

EXHIBIT T

JULES LOBEL (*pro hac vice*)

Email: jl3@pitt.edu

ALEXIS AGATHOCLEOUS (*pro hac vice*)

Email: aagathocleous@ccrjustice.org

RACHEL MEEROPOL (*pro hac vice*)

Email: rachelm@ccrjustice.org

CENTER FOR CONSTITUTIONAL RIGHTS

666 Broadway, 7th Floor

New York, NY 10012

Tel: (212) 614-6478

Fax: (212) 614- 6499

GREGORY D. HULL (Bar No. 57367)

Email: greg.hull@weil.com

BAMBO OBARO (Bar No. 267683)

Email: bambo.obaro@weil.com

WEIL, GOTSHAL & MANGES LLP

201 Redwood Shores Parkway

Redwood Shores, CA 94065-1134

Tel: (650) 802-3000

Fax: (650) 802-3100

Attorneys for Plaintiffs

(Additional counsel listed on attached page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

TODD ASHKER, DANNY TROXELL, GEORGE RUIZ, JEFFREY FRANKLIN, GEORGE FRANCO, GABRIEL REYES, RICHARD JOHNSON, PAUL REED, LUIS ESQUIVEL, and RONNIE DEWBERRY, on their own behalf, and on behalf of a class of similarly situated prisoners,

Plaintiffs,

v.

EDMUND G. BROWN, JR., Governor of the State of California, MATTHEW CATE, Secretary, California Department of Corrections and Rehabilitation (CDCR); ANTHONY CHAUS, Chief, Office of Correctional Safety, CDCR; and G.D. LEWIS, Warden, Pelican Bay State Prison,

Defendants.

Case No. 4:09 CV 05796 CW

DECLARATION OF CRAIG HANEY, Ph.D., J.D., IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Honorable Claudia Wilken

1 I, Craig Haney, Ph.D, J.D., declare:

2 **I. Expert Qualifications**

3 1. I am a Professor of Psychology at the University of California, Santa Cruz, where I
4 also currently serve as the Director of the Legal Studies Program, and the Director of the Graduate
5 Program in Social Psychology. My area of academic specialization is in what is generally termed
6 “psychology and law,” which is the application of psychological data and principles to legal issues. I
7 teach graduate and undergraduate courses in social psychology, psychology and law, and research
8 methods. I received a bachelor's degree in psychology from the University of Pennsylvania, an M.A.
9 and Ph.D. in Psychology and a J.D. degree from Stanford University, and I have been the recipient
10 of a number of scholarship, fellowship, and other academic awards.

12 2. I have published numerous scholarly articles and book chapters on topics in law and
13 psychology, including encyclopedia and handbook chapters on the backgrounds and social histories
14 of persons accused of violent crimes, the psychological effects of imprisonment, and the nature and
15 consequences of solitary or “supermax”-type confinement. In addition to these scholarly articles and
16 book chapters, I have published two books: *Death by Design: Capital Punishment as a Social*
17 *Psychological System* (Oxford University Press, 2005), and *Reforming Punishment: Psychological*
18 *Limits to the Pains of Imprisonment* (American Psychological Association Books, 2006).

20 3. In the course of my academic work in psychology and law, I have lectured and given
21 invited addresses throughout the country on the role of social and institutional histories in explaining
22 criminal violence, the psychological effects of living and working in institutional settings (typically
23 maximum security prisons), and the psychological consequences of solitary confinement. I have
24 given these lectures and addresses at various law schools, bar associations, university campuses, and
25 numerous professional psychology organizations such as the American Psychological Association.

1 4. I also have served as a consultant to numerous governmental, law enforcement, and
2 legal agencies and organizations, including the Palo Alto Police Department, various California
3 Legislative Select Committees, the National Science Foundation, the American Association for the
4 Advancement of Science, and the United States Department of Justice. For example, in the summer
5 of 2000, I was invited to attend and participated in a White House Forum on the uses of science and
6 technology to improve crime and prison policy, and in 2001 participated in a conference jointly
7 sponsored by the United States Department of Health and Human Services (DHHS) concerning
8 government policies and programs that could better address the needs of formerly incarcerated
9 persons as they were reintegrated into their communities. I continued to work with DHHS on the
10 issue of how best to insure the successful reintegration of prisoners into the communities from which
11 they have come. More recently, I consulted with the Department of Homeland Security on detention-
12 related issues, was both a consultant to and an expert witness before the United States Congress, and
13 was appointed in 2012 as a member of a National Academy of Sciences committee analyzing the
14 causes and consequences of high rates of incarceration in the United States. A copy of my
15 curriculum vitae is attached to this Declaration as Exhibit 1.
16
17

18 5. My academic interest in the psychological effects of various prison conditions is
19 long-standing and dates back to 1971, when I was still a graduate student. I was one of the principal
20 researchers in what has come to be known as the “Stanford Prison Experiment,” in which my
21 colleagues Philip Zimbardo, Curtis Banks, and I randomly assigned normal, psychologically healthy
22 college students to the roles of either “prisoner” or “guard” within a simulated prison environment
23 that we had created in the basement of the Psychology Department at Stanford University. The study
24
25
26
27
28

1 has since come to be regarded as a “classic” study in the field of social psychology, demonstrating
2 the power of institutional settings to change and transform the people who enter them.¹

3 6. Since then I have been studying the psychological effects of living and working in
4 real (as opposed to simulated) institutional environments, including juvenile facilities, mainline adult
5 prison and jail settings, and specialized correctional housing units (such as solitary and “supermax”-
6 type confinement). In the course of that work, I have toured and inspected numerous maximum
7 security state prisons and related facilities (in Alabama, Arkansas, Arizona, California, Florida,
8 Georgia, Idaho, Louisiana, Massachusetts, Montana, New Jersey, New Mexico, Ohio, Oregon,
9 Tennessee, Texas, Utah, and Washington), many maximum security federal prisons (including the
10 Administrative Maximum or “ADX” facility in Florence, Colorado), as well as prisons in Canada,
11 Cuba, England, Hungary, Mexico, and Russia. I also have conducted numerous interviews with
12 correctional officials, guards, and prisoners to assess the impact of penal confinement, and
13 statistically analyzed aggregate data from numerous correctional documents and official records to
14 examine the effects of specific conditions of confinement on the quality of prison life and the ability
15 of prisoners to adjust to them.²

18 _____
19 ¹ For example, see Craig Haney, Curtis Banks & Philip Zimbardo, *Interpersonal Dynamics in a*
20 *Simulated Prison*, 1 *International Journal of Criminology and Penology* 69 (1973); Craig Haney &
21 Philip Zimbardo, *The Socialization into Criminality: On Becoming a Prisoner and a Guard*, in Law,
22 Justice, and the Individual in Society: Psychological and Legal Issues. (J. Tapp and F. Levine, eds.,
1977); and Craig Haney & Philip Zimbardo, *Persistent Dispositionalism in Interactionist Clothing:*
Fundamental Attribution Error in Explaining Prison Abuse, *Personality and Social Psychology*
Bulletin, 35, 807-814 (2009).

23 ² For example, Craig Haney & Philip Zimbardo, *The Socialization into Criminality: On Becoming a*
24 *Prisoner and a Guard*, in Law, Justice, and the Individual in Society: Psychological and Legal Issues
25 (pp. 198-223). (J. Tapp and F. Levine, eds., 1977); Craig Haney, *Infamous Punishment: The*
Psychological Effects of Isolation, 8 *National Prison Project Journal* 3 (1993); Craig Haney,
26 *Psychology and Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law*,
Psychology, Public Policy, and Law, 3, 499-588 (1997); Craig Haney, *The Consequences of Prison*
Life: Notes on the New Psychology of Prison Effects, in D. Canter & R. Zukauskienė (Eds.),
27 *Psychology and Law: Bridging the Gap* (pp. 143-165). Burlington, VT: Ashgate Publishing (2008);
28 Craig Haney, *On Mitigation as Counter-Narrative: A Case Study of the Hidden Context of Prison*

1 7. I have been qualified and have testified as an expert in various federal courts,
 2 including United States District Courts in Arkansas, California, Georgia, Texas, New Mexico, and
 3 Washington, and in numerous state courts, including courts in Colorado, Florida, Montana, New
 4 Jersey, New Mexico, Ohio, Oregon, Tennessee, Utah, and Wyoming as well as, in California, the
 5 Superior Courts of Alameda, Calaveras, Kern, Los Angeles, Marin, Mariposa, Monterey, Orange,
 6 Sacramento, San Diego, San Francisco, San Mateo, Santa Clara, Santa Cruz, Shasta, Tulare,
 7 Ventura, and Yolo counties. My research, writing, and testimony have been cited by state courts,
 8 including the California Supreme Court, and by Federal District Courts, Circuit Courts of Appeal,
 9 and the United States Supreme Court.³

11 **II. Nature and Basis of Expert Opinion**

12 8. I have been retained by counsel for the plaintiffs in *Ashker v. Brown* to provide expert
 13 opinions on two inter-related topics: a) a summary of what is known about the negative
 14 psychological consequences of confinement in isolation or “supermax” prisons; and b) based on the
 15 case-specific documents that I have been provided and reviewed, and a series of interviews that I
 16 have conducted, the extent to which prisoners housed in the Pelican Bay Security Housing Unit
 17 (SHU) continue to be subjected to solitary-type confinement that may place them at a serious risk of
 18 psychological harm.

20 9. My opinions on these topics are based on a number of sources. In addition to my own
 21 direct experience interviewing and evaluating prisoners housed in solitary confinement, I reviewed
 22 the extensive published literature that addresses the psychological effects of solitary confinement. In
 23

24 *Violence*, University of Missouri-Kansas City Law Review, 77, 911-946 (2009); Craig Haney,
 25 *Counting Casualties in the War on Prisoners*, 43 University of San Francisco Law Review 87-138
 26 (2008); Craig Haney, *The Perversions of Prison: On the Origins of Hypermasculinity and Sexual*
 27 *Violence in Confinement*, American Criminal Law Review, 48, 121-141 (2011) [Reprinted in: S.
 Ferguson (Ed.), *Readings in Race, Ethnicity, Gender and Class*. Sage Publications (2012)]; and
 Craig Haney, *Prison Effects in the Age of Mass Imprisonment*, *The Prison Journal*, 92, 1-24 (2012).

28 ³ For example, see *Brown v. Plata*, 131 S.Ct. 1910 (2011).

1 addition, I have been provided with a set of documents that pertain to the use of solitary confinement
2 at the Pelican Bay SHU. The documents that I reviewed include: the Class Action Complaint for
3 Injunctive and Declaratory Relief in *Ashker v. Brown*; a 2012 Amnesty International report on
4 conditions in California's SHUs entitled "The Edge of Endurance: Prison Conditions in California's
5 Security Housing Units"; and the Declaration of Terry Kupers, M.D., M.S.P.⁴

6
7 10. In addition, the Pelican Bay Security Housing Unit ("PBSHU") is a facility that I
8 know well. I first toured and inspected this "supermax" prison in 1990, not long after it had opened.
9 Indeed, many of the "pods" at the prison had not yet received their first prisoners and some of those
10 that I toured were still empty. I returned to the prison many times in the early 1990s, as one of the
11 experts who evaluated and testified about the impact of long-term isolated confinement in *Madrid v.*
12 *Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995). In conjunction with my work on that case, I toured and
13 inspected the facility a number of times and conducted numerous interviews with prisoners who
14 were housed in the PBSHU to determine its psychological effects. In July, September, and
15 December, 1992, I conducted approximately thirty (30) interviews with PBSHU prisoners to better
16 understand their conditions of confinement and form preliminary opinions about how they were
17 being affected by those conditions. Then, on two separate occasions (August 3-4, and August 30-
18 September 1, 1993), I and a team of researchers that I assembled returned to the facility for several
19 days to complete a systematic study that entailed in-depth assessments of a representative group of
20 one hundred (100) randomly selected PBSHU prisoners. I also have returned to the prison on a
21 number of occasions since *Madrid* was decided, both to tour and inspect conditions and to interview
22 prisoners. In addition, because of my longstanding interest in the psychological effects of solitary
23 confinement, my active participation in assessing the effects of the PBSHU, and my involvement in
24

25
26 ⁴ I should note that although I reviewed Dr. Kuper's declaration and, as I will point out later in this
27 Declaration, found his observations to be consistent with my own, his opinions in this case have not
28 influenced or affected mine. I have known of and respected Dr. Kuper's work for some time.
However, I am adamant about reaching my own, independent conclusions, and I believe that Dr.
Kupers functions in exactly the same way.

1 the *Madrid* lawsuit, I have remained apprised of many of the practices, policies, and conditions at
2 the facility.

3 11. I also recently traveled to the PBSHU and, on April 16-17, 2013, I conducted
4 interviews with seven (7) prisoners who were both part of the original sample of randomly selected
5 prisoners from my August-September, 1993 study and who were currently being housed in the
6 facility.⁵ Several of these men had been transferred to other CDCR prisons in the intervening 20-year
7 period and were now back at the PBSHU, and several had *never* left since I interviewed them many
8 years ago.

9
10 12. By way of summary, it is my expert opinion that being housed in solitary or isolated
11 confinement—especially over a long period of time—can produce a number of negative
12 psychological effects. It places prisoners at grave risk of psychological harm. I believe that these
13 effects are now well understood and described in the scientific literature. There are numerous
14 empirical studies that report “robust” findings—that is, the findings have been obtained in studies
15 that were conducted by researchers and clinicians from diverse backgrounds and perspectives, were
16 completed and published over a period of many decades, and are empirically very consistent. With
17 remarkably few exceptions, virtually every one of these studies has documented the pain and
18 suffering that isolated prisoners endure and the risk of psychological harm to which they are
19 exposed.
20

21 13. In addition, the empirical conclusions are theoretically sound. That is, there are
22 straightforward scientific explanations for the fact that long-term isolation, the absence of
23 meaningful social interaction and activity, and the other severe deprivations that occur under
24 conditions of isolated or solitary confinement have harmful psychological consequences. Isolation
25

26
27 ⁵ I have been informed by counsel for Plaintiffs that Defendants are aware of the identity of these
28 seven prisoners, and that counsel for Plaintiffs will provide the Court and counsel for Defendants a
list of the seven prisoners’ names upon request.

1 from others is known to produce adverse psychological effects in contexts other than prison; it
2 makes perfect theoretical sense that this experience produces similar negative outcomes in
3 correctional settings.

4 14. The scientific literature on isolation, as well as my own research and experience,
5 indicate that long-term exposure to precisely the kinds of conditions and practices that—based on the
6 documents I have reviewed and interviews I have conducted—appear to currently exist in the
7 PBSHU, places prisoners at grave risk of psychological harm. This is true whether or not those
8 prisoners suffer from a pre-existing mental illness.

9 15. I should note that my opinions concerning the current use, nature, and effects of long-
10 term isolated confinement in the PBSHU are still partial and preliminary. It is my understanding that
11 additional information will be forthcoming during the course of this litigation. For example, I have
12 not been able to conduct a recent tour of the PBSHU. I would also like to have an opportunity to
13 interview staff, and a larger sample of prisoners housed at the facility, as well as to review prisoner
14 files and other pertinent documents. Although I am able to formulate the preliminary opinions about
15 long-term isolation at the PBSHU that I will express in this Declaration, I anticipate that the opinions
16 I ultimately will reach in this case will be supplemented and finalized as more information becomes
17 available.
18
19

20 **III. The Adverse Psychological Effects of Isolation**

21 16. “Solitary confinement” and “isolated confinement” are terms of art in correctional
22 practice and scholarship. For perhaps obvious reasons, total and absolute solitary confinement—
23 literally complete isolation from any form of human contact—does not exist in prison and never has.
24 Instead, the term is generally used to refer to conditions of extreme (but not total) isolation from
25 others. I have defined it elsewhere, in a way that is entirely consistent with its use in the broader
26 correctional literature, as:
27
28

1 [S]egregation from the mainstream prisoner population in attached housing units or
 2 free-standing facilities where prisoners are involuntarily confined in their cells for
 3 upwards of 23 hours a day or more, given only extremely limited or no opportunities
 4 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.⁶

5 17. Even prisoners in “isolated confinement” who are “double-celled” (i.e., housed with
 6 another prisoner) may nonetheless suffer many of the negative psychological effects that are
 7 described in the paragraphs below. In fact, in some ways, prisoners who are double-celled in an
 8 isolation unit have the worst of both worlds: they are “crowded” in and confined with another person
 9 inside a small cell but simultaneously isolated from the rest of the mainstream prisoner population,
 10 deprived of even minimal freedom of movement, prohibited from access to meaningful prison
 11 programs, and denied opportunities for any semblance of “normal” social interaction.

12 18. As I noted in passing above, researchers and practitioners know that meaningful
 13 social interactions and social connectedness can have a positive effect on people’s physical and
 14 mental health and, conversely, social isolation in general is potentially very harmful and can
 15 undermine health and psychological well-being.⁷ Not surprisingly, there is now a reasonably large
 16
 17

18 _____
 19 ⁶ Craig Haney, *The Social Psychology of Isolation: Why Solitary Confinement is Psychologically*
 20 *Harmful*, *Prison Service Journal*, 12 (January, 2009), at n.1. Obviously, there is little or no difference
 21 between 22.5 hours of cell confinement, as practiced at Pelican Bay SHU, and the 23 hours referred
 to here.

