *Id.* at 913.

He characterized these kinds of isolation units as “virtual incubators of psychoses—seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities.”⁴⁹ Finally, in the third case, Jones ‘El v. Berge,⁵⁰ Wisconsin federal judge Barbara Crabb explicitly acknowledged that long-term isolated confinement could produce severe psychological symptoms and disorders “in relatively healthy prisoners who have histories of serious mental illness, as well as prisoners who have never suffered a breakdown in the past but are prone to break down when the stress and trauma become exceptionally severe.”⁵¹ She, too, required the removal of mentally ill prisoners and the systematic psychological evaluation of others.

Thus, during the years that Mr. Silverstein was confined in isolation, there was no shortage of general knowledge about the potential psychological risks posed by confinement in units like the one he was in. To the contrary, dire warnings existed in both the psychological and legal literature about the potential adverse—dangerous—mental health consequences of placing persons in these places on a long-term basis. The mandate to conduct periodic, comprehensive mental health assessments could not have been clearer. Thus, I am at a loss to explain why none was done in a case this extreme, with so much justification for doing so.

In any event, as the sample of entries that I have quoted from Mr. Silverstein’s Central file make clear, there can be little doubt that the distress Mr. Silverstein suffered, the negative changes that he underwent in order to adapt to this environment, and the risk of harm to which he was exposed were obvious, well understood, and amply documented beginning as far back as 20 years ago.

⁴⁹ Id. at 907.

⁵⁰ Jones ‘El v. Berge, 164 F. Supp. 1096 (2001).

⁵¹ Id. at 1101-2.

VI. The Psychological Effect of the Lack of Clearly Articulated Guidelines for Eventual Release

Research indicates that the negative effects of general environmental stress are moderated by perceived control.⁵² That is, when people come to believe that they cannot control the psychologically or physically threatening conditions to which they are exposed, the resulting stress is intensified.⁵³ This general, commonsense proposition applies to prisons in general and to conditions of solitary confinement in particular. Prisoners who do not know whether or when they will be released experience the pains of this kind of isolated confinement more acutely.

This aspect of Mr. Silverstein's isolated confinement exacerbated its psychological effects. Thus, in addition to being placed in unprecedented conditions of isolation for unheard of amounts of time, Mr. Silverstein was not told how long his ordeal would last, or given guidance about what if anything he could do to alleviate his suffering. As a result, he struggled continuously to control feelings of helplessness and hopelessness, something that even the psychology staff at Leavenworth acknowledged was a potential, problematic consequence of the way that he was being treated.

Beyond this general point, several additional issues bear emphasis. The first is that the BOP not only failed to provide Mr. Silverstein with any clear

⁵² For example, see: Gary Evans (Ed.), Environmental Stress. New York: Cambridge University Press (1982).

⁵³ Earlier I referenced the work of Martin Seligman and others on what he termed "learned helplessness"—the disabling psychological state that comes about when people confront painful environmental stressors that cannot be reduced or alleviated, and his conclusion that it can produce to deep despondency and depression and, in the final stages, suffering that literally leads to "giving up." See *supra* note 27, and accompanying text.

guidance for alleviating his painful conditions of isolation but it also failed to provide him with any rationale or explanation for why nothing that he did appeared to matter. This became a point of continuing frustration and contention between Mr. Silverstein and the BOP, and it undoubtedly worsened the nature of his confinement. Its problematic effects were noted in his Central File as, for example, when Dr. Denney wrote: "Themes of helplessness were frequently noted in his presentation concerning the effects on his personality due to his indeterminate placement in solitary confinement. It is likely that his mood and presentation are directly related to his frustration concerning his uncertain future." (Periodic Review, January 22, 1993).

Some of Mr. Silverstein's frustration was likely exacerbated by apparent inconsistencies in at least some of the messages he was given by different BOP staff members. Thus, for example, when Mr. Silverstein asked Dr. Denney in July, 1993—at a time when he had already been held under extraordinary conditions of isolation for nearly 10 years—about plans for a "step down" program to be used "upon his release from Special Housing," Dr. Denney informed him that "Psychology Services has spent some time developing interventions which would be necessary when he is released." (Periodic Review, July 19, 1993)

Yet, just a few weeks later, during Mr. Silverstein's Semi-Annual Review held on August 3, 1993: "Mr. Silverstein asked, 'What is the program?' [Acting Warden] Mr. Rardin replied that his status would not change except with time. He further indicated no changes were going to happen at this time." There was no indication in the record as to how much "time" would be necessary, or what if anything Mr. Silverstein could do, as time passed, to lessen it, other than continuing to behave as he had. Thus, despite having been told a short time earlier that prison psychology staff had "spent some time developing

interventions which would be necessary when he is released,” he was told that there were, in fact, no plans to release him.

The message to Mr. Silverstein at the Semi-Annual review appeared to be not only that there were currently no plans to release him but also, by implication, that there was really nothing he could do to precipitate the development of such plans. Indeed, although he could not know it at the time, despite 15 more years of continuous conforming behavior—from 1993 to 2008—the fundamental conditions of Mr. Silverstein’s isolated confinement would not change for the better (and, from his perspective, would arguably worsen some respects when he was transferred to ADX in 2005).

Indeed, there were numerous instances documented in his Central File in which Mr. Silverstein voiced similar concerns about his fate, but was given no guidance about his future, despite complying scrupulously with prison rules and regulations. For example, on January 14, 1998—now almost 15 years into his extraordinary solitary confinement—Mr. Silverstein was reported as “continu[ing] to complain regarding his conditions of confinement and that his monthly mental health review lacks integrity” (Memorandum of Warden Booker to Regional Director Hershberger). These same views were echoed in the memo that Regional Director Hershberger wrote to Director Hawk: “Silverstein continues to complain about the conditions of his confinement and requests to be provided with a set of conditions that are necessary for him to meet in order to be returned to the general population” (Memorandum, January 16, 1998).

Less than 10 days later, despite being described as “cooperative with the staff,” “voic[ing] his complaints and issues in a respectable and socially appropriate manner,” and continuing “to avoid disciplinary problems,” he was said to represent a “HIGH” threat to others (SHU Review, January 23, 1998, per Dr. Denney). Later in the year, this same issues and these same frustrations

emerged again. For example, in the SHU Review filed on October 19, 1998, Mr. Silverstein expressed his frustration with his continued long-term isolation by asking staff members: “What have I done during the past 15 years to warrant this still? What have I done? If I wanted to, I could do a lot of stuff. I have not received one write up. I have not attacked anyone.”

However, beyond failing to provide Mr. Silverstein with any guidance about what if anything he could do to improve the fundamental nature of his confinement and alleviate the painfulness of his isolation, there was something else that was very troublesome about the internal rationale that was used to justify his continued confinement under “no human contact” conditions. It was the perverse way that Mr. Silverstein’s conforming behavior—the only thing over which he had any control—was repeatedly discounted as a reason to reduce the painful conditions of his isolation because of those very conditions. Language in one of the many SHU Reports that appear in his Central File clearly illustrates another kind of custodial Catch-22 in which he was caught. Thus, the Report acknowledged Mr. Silverstein’s “‘positive level of adjustment’ during the past 9 years” but then attributed positive adjustment primarily to “his limited contact with others and the avoidance of interpersonal conflict.” Without any apparent hint of irony, however, the Report went on to assert that “[t]o accurately assess his level of change in this area would require additional interpersonal interaction” (SHU Review, March 11, 1997)—precisely the interpersonal interaction that Mr. Silverstein had repeatedly asked to have but which the BOP was refusing to allow.

The same logic was applied in an August 14, 1997 SHU Review. Dr. Denney wrote: “His potential to harm others remains difficult to assess in light of the restrictedness of his current housing assignment which limits interpersonal contact. While he has not experienced any problems relating to staff, he is not

challenged by the frustrations and potential irritants encountered in daily living within the prison setting.”

I should note that this was one of time periods in which Mr. Silverstein had become particularly frustrated with and alienated from the psychology staff at Leavenworth (primarily with Dr. Denney, the only psychology staff member with whom Mr. Silverstein appeared to have any continuing contact. In fact, he became so frustrated that he ceased conversing openly with the psychology staff at all for a brief time. I should also underscore that this frustration led only to him becoming passively incommunicative; he did not act out, become physically aggressive, or otherwise engage in disruptive behavior. Yet this clearly passive way of responding was used against him in a remarkable way. Thus, in his July 25, 1997 SHU Review, Dr. Denney wrote that Mr. Silverstein’s “refusal to communicate” and his continuing “frustration” with Psychology Services “suggests a rather rigid and simplistic cognitive orientation” that Denney asserted “is common in those who use violence towards others.”

However, even when this allegedly problematic cognitive style appeared to be changing for what Dr. Denney regarded as the better, it did not matter. Thus, by the time of his January 4, 1999 SHU Review, Dr. Denney allowed that “[t]here are indications that the cognitive style employed by inmate Silverstein is ‘maturing’ into a more tolerant and analytical approach. This is evidenced in his more deliberate response to frustrations and ‘daily hassles.’” But, again, the authenticity of this transformation was said to be contingent on “testing” Mr. Silverstein’s coping style against “challenging people and situations”—something that Denney reminded was “impractical given his current housing assignment...”

Thus, a variety of “flexible” internal interpretations of Mr. Silverstein’s behavior appeared as justifications for his continued confinement under these extremely isolated conditions, no matter what he did. Combined with the lack of

any clear guidelines for him to follow that might improve his chances for release from this painful environment, his situation indeed felt hopeless and helpless. In fact, on at least one occasion, Dr. Denney used Mr. Silverstein's "resilient cognitive orientation" as the basis for judging his "threat to others" as HIGH but the very same resilient orientation as the basis for judging his "risk of harm to himself" as LOW (SHU Review, January 23, 1998).