22 ⁷ For example, see: Brock Bastian & Nick Haslam, *Excluded from Humanity: The Dehumanizing*
 23 *Effects of Social Ostracism*, *Journal of Experimental Social Psychology*, 46, 107-113 (2010);
 24 Stephanie Cacioppo & John Cacioppo, *Decoding the Invisible Forces of Social Connections*,
 25 *Frontiers in Integrative Neuroscience*, 6, 51 (2012); DeWall, et al., *Belongingness as a Core*
 26 *Personality Trait: How Social Exclusion Influences Social Functioning and Personality Expression*,
 27 *Journal of Personality*, 79, 979-1012 (2011); Damiano Fiorillo & Fabio Sabatini, *Quality and*
 28 *Quantity: The Role of Social Interactions in Self-Reported Individual Health*, *Social Science &*
Medicine, 73, 1644-1652 (2011); S. Hafner et al., *Association Between Social Isolation and*
Inflammatory Markers in Depressed and Non-depressed Individuals: Results from the
MONICA/KORA Study, *Brain, Behavior, and Immunity*, 25, 1701-1707 (2011); Johan Karremans, et
 al., *Secure Attachment Partners Attenuate Neural Responses to Social Exclusion: An fMRI*
Investigation, *International Journal of Psychophysiology*, 81, 44-50 (2011); Graham Thornicroft,

1 and growing literature on the significant risk that solitary or so-called “supermax” confinement
 2 poses for the mental health of prisoners. The long-term absence of meaningful human contact and
 3 social interaction, the enforced idleness and inactivity, and the oppressive security and surveillance
 4 procedures, and the accompanying hardware and other paraphernalia that are brought or built into
 5 these units combine to create harsh, dehumanizing, and deprived conditions of confinement. These
 6 conditions can predictably impair the psychological functioning of the prisoners who are subjected
 7 to them.⁸ For some, these impairments can be permanent and life-threatening.
 8

9 19. In the admitted absence of a single “perfect” study of the phenomenon,⁹ there is a
 10 substantial body of published literature that clearly documents the distinctive patterns of
 11 psychological harm that can and do occur when persons are placed in solitary confinement. These

12 *Social Deprivation and Rates of Treated Mental Disorder: Developing Statistical Models to Predict*
 13 *Psychiatric Service Utilisation*, British Journal of Psychiatry, 158, 475-484 (1991).

14 ⁸ For example, see: Kristin Cloyes, David Lovell, David Allen & Lorna Rhodes, *Assessment of*
 15 *Psychosocial Impairment in a Supermaximum Security Unit Sample*, Criminal Justice and Behavior,
 16 33, 760-781 (2006); Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax”*
 17 *Confinement*, Crime & Delinquency, 49, 124-156 (2003); and Peter Smith, *The Effects of Solitary*
 18 *Confinement on Prison Inmates: A Brief History and Review of the Literature*, in Michael Tonry
 19 (Ed.), Crime and Justice (pp. 441-528). Volume 34. Chicago: University of Chicago Press (2006).

20 ⁹ No more than basic knowledge of research methodology is required to design the “perfect” study of
 21 the effects of solitary confinement: dividing a representative sample of prisoners (who had never
 22 been in solitary confinement) into two groups by randomly assigning half to either a treatment
 23 condition (say, two or more years in solitary confinement) or a control condition (the same length of
 24 time residing in a typical prison housing unit), and conducting longitudinal assessments of both
 25 groups (i.e., before, during, and after their experiences), by impartial researchers skilled at gaining
 26 the trust of prisoners (including ones perceived by the prisoner-participants as having absolutely no
 27 connection to the prison administration). Unfortunately, no more than basic knowledge of the
 28 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.

1 broad patterns have been consistently identified in personal accounts written by persons confined in
 2 isolation, in descriptive studies authored by mental health professionals who worked in many such
 3 places, and in systematic research conducted on the nature and effects of solitary or “supermax”
 4 confinement. The studies have now spanned a period of over five decades, and were conducted in
 5 locations across several continents by researchers with different professional expertise, ranging from
 6 psychiatrists to sociologists and architects.¹⁰

7
 8 20. For example, mental health and correctional staff who have worked in disciplinary
 9 segregation and isolation units have reported observing a range of problematic symptoms manifested
 10 by the prisoners confined in these places.¹¹ The authors of one of the early studies of solitary
 11 confinement summarized their findings by concluding that “[e]xcessive deprivation of liberty, here
 12 defined as near complete confinement to the cell, results in deep emotional disturbances.”¹²

13 21. A decade later, Professor Hans Toch’s large-scale psychological study of prisoners
 14 “in crisis” in New York State correctional facilities included important observations about the effects
 15

16
 17 ¹⁰ For example, see: Arrigo, B., & Bullock, J., *The Psychological Effects of Solitary Confinement on*
 18 *Prisoners in Supermax Units: Reviewing What We Know and What Should Change*, *International*
 19 *Journal of Offender Therapy and Comparative Criminology*, 52, 622-640 (2008); Haney, C., *supra*
 20 *note 7*; Haney, C., & Lynch, M., *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 (1997); and Smith, *supra* note 7.

21 ¹¹ For detailed reviews of all of these psychological issues, and references to the many empirical
 22 studies that support these statements, see: C. Haney and M. Lynch, *supra* note 10; and C. Haney,
supra note 6.

23 ¹² Bruno M. Cormier & Paul J. Williams, *Excessive Deprivation of Liberty*, *Canadian Psychiatric*
 24 *Association Journal*, 11, 470-484 (1966), at p. 484. For other early studies of solitary confinement,
 25 see: Paul Gendreau, N. Freedman, G. Wilde, & George Scott, *Changes in EEG Alpha Frequency*
and Evoked Response Latency During Solitary Confinement, *Journal of Abnormal Psychology*, 79,
 26 54-59 (1972); George Scott & Paul Gendreau, *Psychiatric Implications of Sensory Deprivation in a*
Maximum Security Prison, *Canadian Psychiatric Association Journal*, 12, 337-341 (1969); Richard
 27 H. Walters, John E. Callagan & Albert F. Newman, *Effect of Solitary Confinement on Prisoners*,
American Journal of Psychiatry, 119, 771-773 (1963).

1 of isolation.¹³ After he and his colleagues had conducted numerous in-depth interviews of prisoners,
 2 Toch concluded that “isolation panic” was a serious problem in solitary confinement. The symptoms
 3 that Toch reported included rage, panic, loss of control and breakdowns, psychological regression, a
 4 build-up of physiological and psychic tension that led to incidents of self-mutilation.¹⁴ Professor
 5 Toch noted that although isolation panic could occur under other conditions of confinement it was
 6 “most sharply prevalent in segregation.” Moreover, it marked an important dichotomy for prisoners:
 7 the “distinction between imprisonment, which is tolerable, and isolation, which is not.”¹⁵
 8

9 22. More recent studies have identified other symptoms that appear to be produced by
 10 these conditions. Those symptoms include: appetite and sleep disturbances, anxiety, panic, rage, loss
 11 of control, paranoia, hallucinations, and self-mutilations. Moreover, direct studies of prison isolation
 12 have documented an extremely broad range of harmful psychological reactions. These effects
 13 include increases in the following potentially damaging symptoms and problematic behaviors:
 14 anxiety, withdrawal, hypersensitivity, ruminations, cognitive dysfunction, hallucinations, loss of
 15 control, irritability, aggression, and rage, paranoia, hopelessness, a sense of impending emotional
 16 breakdown, self-mutilation, and suicidal ideation and behavior.¹⁶
 17

18 _____
 19 ¹³ Hans Toch, *Men in Crisis: Human Breakdowns in Prisons*. Aldine Publishing Co.: Chicago
 (1975).

20 ¹⁴ *Id.* at 54.

21 ¹⁵ *Ibid.*

22 ¹⁶ In addition to the numerous studies cited in the articles referenced *supra* at notes 10 and 11, there
 23 is a substantial international literature on the adverse effects of solitary confinement. For example,
 24 see: Henri N. Barte, *L'Isolement Carceral*, Perspectives Psychiatriques, 28, 252 (1989). Barte
 25 analyzed what he called the “psychopathogenic” effects of solitary confinement in French prisons
 26 and concluded that prisoners placed there for extended periods of time could become schizophrenic
 27 instead of receptive to social rehabilitation. He argued that the practice was unjustifiable,
 28 counterproductive, and “a denial of the bonds that unite humankind.” In addition, see: Reto Volkart,
Einzelhaft: Eine Literaturubersicht (Solitary confinement: A literature survey), Psychologie -
 Schweizerische Zeitschrift fur Psychologie und ihre Anwendungen, 42, 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 uber*

1 23. In addition, a number of correlational studies have been done examining the
 2 relationship between housing type and various kinds of incident reports in prison. They show that
 3 self-mutilation and suicide are more prevalent in isolated, punitive housing units such as
 4 administrative segregation and security housing or SHU, where prisoners are subjected to solitary-
 5 like conditions of confinement. For example, clinical researchers Ray Patterson and Kerry Hughes
 6 attributed higher suicide rates in solitary confinement-type units to the heightened levels of
 7 “environmental stress” that are generated by the “isolation, punitive sanctions, [and] severely
 8

11 *Psychopathologische Effekte der Einzelhaft* (A controlled investigation on psychopathological
 12 effects of solitary confinement), *Psychologie - Schweizerische Zeitschrift für Psychologie und ihre*
 13 *Anwendungen*, 42, 25-46 (1983) (when prisoners in “normal” conditions of confinement were
 14 compared to those in solitary confinement, the latter were found to display considerably more
 15 psychopathological symptoms that included heightened feelings of anxiety, emotional
 16 hypersensitivity, ideas of persecution, and thought disorders); Reto Volkart, et al., *Einzelhaft als*
 17 *Risikofaktor für Psychiatrische Hospitalisierung* (Solitary confinement as a risk for psychiatric
 18 hospitalization), *Psychiatria Clinica*, 16, 365-377 (1983) (finding that prisoners who were
 19 hospitalized in a psychiatric clinic included a disproportionate number who had been kept in solitary
 20 confinement); Boguslaw Waligora, *Funkcjonowanie Człowieka W Warunkach Izolacji Wieziennej*
 21 (How men function in conditions of penitentiary isolation), *Seria Psychologia I Pedagogika NR 34*,
 22 Poland (1974) (concluding that so-called “pejorative isolation” of the sort that occurs in prison
 23 strengthens “the asocial features in the criminal’s personality thus becoming an essential cause of
 24 difficulties and failures in the process of his resocialization”). See, also, Ida Koch, *Mental and Social*
 25 *Sequelae of Isolation: The Evidence of Deprivation Experiments and of Pretrial Detention in*
 26 *Denmark, in The Expansion of European Prison Systems*, Working Papers in European Criminology,
 27 No. 7, 119 (Bill Rolston & Mike Tomlinson eds. 1986) who found evidence of “acute isolation
 28 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 p. 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 p. 125). See,
 also: Michael Bauer, Stefan Priebe, Bettina Haring & Kerstin Adamczak, *Long-Term Mental*
Sequelae of Political Imprisonment in East Germany, *Journal of Nervous & Mental Disease*, 181,
 257-262 (1993), who reported on the serious and persistent psychiatric symptoms suffered by a
 group of former East German political prisoners who sought mental health treatment upon release
 and whose adverse conditions of confinement had included punitive isolation.

1 restricted living conditions” that exist there.¹⁷ These authors reported that “the conditions of
 2 deprivation in locked units and higher-security housing were a common stressor shared by many of
 3 the prisoners who committed suicide.”¹⁸ In addition, signs of deteriorating mental and physical
 4 health (beyond self-injury), other-directed violence, such as stabbings, attacks on staff, and property
 5 destruction, and collective violence are also more prevalent in these units.¹⁹

6 24. The painfulness and damaging potential of extreme forms of solitary confinement is
 7 underscored by its use in so-called “brainwashing” and certain forms of torture. In fact, many of the
 8 negative effects of solitary confinement are analogous to the acute reactions suffered by torture and
 9 trauma victims, including post-traumatic stress disorder (“PTSD”) and the kind of psychiatric
 10 sequelae that plague victims of what are called “deprivation and constraint” torture techniques.²⁰

11
 12
 13 ¹⁷ Raymond Patterson & Kerry Hughes, *Review of Completed Suicides in the California Department*
 14 *of Corrections and Rehabilitation, 1999-2004*, Psychiatric Services, 59, 676-682 (2008), at p. 678.

15 ¹⁸ Ibid. See also: Lindsay M. Hayes, *National Study of Jail Suicides: Seven Years Later*. Special
 16 Issue: Jail Suicide: A Comprehensive Approach to a Continuing National Problem, *Psychiatric*
 17 *Quarterly*, 60, 7 (1989); Alison Liebling, *Vulnerability and Prison Suicide*, *British Journal of*
Criminology, 36, 173-187 (1995); and Alison Liebling, *Prison Suicide and Prisoner Coping*, *Crime*
and Justice, 26, 283-359 (1999).

18 ¹⁹ For example, see: Howard Bidna, *Effects of Increased Security on Prison Violence*, *Journal of*
 19 *Criminal Justice*, 3, 33-46 (1975); K. Anthony Edwards, *Some Characteristics of Prisoners*
 20 *Transferred from Prison to a State Mental Hospital*, *Behavioral Sciences and the Law*, 6, 131-137
 21 (1988); Elmer H. Johnson, *Felon Self-Mutilation: Correlate of Stress in Prison*, in Bruce L. Danto
 22 (Ed.) *Jail House Blues*. Michigan: Epic Publications (1973); Anne Jones, *Self-Mutilation in Prison:*
 23 *A Comparison of Mutilators and Nonmutilators*, *Criminal Justice and Behavior*, 13, 286-296 (1986);
 24 Peter Kratcoski, *The Implications of Research Explaining Prison Violence and Disruption*, *Federal*
Probation, 52, 27-32 (1988); Ernest Otto Moore, *A Prison Environment: Its Effect on Health Care*
 25 *Utilization*, Dissertation Abstracts, Ann Arbor, Michigan (1980); Frank Porporino, *Managing*
Violent Individuals in Correctional Settings, *Journal of Interpersonal Violence*, 1, 213-237 (1986);
 and Pamela Steinke, *Using Situational Factors to Predict Types of Prison Violence*, 17 *Journal of*
Offender Rehabilitation, 17, 119-132 (1991).

26 ²⁰ Solitary confinement is among the most frequently used psychological torture techniques. In D.
 27 Foster, *Detention & Torture in South Africa: Psychological, Legal & Historical Studies*, Cape Town:
 28 David Philip (1987), Psychologist Foster listed solitary confinement among the most common
 “psychological procedures” used to torture South African detainees (at p. 69), and concluded that
 “[g]iven the full context of dependency, helplessness and social isolation common to conditions of

1 25. The *prevalence* of psychological symptoms (that is, the percentage of prisoners who
 2 are placed in these units who suffer from these and related signs of psychological distress) is often
 3 very high. For example, in the study that I alluded to in passing earlier in this Declaration, I
 4 conducted systematic assessments of a randomly selected sample of 100 prisoners housed at the very
 5 facility that is the focus of the present litigation—the PBSHU. Because the sample was randomly
 6 selected, it was composed of a representative group of SHU prisoners. This fact allowed me to reach
 7 conclusions about the prevalence of the indices of psychological trauma and the isolation-related
 8 pathology among them. In fact, I found that every symptom of psychological distress that I measured
 9 but one (fainting spells) was suffered by more than half of the prisoners who were interviewed.²¹
 10 Many of the symptoms were reported by two-thirds or more of the prisoners assessed in this isolated
 11 housing unit, and some were suffered by nearly everyone. Well over half of the prisoners who were
 12 isolated in the PBSHU reported a constellation of symptoms— headaches, trembling, sweaty palms,
 13 and heart palpitations—that is commonly associated with hypertension.
 14

15 26. I also found that almost all of the prisoners whom I evaluated in the PBSHU reported
 16 ruminations or intrusive thoughts, an oversensitivity to external stimuli, irrational anger and
 17 irritability, difficulties with attention and often with memory, and a tendency to socially withdraw.
 18 Almost as many prisoners reported a constellation of symptoms indicative of mood or emotional
 19 disorders—concerns over emotional flatness or losing the ability to feel, swings in emotional
 20 responding, and feelings of depression or sadness that did not go away. Finally, sizable minorities of
 21

22 South African security law detention, there can be little doubt that solitary confinement under these
 23 circumstances should in itself be regarded as a form of torture” (at p. 136). See also: Matthew
 24 Lippman, *The Development and Drafting of the United Nations Convention Against Torture and*
 25 *Other Cruel, Inhuman or Degrading Treatment or Punishment*, 27 *Boston College International &*
 26 *Comparative Law Review*, 27, 275 (1994); Tim Shallice, *Solitary Confinement—A Torture Revived?*
 27 *New Scientist*, November 28, 1974; F.E. Somnier & I.K. Genefke, *Psychotherapy for Victims of*
 28 *Torture*, *British Journal of Psychiatry*, 149, 323-329 (1986); and Shaun R. Whittaker, *Counseling*
 29 *Torture Victims*, *The Counseling Psychologist*, 16, 272-278 (1988).

²¹ See Haney, *supra* note 7.

1 the prisoners reported symptoms that are typically only associated with more extreme forms of
2 psychopathology—hallucinations, perceptual distortions, and thoughts of suicide.

3 27. It is important to note—especially in the context of the current case—that these
4 reported symptoms of psychological trauma and the psychopathological effects of isolation came
5 from prisoners who, by definition, had been housed at the PBSHU for a maximum of no more than
6 four (4) years. The facility opened in December, 1989, and the interviews that I conducted took
7 place just a few years later (although it is certainly true that some of the prisoners I interviewed for
8 my 1993 study had been in isolation units at other prisons). At the present time, of course, there are
9 large numbers of prisoners who have been housed in the PBSHU for much longer periods of time,
10 including some who were interviewed by me in 1992 and 1993, and who reported the symptoms of
11 psychological distress that I described above, and who are *still* at the facility.
12

13 28. Although these specific symptoms of psychological stress and the psychopathological
14 reactions to isolation are numerous and well-documented, and certainly provide one index of the
15 magnitude of the risk of harm this kind of experience presents, they do not necessarily reflect all of
16 the psychological pain and dysfunction that such confinement can incur. The nature and magnitude
17 of the negative changes that long-term isolation may bring about, and the full range of the risk of
18 harm that it represents, can extend beyond specific and readily measured symptoms and reactions.
19 Depriving people of normal forms of social contact and interaction over long periods of time can
20 undermine their social identity, destabilize their sense of self, and ultimately destroy their ability to
21 function in the highly social free society to which many of them will return.
22

23 29. The importance of “affiliation”—the opportunity to have meaningful contact with
24 others—in reducing anxiety in the face of uncertain or fear-arousing stimuli is long established in
25
26
27
28

1 social psychological literature.²² In addition, one of the ways that people determine the
2 appropriateness of their feelings—indeed, how we establish the very nature and tenor of our
3 emotions—is largely through the contact we have with others.²³ Thus, depriving people of
4 opportunities to have contact with others for long periods of time denies them of the opportunity to
5 ground their thoughts and emotions in a meaningful social context.

6 30. Indeed, solitary confinement is a socially pathological environment that forces long-
7 term inhabitants to develop their own socially pathological adaptations—ones premised on the
8 absence of meaningful contact with people—in order to function and survive. As a result, prisoners
9 gradually change their patterns of thinking, acting and feeling to cope with the asocial world in
10 which they live and the impossibility of relying on social support or the routine feedback that comes
11 from normal contact with others. They become accustomed to the lack of social feedback for their
12 feelings and perceptions, become more inward, and eventually ignore social feedback in those rare
13 instances when they do get it. Their inability to interact in natural and meaningful ways with others
14 undermines their ability to read social cues, turning hypervigilance into paranoia. Organizing their
15 day-to-day lives without receiving input from, or having to negotiate with others may lead to rigidity
16 and an inability to compromise. Clearly, as I say, these “normal” and even necessary adaptations
17 represent “social pathologies” that are brought about by the extraordinary conditions of isolated
18

19 _____
20 ²² For example, see: Stanley Schachter, *The Psychology of Affiliation: Experimental Studies of the*
21 *Sources of Gregariousness*. Stanford, CA: Stanford University Press (1959); Irving Sarnoff & Philip
22 *Zimbardo, Anxiety, Fear, and Social Affiliation*, *Journal of Abnormal Social Psychology*, 62, 356-
23 363 (1961); Philip Zimbardo & Robert Formica, *Emotional Comparison and Self-Esteem as*
Determinants of Affiliation, *Journal of Personality*, 31, 141-162 (1963).

24 ²³ For example, see: A. Fischer, A. Manstead, & R. Zaalberg, *Social Influences on the Emotion*
25 *Process*, in M. Hewstone & W. Stroebe (Eds.), *European Review of Social Psychology* (pp. 171-
26 202). Volume 14. Wiley Press (2004); C. Saarni, *The Development of Emotional Competence*. New
27 *York: Guilford Press (1999)*; Stanley Schachter & Jerome Singer, *Cognitive, Social, and*
28 *Physiological Determinants of Emotional State*, *Psychological Review*, 69, 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*, *Motivation and*
Emotion, 8, 33-54 (1984).

1 confinement. Although these adaptations are functional and perhaps even necessary under these
2 circumstances, they can become especially painful and disabling if taken to extremes, or are
3 internalized in such a way that they persist long after a prisoner's time in isolation has ended.

4 31. In fact, some prisoners cope with the painful, asocial nature of their daily existence by
5 paradoxically creating even more. For some, the absence of others becomes so painful that they
6 convince themselves that they do not need social contact of any kind—that people are a “nuisance,”
7 after all, and the less contact they have the better. As a result, they socially withdraw further from
8 the world around them, receding even more deeply into themselves than the sheer physical isolation
9 of solitary confinement and its attendant procedures require. Others move from initially being
10 starved for social contact to eventually being disoriented and even frightened by it. As they become
11 increasingly unfamiliar and uncomfortable with social interaction, they are further alienated from
12 others and made anxious in their presence.²⁴

14 32. Although social deprivation is the source of most of the psychological pain that
15 prisoners experience in solitary confinement and what creates the greatest risk of harm, prison
16 isolation units deprive prisoners of other things as well. Solitary confinement typically includes high
17 levels of repressive control, enforced idleness, reduced environmental stimulation, and physical or
18 material deprivations that also produce psychological distress and can exacerbate the negative
19 consequences of social deprivation. Indeed, most of the things that we know are beneficial to
20 prisoners—such as increased participation in institutional programming, contact visits with persons
21
22
23

24 _____
25 ²⁴ For evidence that solitary confinement may lead to a withdrawal from social contact or an
26 increased tendency to find the presence of people increasingly aversive or anxiety arousing, see:
27 Cormier, B., & Williams, *supra* note 12; Haney, *supra* note 6; H. Miller & G. Young, *Prison*
28 *Segregation: Administrative Detention Remedy or Mental Health Problem?*, *Criminal Behaviour and*
Mental Health, 7, 85-94 (1997); Scott & Gendreau, *supra* note 12; Toch, *supra* note 13; and
Waligora, *supra* note 16.

1 from outside the prison, opportunities for meaningful physical exercise, and so on²⁵—are either
2 functionally denied or greatly restricted to prisoners housed in isolation units. Thus, in addition to
3 the social pathologies that are created by the experience of solitary confinement, as I say, these other
4 stressors also can produce additional negative psychological effects.

5 33. More specifically, for example, people require a certain level of mental and physical
6 activity in order to remain healthy. The near total lack of movement and opportunity for exercise
7 experienced by most prisoners in isolation can impact their mental health. Simply put, because
8 human beings need movement and exercise to maintain healthy mental functioning, denying
9 prisoners access to normal and necessary human activity places them at risk of psychological harm.

11 34. Similarly, apart from the profound social, mental and physical deprivations that
12 solitary confinement can produce, prisoners housed in these units experience prolonged periods of
13 monotony and idleness. Many of them experience a form of sensory deprivation or “reduced
14 environmental stimulation”—there is an unvarying sameness to the physical stimuli that surround
15 them, they exist within the same limited spaces and are subjected to the same repetitive routines, and
16 there is little or no external variation to the experiences they are permitted to have or can create for
17 themselves. They see and experience the same extremely limited physical environment, and have
18 minimal, routinized, and superficial contacts with the same very small group of people, again and
19 again, for years on end. This loss of perceptual and cognitive or mental stimulation may result in the
20 atrophy of important related skills and capacities.²⁶

22 35. I hasten to add that not every isolated prisoner will suffer all of the previously
23 described adverse psychological reactions to these severe conditions of confinement. But the overall
24

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

26 ²⁶ For examples of this range of symptoms, see: Brodsky & Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, Forensic Reports, 1, 267-280 (1988); Grassian, S., *Psychopathological Effects of Solitary Confinement*, American Journal of Psychiatry, 140, 1450-54 (1983); Haney, *supra* note 6; Miller & Young, *supra* note 24; and Volkart, et al., *supra* note 16.

1 nature and magnitude of the negative psychological reactions that I have documented in my own
2 research and that have been reported by others in the literature underscore the stressfulness and
3 painfulness of this kind of confinement, the lengths to which prisoners must go to adapt and adjust to
4 it, and the risk of harm that it creates. The potentially devastating effects of these conditions are
5 reflected in the characteristically high numbers of suicide deaths, incidents of self-harm and self-
6 mutilation that occur in these units.

7
8 36. Given the years of sustained research on solitary confinement and the observable
9 outcomes produced by this form of incarceration across time and locality, there can be no doubt that
10 the negative psychological impact of confinement in these environments is often severe and, for
11 some prisoners, sets in motion a set of cognitive, emotional, and behavioral changes that are long-
12 lasting. As I noted above, they can persist beyond the time that prisoners are housed in isolation and,
13 for some, will prove irreversible.

14
15 37. The accumulated weight of the scientific evidence that I have cited to and
16 summarized above documents and confirms that isolated confinement can produce a range of
17 adverse psychological effects. We clearly do know what happens to people in prison and elsewhere
18 in society who are deprived of normal social contact for extended periods of time. The evidence I
19 have summarized above describes and details the risk of psychological harm that long-term isolation
20 creates, including mental pain and suffering and the increased incidence of self-harm and suicide.
21 The psychological literature underscores the importance of meaningful social contact and
22 interaction, in essence establishing these things as identifiable human needs. Over the long-term,
23 they may be as essential to a person's psychological or mental health as adequate food, clothing, and
24 shelter are to his or her physical well-being.
25

26 **IV. The Use of Solitary Confinement at the Pelican Bay SHU**

27
28

1 38. As I noted above, the adverse psychological effects of solitary confinement are
2 thought to vary as a function of the specific nature and duration of the isolated conditions to which
3 prisoners are exposed. In this regard, there are better and worse isolation or supermax units,
4 including some that have implemented practices and procedures intended to ameliorate the harsh
5 conditions that they impose and tried minimize the harm that they inflict on prisoners. It is also
6 important to note that there are more and less resilient prisoners, including some who seem able to
7 withstand the painfulness of these environments and to recover from the experience with few if any
8 lasting effects. But neither of these facts challenges the overall consensus that has emerged on the
9 harmful effects of long-term isolation and the serious risk of such harm that this form of confinement
10 poses for all prisoners who are subjected to it.

12 39. As I have already noted, my evaluation of the nature and effect of long-term exposure
13 to the current conditions at the Pelican Bay SHU has just begun. I anticipate conducting onsite
14 inspections of the conditions of confinement at the facility, interviewing a larger representative
15 sample of prisoners who have been housed there for an extended period of time, and reviewing what
16 I would expect to be a substantial amount of additional discovery material.

18 40. However, there are several things that I can say at the early stages of this analysis.
19 The first is that the PBSHU is very clearly built and operated as a solitary confinement or
20 “supermax” prison. Nothing I have read or learned through my recent interviews has indicated that it
21 has changed significantly in this regard from the facility that I came to know very well over the
22 preceding several decades. Prisoners live under severe conditions of confinement in cells that they
23 almost never leave. Their regular opportunities for out-of-cell time are restricted to approximately an
24 hour and a half, five days a week, when they are permitted to enter a concrete enclosed “yard”
25 (which affords access to recently installed “pull up” bars but nothing else). They have no access to
26 meaningful programs and are prohibited from group activity of any kind. Aside from the very
27

1 limited number of them who are double-celled, they have no regular, meaningful contact with one
2 another. Because all of their visits (social and legal) are held on a non-contact basis—through glass
3 and over phones—they are denied the opportunity to ever physically touch another human being
4 with affection. In fact, it remains on the extreme or severe end of the continuum of such units. The
5 fact that PBSHU prisoners are housed in windowless cells and are denied any access to phone calls
6 are two features of confinement there that make it more onerous than most such places.

7
8 41. It is my opinion that the conditions of extreme social isolation and enforced idleness
9 that were described in the documents that I have reviewed and the interviews I have conducted are
10 very similar if not virtually identical to the types of isolation conditions that I have seen and studied
11 in other correctional institutions and about which the literature I have summarized above refers.
12 Such conditions are harsh and severe and are precisely the kind that create a risk of substantial harm
13 for all the prisoners who are subjected to them

14
15 42. All of the prisoners housed in the PBSHU are subjected to these conditions of isolated
16 confinement. As I noted in passing above, the fact that some small number of these prisoners may be
17 housed with cellmates (i.e., are “double-celled”) does not mitigate, and indeed may exacerbate, the
18 psychological impact of their deprived conditions. The kind of forced and strained “interactions” that
19 take place between prisoners who are confined nearly around-the-clock in a small cell hardly
20 constitute meaningful social contact. In fact, under these harsh and deprived conditions, the forced
21 presence of another person may become an additional stressor and source of tension (even conflict)
22 that exacerbates some of the negative reactions brought about by this kind of segregated
23 confinement. Indeed, in my experience, assaults (and sometime lethal violence) between cellmates
24 who are in isolated confinement is a serious problem in many of these units. This is one tragic
25 measure of the way in which double-celling can exacerbate rather than ameliorate the worst aspects
26 of isolated confinement.
27

1 43. The small group of prisoners whom I recently interviewed in fact constituted a kind
2 of “random” sample, in the sense that they were originally—in 1992 and 1993—selected randomly
3 from the PBSHU roster, and were selected by me to re-interview now only because they were
4 currently housed at PBSHU. All or nearly all of these men described symptoms of mental suffering,
5 including anxiety, depression, ruminations, irrational anger and irritability, feelings of overall
6 deterioration, sleep disturbances, the sense of an impending breakdown, and social withdrawal. The
7 problems they described are very similar to the ones that they and others described in my earlier
8 study of a much larger group of PBSHU prisoners, similar to the psychiatric observations made by
9 Dr. Kupers in his April 10, 2013 Declaration, and are entirely consistent with the types of symptoms
10 and suffering that the psychological literature warns are likely to occur in prisoners housed in
11 conditions of isolated confinement.
12

13 44. In addition, however, it is important to underscore that these seven (7) men have lived
14 most of their adult lives in one or another form isolated confinement, denied normal and consistent
15 contact with other human beings for a decade or more. Indeed, in the case of three (3) of them, as I
16 noted, fully twenty (20) straight years were spent living this way at PBSHU. Even those prisoners
17 who went elsewhere typically did not stay long, so that most of the last 20 years were spent in the
18 severely isolated environment of PBSHU. The magnitude of the suffering that they have endured,
19 and the full measure of what they have lost over the course of the last two decades of their lives, is
20 difficult to fathom.
21

22 45. They are all men in their 50s who have matured into middle age without having had
23 any of the adult experiences that lend meaning to that stage of someone’s life. Because they could
24 not remain connected in a meaningful way to the social world and social contexts in which they were
25 raised and from which they came—the network of people and places that in essence, created them—
26 they have lost a connection to the basic sense of who they “were.” Yet, because of the bizarre asocial
27
28

1 world in which they have lived, it is not at all clear to most of them who they now “are.” There is a
2 certain flatness or numbness to the way most of them talk about their emotions—they “feel” things,
3 but at a distanced or disembodied way. The form of “social death” to which they were subjected has
4 left them disconnected from other people, whom they regard more or less as “abstractions” rather
5 than as real. Very few of them have had consistent social visits over the many years during which
6 they have been in isolated confinement, so they have lost contact with the outside world, with the
7 social world of even a mainline prison, and with themselves.

8
9 46. These reactions were consistent and widely shared enough to form a common pattern.
10 But the pattern is one that merits further study. As I noted earlier in this Declaration, my impressions
11 are based on a preliminary assessment of these issues, and will require additional interviews and
12 observations in order to formalize and finalize.