The issue of Mr. Silverstein's alleged "resiliency" factored repeatedly into the Catch 22 that he faced with respect to whether and how he would ever be released from isolation. I noted previously that resiliency was used by Dr. Denney as both the psychological trait that he believed buffered Mr. Silverstein from hopelessness and helplessness that might otherwise overcome him, but that it was also seen by Dr. Denney as justifying Mr. Silverstein's continued placement in isolation.⁵⁴

In addition, however, Mr. Silverstein was aware of another dimension to this seeming paradox. Thus, on or about January 11, 2000, he asked Dr. Denney to please explain whether the fact that he had been deemed "resilient" was "the excuse used to continue my solitary confinement status, since I may be more resilient to psychological torture than someone else." Dr. Denney told him that his "approach" to his "current living situation" was "deemed to be highly adaptive and well adjusted," but that the "rationale" for his continued placement in the special housing unit had been "explained and explored" with him in the past. In fact, it had not been, at least not in any meaningful way that was documented anywhere in the Central File that I reviewed. It certainly had not been stated in a way that provided Mr. Silverstein with any clear understanding about what he could do to effectuate his eventual release from these extraordinary conditions of isolation. He not only reported this to me in my recent interviews with him, but

⁵⁴ See *supra*, note 42 and accompanying text.

he repeatedly voiced exactly this same kind of uncertainty in numerous exchanges that are documented in his Central File.

Eventually, Dr. Denney, who had been assigned to Mr. Silverstein's case for most of the past 15 years—during which time Mr. Silverstein had been held under conditions of unprecedented isolation—was moved to a different assignment. In his final official contact with Mr. Silverstein—"the last detention review" he conducted in the case—Dr. Denney reported on July 10, 2003, that:

[Mr. Silverstein] remains resilient in his thinking and adjustment to his current confinement status; his thinking remains sharp with few indications of any slippage—at times he struggles to find the right words or to formulate his thinking; however, these "difficulties" are not inconsistent with his level of interpersonal interaction.

He also noted that "[g]iven his limited interpersonal interactions, it is difficult to accurately assess his risk to others," but that his behavior in solitary confinement over the last 15 year period reflected a "positive level of conduct" and "limited interpersonal relationships" that were "worthy of consideration."

Despite the fact that Dr. Denney finally acknowledged that Mr. Silverstein's "positive level of conduct" over the preceding 15 years warranted some "consideration," Mr. Silverstein does not appear to have received any. Instead of benefiting from significantly improved conditions of confinement and a relaxation of the total isolation to which he had been subjected for so long, Mr. Silverstein was moved to what was apparently the most restrictive remaining unit in the entire BOP—Range 13 at the ADX facility.

According to Regional Director Michael Nalley's deposition testimony, Mr. Silverstein was moved to ADX because of a "mission change" at USP Leavenworth that reduced its custody level from a maximum to medium security prison. Leavenworth no longer provided the level of security than needed for maximum security inmates and ADX was the only facility "that had the type of conditions that he required." (Nalley Deposition, p. 29-30). The "conditions that

he required,” were further clarified in a memo that Section Chief Mike Heimbach written on July 12, 2005, the day Mr. Silverstein was being transferred (the fax transmittal of which Mr. Nalley signed). It noted that Range 13 was uniquely equipped to handle the “no human contact” order under which Mr. Silverstein was still being kept. The rationale for why, exactly, Mr. Silverstein required “no human contact,” was not precisely explained. In his deposition testimony, however, Mr. Nalley indicated that the perceived need for this extraordinary treatment of Mr. Silverstein was based primarily if not exclusively on something Mr. Silverstein could not possibly have changed over the entire preceding 22 years of isolation: “his criminal history, his past” (Nalley Deposition, p. 31).

Mr. Silverstein remained under a “no human contact” order and resided in Range 13, ADX for nearly 3 years. He was moved to General Population at ADX on April 7, 2008. While in Range 13, Mr. Silverstein continued to inquire about the behavioral standards that were being applied to him and the “program” he would need to follow to have his extreme level of isolation reduced, but to no avail. Moreover, it is unclear what if any objective or clear standards the BOP applied in making the decision to transfer him out of Range 13 and into D Unit.

According to Regional Director Nalley’s deposition testimony, the decision to transfer Mr. Silverstein to D Unit was based on the fact that Mr. Silverstein “was programming, acting appropriately”—something that he had been doing for the preceding 25 plus years—and that “a decision was made... to move him to the ADX GP” (Nalley Deposition, p 103). Mr. Nalley further elaborated that it was Mr. Silverstein’s “demeanor, his behavior, his appropriateness with staff, his programming...” (p. 105). However, he did not articulate the precise standards that were used to evaluate this demeanor, behavior, appropriateness with staff, and programming to determine his suitability for “GP” confinement.

In fact, in addition to the apparent absence of any clear and objective standards used to inform the decision-making process, Mr. Nalley articulated what appeared to be a purely subjective, “gut feeling” component on which he said he relied: “I can tell you that after the in-person interviews with Mr. Silverstein—and I’ve been doing this since 1981, many assignments—and conversing with him straight across that table, which is probably two foot in distance, back and forth, and eventually a decision was made to move him into the ADX general population” (Nalley Deposition, p. 114).⁵⁵ Given the apparent importance that Mr. Nalley attached to the “in-person interviews” he conducted with Mr. Silverstein in making the decision to move him into general population, it is unclear why he did not choose to conduct them much earlier in the course of Mr. Silverstein’s extended and extreme solitary confinement, something he and other BOP officials with decision-making authority were certainly in a position to do at any time.

Mr. Silverstein remains in a similarly difficult and uncertain position with respect to his current housing assignment and the special restrictions that have been imposed on him in D Unit. Thus, he has not been informed about how long the restrictions will last, what he can or must do in order to have the restrictions lifted. In fact, according to his current case manager, Ms. Tena Sudlow, there is no particular time frame for the restrictions to be lifted, there is nothing he can do to show that they are no longer necessary, and Mr. Silverstein has never “been told what he can do to lessen these restrictions” (Sudlow Deposition, p. 106).

⁵⁵ Adding the boilerplate expressions “[b]ased on my many years of experience, good sound correctional judgment, sound correctional practice” (Nalley Deposition, p. 115) does not increase the objectivity of the judgment.

As these entries make clear, the BOP's failure to provide Mr. Silverstein with meaningful guidelines or criteria by which a reduction in his solitary confinement could be achieved left him with the sense that there was nothing he could do to change his fate. It was a course of continuing frustration for him. It contributed to a deep and chronic sense of chronic uncertainty that likely exacerbated the painfulness of his isolated confinement.

VII. Mr. Silverstein's Self-Reported Psychological Effects of His Solitary Confinement

I conducted two direct interviews with Mr. Silverstein at ADX. In addition, after my first interview with him, Mr. Silverstein sent me a long, detailed letter in which he elaborated on some of the things that we discussed in the course of our conversation. In the initial interview itself, he appeared to somewhat anxious. However, he eventually settled down, appeared to trust me with sensitive information, and eventually was willing to speak candidly about his painful experiences in solitary confinement. Mr. Silverstein's trust and willingness to share this information were underscored by the letter that he sent, which he also understood would be shared with the other experts in the case—Mr. Martin and Dr. Freidman—whom he clearly appears to trust and confide in as well. He was equally candid in our second interview, during which time I discussed some of the concerns that he had raised in the letter that he sent and some additional issues.

We began by talking about his current situation in his housing in D Unit, the “general population” ADX unit where he has been since April of last year. Mr. Silverstein told me that, although some aspects of his new housing arrangements are far less favorable than Range 13 (e.g., less access to recreation, fewer monthly

phone calls), he appreciates his new surroundings—especially the fact that he can look out the window of his cell and see the sky (something that he has been unable to do for decades). However, the main concern he reported was that he feels very, very anxious around people, especially when he has direct contact with them. He told me: “You don’t realize how it’s affecting you until you experience something different.” In fact, he was very candid: “I’m afraid of people, afraid to leave the cage, afraid like a bird who has been caged.” He also noted that he had lost the ability to converse with other people, to carry on a conversation. He observed that for the most part his “conversations” while in isolation have been restricted to responding to correctional officers with single word answers, as in: “Do you want to go to rec?” “Yeah.” Of course, these feelings are—under these extraordinary circumstances—entirely normal and to be expected. In fact, if Mr. Silverstein did not experience these feelings it would be problematic. But it is just one indication of how far removed he has been from the normal rhythms of social life.

Mr. Silverstein told me that his ability to survive the severe conditions and deprivations to which he has been subjected was a work in progress, one that he struggled to implement with little or no help from the BOP psychology staff. One of his greatest challenges was to figure out how to occupy the seemingly unending time and emptiness he confronted in his solitary cell each day. He tried hard to find things to read, to keep his mind occupied. But he acknowledged that even this was a struggle.

It was also a struggle to control his frustration and feelings of helpless desperation. He reported periods at Leavenworth, for example, in which he felt he was being harassed and was unable to control his reactions. Yet, over time, he worked hard to learn to manage these frustrations. He began to practice yoga, and he now relies heavily on meditation to accomplish this. It is something he taught himself while isolated and which he is now able to use in trying to attain

calm and equilibrium. He also has learned to “go through official channels” to resolve his grievances rather than futilely trying to fix things on his own.

In the course of my first interview with Mr. Silverstein I administered a 27-item “symptom checklist” that I have used in the past to assess the degree of psychological distress experienced by prisoners who have been placed in solitary confinement-type conditions. Mr. Silverstein’s responses were consistent with those of someone who, although he has spent an extremely long period of time under conditions of severe isolation, has been forced to become accustomed to his profoundly asocial existence.

In fact, one of his main areas of continuing concern and distress revolves around issues of anxiety, which plagues him in what he regards as “social situations” (i.e., when he is in the mere presence of another human being when he is not separated from them by a cell wall or door or solid glass partition). He told me in discussing his anxiety symptoms that: “When I’m around people my whole body would shake,” and that this would occur in the course of even routine contact (such as when he was being taken from Range 13 to get a haircut). His feelings of anxiety were strong and uncontrollable enough that he often became concerned that he was on the verge of a breakdown, or “losing it.” He reported feeling his heart beat rapidly when correctional officers come into his cell—“my heart beats fast, I am scared.” He reported some other symptoms that are signs of psychological stress, and common among severely isolated prisoners. For example, he reported being lethargic, lacking motivation, being unable to “get going,” even when he wants to.