13 47. Finally, I should note that the fact that many of the most onerous and potentially
14 harmful conditions of confinement and the regimen of harsh practices and procedures that I
15 encountered in the PBSHU some twenty (20) years ago are still in existence, and that there are
16 numerous prisoners who have been subjected to those conditions for extremely long periods of time
17 (some from December, 1989, when the facility opened), suggests that these are not “self correcting”
18 or “self correctible” problems. Outside intervention in the form of court-ordered reform seems
19 necessary to alleviate this suffering and reduce these risks of harm to the prisoners.
20

21 **V. Conclusion**

22 48. As I noted repeatedly above, there is a robust scientific literature that establishes the
23 adverse psychological effects of solitary or isolated confinement and the severe risk of harm to
24 which prisoners in these units are exposed. The risk of harm exists whether or not isolated prisoners
25 are “double celled” and it applies even to those prisoners who enter solitary confinement units
26 without any pre-existing psychiatric disorders.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADDITIONAL PLAINTIFFS' COUNSEL

CHARLES F.A. CARBONE (SBN 206536)
Email: charles@charlescarbone.com
EVAN CHARLES GREENBERG (SBN 271356)
Email: evan@charlescarbone.com
LAW OFFICES OF CHARLES CARBONE
P.O. Box 2809
San Francisco, CA 94126
Tel: (415) 981-9773
Fax: (415) 981-9774

MARILYN S. MCMAHON (SBN 270059)
Email: marilyn@prisons.org
CALIFORNIA PRISON FOCUS
1904 Franklin Street, Suite 507
Oakland, CA 94612
Tel: (510) 734-3600
Fax: (510) 836-7222

ANNE BUTTERFIELD WEILLS (SBN 139845)
Email: aweills@aol.com
SIEGEL & YEE
499 14TH STREET, SUITE 300
Oakland, CA 94612
Tel: (510) 839-1200
Fax: (510) 444-6698

CAROL STRICKMAN (SBN 78341)
Email: carol@prisonerswithchildren.org
LEGAL SERVICES FO PRISONERS WITH CHILDREN
1540 Market Street, Suite 490
San Francisco, CA 94102
Tel: (415) 255-7036
Fax: (415) 552-3150

Exhibit 1

CURRICULUM VITAE

Craig William Haney
Professor of Psychology
Director, Program in Legal Studies
University of California, Santa Cruz 95064

home address: 317 Ocean View Ave.
Santa Cruz, California 95062
phone: (831) 459-2153
fax: (831) 425-3664
email: psylaw@ucsc.edu

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

- 2012 Appointed to National Academy of Sciences Committee to Study the Causes and Consequences of High Rates of Incarceration in the United States.
- Invited Witness, United States Senate, Judiciary Committee.
- 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: Psychological Limits to the Pains of Imprisonment).
- “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 | <u>Reforming Punishment: Psychological Limits to the Pains of Imprisonment</u> , Washington, DC: American Psychological Association Books. |
| 2005 | <u>Death by Design: Capital Punishment as a Social Psychological System</u> . New York: Oxford University Press. |

Monographs and Technical Reports

- | | |
|------|--|
| 1989 | <u>Employment Testing and Employment Discrimination</u> (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

- 2012 “Politicizing Crime and Punishment: Redefining ‘Justice’ to Fight the ‘War on Prisoners,’” West Virginia Law Review, 114, 373-414.
- “Prison Effects in the Age of Mass Imprisonment,” Prison Journal, 92, 1-24.
- “The Psychological Effects of Imprisonment,” in J. Petersilia & K. Reitz (Eds.), Oxford Handbook of Sentencing and Corrections (pp. 584-605). New York: Oxford University Press.
- 2011 “The Perversions of Prison: On the Origins of Hypermasculinity and Sexual Violence in Confinement,” American Criminal Law Review, 48, 121-141. [Reprinted in: S. Ferguson (Ed.), Readings in Race, Gender, Sexuality, and Social Class. Sage Publications (2012).]
- “Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the ‘Empathic Divide’” (with Mona Lynch), Law and Society Review, 45, 69-102.
- “Getting to the Point: Attempting to Improve Juror Comprehension of Capital Penalty Phase Instructions” (with Amy Smith), Law and Human Behavior, 35, 339-350.
- “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 (pp. 101-121). New York: Routledge Press.
- “Looking Across the Empathic Divide: Racialized Decision-Making on the Capital Jury” (with Mona Lynch), Michigan State Law Review, 2011, 573-608.
- 2010 “Demonizing the ‘Enemy’: The Role of Science in Declaring the ‘War on Prisoners,’” Connecticut Public Interest Law Review, 9, 139-196.
- “Hiding From the Death Penalty,” Huffington Post, July 26, 2010 [www.huffingtonpost.com/craig-haney/hiding-from-the-death-pen-pen_b_659940.html]; reprinted in Sentencing and Justice Reform Advocate, 2, 3 (February, 2011).

- 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. [Reprinted: California Prison Focus, #36, 1, 14-15 (2011).]
- “The Stanford Prison Experiment,” in John Levine & Michael Hogg (Eds.), Encyclopedia of Group Processes and Intergroup Relations. Thousand Oaks, CA: Sage Publications.
- “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.
- “The Consequences of Prison Life: Notes on the New Psychology of Prison Effects,” in D. Canter & R. Zukauskienė (Eds.), Psychology and Law: Bridging the Gap (pp. 143-165). Burlington, VT: Ashgate Publishing.
- “The Stanford Prison Experiment,” in J. Bennett & Y. Jewkes (Eds.), Dictionary of Prisons (pp. 278-280). Devon, UK: Willan Publishers.
- “Capital Mitigation,” in Brian Cutler (Ed.), The Encyclopedia of Psychology and the Law (pp. 60-63). Volume I. Thousand Oaks, CA: Sage Publications.

Death Qualification of Juries,” in Brian Cutler (Ed.), The Encyclopedia of Psychology and the Law (pp. 190-192). Volume I. Thousand Oaks, CA: Sage Publications.

“Stanford Prison Experiment,” in Brian Cutler (Ed.), The Encyclopedia of Psychology and the Law (pp. 756-757) (with P. Zimbardo). Volume II. Thousand Oaks, CA: Sage Publications.

“Supermax Prisons,” in Brian Cutler (Ed.), The Encyclopedia of Psychology and the Law (pp. 787-790). Volume II. Thousand Oaks, CA: Sage Publications.

- 2006 “The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions,” Washington University Journal of Law & Policy, 22, 265-293. [Reprinted in: N. Berlatsky, Opposing Viewpoints: America’s Prisons. Florence, KY: Cengage Learning, 2010.]
- “Exonerations and Wrongful Condemnations: Expanding the Zone of Perceived Injustice in Capital Cases,” Golden Gate Law Review, 37, 131-173.
- “Preface,” D. Jones (Ed.), Humane Prisons. San Francisco, CA: Radcliffe Medical Press.
- 2005 “The Contextual Revolution in Psychology and the Question of Prison Effects,” in Alison Liebling and Shadd Maruna (Eds.), The Effects of Imprisonment (pp. 66-93). Devon, UK: Willan Publishing.
- “Achieving Educational Equity: Beyond Individual Measures of Merit,” (with A. Hurtado), Harvard Journal of Hispanic Policy, 17, 87-92.
- “Conditions of Confinement for Detained Asylum Seekers Subject to Expedited Removal,” in M. Hetfield (Ed.), Report on Asylum Seekers in Expedited Removal. Volume II: Expert Reports. Washington, DC: United States Commission on International Religious Freedom.
- 2004 “Special Issue on the Death Penalty in the United States” (co-edited with R. Weiner), Psychology, Public Policy, and Law, 10, 374-621.

“Death Is Different: An Editorial Introduction” (with R. Wiener), Psychology, Public Policy, and Law, 10, 374-378.

“The Death Penalty in the United States: A Crisis of Conscience” (with R. Wiener), Psychology, Public Policy, and Law, 10, 618-621.

“Condemning the Other in Death Penalty Trials: Biographical Racism, Structural Mitigation, and the Empathic Divide,” DePaul Law Review, 53, 1557-1590.

“Capital Constructions: Newspaper Reporting in Death Penalty Cases” (with S. Greene), Analyses of Social Issues and Public Policy (ASAP), 4, 1-22.

“Abu Ghraib and the American Prison System,” The Commonwealth, 98 (#16), 40-42.

“Disciplinary Segregation,” in Mary Bosworth (Ed.), Encyclopedia of U.S. Prisons and Correctional Facilities (240-244). Volume 1. Thousand Oaks, CA: Sage Publications.

“Super-Maximum Secure Prisons,” in Mary Bosworth (Ed.), Encyclopedia of U.S. Prisons and Correctional Facilities (pp. 938-944). Volume 2. Thousand Oaks, CA: Sage Publications.

2003 “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” Crime & Delinquency (special issue on mental health and the criminal justice system), 49, 124-156. [Reprinted in: Roesch, R., & Gagnon, N. (Eds.), Psychology and Law: Criminal and Civil Perspectives. Hampshire, UK: Ashgate (2007).]

“The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment,” in Travis, J., & Waul, M. (Eds.), Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities (pp. 33-66). Washington, DC: Urban Institute Press.

“Comments on “Dying Twice”: Death Row Confinement in the Age of the Supermax,” Capital University Law Review.

2002 “Making Law Modern: Toward a Contextual Model of Justice,” Psychology, Public Policy, and Law, 7, 3-63.

“Psychological Jurisprudence: Taking Psychology and Law into the Twenty-First Century,” (with John Darley, Sol Fulero, and Tom

Tyler), in J. Ogloff (Ed.), Taking Psychology and Law into the Twenty-First Century (pp. 35-59). New York: Kluwer Academic/Plenum Publishing.

“Science, Law, and Psychological Injury: The Daubert Standards and Beyond,” (with Amy Smith), in Schultz, I., Brady, D., and Carella, S., The Handbook of Psychological Injury (pp. 184-201). Chicago, IL: American Bar Association. [CD-ROM format]

2001 “Vulnerable Offenders and the Law: Treatment Rights in Uncertain Legal Times” (with D. Specter). In J. Ashford, B. Sales, & W. Reid (Eds.), Treating Adult and Juvenile Offenders with Special Needs (pp. 51-79). Washington, D.C.: American Psychological Association.

“Afterword,” in J. Evans (Ed.), Undoing Time (pp. 245-256). Boston, MA: Northeastern University Press.

2000 “Discrimination and Instructional Comprehension: Guided Discretion, Racial Bias, and the Death Penalty” (with M. Lynch), Law and Human Behavior, 24, 337-358.

“Cycles of Pain: Risk Factors in the Lives of Incarcerated Women and Their Children,” (with S. Greene and A. Hurtado), Prison Journal, 80, 3-23.

1999 “Reflections on the Stanford Prison Experiment: Genesis, Transformations, Consequences (‘The SPE and the Analysis of Institutions’),” In Thomas Blass (Ed.), Obedience to Authority: Current Perspectives on the Milgram Paradigm (pp. 221-237). Hillsdale, NJ: Erlbaum.

“Ideology and Crime Control,” American Psychologist, 54, 786-788.

1998 “The Past and Future of U.S. Prison Policy: Twenty-Five Years After the Stanford Prison Experiment,” (with P. Zimbardo), American Psychologist, 53, 709-727. [Reprinted in special issue of Norwegian journal as: USAs fengselspolitikk i fortid og fremtid, Vardoger, 25, 171-183 (2000); in H. Tischler (Ed.), Debating Points: Crime and Punishment. Englewood Cliffs, NJ: Prentice-Hall (2001); Annual Editions: Criminal Justice. Guilford, CT: Dushkin/McGraw-Hill, in press; Herman, Peter (Ed.), The American Prison System (pp. 17-43) (Reference Shelf Series). New York: H.W. Wilson (2001); and in Edward Latessa & Alexander Holsinger (Eds.), Correctional

Contexts: Contemporary and Classical Readings. Fourth Edition. Oxford University Press (2010).]

“Riding the Punishment Wave: On the Origins of Our Devolving Standards of Decency,” Hastings Women’s Law Journal, 9, 27-78.

“Becoming the Mainstream: “Merit,” Changing Demographics, and Higher Education in California” (with A. Hurtado and E. Garcia), La Raza Law Journal, 10, 645-690.

1997 “Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement,” (with M. Lynch), New York University Review of Law and Social Change, 23, 477-570.

“Psychology and the Limits to Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law,” Psychology, Public Policy, and Law, 3, 499-588.

“Commonsense Justice and the Death Penalty: Problematizing the ‘Will of the People,’” Psychology, Public Policy, and Law, 3, 303-337.

“Violence and the Capital Jury: Mechanisms of Moral Disengagement and the Impulse to Condemn to Death,” Stanford Law Review, 49, 1447-1486.

“Mitigation and the Study of Lives: The Roots of Violent Criminality and the Nature of Capital Justice.” In James Acker, Robert Bohm, and Charles Lanier, America’s Experiment with Capital Punishment: Reflections on the Past, Present, and Future of the Ultimate Penal Sanction. Durham, NC: Carolina Academic Press, 343-377.

“Clarifying Life and Death Matters: An Analysis of Instructional Comprehension and Penalty Phase Arguments” (with M. Lynch), Law and Human Behavior, 21, 575-595.

“Psychological Secrecy and the Death Penalty: Observations on ‘the Mere Extinguishment of Life,’” Studies in Law, Politics, and Society, 16, 3-69.

1995 “The Social Context of Capital Murder: Social Histories and the Logic of Capital Mitigation,” Santa Clara Law Review, 35, 547-609. [Reprinted in part in David Papke (Ed.), Law and Popular Culture, Lexis/Nexis Publications, 2011].

“Taking Capital Jurors Seriously,” Indiana Law Journal, 70, 1223-1232.

“Death Penalty Opinion: Myth and Misconception,” California Criminal Defense Practice Reporter, 1995(1), 1-7.

1994 “The Jurisprudence of Race and Meritocracy: Standardized Testing and ‘Race-Neutral’ Racism in the Workplace,” (with A. Hurtado), Law and Human Behavior, 18, 223-248.

“Comprehending Life and Death Matters: A Preliminary Study of California’s Capital Penalty Instructions” (with M. Lynch), Law and Human Behavior, 18, 411-434.

“Felony Voir Dire: An Exploratory Study of Its Content and Effect,” (with C. Johnson), Law and Human Behavior, 18, 487-506.

“Broken Promise: The Supreme Court’s Response to Social Science Research on Capital Punishment” (with D. Logan), Journal of Social Issues (special issue on the death penalty in the United States), 50, 75-101.

“Deciding to Take a Life: Capital Juries, Sentencing Instructions, and the Jurisprudence of Death” (with L. Sontag and S. Costanzo), Journal of Social Issues (special issue on the death penalty in the United States), 50, 149-176. [Reprinted in Koosed, M. (Ed.), Capital Punishment. New York: Garland Publishing (1995).]

“Modern’ Death Qualification: New Data on Its Biasing Effects,” (with A. Hurtado and L. Vega), Law and Human Behavior, 18, 619-633.

“Processing the Mad, Badly,” Contemporary Psychology, 39, 898-899.

“Language is Power,” Contemporary Psychology, 39, 1039-1040.

1993 “Infamous Punishment: The Psychological Effects of Isolation,” National Prison Project Journal, 8, 3-21. [Reprinted in Marquart, James & Sorensen, Jonathan (Eds.), Correctional Contexts: Contemporary and Classical Readings (pp. 428-437). Los Angeles: Roxbury Publishing (1997); Alarid, Leanne & Cromwell, Paul (Eds.), Correctional Perspectives: Views from Academics, Practitioners,

and Prisoners (pp. 161-170). Los Angeles: Roxbury Publishing (2001).]

“Psychology and Legal Change: The Impact of a Decade,” Law and Human Behavior, 17, 371-398. [Reprinted in: Roesch, R., & Gagnon, N. (Eds.), Psychology and Law: Criminal and Civil Perspectives. Hampshire, UK: Ashgate (2007).]

- 1992 “Death Penalty Attitudes: The Beliefs of Death-Qualified Californians,” (with A. Hurtado and L. Vega). Forum, 19, 43-47.
- “The Influence of Race on Sentencing: A Meta-Analytic Review of Experimental Studies.” (with L. Sweeney). Special issue on Discrimination and the Law. Behavioral Science and Law, 10, 179-195.
- 1991 “The Fourteenth Amendment and Symbolic Legality: Let Them Eat Due Process,” Law and Human Behavior, 15, 183-204.
- 1988 “In Defense of the Jury,” Contemporary Psychology, 33, 653-655.
- 1986 “Civil Rights and Institutional Law: The Role of Social Psychology in Judicial Implementation,” (with T. Pettigrew), Journal of Community Psychology, 14, 267-277.
- 1984 “Editor’s Introduction. Special Issue on Death Qualification,” Law and Human Behavior, 8, 1-6.
- “On the Selection of Capital Juries: The Biasing Effects of Death Qualification,” Law and Human Behavior, 8, 121-132.
- “Examining Death Qualification: Further Analysis of the Process Effect,” Law and Human Behavior, 8, 133-151.
- “Evolving Standards and the Capital Jury,” Law and Human Behavior, 8, 153-158.
- “Postscript,” Law and Human Behavior, 8, 159.
- “Social Factfinding and Legal Decisions: Judicial Reform and the Use of Social Science.” In Muller, D., Blackman, D., and Chapman,

- A. (Eds.), Perspectives in Psychology and Law. New York: John Wiley, pp. 43-54.
- 1983 “The Future of Crime and Personality Research: A Social Psychologist’s View,” in Laufer, W. and Day, J. (Eds.), Personality Theory, Moral Development, and Criminal Behavioral Behavior. Lexington, Mass.: Lexington Books, pp. 471-473.
- “The Good, the Bad, and the Lawful: An Essay on Psychological Injustice,” in Laufer, W. and Day, J. (Eds.), Personality Theory, Moral Development, and Criminal Behavior. Lexington, Mass.: Lexington Books, pp. 107-117.
- “Ordering the Courtroom, Psychologically,” Jurimetrics, 23, 321-324.
- 1982 “Psychological Theory and Criminal Justice Policy: Law and Psychology in the ‘Formative Era,’” Law and Human Behavior, 6, 191-235. [Reprinted in Presser, S. and Zainaldin, J. (Eds.), Law and American History: Cases and Materials. Minneapolis, MN: West Publishing, 1989; and in C. Kubrin, T. Stucky & A. Tynes (Eds.) Introduction to Criminal Justice: A Sociological Perspective. Palo Alto, CA: Stanford University Press (2012).]
- “Data and Decisions: Social Science and Judicial Reform,” in P. DuBois (Ed.), The Analysis of Judicial Reform. Lexington, Mass.: D.C. Heath, pp. 43-59.
- “Employment Tests and Employment Discrimination: A Dissenting Psychological Opinion,” Industrial Relations Law Journal, 5, pp. 1-86.
- “To Polygraph or Not: The Effects of Preemployment Polygraphing on Work-Related Attitudes,” (with L. White and M. Lopez), Polygraph, 11, 185-199.
- 1981 “Death Qualification as a Biasing Legal Process,” The Death Penalty Reporter, 1 (10), pp. 1-5. [Reprinted in Augustus: A Journal of Progressive Human Sciences, 9(3), 9-13 (1986).]
- 1980 “Juries and the Death Penalty: Readdressing the Witherspoon Question,” Crime and Delinquency, October, pp. 512-527.

“Psychology and Legal Change: On the Limits of a Factual Jurisprudence,” Law and Human Behavior, 6, 191-235. [Reprinted in Loh, Wallace (Ed.), Social Research and the Judicial Process. New York: Russell Sage, 1983.]

“The Creation of Legal Dependency: Law School in a Nutshell” (with M. Lowy), in R. Warner (Ed.), The People’s Law Review. Reading, Mass.: Addison-Wesley, pp. 36-41.

“Television Criminology: Network Illusions of Criminal Justice Realities” (with J. Manzolari), in E. Aronson (Ed.), Readings on the Social Animal. San Francisco, W.H. Freeman, pp. 125-136.

1979 “A Psychologist Looks at the Criminal Justice System,” in A. Calvin (Ed.), Challenges and Alternatives to the Criminal Justice System. Ann Arbor: Monograph Press, pp. 77-85.

“Social Psychology and the Criminal Law,” in P. Middlebrook (Ed.), Social Psychology and Modern Life. New York: Random House, pp. 671-711.

“Bargain Justice in an Unjust World: Good Deals in the Criminal Courts” (with M. Lowy), Law and Society Review, 13, pp. 633-650. [Reprinted in Kadish, Sanford and Paulsen, Robert (Eds.), Criminal Law and Its Processes. Boston: Little, Brown, 1983.]

1977 “Prison Behavior” (with P. Zimbardo), in B. Wolman (Ed.), The Encyclopedia of Neurology, Psychiatry, Psychoanalysis, and Psychology, Vol. IX, pp. 70-74.

“The Socialization into Criminality: On Becoming a Prisoner and a Guard” (with P. Zimbardo), in J. Tapp and F. Levine (Eds.), Law, Justice, and the Individual in Society: Psychological and Legal Issues (pp. 198-223). New York: Holt, Rinehart, and Winston.

1976 “The Play’s the Thing: Methodological Notes on Social Simulations,” in P. Golden (Ed.), The Research Experience, pp. 177-190. Itasca, IL: Peacock.

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.]

1973

“Social Roles, Role-Playing, and Education” (with P. Zimbardo), The Behavioral and Social Science Teacher, Fall, 1(1), pp. 24-45. [Reprinted in: Zimbardo, P., and Maslach, C. (Eds.) Psychology For Our Times. Glenview, Ill.: Scott, Foresman, 1977. Hollander, E. and Hunt, R. (Eds.) Current Perspectives in Social Psychology. Third Edition. New York: Oxford University Press, 1978.]

“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, 1, pp. 69-97. [Reprinted in: Steffensmeier, Darrell, and Terry, Robert (Eds.) Examining Deviance Experimentally. New York: Alfred Publishing, 1975; Golden, P. (Ed.) The Research Experience. Itasca, Ill.: Peacock, 1976; Leger, Robert (Ed.) The Sociology of Corrections. New York: John Wiley, 1977; A kiserleti tarsadalom-lelektan foarma. Budapest, Hungary: Gondolat Konyvkiado, 1977; Johnston, Norman, and Savitz, L. Justice and Corrections. New York: John Wiley, 1978; Research Methods in Education and Social Sciences. The Open University, 1979; Goldstein, J. (Ed.), Modern Sociology. British Columbia: Open Learning Institute, 1980; Ross, Robert R. (Ed.), Prison Guard/ Correctional Officer: The Use and Abuse of Human Resources of Prison. Toronto: Butterworth’s 1981; Monahan, John, and Walker, Laurens (Eds.), Social Science in Law: Cases, Materials, and Problems. Foundation Press, 1985; Siuta, Jerzy (Ed.), The Context of Human Behavior. Jagiellonian

University Press, 2001; Ferguson, Susan (Ed.), Mapping the Social Landscape: Readings in Sociology. St. Enumclaw, WA: Mayfield Publishing, 2001 & 2010; Pethes, Nicolas (Ed.), Menschenversuche (Experiments with Humans). Frankfurt, Germany: Suhrkamp Verlag, 2006.]

“A Study of Prisoners and Guards” (with C. Banks and P. Zimbardo). Naval Research Reviews, 1-17. [Reprinted in Aronson, E. (Ed.) Readings About the Social Animal. San Francisco: W.H. Freeman, 1980; Gross, R. (Ed.) Key Studies in Psychology. Third Edition. London: Hodder & Stoughton, 1999; Collier, C. (Ed.), Basic Themes in Law and Jurisprudence. Anderson Publishing, 2000.]

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)

2012 “The Psychological Consequences of Long-term Solitary Confinement,” Joint Yale/Columbia Law School Conference on Incarceration and Isolation, New York, April.

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.

“Invited Keynote Address: The Nature and Consequences of Prison Overcrowding—Urgency and Implications,” West Virginia School of Law, Morgantown, West Virginia, March.

“Symposium: The Stanford Prison Experiment—Enduring Lessons 40 Years Later,” American Psychological Association Annual Convention, Washington, DC, August.

“The Dangerous Overuse of Solitary Confinement: Pervasive Human Rights Violations in Prisons, Jails, and Other Places of Detention” Panel, United Nations, New York, New York, October.

“Criminal Justice Reform: Issues and Recommendation,” United States Congress, Washington, DC, November.

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, New England Journal of Medicine.
- 2007-present Editorial Board Member, Correctional Mental Health Reporter.
- 2007-present Editorial Board Member, Journal of Offender Behavior and Rehabilitation.
- 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, ASAP (on-line journal of the Society for the Study of Social Issues)
- 1997-present Editorial Board Member, Psychology, Public Policy, and Law
- 1991 Editorial Consultant, Brooks/Cole Publishing
- 1989 Editorial Consultant, Journal of Personality and Social Psychology
- 1988- Editorial Consultant, American Psychologist
- 1985 Editorial Consultant, American Bar Foundation Research Journal
- 1985-2006 Law and Human Behavior, Editorial Board Member
- 1985 Editorial Consultant, Columbia University Press
- 1985 Editorial Consultant, Law and Social Inquiry
- 1980-present Reviewer, National Science Foundation
- 1997 Reviewer, National Institutes of Mental Health
- 1980-present Editorial Consultant, Law and Society Review
- 1979-1985 Editorial Consultant, Law and Human Behavior

1997-present Editorial Consultant, Legal and Criminological Psychology

1993-present Psychology, Public Policy, and Law, 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 on 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 (USCRIF). 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, 2004-2008.

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, 2004-2008.

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

Invited Participant, Department of Homeland Security, Mental Health Effects of Detention and Isolation, 2010.

Consultant, "Reforming the Criminal Justice System in the United States" Joint Working Group with Senator James Webb and Congressional Staffs, 2011 Developing National Criminal Justice Commission Legislation.

Invited Participant, United Nations, Forum with United Nations Special Rapporteur on Torture Concerning the Overuse of Solitary Confinement, New York, October, 2011.

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.

In re 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. [See Brown v. Plata, 131 S.Ct. 1910 (2011).]

EXHIBIT U

JULES LOBEL (*pro hac vice*)
Email: jll3@pitt.edu
ALEXIS AGATHOCLEOUS (*pro hac vice*)
Email: aagathocleous@ccrjustice.org
RACHEL MEEROPOL (*pro hac vice*)
Email: rachelm@ccrjustice.org
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
Tel: (212) 614-6478
Fax: (212) 614-6499

GREGORY D. HULL (Bar No. 57367)
Email: greg.hull@weil.com
BAMBO OBARO (Bar No. 267683)
Email: bambo.obaro@weil.com
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065-1134
Tel: (650) 802-3000
Fax: (650) 802-3100

Attorneys for Plaintiffs
(Additional counsel listed on attached page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

TODD ASHKER, DANNY TROXELL, GEORGE RUIZ, JEFFREY FRANKLIN, GEORGE FRANCO, GABRIEL REYES, RICHARD JOHNSON, PAUL REDD, LUIS ESQUIVEL, and RONNIE DEWBERRY, on their own behalf, and on behalf of a class of similarly situated prisoners,

Plaintiffs,

v.

EDMUND G. BROWN, JR., Governor of the State of California, MATTHEW CATE, Secretary, California Department of Corrections and Rehabilitation (CDCR); ANTHONY CHAUS, Chief, Office of Correctional Safety, CDCR; and G.D. LEWIS, Warden, Pelican Bay State Prison,

Defendants.

Case No. 4:09 CV 05796 CW

DECLARATION OF TERRY KUPERS, M.D., M.S.P., IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Honorable Claudia Wilken

1 I, Dr. Terry A. Kupers, declare under penalty of perjury that:

2 1. I am a board-certified psychiatrist retained as an expert witness by the plaintiffs in this
3 matter to interview named plaintiffs and others and to conduct an investigation for the purpose of
4 testifying at trial regarding conditions of confinement at the Pelican Bay Security Housing Unit
5 (SHU), plaintiffs' mental health, and related issues.

6 **I. Expert Qualifications**

7 2. I am Institute Professor in the Graduate School of Psychology at The Wright Institute.
8 I have been on the faculty of The Wright Institute since 1981. I teach doctoral students the basics of
9 forensic and correctional psychology and I teach them to practice psychotherapy. I also teach in other
10 venues, for example a continuing education webinar presentation: "Correctional Psychiatry
11 Overview," The Center for Public Service Psychiatry of Western Psychiatric Institute and Clinic (co-
12 sponsored by the American Association of Community Psychiatrists), a national videoconference
13 originating in Pittsburg, PA on February 2, 2012.

14 3. I am a Distinguished Life Fellow of the American Psychiatric Association. I was the
15 recipient of the Exemplary Psychiatrist Award presented by the National Alliance on Mental Illness
16 (NAMI) at the 2005 annual meeting of the American Psychiatric Association, and the William
17 Rossiter Award at the 2009 Annual Meeting of the Forensic Mental Health Association of California.
18 My C.V. and a list of forensic cases of the past four years are attached to this report.

19 4. I am author of four books, including *Prison Madness: The Mental Health Crisis*
20 *Behind Bars and What We Must Do About It* (Jossey-Bass/Wiley, 1998). I am co-editor of *Prison*
21 *Masculinities* (Temple University Press, 2001), Contributing Editor of *Correctional Mental Health*
22 *Report*, and the author of many professional articles (see C.V., attached).

23 5. I give many lectures (see C.V., attached), including the keynote address, "Solitary
24
25
26
27

1 Confinement and Mental Health,” at the Conference of the Midwest Coalition for Human Rights,
2 Northeastern Illinois University, Chicago, November 9, 2012, and the invited lecture, “Suicide
3 Behind Bars: The Forgotten Epidemic,” at the Institute on Psychiatric Services, American Psychiatric
4 Association, San Francisco, October 28, 2011.

5 6. I serve as a consultant to community mental health programs as well as jails and
6 departments of correction. For example, I have met with the staff at Contra Costa County, San
7 Francisco City and County and Solano County Jails for staff development and training sessions. I
8 also periodically conduct trainings with the mental health staff at Progress Foundation in San
9 Francisco. I have also consulted with the Ohio Department of Corrections and I served as a
10 consultant to the U.S. Department of Justice and Human Rights Watch. I am currently monitor of the
11 *Presley v. Epps* consent decree (federal court) in Mississippi, involving prisoners with mental illness
12 in isolated confinement at Mississippi State Penitentiary.

13
14 7. I became interested in corrections as my training in psychiatry was ending in the early
15 1970s. I became aware that quite a few people who would qualify as consumers in community
16 mental health settings were being “lost to follow-up,” and it turned out they had been sent to jails and
17 prisons. I researched their fate behind bars, and one of my books is largely a report on their
18 situation.¹ Once I learned of the realities of life in jail and prison, I turned my attention to the
19 problem of crowding and testified in several lawsuits about jail and prison conditions. Meanwhile, I
20 was asked to investigate sexual abuse behind bars and testified in court about that issue. And by the
21 late 1980s, long-term isolation was a widespread practice in the prisons and I was asked to investigate
22 and testify about the possible psychiatric harm in long-term isolative confinement.

23
24 8. I have testified more than two dozen times in state and federal courts about the

25
26
27 ¹ Kupers, Terry. (1999). *Prison Madness: The Mental Health Crisis and What We Must Do About It*. Jossey-
Bass/Wiley.

1 psychiatric effects of jail and prison conditions, the consequences of sexual abuse behind bars and the
2 quality of correctional management and mental health treatment. Litigation where I have testified at
3 trial on matters similar to the issues in the present case include *Rutherford v. Pitchess*, Los Angeles
4 Superior Court, regarding conditions and mental health services in Los Angeles County Jail, 1977;
5 *Wilson v. Deukmejian*, Marin County Sup Court, regarding conditions and mental health services at
6 San Quentin Prison, 1983; *Toussaint/Wright/Thompson v. Enomoto*, Federal District Court in San
7 Francisco, regarding conditions and double-celling in California State Prison security housing units,
8 1983; *Gates v Deukmejian*, in Federal Court in Sacramento, regarding conditions, quality of mental
9 health services and segregation of inmates with HIV positivity or AIDS at California Medical Facility
10 at Vacaville, 1989; *Coleman v. Wilson*, Federal Court in Sacramento, regarding the quality of mental
11 health services in the California Department of Corrections' statewide prison system, 1993; *Bazetta v.*
12 *McGinnis*, Federal Court in Detroit, regarding visiting policy and restriction of visits for substance
13 abuse infractions, 2000; *Jones 'El v. Litscher*, Federal Court in Madison, Wisconsin, regarding
14 confinement of prisoners suffering from severe mental illness in supermax isolation, 2002; *Russell v.*
15 *Johnson and Presley v. Epps*, Federal Court in Oxford, Mississippi, regarding conditions of
16 confinement and treatment of prisoners with mental illness on Death Row inside supermaximum Unit
17 32 and regarding all prisoners in isolated confinement at Parchman, 2003 and 2006; *Austin v.*
18 *Wilkinson*, Federal Court in Cleveland, Ohio, regarding proposed transfer of Death Row into Ohio
19 State Penitentiary (supermax), August, 2005; *DAI, Inc. v. NY OMH*, Federal Court in New York,
20 April 3, 2006, regarding mental health care in NY Dept. of Correctional Services, with special
21 attention to supermax confinement and its effects on vulnerable prisoners; *Hadix v. Caruso*, Federal
22 Court in Grand Rapids, Michigan, regarding correctional mental health care, April 29, 2008. I also
23 serve as Monitor for the consent decree in *Presley v. Epps*, a class action regarding conditions in
24
25
26
27

1 Supermax Unit 32 at Parchman/Mississippi State Penitentiary and the treatment of prisoners with
2 serious mental illness.

3 **II. Preparation**

4 9. In preparation for this declaration, on April 17 and 18, 2012, I interviewed 10
5 individual prisoners for approximately 45 minutes each, using non-contact visits in the Security
6 Housing Unit (SHU) visiting area at Pelican Bay State Prison (PBSP). I also reviewed medical and
7 custody charts when available in the Medical Facility. I plan further interviews with the 10 prisoners
8 I have already met with, as well as more interviews, a tour of the facility, plus extensive document
9 review in this action. I would like to talk in detail with staff at PBSP about issues relevant to this
10 action, and if Defendants are not willing to permit me to talk with staff, I will rely on deposition
11 testimony to learn the staff's perspective.
12

13 **III. Common Themes in the Ten Prisoners.**

14 10. There is a rich literature of robust research on the effects of long-term solitary
15 confinement in prison.² Long-term confinement (greater than three months) in an isolated
16 confinement unit such as the supermaximum Security Housing Unit (SHU) at Pelican Bay State
17 Prison (PBSP) is well known to cause severe psychiatric morbidity, disability, suffering and
18 mortality.³ Hans Toch provided early narrative reports from prisoners at the highest levels of security
19
20
21

22 ² For an overview of supermaximum security and isolated confinement, see Rhodes, Lorna (2004). *Total*
23 *Confinement: Madness and Reason in the Maximum Security Prison*, Berkeley: University of California
24 Press; and Shalev, Sharon. (2009). *Supermax: Controlling Risk Through Solitary Confinement*, Portland,
Oregon: Willan Publishing.

25 ³ For reviews of this research, see Peter Scharff Smith, The Effects of Solitary Confinement on Prison Inmate:
26 A Brief History and Review of the Literature, 34 *CRIME & JUST* . 441, 488–90 (2006); and Bruce Arrigo &
27 Jennifer Leslie Bullock, The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units:
Reviewing What We Know and Recommending What We Should Change, *Int J Offender Ther Comp*
Criminol 2008 52:, 622-640.

1 and Isolation.⁴ Craig Haney has researched the detrimental effects of long-term isolation.⁵ Stuart
2 Grassian has conducted similar research.⁶ Two-thirds of the prisoners Dr. Grassian initially studied
3 had become hypersensitive to external stimuli (noises, smells, etc.) and about the same number
4 experienced “massive free floating anxiety.” About half of the prisoners suffered from perceptual
5 disturbances that for some included hallucinations and perceptual illusions, and another half
6 complained of cognitive difficulties such as confusional states, difficulty concentrating, and memory
7 lapses. About a third also described thought disturbances such as paranoia, aggressive fantasies, and
8 impulse control problems. Three out of the fifteen had cut themselves in suicide attempts while in
9 isolation. In almost all instances the prisoners had not experienced any of these psychiatric reactions
10 prior to their time in isolation. For all prisoners, long-term solitary confinement has the effect, on
11 average, of making post-release adjustment very problematic and worsening recidivism rates.⁷ An
12 alarmingly large proportion of prisoners consigned to supermaximum security isolation in recent
13 decades suffer from serious mental illness. Sheilagh Hudgins and Gilles Cote performed a research
14 evaluation of penitentiary inmates in a Supermaximum Security Housing Unit and discovered that
15 29% suffered from severe mental disorders, notably schizophrenia.⁸ David Lovell has described
16
17
18
19

20 ⁴ Toch, H. (1975, 1992). *Mosaic of Despair: Human Breakdown in Prison*, Washington, D.C.: American
21 Psychological Association.