However, Mr. Silverstein’s responses to the second set of questions—the psychopathological reactions to isolation—provided a glimpse of the amount of pain he has felt, the depth of the changes he has undergone in order to survive this profound level of social deprivation, and the very substantial risks of

psychological harm to which he was exposed. Thus, he reported sometimes having had deprivation-related hallucinatory-like experiences in which he has seen shadows pass by his cell, or heard someone calling his name, or having felt that the cell walls were closing in on him. (He describes these experiences in ways that suggest they are more the result of stimulus deprivation than psychotically-produced breaks with reality.) Despite the years of being confined to a cell, and having access to almost literally no other kind of environment, he told me “I still get a caged in feeling.” He reported experiencing ruminations often—having a thought or concern “stuck” in his head and not being able to make it go away. In addition, although he works hard at controlling it and has managed to do so very successfully over the years, he still finds himself becoming angry over small or unimportant things. He acknowledges that he consciously struggles more now at putting things in context than when he was younger—he knows when something is “dumb and petty” and, as he says, “I also know the consequences [of becoming angry]”. But there were many times in the course of his isolation that his frustrations got the better of him and led to significant distress.

Some of the problematic reactions are ones he has learned to manage successfully. Thus, he feels he has made great strides in controlling his emotional responses overall. Although he recalled times early in his solitary confinement (especially in Atlanta) when he thought about suicide all the time, he has these feelings now only when there are major changes that take place in his life (i.e., new situations that he does not feel he can handle). But he has learned to manage the feelings appropriately, and recalled even having contacted the psychology staff at ADX about such feelings he was having when he first arrived there. He also has fought to control mood swings and feelings of depression. The latter mood state—depression—was a serious problem for a long time, but no longer constantly so. He uses his “regular routine” in his cell as an outlet for his feelings,

and reminds himself that “there’s another world, and kind people in it” to fight off the tendency to become hardened or uncaring.

On the other hand, another constellation of symptom reactions continue to plague him very much. He overreacts to stimuli in his environment, particularly to sounds, that make him jumpy. Mr. Silverstein also feels that he is experiencing significant cognitive deficits now, and specifically that he cannot process information the way he wants to and once could. This occurs most commonly in interactions with others: “People say things to me now and I can’t process what they are saying. I feel like I’m in a fog.” He cannot focus on things or remember things, something he characterizes as a “huge problem.” In addition, he is extremely worried about his physical and mental deterioration and whether he will be able to function properly in whatever new environment he may enter. Indeed, there are many times when he feels like he wants to withdraw from the social world, because it presents many challenges he is not sure he has the capacity—the physical and mental wherewithal to meet.

Mr. Silverstein also provided me with a more elaborate list of his concerns—in the form of a 7 page, single-spaced, printed list—that was prompted in part by our discussion and his thinking explicitly and specifically about his psychological reactions, and also his finally feeling comfortable and trusting enough to share those reactions honestly with certain others (something that is particularly difficult to do in a prison setting, and especially in an environment like the one Mr. Silverstein has been kept in for the last 26 years). The list itself is entirely consistent with the things Mr. Silverstein told me in the course of my interviews with him, except that, upon reflection, he is much better able to provide examples of the reactions that he is experiencing. The notable additional pieces of information included: Mr. Silverstein’s deep-seated frustration and feelings of hopelessness with respect to his uncertain status in the BOP and his

sense that there is no plan for him to follow and no standards that have been articulated for him to meet that will result in any direct improvement in his otherwise painful living conditions. As he indicated, he believes a number of personnel in the BOP would like to see him dead and, because he was not subject to the death penalty at the time of his crime in 1983, they are dedicated to making his life “a living hell.” He believes that there is nothing that he can do, no matter how well behaved he is, to change this. He worries there is “no end in sight.”

He acknowledged that he still struggles with depression from time to time, especially when he thinks about his children, and he experiences “serious regret for not being a better father.” He is struggling to set a good example for them, even though it is from prison, and it is upsetting not be able to do what he should do, from such a great distance and under the limitations he faces. But this adds to the frustration of not knowing how to improve his situation. One of the very few meaningful and, he feels, achievable goals he has set for himself is to get closer to his children geographically, and to somehow be able to have meaningful contact with them.

Yet, Mr. Silverstein also acknowledges the challenges he knows he confronts, not just with the BOP but also with his own psychology and what he understands to be the price of his having to adapt to an asocial existence—that is, the various ways in which his adaptations to a world without meaningful social contact has left him, frankly, unable to manage it now. As I noted earlier, because all of his visits—including his legal visits—have been conducted on a non-contact basis, he has not had a normal social interaction or touched another human being with affection for more than 25 years. But now the things he once craved are difficult for him to tolerate. He recoils from touch, even when it comes from female nurses at the infirmary or dentist. He told me that, as much as he loves visits and phone calls, “I dread them just the same.” Indeed, he is “anguished at

the thought of being in the presence of others.” He understands that these are his problems, ones that have come about because of the environments in which he has been kept, and that he will have to work to overcome them. Thus, he appreciates the fact that his gradual re-acclimation to people will at times be difficult, and require him to undo the adaptations and habits that he developed over the last 26 years of isolation. Yet he is clearly committed to undertaking it.

VIII. Risk of Future Danger to Others and Subsequent Placement

There are a number of reasons to believe that, as numerous BOP “SHU Reviews” indicate, Mr. Silverstein’s risk of danger to others should now be considered “LOW.” For one, Mr. Silverstein’s age alone would predict a relatively unproblematic and violence-free readjustment to his subsequent years of incarceration. As a 57 year-old man, he is near the upper end of the age distribution among prisoners, and, all other things being equal, there are very actuarial reasons to predict that he poses very little risk of harm to others.

More important to his individual case, in my opinion, in contrast to his earlier years of incarceration in the BOP, and despite of the extraordinary psychological stressors to which he was subjected during his 26 years of isolation, Mr. Silverstein has continued to be a model inmate. I believe that it is important to note that, although Mr. Silverstein had extremely limited opportunities to interact with others over the years during which he lived in extreme isolation, he did not use any of those opportunities to act out or otherwise aggress physically or verbally against anyone. To the contrary, his BOP Central File indicates that he expressed his considerable and understandable frustration in completely acceptable ways—at worst, by becoming passively uncooperative for brief periods of time. In all other respects, it appears that his behavior was entirely

conforming, even respectful, cooperative, and polite in his routinized interactions with correctional and psychology staff.

I disagree strongly with the suggestion that repeatedly appears in Mr. Silverstein's Central File that the significance of his conforming and compliant behavior should be discounted because it occurred only in the course of extremely isolated confinement. In fact, as I discussed in detail earlier, this kind of confinement is exceptionally stressful and presented Mr. Silverstein with extraordinary psychological challenges. The fact that Mr. Silverstein was able to maintain a conforming and appropriate demeanor in spite of these stressors (whose negative effects on him were documented not just by me but BOP personnel as well) is a tribute to his self control and increased emotional maturity.

Mr. Silverstein's increased emotional maturity is reflected as well in the way that he now thinks and talks about what he has been through, and expresses his hopes and intentions for the future. I believe that the skill he has developed as an artist has given him a positive outlet for his feelings and well-deserved feelings of self worth (in spite of how he has been treated), and the insights he has developed about himself as a result of the extensive reading and meditation he has done on his own have given him a depth of understanding about his own and others behavior that he did not have earlier in his life. His willingness to be open and candid about his feelings of his own vulnerability—something that is difficult for prisoners in general to share with others—is just one sign of this maturity. This maturity and insight, and his recognition of the physical as well as psychological limitations with which he now copes have led him away from the reactive, “survival” mode that he felt was necessary to adopt so fiercely earlier in his life.

Thus, in addition to his age, Mr. Silverstein's conforming behavior over such a long and stressful period of incarceration and his physical and emotional maturity indicate that he no longer poses a significant risk of future danger.

Yet, it would be naïve to assume that the process of resocialization that he will need to undergo can occur overnight for Mr. Silverstein. Whether and for how long the psychological damage that he has incurred—the extraordinary adjustments to enforced asociality he was required to make for more than a quarter century in isolation—will persist remains to be seen. Thus, although I believe that a graduated program of transition back into mainline maximum security (as opposed to continued, indefinite ADX) housing should be implemented as soon as possible, through the use of appropriate transitional or “step down” programming, I also think that these transitions need to be brought about with a great deal of sensitivity to Mr. Silverstein's extraordinary conditions of confinement over the last 26 years. The magnitude of the psychological readjustments he will have to effect are truly substantial and perhaps unprecedented.

That sensitivity should include giving special consideration to the context of his actions, as they are being judged and evaluated, and special attention to his compatibility (along age and other dimensions) with the other prisoners with whom he will housed and expected to socialize. On the other hand, it should not be used to deny him privileges that he should otherwise be afforded, or to prevent him from progressing expeditiously through whatever steps are necessary to return him to maximum security USP mainline housing. Although Mr. Silverstein is aware of the psychological challenges ahead and at times is apprehensive about facing them, he is confident that he will be able to manage them and is committed to doing so. I, too, believe that his confidence is warranted.

Sincerely,

Craig Haney, Ph.D., J.D.

Professor of Psychology

SILVERSTEIN v. FEDERAL BUREAU OF PRISONS, et al.
Civil Action No. 07-cv-02471-PAB-KMT

Attachment 3

The Social Psychology of Isolation:

Why Solitary Confinement is Psychologically Harmful

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As everywhere else in society, social context matters a great deal in prison. However, even the best correctional environments are inherently problematic places; they are extremely difficult for staff to operate humanely and for prisoners to survive unscathed. They are also highly improbable places—ones where large numbers of people must be involuntarily confined under conditions of severe restriction, deprivation, and dependency. In this brief article, I review some of the psychological effects of living in a particular kind of prison environment where the inherent problems and improbabilities are made much worse—solitary confinement.¹

The Empirical Status of Solitary Confinement Effects

The social extremes of confinement—intense overcrowding and, at the other end of the spectrum, enforced isolation or solitary confinement—intensify the challenges that are faced by both prisoners and guards during their prison terms. Thus, the ecology of an overcrowded prison creates heightened levels of psychological stress by multiplying the sheer number of potentially problematic interactions that occur. Overcrowding also insures that too many prisoners will be vying for too few already scarce resources. As an overcrowded prison 'runs out' of space, programming, mental health services and the like, the number and magnitude of unmet prisoner needs begin to multiply. Prison staff members are often pressed to manage the inevitable chaos and conflicts in increasingly repressive ways.