22 ⁵ Haney, C. (2003). *Mental health issues in long-term solitary and “supermax” confinement*. *Crime &*
Delinquency, 49(2), 124-156.

23 ⁶ Grassian, S., & Friedman, N. (1986). *Effects of sensory deprivation in psychiatric seclusion and solitary*
confinement. *International Journal of Law and Psychiatry*, 8(1), 49-65.

24 ⁷ Lovell, D., Johnson, L.C., & Cain, K.C. (2007). *Recidivism of supermax prisoners in Washington*, *Crime &*
25 *Delinquency*, 52,4, 633-56.

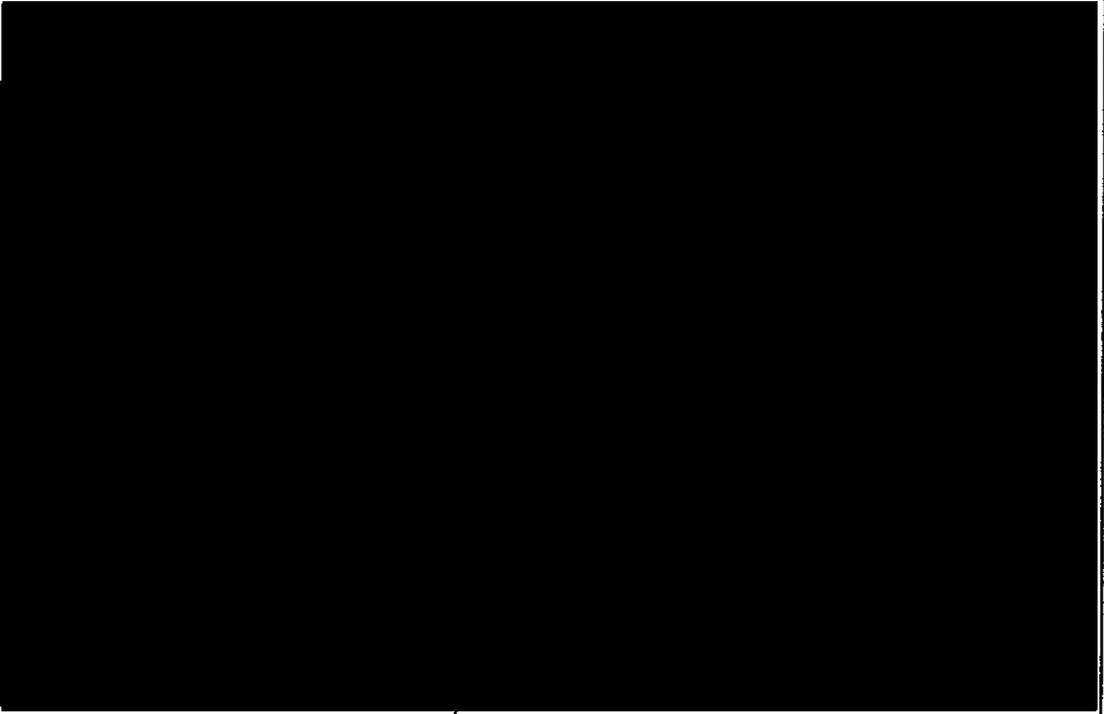
26 ⁸ Hudgins, S. & Cote, G. (1991). *The Mental health of penitentiary inmates in isolation*, *Canadian Journal of*
27 *Criminology*, 177-182.

1 typical disturbed behavior.⁹ I have reported my own findings from litigation-related investigations.¹⁰

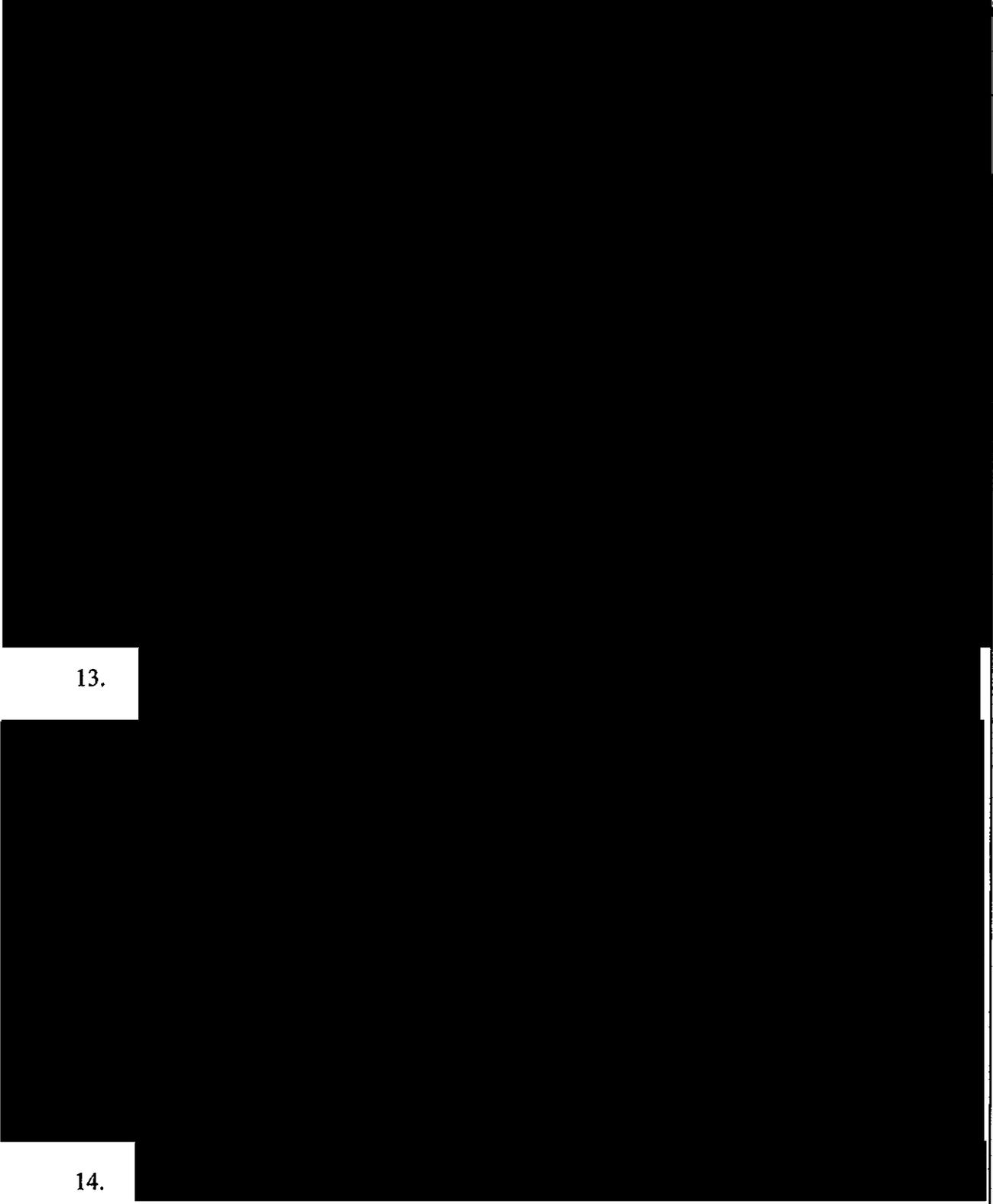
2 In other words, the conditions of confinement in place at the Pelican Bay SHU are well known to

3 cause a very significant risk of serious psychiatric problems.

4 11. 

17 12. 

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27



13.

14.

1

2

3

4

15.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

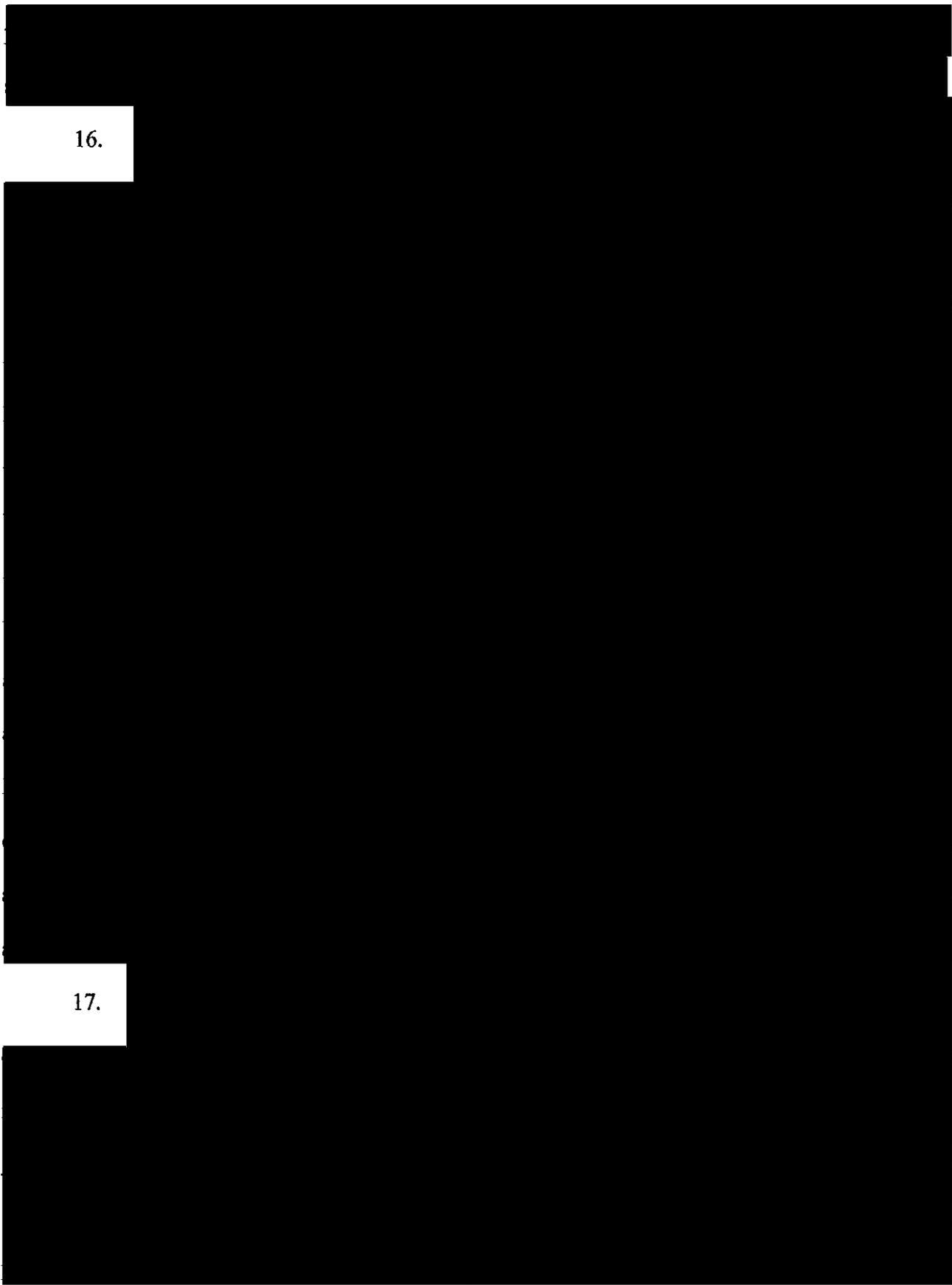
25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27



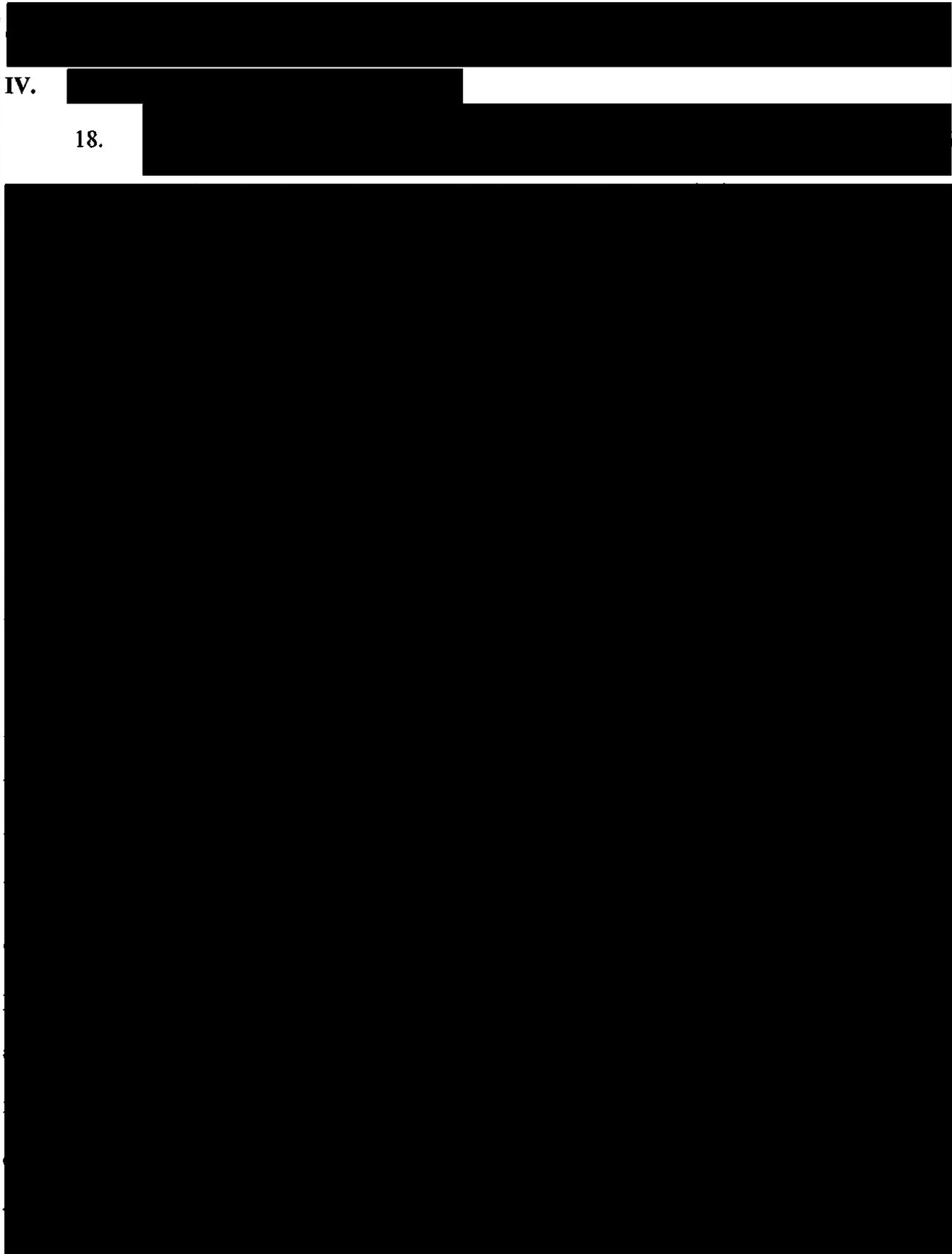
16.

17.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IV.