Solitary confinement presents a different set of psychological challenges. It subjects prisoners to a deeply monotonous existence, and to unparalleled levels of social and material deprivation. There is also typically a pejorative or stigmatizing component to the experience; prisoners are usually sent to solitary confinement because they are thought to be 'bad,' even in comparison to other prisoners (in some jurisdictions they are literally referred to as 'the worst of the worst'). Correctional officers who must implement the extra-

punitive measures that are used to maintain these especially harsh regimes risk having their behavior descend into outright cruelty.²

Prison officials and administrators are not oblivious to these commonsense psychological notions about the extremes of confinement. Thus, they try to ameliorate overcrowding when they can and they put prisoners in isolation when they want to punish them. However, overcrowding is regarded as an unwanted anomaly—something that prison systems never seek out but nonetheless are forced to reluctantly accommodate to. Solitary confinement, on the other hand, is a practice that prison systems can choose to employ (or not).

Indeed, despite its problematic history in corrections, there is some evidence that certain prison systems are once again resorting to the use of long-term solitary confinement. The trend is a regrettable one. We have known for well over a century that placing people in conditions of severe isolation for long periods of time places them at dire risk of grave psychological harm. For example, in 1890 the United States Supreme Court acknowledged that 'it is within the memory of many persons interested in prison discipline that some 30 or 40 years ago the whole subject attracted the general public attention, and its main feature of solitary confinement was found to be too severe.'³ The Court also noted that '[i]n Great Britain, as in other countries, public sentiment revolted against this severity and... the additional punishment of solitary confinement was repealed.'⁴ No new insights about human nature have surfaced in the intervening years to raise doubts about the wisdom of these early precedents.

In fact, solitary confinement came to be seen as so painful and destabilizing an experience that it emerged as a common feature in torture and so-called 'brainwashing' protocols.⁵ In addition, domestic and international human rights organizations have concluded that solitary confinement poses such a serious risk of psychological harm that they roundly condemned its use and called for the

1. In the United States, at least, "solitary confinement" is a term that encompasses a relatively wide range of prison housing arrangements to which various labels are applied. I will use it here to mean segregation from the mainstream prisoner population in attached housing units or free-standing facilities where prisoners are involuntarily confined in their cells for upwards of 23 hours a day or more, given only extremely limited or no opportunities for direct and normal social contact with other persons (i.e., contact that is not mediated by bars, restraints, security glass or screens, and the like), and afforded extremely limited if any access to meaningful programming of any kind.
2. For a discussion of these dynamics, see: Haney, C. (2008). 'A culture of harm: Taming the dynamics of cruelty in supermax prisons', *Criminal Justice and Behavior* 35: 956-984.
3. In re Medley, 134 U.S. 160 (1890), at p. 168.
4. Medley, at p. 170.
5. For example, see: Hinkle, L. & Wolff, H. (1956). 'Communist interrogation and indoctrination of "enemies of the states"', *Archives of Neurology and Psychiatry* 76: 115-174; Louw, J. & O'Brien, C. (2007). 'The psychological effects of solitary confinement: An early instance of psychology in South African courts', *South African Journal of Psychology* 37: 96-106; Ristow, W. & Shallice, T. (1976, August 5). 'Taking the hood off British torture', *New Scientist*: 272-274; Suker, P., Winstead, D., Galina, Z., & Allain, A. (1991). 'Cognitive deficits and psychopathology among former prisoners of war and combat veterans of the Korean conflict', *American Journal of Psychiatry* 148: 67-72; Whittaker, S. (1988). 'Counseling torture victims', *Counseling Psychologist* 16: 272-278.

severe restriction or outright abolition of the practice.⁶ Moreover, proof of the adverse psychiatric consequences of long-term solitary confinement led a number of courts in the United States to formally prohibit the placement of mentally-ill prisoners inside so-called 'supermax'-type housing units.⁷

Nonetheless, the myth continues to be perpetuated in some quarters that the psychological effects of enforced isolation have not been carefully enough studied and, as a result, too little is known about its harmful consequences to require its strict regulation or the outright elimination of its most extreme forms.

I believe this view is misguided. In the admitted absence of a single perfect study of the phenomenon,⁸ there is a substantial body of published literature that clearly documents the distinctive **patterns** of negative psychological effects that can and do occur when persons are placed in long-term solitary confinement. This work has been reviewed in detail elsewhere and I will not belabor it here,⁹ except to say that these broad patterns have been consistently identified in personal accounts, descriptive studies, and systematic research on solitary and punitive segregation. The

studies have now spanned a period of over four decades, and were conducted in locations across several continents by researchers with different professional expertise, ranging from psychiatrists to sociologists and architects.

Of course, just as solitary confinement regimes vary in severity, and people differ in their capacity to tolerate noxious stimuli, the nature and magnitude of the adverse effects of prolonged isolation are not entirely uniform.¹⁰ Yet, even researchers who seem to be at pains to minimize the negative consequences of solitary confinement are hard pressed to ignore them (especially if they have interviewed a significant number of prisoners who have undergone the experience). For example, Canadian researcher Peter Suedfeld has sometimes been cited for the proposition that solitary confinement is not particularly problematic or harmful. Indeed, he has acknowledged beginning his research on solitary confinement already 'convinced' that reduced environmental stimulation and social isolation were 'extremely beneficial' for many of the people exposed to it,¹¹ and publicly recommended its use in curing a remarkably wide range of maladies, including addictive behaviors,¹² snake phobias,¹³ and the negative after effects of electroshock therapy.¹⁴

6. For example, see: Gibbons, J., and Katzenbach, N. (2006). *Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons*. New York: Vera Institute of Justice; Hreski, T. (2006). 'In the cellars of the hollow men: Use of solitary confinement in U.S. prisons and its implications under international laws against torture', *Pace International Law Review* 18: 1-27; Human Rights Watch. *Out of Sight: Super Maximum Security Confinement in the United States*. New York: Human Rights Watch (2000). Available online at: <http://www.hrw.org/reports/2000/supermax/index.htm#TopOfPage>; International Psychological Trauma Symposium, *Istanbul Statement on the Use and Effects of Solitary Confinement*. Istanbul, Turkey (December 9, 2007).
7. Jones 'El v. Berge, 164 F. Supp. 1096 (W.D. Wis. 2001); Madrid v. Gomez, 889 F.Supp. 1146 (N.D. Cal., 1995); and Ruiz v. Johnson, 37 F.Supp. 2d 855 (S.D. Texas, 1999), *rev'd by* 178 F.3d 385 (5th Cir. 1999).
8. No more than basic knowledge of research methodology is required to design the "perfect" study of the effects of solitary confinement: dividing a representative sample of prisoners (who had never been in solitary confinement) into two groups by randomly assigning half to either a treatment condition (say, two or more years in solitary confinement) or a control condition (the same length of time residing in a typical prison housing unit), and conducting longitudinal assessments of both groups (i.e., before, during, and after their experiences), by impartial researchers skilled at gaining the trust of prisoners (including ones perceived by the prisoner-participants as having absolutely no connection to the prison administration). Unfortunately, no more than basic knowledge of the realities of prison life and the practicalities of conducting research in prisons is required to understand why such a study would be impossible to ever conduct. Moreover, any prison system that allowed truly independent, experienced researchers to perform even a reasonable approximation of such a study would be, almost by definition, so atypical as to call the generalizability of the results into question. Keep in mind also that the assessment process itself—depending on who carried it out, how often it was done, and in what manner—might well provide the solitary confinement participants with more meaningful social contact than they are currently afforded in a number of such units with which I am familiar, thereby significantly changing (and improving) the conditions of their confinement.
9. For example, see: Arrigo, B., & Bullock, J. (2008). 'The psychological effects of solitary confinement on prisoners in supermax units: Reviewing what we know and what should change', *International Journal of Offender Therapy and Comparative Criminology* 52: 622-640; Haney, C. (2003). 'Mental health issues in long-term solitary and 'supermax' confinement', *Crime & Delinquency* 49: 124-156; Haney, C., & Lynch, M. (1997). 'Regulating prisons of the future: The psychological consequences of solitary and supermax confinement', *New York University Review of Law and Social Change* 23: 477-570; Smith, P. (2006). 'The effects of solitary confinement on prison inmates: A brief history and review of the literature', in M. Tonry (Ed.), *Crime and Justice* (pp. 441-528). Volume 34. Chicago: University of Chicago Press.
10. It is useful to think about real-world conditions of solitary and solitary-like confinement along a continuum of harshness, comprising different dimensions of confinement that are imposed in differing amounts in any given unit. It is these dimensions—primarily the severity of isolation, amount of deprivation, number of restrictions, and degree of degradation—that facilities impose in varying degrees—amplified by the length of confinement and the amount of control prisoners perceive themselves to have over whether and how they can end it—that primarily account for the negative effects and amount of psychological harm. Thus, the characterization of the literature on solitary confinement as somehow "inconsistent" because some studies show few if any negative effects, without any attention being given to the particular conditions of confinement, the duration of the isolation, or other variables (such as whether the prisoners were involuntarily confined to the units in question or chose to be there for protection or other reasons) seems inapt. In fact, solitary confinement is only ever embodied in actual places, ones that exist in any given instance as an amalgam of different conditions that vary along dimensions of harshness and harm, rather than as some sort of Weberian "ideal type." For precisely this reason, its effects would not be expected to be independent of the particular form it took. Rather than "inconsistency," the differential results merely confirm the basic point with which I began this article: context—here, specific conditions of confinement—matter.
11. Suedfeld, P., Ramirez, C., Deaton, J., & Baker-Brown, G. (1982). 'Reactions and attributes of prisoners in solitary confinement', *Criminal Justice and Behavior* 9: 303-340. p. 312.
12. Suedfeld, P. (1983). 'The restricted environmental stimulation technique in the modification of addictive behaviors: Through the centuries to frontiers for the Eighties', *Bulletin of the Society of Psychologists in Addictive Behaviors* 2: 231-237.
13. Suedfeld, P. & Hare, R. (1977). 'Sensory deprivation in the treatment of snake phobia: Behavioral, self-Report, and physiological effects', *Behavior Therapy* 8: 240-250.
14. Suedfeld, P., Ramirez, C., Remick, R., & Jonathan Fleming, J. (1989). 'Reduction of post-ECT memory complaints through brief, partial restricted environmental stimulation (REST)', *Progress in Neuro-Psychopharmacology & Biological Psychiatry* 13: 693-700.

But a close reading of Suedfeld's best-known empirical piece on solitary confinement in prison complicates things considerably.¹⁵ It is true that Suedfeld concluded that the experience of isolation was not 'overwhelmingly' damaging and did not result in 'deterioration of personality or intellect' in the prisoners that he and his colleagues assessed. Given the fact that only 15 of the 65 of his participants had ever served more than 90 days in solitary, the negative conclusions he reached about these drastic outcomes—the absence of 'overwhelming' damage or 'deterioration' of prisoners' 'personality or intellect'—were certainly not surprising.¹⁶

However, a careful look at the actual results of Suedfeld's study—not just his vaguely worded conclusions—reveals that, despite the limitations in duration and other caveats about the circumstances of the prisoners' confinement,¹⁷ he and his colleagues found and reported that prisoners who had spent more time in solitary confinement were 'inhibited, anxious, cautious, dissatisfied, dull, submissive to authority, and lacking in self insight.'¹⁸ In addition, they reported that 'inmates who had spent longer periods of time in segregation scored higher on depression... and hostility,' and there was a 'significant correlation between length of the current sentence and hostility.'¹⁹ At the one institution among the several he studied that appeared to be most similar to an actual long-term segregation unit, Suedfeld et al. reported that 'longer time in SC was associated with suspicion, distrust, and forceful and self-seeking behavior' and also that there was 'a significant relationship' between 'longer time in SC [and] higher levels of hostility.'²⁰ Despite the relatively modest amounts of solitary confinement the participants in Suedfeld's study had experienced, the negative effects he found were similar in a number of respects to those reported by others.

What of the possibility that a disproportionate number of the prisoners who are placed in solitary confinement

suffer from psychiatric disorders that account for the high levels of psychological symptoms and distress that are manifested there? There are several factors that mitigate against this as a likely explanation for many if not most of the negative effects that have been identified in the literature. The first is that the prisoners themselves attribute their acute suffering to the painful conditions of solitary confinement. Many of them report experiencing their psychiatric symptoms and psychological distress only after coming into solitary confinement. In addition, most prison systems have screening procedures that are supposed to prevent at least the *most* seriously mentally prisoners from going into solitary confinement. No matter how imperfect these procedures and how imperfectly they are implemented—and in some systems they are extremely so—it is reasonable to assume that the most obviously or flagrantly mentally ill prisoners have been culled from the population of persons in solitary confinement and spared this experience.

At the same time, it is certainly true that—despite these screening procedures—we know there are elevated percentages of mentally ill prisoners found in solitary confinement. Several studies have estimated that about a third of prisoners in solitary confinement are mentally ill.²¹ In my own experience, in some poorly run systems or special units, the number may even be higher. In addition, as David Lovell points out, 'mental health issues, variously conceived' are much broader than the category of those diagnosed or diagnosable with 'serious mental illness.'²² Thus, he and his colleagues found that some 45 per cent of supermax prisoners suffered from overall 'psychosocial impairments'—the cumulative percentage of prisoners suffering serious mental illness (based on prison documentation), marked or severe psychiatric symptoms (based on the administration of a brief psychiatric rating scale), psychotic or self-injurious

15. Suedfeld, Ramirez, Deaton, & Baker-Brown, at p. 312.

16. Id. at 335, 336. By the norms that prevail in many jurisdictions in the United States nowadays, unfortunately, 90 days in solitary confinement hardly qualifies as "long-" or, frankly, even "medium-term." See, also, Zinger, I., Wichmann, C., & Andrews, D. (1999). 'The psychological effect of 60 days in administrative segregation', *Canadian Journal of Criminology* 43: 47-83, who reported few if any significant negative effects of solitary confinement in an extremely small sample of prisoners (N=10) who were involuntarily housed there for only 60 days (under conditions where they could anticipate being released even more expeditiously).

17. For example, an unspecified number of Suedfeld et al.'s participants were not actually in solitary confinement (SC) at the time they were assessed, and the participants in general were described as having "experienced SC at this or another institution." At p. 324. Moreover, 12 of the participants were in solitary confinement either voluntarily or for their own protection. At p. 325. Finally, as Suedfeld et al. acknowledged, "[i]ndividuals who were completely unable to adapt to SC and became psychotic or committed suicide were obviously not included." At p. 335. Another potential group—those who may have been so negatively affected by the experience that they were either unable or unwilling to come out of their cells and voluntarily participate in the research project—also were not included.

18. Id. at p. 328.

19. Id. at p. 328.

20. Id. at 329. In fairness to Suedfeld and his colleagues, they also concluded their study with this statement: "We would strongly recommend that attempts be made to assess prisoners' ability to adapt to SC, and that close and objective monitoring and release procedures be set up to identify and transfer individuals for whom the experience may be damaging." Id. at 337. Suedfeld also has been quoted as saying, in testimony that he gave in a case concerning the effects of solitary confinement in Canadian prisons, that: "I would expect that for many people after some prolonged period of time, especially if there is no hope of being released from that environment, things would tend to become inadequate and an individual would then take on another form of reaction to the environment. That may take place in the form of apathy, fantasizing, general withdrawal from the external environment, some kind of inner life, and in some cases, I expect it would lead to psychosis." Quoted in Jackson, M. (1983). *Prisoners of isolation: Solitary confinement in Canada*. Toronto: University of Toronto Press, at p. 79.

21. Specifically, two separate studies have found that 29% of the prisoners in solitary or supermax confinement suffer from a "serious mental disorder." Hodgins, S., and Cote, G. (1991). 'The mental health of penitentiary inmates in isolation', *Canadian Journal of Criminology* 33: 177-182; Lovell, D., Cloyes, K., Allen, D., & Rhodes, L. (2000). 'Who lives in super-maximum custody? A Washington State study', *Federal Probation* 64: 33-38.

22. Lovell, D. (2008). 'Patterns of disturbed behavior in a supermax population', *Criminal Justice and Behavior* 35: 985-1004, at p. 990.

episodes (derived from prison files), or brain damage (again, as indicated in prison medical charts).²³

Yet even if we assume that most or all of the psychosocial impairment Lovell et al. uncovered was pre-existing (an assumption that I think is highly unlikely, especially with respect to the subset of prisoners identified through the psychiatric rating scale), it does not entirely account for the very high levels of psychological distress and other symptoms documented in at least some of these units. For example, my own direct assessments of prisoners in harsh solitary confinement facilities located in several jurisdictions in the United States indicated that two-thirds or more of them were suffering from a variety of symptoms of psychological and emotional trauma, as well as some of the psychopathological effects of isolation.²⁴ In some cases these symptoms of trauma and distress appeared to have been related to more chronic forms of mental illness that the prisoners brought into the solitary confinement unit (which, in many instances, also appeared to have been exacerbated by the harsh conditions of their solitary confinement). However, in others that was clearly not the case, and the negative psychological effects and impairments appeared to have originated in solitary confinement.

Danish researchers reached similar conclusions in their study of a group of prisoners in solitary confinement. In the first study they reported that the probability of being admitted to the prison hospital for a psychiatric reason was about 20 times as high for prisoners who remained in solitary confinement for longer than 4 weeks than it was for those housed in the mainline prison population.²⁵ The researchers attributed causal responsibility to the conditions of confinement themselves, concluding that prisoners placed in solitary confinement 'are forced into an environment that increases their risk of hospitalization to the prison hospital for psychiatric reasons.'²⁶ In a follow-up, longitudinal study they were able to identify some 28 per cent of solitary confinement prisoners who suffered psychiatric disorders during their imprisonment and, further, to determine that in more than 2 out of 3 cases the disorder was not present prior to their incarceration. They concluded that solitary confinement was 'a significant risk factor for the development of... psychiatric morbidity in comparison with [mainline] imprisonment' and that placement in solitary confinement was medically 'questionable.'²⁷

Some commentators have suggested that although solitary confinement is so clearly harmful to mentally-ill prisoners that most or all of them should be removed from such conditions—a proposition that seems indisputable—these same painfully harsh environments are unlikely to have

any negative psychological effects that put those who are not mentally ill at risk. It is a position that seems to me difficult to defend. The adverse effects of severe stress and painful, destabilizing trauma on mental health are not restricted to only those who already suffer from serious mental disorders. Moreover, there are a number of incipient or 'pre-morbid' emotional conditions that seem likely to be aggravated by the psychological demands of solitary confinement. And then there are those mildly—perhaps undetectably—mentally-ill prisoners who can effectively manage their psychiatric symptoms in mainstream prison settings but who decompensate under the rigours of prolonged isolation. But whether and how often long-term solitary confinement makes healthy people 'crazy,' or drives those predisposed to mental illness across some diagnostic line, it certainly appears to cause significant distress and even anguish in many people, and puts them at risk of serious psychological harm.

Theoretical Bases for the Harmfulness of Isolation

The scientific analysis of the effects of a real-world environment such as solitary confinement is necessarily based in part on research conducted under less than ideal conditions. Some empirical questions simply cannot be examined in a controlled laboratory setting. Under these circumstances, as I noted in the preceding section, researchers and analysts look to patterns in the data that have been collected to discern whether consistent and apparently corroborating findings exist. In the case of the harmful effects of solitary confinement, as I have also noted, they clearly do. It is also important in this context to draw on knowledge gained from scientific research that has been conducted on analogous circumstances or phenomena. In the case of solitary confinement, this parallel literature includes research on the effects of isolation in a range of other contexts and settings that, although certainly not always directly applicable, are highly suggestive.²⁸ Finally, it is essential to examine whether there is a theoretical logic or valid conceptual apparatus that helps to account for the patterns of results—that is, to determine, essentially, if the findings 'make sense.'