18.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[Redacted]

19. [Redacted]

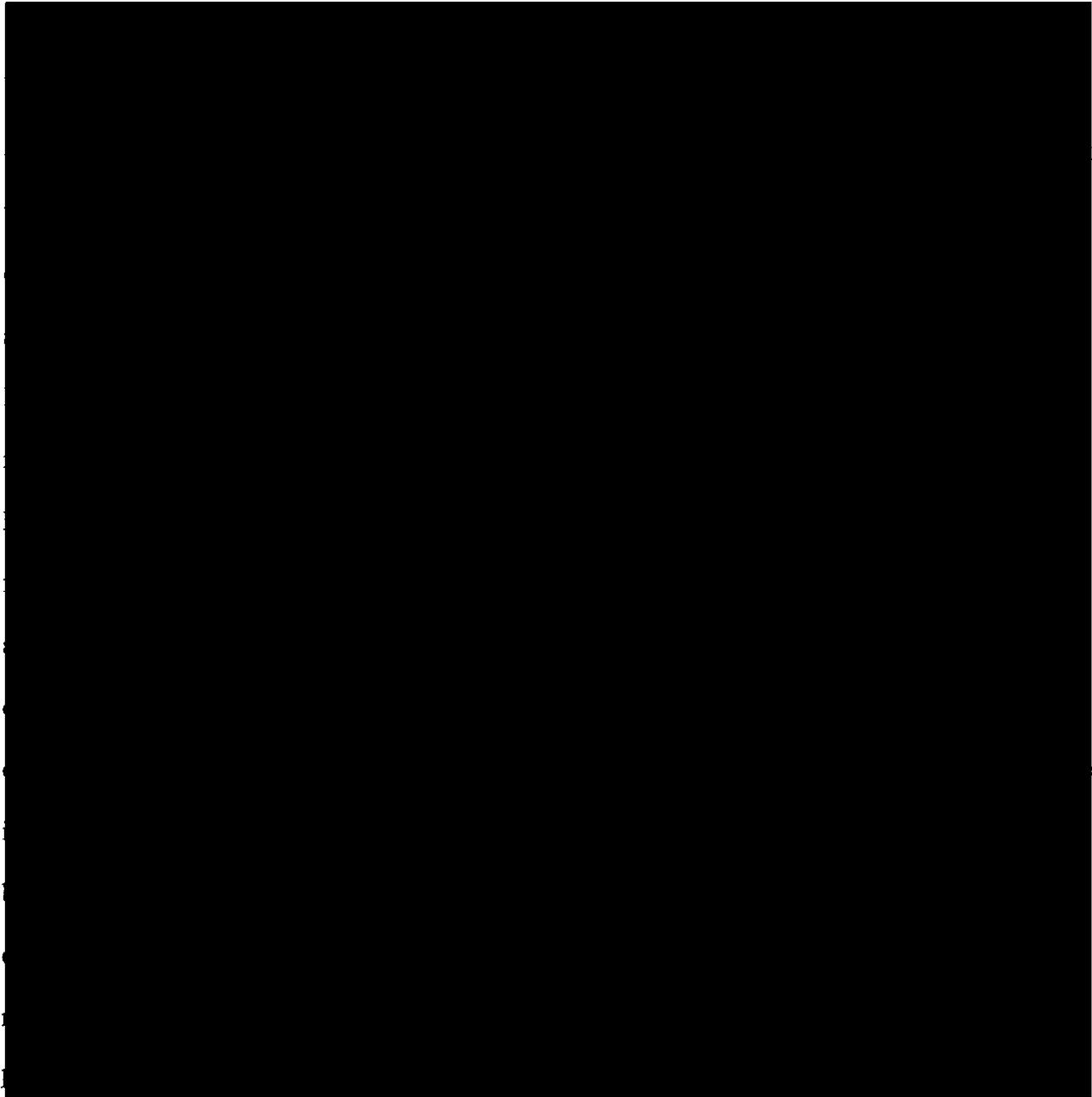
[Redacted]

20. [Redacted]

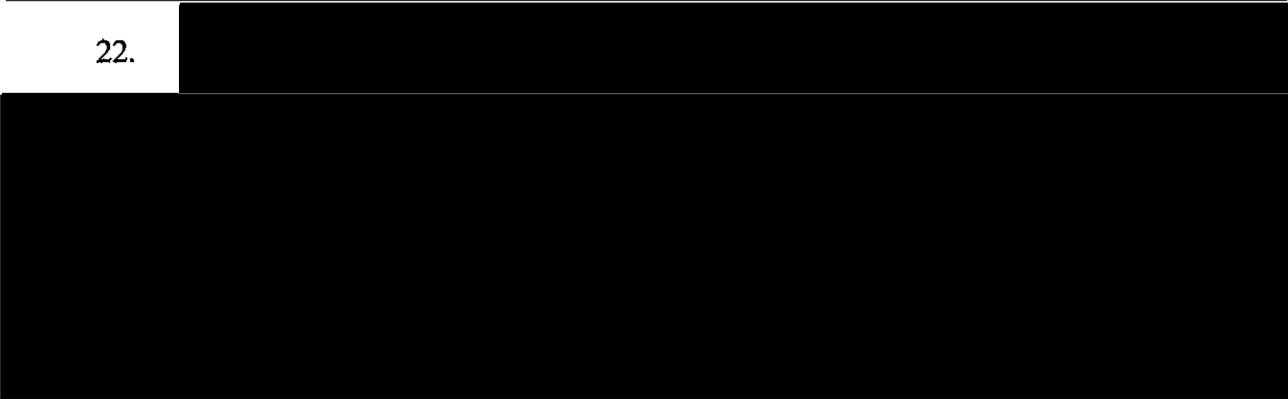
[Redacted]

21. [Redacted]

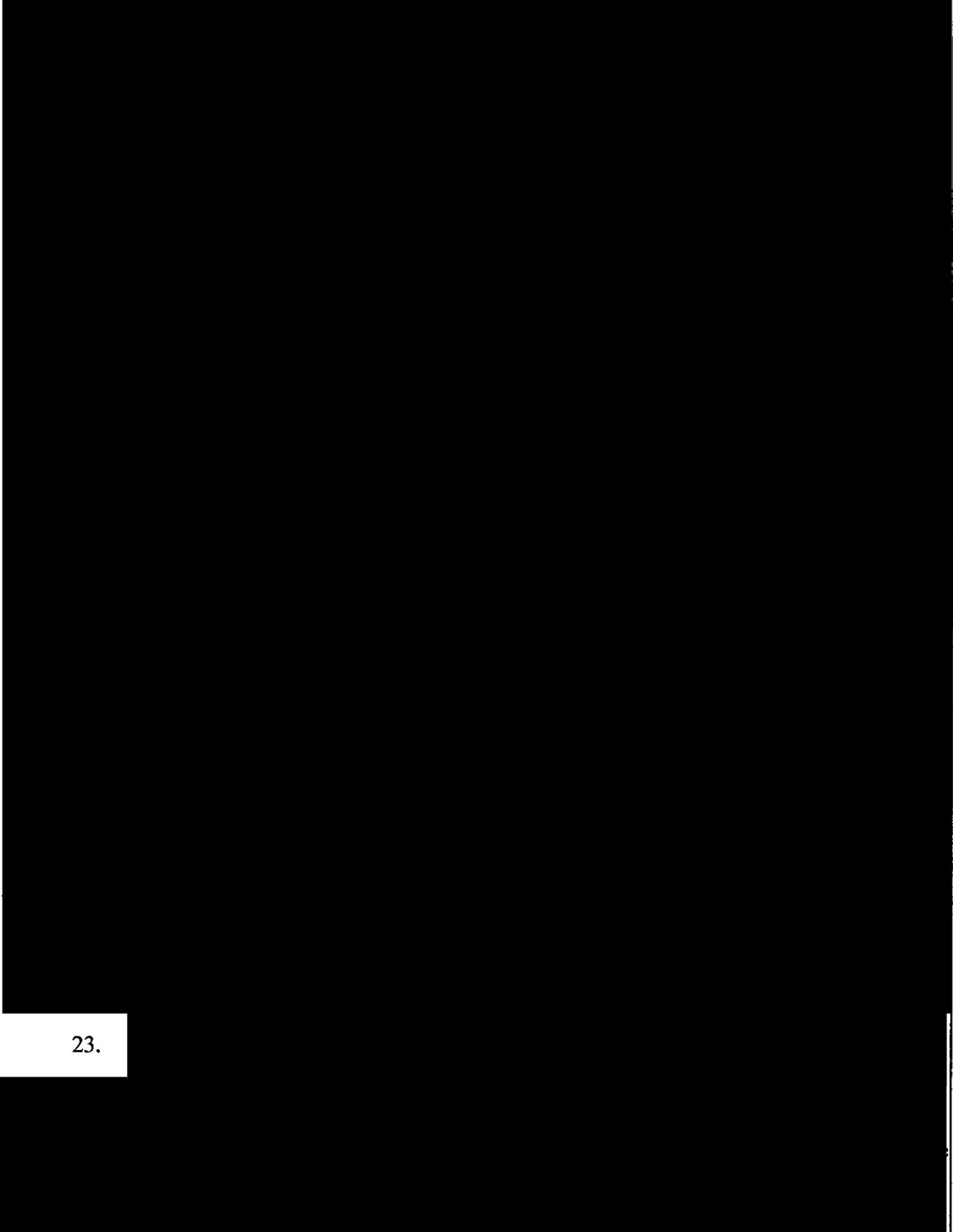
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



22.

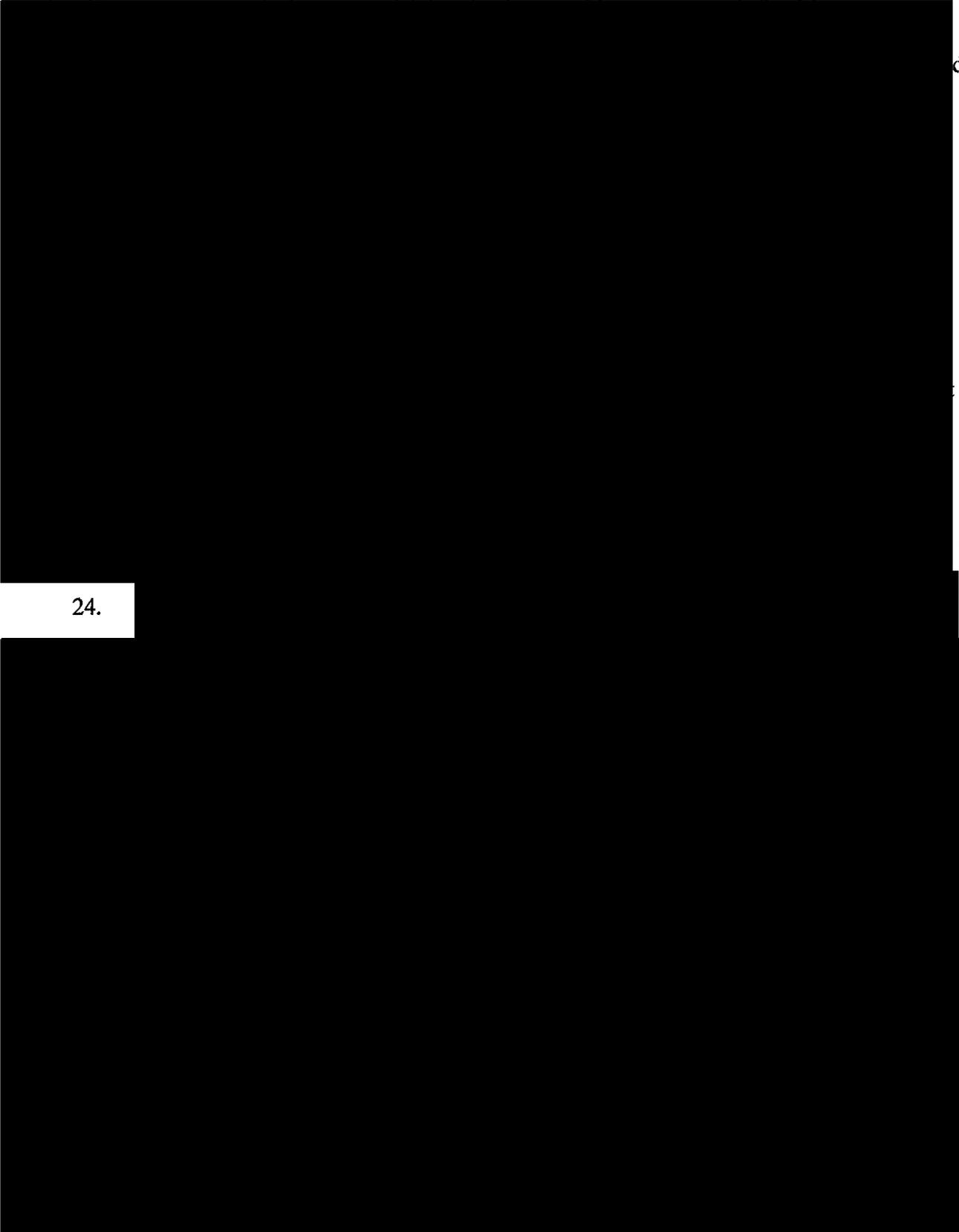


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



23.

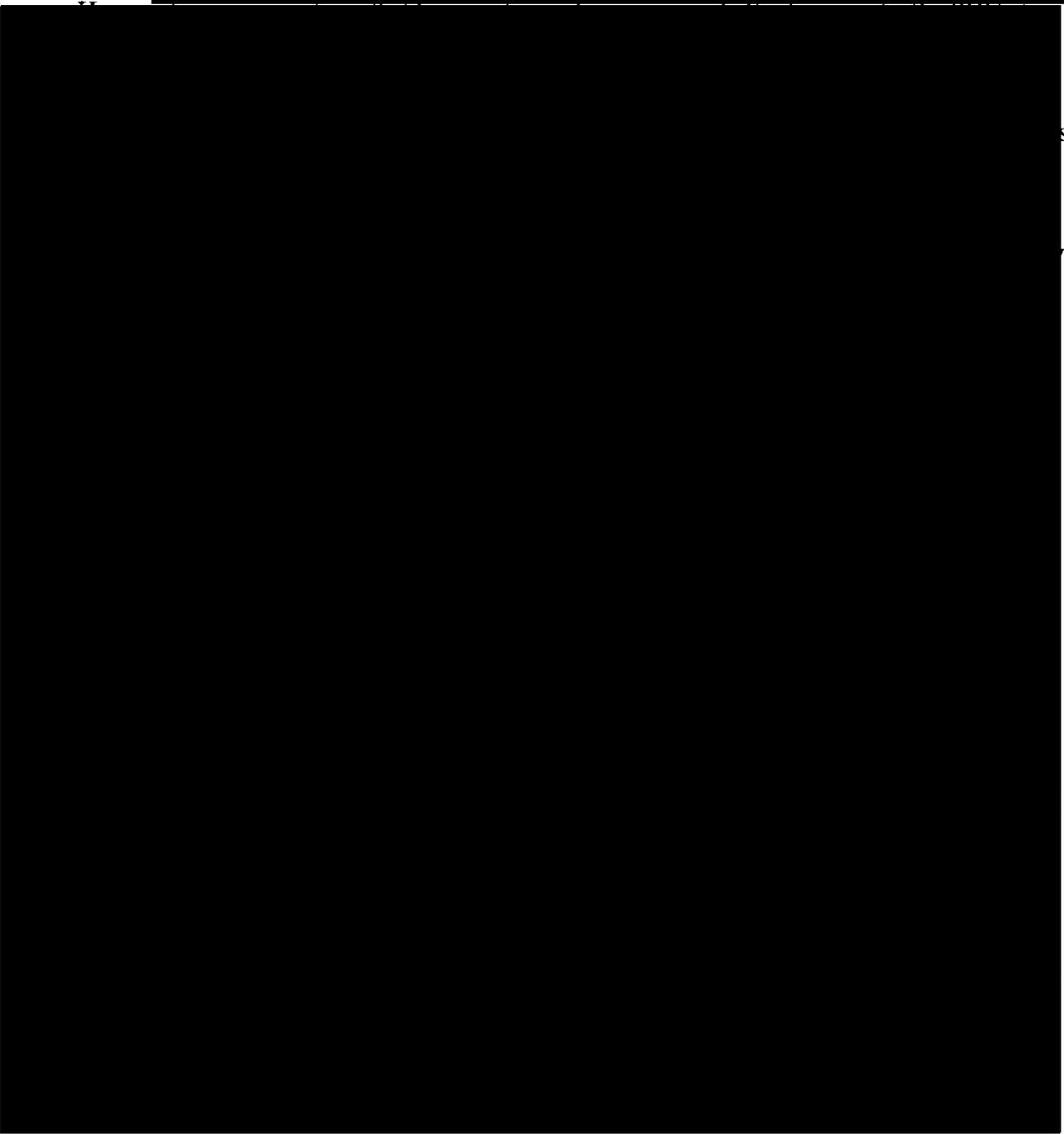
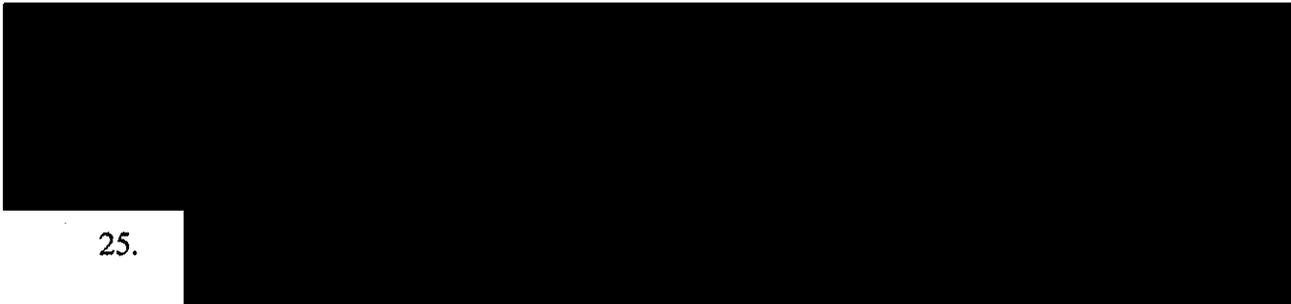
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27



24.