In fact, situating solitary confinement in broader body of knowledge provides some very clear insights into how and why it is likely to produce certain negative effects. Thus, in addition to the empirical literature that documents the harmful psychological effects of solitary confinement, and a parallel literature on analogous settings and circumstances that reaches a number of highly compatible conclusions, there is a conceptual framework that helps to explain how

23. Lovell, *supra* note 22; Cioyes, K., Lovell, D., Allen, D., & Rhodes, L. (2006). 'Assessment of psychosocial impairment in a supermaximum security unit sample', *Criminal Justice and Behavior* 33: 760-781.

24. Some of these results are reported in Haney, *supra* note 9.

25. Sestoft, D., Andersen, H., Lillebaek, T., & Gabrielsen, G. (1998). 'Impact of solitary confinement on hospitalization among Danish prisoners in custody', *International Journal of Law and Psychiatry* 21: 99-108.

26. *Id.* at p. 105.

27. Andersen, H., Sestoft, D., Lillebaek, T., Gabrielsen, G., Hemmingsen, R., & Kramp, P. (2000). 'A longitudinal study of prisoners on remand: Psychiatric prevalence, incidence and psychopathology in solitary vs. non-solitary confinement', *Acta Psychiatrica Scandinavica* 102: 19-25, at p. 23.

28. Some of this research is discussed in Haney & Lynch, *supra* note 9, at p. 496-510.

and why this kind of prison environment is psychologically painful and places those exposed to it at grave psychological risk. This series of theoretical propositions underpins the many concerns that informed scholars and practitioners have voiced about the potential of long-term isolation to produce adverse psychological consequences. It also provides a way of understanding the nature of the negative effects that do occur. Below I briefly discuss some of the theoretical and conceptual explanations for these adverse psychological effects.

For one, the deprivation of social contact can undermine social identity and destabilize one's sense of self. Like the rest of us, of course, prisoners are social beings. Although they vary in their levels of sociability, they are nonetheless dependent on social context and interaction with others to remain psychologically grounded in their thoughts, feelings, and actions. There is a long line of research in social psychology that confirms the centrality of social interaction in establishing and maintaining self-knowledge and anchoring personal attitudes and beliefs through social comparison processes.²⁹

Precisely because so much of our individual identity is socially constructed and maintained, the virtually complete loss of genuine forms of social contact and the absence of routine and recurring opportunities to ground thoughts and feelings in recognizable human contexts is not only painful and but also personally destabilizing. This is precisely why long-term isolated prisoners are literally at risk of losing their grasp on who they are, of how and whether they are connected to a larger social world. Indeed, a number of prisoners whom I have interviewed in long-term isolation admit to having 'acted out' while confined there literally as a way of getting a reaction from their environment, to prove to themselves that they were still alive and capable of eliciting a human response—however hostile—from other human beings. If they can still at least *provoke* others into responding to them, then they must still exist.

As Joane Martel has poignantly phrased another aspect of this phenomenon, 'to be, one has to be somewhere.' She observed that as prisoners in solitary confinement lose their temporal and spatial grounding—by being placed in environments where the 'space-time continuum of the prison's 'ordinary' life flies into pieces'³⁰—their very identity is placed in jeopardy. Segregated prisoners 'vanish in time and space' which is 'akin to losing connection to one's prior

experiences and subsequent ones in a biographical narrative, thus to one's memory of [oneself] in the social world.'³¹

The fact that they lack any tangible connection to their previous biographical narrative—who they were before their solitary confinement—does not obviate the need for prisoners to fashion some kind of identity that can sustain them. A number of prisoners facing this dilemma come to define themselves in terms of who they have recently become—that is, the way they are defined in the punitive isolation unit that surrounds them. Some isolated prisoners turn this process on its head, and instead reconstitute their identities primarily in *opposition* to the prison administration. They gradually develop a conception of self that is anchored by the overarching goal of thwarting and resisting the control mechanisms that are increasingly directed at them. But, even here, it is still the prison that sets the terms of their self-definition. Moreover, as I have noted elsewhere, 'the material out of which their social reality is constructed increasingly consists of the only events to which they are exposed and the only experiences they are allowed to have—the minutiae of the [solitary confinement unit] itself and all of the nuances with which it can be infused.'³²

Depriving people of contact with others for long periods of time is psychologically hurtful and potentially destabilizing for another set of related reasons. The importance of 'affiliation'—the opportunity to have contact with others—in reducing anxiety in the face of uncertain or fear-arousing stimuli is long-established in social psychological literature.³³ People who are denied the opportunity to express these affiliative needs and tendencies—especially when confronted with uncertainty, stress, and danger—may become increasingly frightened, anxious, even panicked. Similarly, the significance of social cues and a larger social context in providing specific content and meaning to our emotional states is well understood.³⁴ Thus, one of the ways that people determine the appropriateness of their feelings—indeed, how we establish the very nature and tenor of our emotions—is through contact with others. Harry Stack Sullivan once summarized the clinical importance of social contact by observing that '[w]e can't be alone in things and be very clear on what happened to us, and we... can't be alone and be very clear even on what is happening in us very long—excepting that it gets simpler and simpler, and more primitive and more primitive, and less and less socially acceptable.'³⁵

29. For example, see: Festinger, L. (1954). 'A theory of social comparison processes', *Human Relations* 7: 327-346; Symposium (1986). *Personality and Social Psychology Bulletin* 12: 261-299.

30. Martel, J. (2006). 'To be, one has to be somewhere', *British Journal of Criminology* 46: 587-611, at p. 587.

31. *Id.* at p. 609.

32. Haney, *supra* note 9, at p. 141.

33. For example, see: Schachter, S. (1959). *The psychology of affiliation: Experimental studies of the sources of gregariousness*. Stanford, CA: Stanford University Press; Sarnoff, I. & Philip Zimbardo, P. (1961). 'Anxiety, fear, and social affiliation', *Journal of Abnormal Social Psychology* 62: 356-363; Zimbardo, P. & Robert Formica, R. (1963). 'Emotional comparison and self-esteem as determinants of affiliation', *Journal of Personality* 31: 141-162.

34. For example, see: Fischer, A., Manstead, A., & Zaalberg, R. (2003). 'Social influences on the emotion process', *European Review of Social Psychology* 14: 171-2001; Saarni, C. (1999). *The development of emotional competence*. New York: Guilford Press; Schachter, S. & Singer, J. (1962). 'Cognitive, social, and physiological determinants of emotional state', *Psychological Review* 69: 379-399; Tiedens, L. & Leach, C. (Eds.) (2004). *The social life of emotions*. New York: Cambridge University Press; Truax, S. (1984). 'Determinants of emotion attributions: A unifying view', *Motivation and Emotion* 8: 33-54;

35. Sullivan, H. (1971). 'The illusion of personal individuality', *Psychiatry* 12: 317-332, at p. 326.

Precisely because people's emotional reactions are so coloured by the social environment in which they live, subjecting them to severe and prolonged social isolation makes them especially vulnerable to a range of emotional disturbances.³⁶ For many prisoners, solitary confinement is an especially unfamiliar, threatening, and hostile environment. Not surprisingly, then, the empirical literature on solitary confinement documents a number of negative emotional effects, including heightened levels of anxiety, the increased risk of panic attacks, and a sense of impending emotional breakdown among prisoners who are denied normal social contact with others on a long-term basis.³⁷

Whatever else it does, of course, solitary confinement drastically restricts or completely eliminates opportunities for normal social interaction. The claim is sometimes made that prisoners who are housed in certain punitive or administrative segregation units are not 'really' in solitary confinement. After all, the prisoners are almost always afforded between 5-10 hours a week out of their cells and, in addition, most of them have managed to devise limited forms of communication with each other—no matter how strained and denatured. Moreover, they all have routine cell-front 'interactions' with correctional officers who—given the fact that the prisoners are confined to their cells nearly around-the-clock—must administer to their basic needs. This argument seems to me to be somewhat disingenuous. Total and absolute solitary confinement—literally complete isolation from any form of human contact—does not exist in prison and *never* has. Although I am aware of at least one prisoner who lived under an official 'no human contact' order for over two decades, even he had *some* contact with others or he could not have been maintained in prison.

In any event, I would take issue the contention that prisoners are being afforded remotely normal, adequate 'social communication' when they are reduced to yelling to one another within or between cellblocks, or from one concrete enclosed or caged exercise pen to another, or can

only talk to one another through toilets or plumbing chases. The assertion that prisoners are engaged in remotely normal, adequate forms of 'social interaction' when the only face-to-face contact they have with each other is mediated by iron cell doors or bars or the wire mesh or metal fencing of the individual cages in which they are increasingly enclosed (nowadays, both indoors and out) similarly misses the point. So, too, does the contention that the often brusque or hostile but at best perfunctory exchanges that they have with correctional officers is a genuine and psychologically adequate form of meaningful social intercourse.

In this sense, then, solitary confinement is a socially pathological environment that forces long-term inhabitants to develop their own socially pathological adaptations—ones premised on the absence of meaningful contact with people—in order to function and survive. As a result, prisoners gradually change their patterns of thinking, acting and feeling to cope with their largely asocial world and the impossibility of relying on social support or the routine feedback that comes from normal contact with others. These adaptations represent 'social pathologies' brought about by the socially pathological environment of solitary confinement. Although they are functional and even necessary under the circumstances, they can become painful and disabling if taken to extremes or internalized so deeply that they persist long after the time in solitary confinement has ended.

For example, some prisoners cope with the asociality of their daily existence by paradoxically creating even more. That is, they socially withdraw further from the world around them, receding even more deeply into themselves than the sheer physical isolation of solitary confinement and its attendant procedures require. Others move from initially being starved for social contact to eventually being disoriented and even frightened by it. As they become increasingly unfamiliar and uncomfortable with social interaction, they are further alienated from others and made anxious in their presence.³⁸ In extreme cases, another pattern

36. Isolation correlates with psychiatric and other symptomatology in society at large. For example, see: Cacioppo, J., Hawkley, L., & Bernston, G. (2003). 'The anatomy of loneliness', *Current Directions in Psychological Science* 12: 71-74; Chappell, N., & Badger, M. (1989). 'Social isolation and well-being', *Journal of Gerontology* 44: 169-176. Conversely, there is a diverse literature on the beneficial effects of social contact and support. For example, see: Cohen, S., & Wills, T. (1985). 'Stress, social support, and the buffering hypothesis', *Psychological Bulletin* 98: 310-357; Heller, K. (1979). 'The effects of social support: Prevention and treatment implications', in A. Goldstein & F. Kanfer (Eds.), *Maximizing treatment gains: Transfer enhancement in psychotherapy*. New York: Academic Press; House, J., Landis, K., & Umberson, D. (1988). 'Social relationships and health', *Science* 241: 540-545; Reblin, M., & Uchino, B. (2006). 'Social and emotional support and its implication for health', *Current Opinion in Psychiatry* 21: 201-205; Uchino, B., Cacioppo, J., & Kiecolt-Glaser, J. (1996). 'The relationship between social support and physiological processes: A review with emphasis on underlying mechanisms and implications for health', *Psychological Bulletin* 119: 488-531.
37. For example, see: Andersen, et al., *supra* note 27; Brodsky, S., & Scogin, F. (1988). 'Inmates in protective custody: First data on emotional effects', *Forensic Reports* 1: 267-280; Grassian, S. (1983). 'Psychopathological effects of solitary confinement', *American Journal of Psychiatry* 140: 1450-1454; Haney, *supra* note 9; Hilliard, T. (1976). 'The Black psychologist in action: A psychological evaluation of the Adjustment Center environment at San Quentin Prison', *Journal of Black Psychology* 2: 75-82; Koch, I. (1986). 'Mental and social sequelae of isolation: The evidence of deprivation experiments and of pretrial detention in Denmark', in B. Rolston & M. Tomlinson (Eds.), *The expansion of European prison systems, Working Papers in European Criminology No. 7* (pp. 119-129). Belfast: Print Workshop; Korn, R. (1988). 'The effects of confinement in the High Security Unit at Lexington', *Social Justice* 15: 8-19; Korn, R. (1988). 'Follow-up report on the effects of confinement in the High Security Unit at Lexington', *Social Justice* 15: 20-29; Toch, H. (1975). *Men in crisis: Human breakdowns in prisons*. Aldine Publishing Co.: Chicago; Volkart, R., Dittrich, A., Rothenfluh, T., & Werner, P. (1983). 'Eine kontrollierte untersuchung uber psychopathologische effekte der einzelhaft (A controlled investigation on psychopathological effects of solitary confinement)', *Psychologie - Schweizerische Zeitschrift fur Psychologie und ihre Anwendungen* 42: 25-46; Walters, R., Callagan, J., & Newman, A. (1963). 'Effect of solitary confinement on prisoners', *American Journal of Psychiatry* 119: 771-773.
38. For evidence that solitary confinement may lead to a withdrawal from social contact or an increased tendency to find the presence of people increasingly aversive or anxiety-arousing, see: Cormier, B., & Williams, P. (1966). 'Excessive deprivation of liberty', *Canadian Psychiatric Association Journal* 11: 470-484; Haney, *supra* note 9; Miller, H., & Young, G. (1997). 'Prison segregation: Administrative detention remedy or mental health problem?', *Criminal Behaviour and Mental Health* 7: 85-94; Scott, G., & Gendreau, P. (1969). 'Psychiatric implications of sensory deprivation in a maximum security prison', *Canadian Psychiatric Association Journal* 12: 337-341; Toch, *supra* note 38; and Waligora, B. (1974). 'Funkcjonowanie Czlowieka W Warunkach Izolacji Wieziennej (How men function in conditions of penitentiary isolation)', *Seria Psychologia I Pedagogika* NR 34, Poland.

emerges: this environment is so painful, so bizarre and impossible to make sense of, that they create their own reality—they live in a world of fantasy instead.³⁹ Indeed, at least for some prisoners, solitary confinement appears to be associated with paranoia and the presence of both visual and auditory hallucinations.⁴⁰

Not surprisingly, some prisoners in long-term isolation also report that these adaptations to asociality are painful, and that they feel their lives have been drained of meaning and happiness. John Bowlby characterized intimate attachments with others as the ‘the hub around which a person’s life revolves,’ and elaborated that ‘[f]rom these intimate attachments a person draws his strength and enjoyment of life and, through what he contributes, he gives strength and enjoyment of others.’⁴¹ Prisoners who cannot manage without such a ‘hub’ may find themselves becoming increasingly joyless, depressed, and even suicidal.⁴²

Virtually every solitary confinement unit with which I am familiar subjects prisoners to more than simply social deprivation. Life in these units also typically includes a high level of repressive control, enforced idleness, reduced environmental stimulation, and physical deprivations that are much greater than in other prison settings. Indeed, most of the things that we know are beneficial to prisoners—such as increased participation in institutional programming, visits with persons from outside the prison, and so on⁴³—are either functionally denied them or greatly restricted. The model of profound deprivation on which most solitary confinement units are built and run constricts virtually all aspects of the isolated prisoner’s day-to-day existence. Thus, it is not surprising that, in addition to the social pathologies that are generated, the imposition of these other stressors produces a number of other negative psychological effects.

For example, we know that psychological health, adjustment, and well being depend in part on people being able to attain and maintain a sense of autonomy and purpose, a modicum of what Albert Bandura broadly termed ‘self-efficacy.’⁴⁴ When people are placed in environments or situations where little that they do seems to make a difference, or their plight seems insurmountable and beyond their control, they are likely to become despondent, lethargic, even depressed. Years ago Martin Seligman coined the term ‘learned helplessness’ to describe the consequence of being kept in environments where negative outcomes appeared unavoidable⁴⁵ or environmental stressors could not be controlled or reduced.⁴⁶ In analogous ways, the numerous, seemingly insurmountable restrictions of long-term solitary confinement increase the likelihood that a potentially disabling sense of helplessness will become chronic, global, and internalized—the form that Seligman and colleagues regarded as most likely to produce debilitating depression.⁴⁷

Indeed, one of the hallmarks of solitary confinement is that it constricts and constrains the ‘already limited opportunities that prisoners have to initiate behavior. Since they can *do* very little—even less than in mainstream prison settings—they cannot exercise autonomy or efficacy over much at all.’⁴⁸ They are forced to become highly dependent upon the institution to authorize, organize, and oversee even the most minute and mundane aspects of their daily life. In a related way, some prisoners in solitary confinement find themselves struggling to **initiate** behavior on their own, in part because they have been stripped of the opportunity to organize their lives around meaningful activity and purpose. They report being unable to begin even mundane tasks or to follow through once they have begun them. Or they find it difficult to focus their attention, to concentrate, or to

39. For example, compare the description in: Cooke, M., & Goldstein, J. (1989). ‘Social isolation and violent behavior’, *Forensic Reports* 2: 287-294, at p. 288: A socially isolated individual who has few, and/or superficial contacts with family, peers, and community cannot benefit from social comparison. Thus, these individuals have no mechanism to evaluate their own beliefs and actions in terms of reasonableness or acceptability within the broader community. They are apt to confuse reality with their idiosyncratic beliefs and fantasies and likely to act upon such fantasies, including violent ones.
40. For example, see: Brodsky & Scogin, *supra* note 38; Cormier & Williams, *supra* note 40; Grassian, *supra* note 38; Haney, *supra* note 9; Koch, *supra* note 38; Korn, *supra* note 38; Suedfeld, P. & Roy, C. (1975). ‘Using social isolation to change the behavior of disruptive inmates’, *International Journal of Offender Therapy and Comparative Criminology* 19: 90-99; and Volkart, et al., *supra* note 38.
41. Bowlby, B. (1980). *Attachment and loss: Loss, sadness, and depression*. New York: Basic Books, at p. 442.
42. Andersen, et al., *supra* note 27; Benjamin, T., & Lux, K. (1975). ‘Constitutional and psychological implications of the use of solitary confinement: Experience at the Maine prison’. *Clearinghouse Review* 9: 83-90; Brodsky & Scogin, *supra* note 38; Cormier & Williams, *supra* note 40; Grassian, *supra* note 38; Haney, *supra* note 9; Hilliard, *supra* note 38; Korn, *supra* note 38; and Patterson, R., & Hughes, K. (2008). ‘Review of completed suicides in the California Department of Corrections and Rehabilitation, 1999-2004’, *Psychiatric Services* 59: 676-682.
43. Wooldredge, J. (1999). ‘Inmate experiences and psychological well-being’, *Criminal Justice and Behavior* 26: 235-250.
44. For example, see: Bandura, A. (1997). *Self-efficacy: The exercise of control*. New York: Freeman; Karademas, E. & Kalantzi-Asisi, A. (2004). ‘The stress process, self-efficacy expectations, and psychological health’, *Personality and Individual Differences* 37: 1033-1043; Maddux, J. (1991). ‘Self-efficacy’, in Snyder, C. & Forsyth, D. (Eds.), *Handbook of social and clinical psychology: The health perspective* (pp. 57-78). New York: Pergamon. See, also: Goodstein, L., MacKenzie, D., & Shotland, L. (1984). ‘Personal control and inmate adjustment to prison’, *Criminology: An Interdisciplinary Journal* 22: 343-369.
45. Seligman, M. (1975). *Helplessness: On depression, development, and death*. San Francisco: Freeman. See, also: Collins, A., & Kuehn, M. (2007). ‘The construct of hope in the rehabilitation’, in Power, P. (Eds.), *The psychological and social impact of illness and disability* (pp. 427-440). 5th Edition. New York: Springer.
46. Evans, G., & Stecker, R. (2004). ‘Motivational consequences of environmental stress’, *Journal of Environmental Psychology* 24: 143-165.
47. For example, see: Abramson, L., Seligman, M., & Teasdale, J. (1978). ‘Learned helplessness in humans: Critique and reformulation’, *Journal of Abnormal Psychology* 87: 49-74.
48. In addition, in many solitary confinement settings prisoners report feeling that they have little or no control over whether and when they will be released from this painful form of imprisonment. They may literally not know what if anything they can do that will lead to their release, or find the stated requirements arbitrary or unreachable (for example, to be judged as having displayed a “positive attitude” by staff members whom they view as harboring considerable animosity toward them), or be officially that they have simply been placed on “indefinite” solitary confinement status.

organize sustained activity. In extreme cases prisoners may literally stop behaving.⁴⁹

In fact, in most of these units in the United States prisoners cannot even come out of their cells without first being cinched up in elaborate security devices and hardware—handcuffs, leg irons, restraint chains and the like. Along with the other degrading ways in which they are often treated, these procedures undermine their sense of dignity, value, and worth. But because almost every aspect of the prisoner's day-to-day existence is so carefully and completely circumscribed in these units, some of them also lose the ability to set limits for themselves or to control their own behavior through internal mechanisms. They may become uncomfortable with even small amounts of freedom because they have lost confidence in their own ability to behave in the absence of constantly enforced restrictions, the tight external structure that surrounds them, and the ubiquitous physical restraints into which they are repeatedly placed.

As might be expected, then, research confirms that persons who have been kept in solitary confinement under these conditions report having more negative attitudes and affect as well as developing a sense of hopelessness, feeling chronically lethargic, and becoming depressed.⁵⁰ In more extreme cases, solitary confinement has been associated with self-mutilation, and suicidal ideation and behaviour.⁵¹ The comparatively high number of suicides and suicide attempts that occur in segregation and solitary-type confinement is due in some part to the increased opportunity that being housed apart from others provides prisoners who are intent on taking such a drastic, tragic step. But it is also in part the result of the heightened levels of 'environmental stress' that are generated by 'isolation, punitive sanctions, [and] severely restricted living conditions.'⁵²

In addition to the profound social deprivation and nearly complete undermining of self-efficacy that such extraordinary levels of segregation, restriction and control bring about, prisoners in long-term solitary confinement must endure prolonged and extreme monotony and idleness. They are subjected to certain forms of sensory deprivation,

and to a lack of cognitive or mental stimulation that exceeds that of the mainstream prison population. Of course, we know that people require a certain level of mental and physical activity in order to remain healthy.

In this context, some defenders of solitary confinement have belittled the research that shows its negative effects by distinguishing the conditions that prevail in the typical prison isolation unit from those created in the total sensory deprivation studies that were done decades ago. Of course, the differences between the two environments are obvious, and I know of no knowledgeable commentator on solitary confinement who would equate or confuse one with the other. That said, one of the basic lessons of that early sensory deprivation research and the related research that followed—that people are 'dependent on adequate and changing amounts of sensory and social stimulation in order to maintain [their] psychic and physiological functioning'—does seem useful in understanding at least some of the negative consequences of solitary confinement.⁵³ Of course, this implies that low levels of cognitive stimulation and severe restrictions on activity are problematic for a variety of reasons.

Not surprisingly, prisoners subjected to the emptiness of isolated confinement for long periods of time report becoming concerned (even obsessed) about their own potential physical and mental deterioration. In addition, they can suffer from lethargy, a loss of direction and purposefulness, hypersensitivity or a tendency to overreact to certain stimuli, ruminations, and certain forms of cognitive dysfunction (such as an inability to concentrate, focus, and remember).⁵⁴

Finally, numerous studies provide support for the commonsense proposition that frustration makes people angry. When persons believe that their desired goals have been blocked for what they perceive to be unjustified or illegitimate reasons, such frustration tends to produce even greater levels of 'angry aggression,'⁵⁵ even very serious forms of aggression in society at large.⁵⁶ Yet, many solitary confinement units are structured to deprive prisoners of most of the things that all but the most callous commentators

49. For examples of this range of symptoms, see: Brodsky & Scogin, *supra* note 38; Grassian, *supra* note 38; Haney, *supra* note 9; Hilliard, *supra* note 38; Koch, *supra* note 38; Korn, *supra* note 38; Miller & Young, *supra* note 40; Scott & Gendreau, *supra* note 49; Suedfeld & Roy, *supra* note 42; and Volkart, Dittrich, Rothenfluh & Werner, *supra* note 38.

50. For example, for studies that document some or all of these symptoms as manifested by people who are or have been in solitary confinement, see: Andersen, et al., *supra* note 27; Bauer, M., Priebe, S., Haring, B., & Adamczak, K. (1993). 'Long-term mental sequelae of political imprisonment in East Germany', *Journal of Nervous & Mental Disease* 181: 257-262; Brodsky & Scogins, *supra* note 38; Cormier & Williams, *supra* note 40; Grassian, *supra* note 38; Haney, *supra* note 9; Hilliard, *supra* note 38; Koch, *supra* note 38; Korn, a & b, *supra* note 38; Miller & Young, *supra* note 40; Suedfeld, et al., *supra* note 11; Suedfeld & Roy, *supra* note 42; and Scott & Gendreau, *supra* note 40.

51. For example, see: Benjamin & Lux, *supra* note 44; Cormier & Williams, *supra* note 40; Grassian, *supra* note 38; Haney, *supra* note 9; Patterson & Hughes, *supra* note 44; and Toch, *supra* note 38.

52. Patterson & Hughes, *supra* note 44, at p. 678. The authors reported that "the conditions of deprivation in locked units and higher-security housing were a common stressor shared by many of the prisoners who committed suicide." *Ibid.* See, also: Leibling, A. (1995). 'Vulnerability and prison suicide', *British Journal of Criminology* 36: 173-187; and Leibling, A. (1999). 'Prison suicide and prisoner coping', *Crime and Justice* 26: 283-359.

53. Leiderman, H. (1962). 'Man alone: Sensory deprivation and behavioral change', *Corrective Psychiatry and Journal of Social Therapy* 8: 64-74 (1962), p. 73.

54. For examples of this range of symptoms, see: Brodsky & Scogin, *supra* note 38; Grassian, *supra* note 38; Haney, *supra* note 9; Koch, *supra* note 38; Korn, a & b, *supra* note 38; Miller & Young, *supra* note 40; Suedfeld & Roy, *supra* note 42; and Volkart, et al., *supra* note 38.

55. For example, see Berkowitz, L. (1989). 'Frustration-aggression hypothesis: Examination and reinterpretation', *Psychological Bulletin* 106: 59-73.

56. For example, see: Huff-Corzine, L., Corzine, J., & Moore, D. (1991). 'Deadly connections: Culture, poverty, and the direction of lethal violence', *Social Forces* 69: 715-732; and Williams, K. (1984). 'Economic sources of homicide: Reestimating the effects of poverty and inequality', *American Sociological Review* 49: 283-289.

would concede are basic necessities of life—minimal freedom of movement, the opportunity to touch another human being in friendship or with affection, the ability to engage in meaningful or productive physical or mental activity, and so on. These deprivations, restrictions, and the totality of control fills many prisoners with intolerable levels of frustration that, for some, turns to anger, and then even to uncontrollable and sudden outbursts of rage.⁵⁷

Others channel their anger by ruminating over the course of the countless empty hours of uninterrupted time during which they are allowed to do little else. Some occupy this idle time by committing themselves to fighting against the system and the staff and officials whom they perceive as intent on provoking, thwarting, and oppressing them. There are solitary confinement prisoners who become consumed by the fantasy of revenge, and others who sometimes lash out against those who have treated them in ways they regard as inhumane. As two commentators wisely observed: 'Modern experts certainly imagined that they could shape and monitor the identities of those whom they segregated, but empirical studies based on institutional records and memories expose the limits on those ambitions. Exclusion produces submission but it also provokes non-compliance at the very least, and organized rebellion at the extreme.'⁵⁸ Ironically, but sometimes uncontrollably, some prisoners are driven by these deprived and oppressive conditions to pursue courses of action that further ensure their continued deprivation and oppression.

Conclusion

A very high percentage of the persons placed in long-term solitary confinement are truly suffering, and many are deeply disturbed—emotionally and in other ways. In some cases a prisoner's pre-existing psychiatric disorder has

contributed to the disturbing behavior that has resulted in his placement in solitary confinement, making him more susceptible to the painful stresses of the harsh and deprived environment in which he is housed. In other cases, however, the painful effects and negative consequences stem more fully and directly from the harsh conditions—the stresses and traumas—of isolated confinement. Moreover, as I have tried to show in this article, there is a theoretical framework within which the harmful effects of solitary confinement can be understood. The resulting social pathologies and other adverse reactions are precisely the ones that would be expected, given what is known about the importance of social context and contact, and the effects of severe deprivation and repressive control. Thus, there is a logic to the way isolation hurts and can damage those subjected to it.

These are extraordinary—I believe often needless and indefensible—risks to take with the human psyche and spirit.

I do not see any other way to interpret the renewed use of this long-discredited punishment except as a concession to the punitive age in which we now live, one in which it has become acceptable—even routine—within certain prison systems to resort to extraordinarily harsh practices that are motivated by little more than administrative convenience (absent any penological justification or psychological rationale), no matter how much they may 'hurt' prisoners (sometimes precisely because they do hurt them), and no matter the risk that the painfulness of the experience will do real harm. Modern and humane policy makers would do well to reflect on the range of perverse outcomes that may occur when they are designing regimes that are intended to control problematic behaviour in prison.

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57. For examples of some or all of these symptoms among present or former solitary confinement prisoners, see: Bauer, et al., *supra* note 52; Brodsky & Scogin, *supra* note 38; Cormier & Williams, *supra* note 40; Grassian, *supra* note 38; Haney, *supra* note 9; Hilliard, *supra* note 38; Koch, *supra* note 38; Miller & Young, *supra* note 40; Suedfeld, et al., *supra* note 11; Suedfeld & Roy, *supra* note 42; and Toch, *supra* note 38.
58. Bashford, A., & Strange, C. (2003). 'Isolation and exclusion in the modern world: An introductory essay', in C. Strange & A. Bashford (Eds.), *Isolation: Places and practices of exclusion* (pp. 1-19). London: Routledge, at p. 13