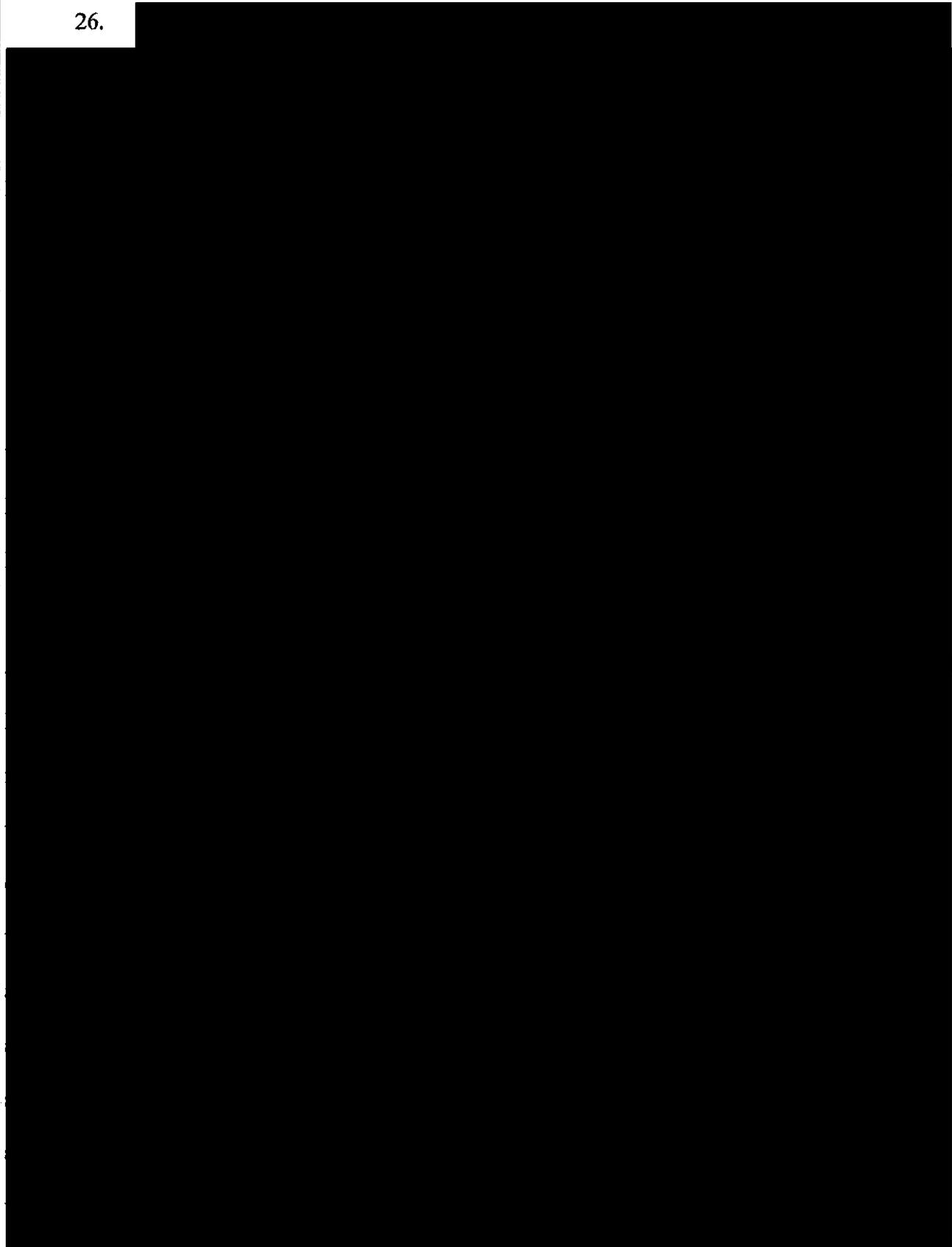
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

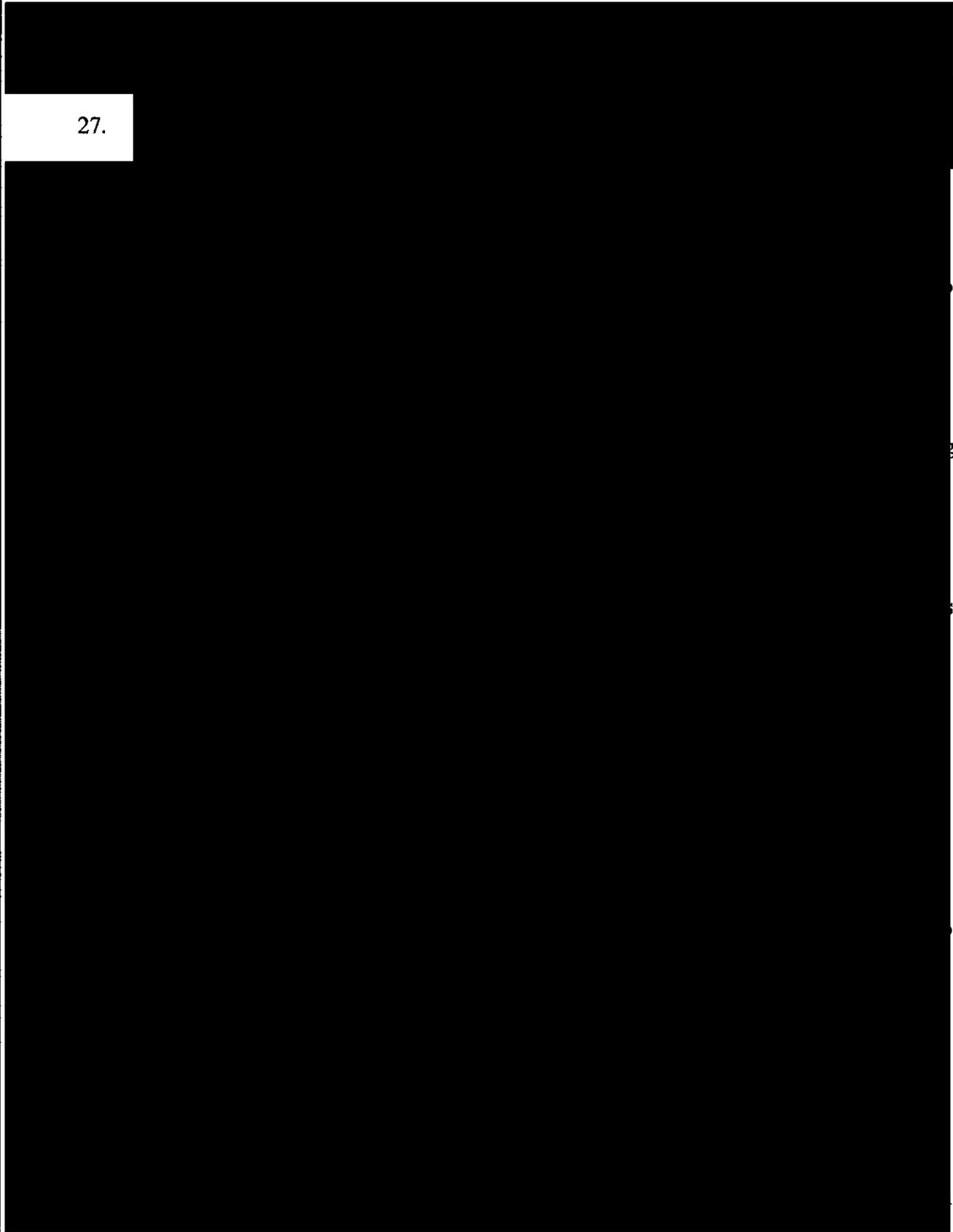


26.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

[REDACTED]

V.

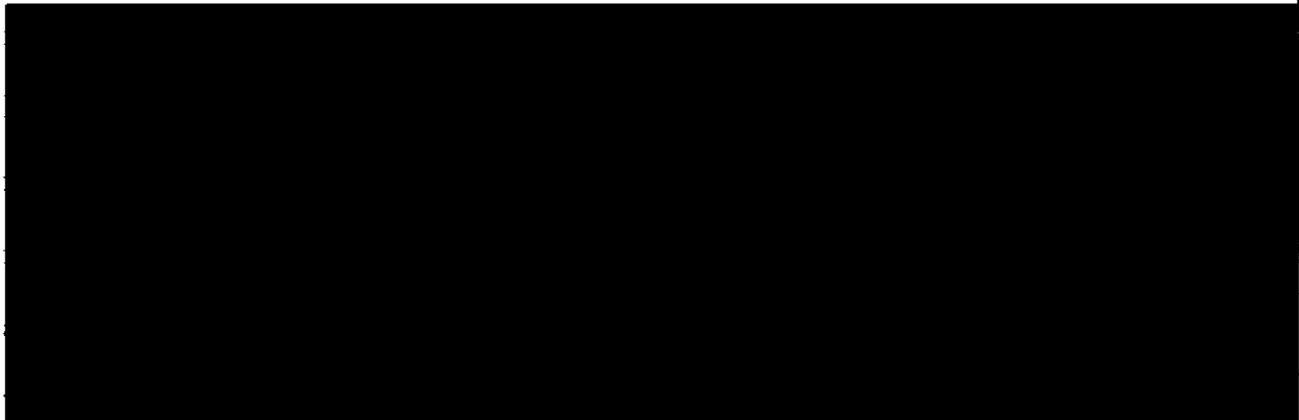
28.

[REDACTED]

29.

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



30.



26
27

31. In arriving at the opinion that the reports of these ten men are quite representative of

28

1 the group of prisoners confined in the SHU at PBSP, I also call on all my previous experience
2 investigating conditions in isolation units and interviewing over a thousand prisoners in many states.
3 I have encountered prisoners in several states who were in isolated confinement for longer than ten
4 years, and found in many cases that they exhibited massively constricted affect, extreme isolative
5 tendencies and significant despair. As a general tendency, I have discovered that the longer an
6 individual remains in isolated confinement, the more severe the resultant symptoms and disability,
7 especially symptoms related to constriction of affect, severe isolation and despair.¹³ I cannot
8 guarantee that every single prisoner similarly situated in the SHU at PBSP suffers precisely the same
9 emotional pain and psychiatric symptomatology and disability as these ten men, but I can say with a
10 reasonable degree of medical certainty that, given the severity and consistency of these ten men's
11 reported suffering and symptomatology, most if not all of the prisoners in the SHU at PBSP suffer
12 from a significant degree of emotional numbing, social isolation and despair, resulting in severe pain,
13 suffering and disability. In other words, I have discovered a consistent pattern of psychological harm
14 in the ten individuals I interviewed, a pattern which is entirely consistent with the research literature
15 about the effects of solitary confinement, and therefore I can predict with a reasonable degree of
16 medical certainty that I will find equivalent harm in the other inhabitants of the SHU at PBSP.

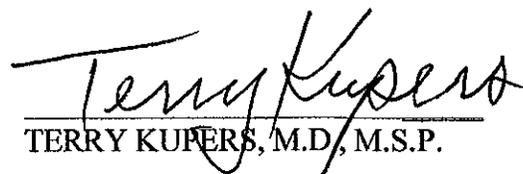
19 32. Finally, I saw no evidence of malingering in the ten prisoners I interviewed.
20 Malingering is the invention or exaggeration of symptoms for secondary gain. The ten men I
21 interviewed are strongly inclined not to report, or to under-report, emotional symptoms. They tended
22 to underplay rather than exaggerate their emotional pain and disability. This is because they share a
23 "prison code" that discourages exhibiting weakness and emotional problems. They are very unlikely
24 to utilize mental health services. Many of them tell me that they do not trust that mental health staff
25

26
27 ¹³ See Kupers, Terry. (2008). *What To Do with the Survivors?: Coping With the Long-Term Effects of Isolated Confinement*, Criminal Justice and Behavior, Vol. 35 No. 8, August 2008 1005-1016.

1 will maintain confidentiality, and their reports of symptoms could get them in trouble. And the
2 symptoms and disabilities I am memorializing in this report are not typical of any particular mental
3 disorder. If a prisoner were interested in creating a false impression that they suffer from a mental
4 disorder in order to gain something, he would not tell me about the kinds of symptoms these men
5 report. Rather, he would tell me about symptoms out of a psychiatric textbook, such as auditory
6 hallucinations or suicidal inclinations, and he would be seeking some kind of psychiatric services or
7 benefits. Further, my conclusion is that these men share a common syndrome characterized by
8 numbing, isolation and despair. There is no way they would be able to concoct a false story with the
9 consistency and integrity I discover in their oral reports.
10

11 33. My interviews thus far are preliminary in the sense that I plan to conduct further
12 interviews with the ten men I have discussed in this declaration and I expect to interview other like-
13 situated prisoners by the time of trial in this matter. I have conducted sufficient investigation and
14 spent enough time with the prisoners I interviewed to be quite confident of the opinions I offer here,
15 to a reasonable degree of medical certainty. But I also plan to spend more time conducting
16 interviews, taking a tour and reviewing documents, including depositions of staff and administrators.
17 I reserve the right to alter my opinions accordingly.
18

19 I declare under penalty of perjury that the foregoing is true and correct based on my
20 knowledge and belief and that this declaration was executed on April 10, 2013, in
21 Oakland, California.
22

23
24 
TERRY KUPERS, M.D., M.S.P.

ADDITIONAL PLAINTIFFS' COUNSEL

1 CHARLES F.A. CARBONE (SBN 206536)

2 Email: charles@charlescarbone.com

3 EVAN CHARLES GREENBERG (SBN 271356)

4 Email: evan@charlescarbone.com

5 LAW OFFICES OF CHARLES CARBONE

6 P.O. Box 2809

7 San Francisco, CA 94126

8 Tel: (415) 981-9773

9 Fax: (415) 981-9774

10 MARILYN S. MCMAHON (SBN 270059)

11 Email: marilyn@prisons.org

12 CALIFORNIA PRISON FOCUS

13 1904 Franklin Street, Suite 507

14 Oakland, CA 94612

15 Tel: (510) 734-3600

16 Fax: (510) 836-7222

17 ANNE BUTTERFIELD WEILLS (SBN 139845)

18 Email: aweills@aol.com

19 SIEGEL & YEE

20 499 14TH STREET, SUITE 300

21 Oakland, CA 94612

22 Tel: (510) 839-1200

23 Fax: (510) 444-6698

24 CAROL STRICKMAN (SBN 78341)

25 Email: carol@prisonerswithchildren.org

26 LEGAL SERVICES FO PRISONERS WITH CHILDREN

27 1540 Market Street, Suite 490

28 San Francisco, CA 94102

Tel: (415) 255-7036

Fax: (415) 552-3150

Attachment 1

Curriculum Vitae

Terry Allen Kupers, M.D., M.S.P.

Office Address:

2100 Lakeshore Avenue, Suite C, Oakland, California 94610
phone: 510-654-8333

Currently:

Institute Professor, Graduate School of Psychology, The Wright Institute, 2728
Durant Avenue, Berkeley, California 94704
Private Practice of Psychiatry, Oakland

Family: Married to Arlene Shmaeff, Education Director at the Museum of
Children's Art (M.O.C.H.A.) in Oakland; father of three young adult sons

Born: October 14, 1943, Philadelphia, Pennsylvania

Education:

B.A., With Distinction, Psychology Major, Stanford University, 1964
M.D., U.C.L.A. School of Medicine, 1968
M.S.P. (Masters in Social Psychiatry), U.C.L.A., 1974

Training:

Intern (Mixed Medicine/ Pediatrics/ Surgery), Kings County Hospital/Downstate
Medical Center, Brooklyn, New York, 1968-1969.
Resident in Psychiatry, U.C.L.A. Neuropsychiatric Institute, Los Angeles, 1969-
1972
Registrar in Psychiatry, Tavistock Institute, London (Elective Year of U.C.L.A.
Residency) 1971-1972
Fellow in Social and Community Psychiatry, U.C.L.A. Neuropsychiatric Institute,
1972-1974

License: California, Physicians & Surgeons, #A23440, 1968-

Certification: American Board of Psychiatry and Neurology (Psychiatry,
#13387), 1974-

Honors:

Alpha Omega Alpha, U.C.L.A. School of Medicine, 1968.
Distinguished Life Fellow, American Psychiatric Association; Fellow, American
Orthopsychiatric Association.
Listed: Who's Who Among Human Services Professionals (1995-); Who's Who
in California (1995-); Who's Who in The United States (1997-); Who's
Who in America (1998-); International Who's Who in Medicine (1995-
); Who's Who in Medicine and Healthcare (1997-); The National Registry

of Who's Who (2000-); Strathmore's Millennial Edition, Who's Who; American Biographical Institute's International Directory of Distinguished Leadership; Marquis' Who's Who in the World (2004-); Marquis' Who's Who in Science and Engineering, (2006-); Who's Who Among American Teachers & Educators (2007-); The Global Directory of Who's Who (2012-); International Association of Healthcare Professionals' The Leading Physicians (2012-).

Helen Margulies Mehr Award, Division of Public Interest (VII), California Psychological Association, Affiliate of American Psychological Association, March 30, 2001.

Stephen Donaldson Award, Stop Prisoner Rape, 2002.

Exemplary Psychiatrist Award, National Alliance for the Mentally Ill, 2005

William Rossiter Award for "global contributions made to the field of forensic mental health," Annual Meeting, Forensic Mental Health Association of California, March 18, 2009, Monterey, California

Clinical Practice:

Los Angeles County, SouthEast Mental Health Center, Staff Psychiatrist, 1972-1974

Martin Luther King, Jr. Hospital, Department of Psychiatry, Los Angeles Staff Psychiatrist and Co-Director, Outpatient Department, 1974-1977.

Contra Costa County, Richmond Community Mental Health Center, Staff Psychiatrist and Co-Director, Partial Hospital, 1977-1981

Private Practice of Psychiatry, Los Angeles and Oakland, 1972 to present

Teaching:

Assistant Professor, Department of Psychiatry and Human Behavior, Charles Drew Postgraduate Medical School, Los Angeles, and Assistant Director, Psychiatry Residency Education, 1974-1977.

Institute Professor, Graduate School of Psychology, The Wright Institute, Berkeley, 1981 to present

Courses Taught at: U.C.L.A. Social Science Extension, California School of Professional Psychology (Los Angeles), Goddard Graduate School (Los Angeles), Antioch-West (Los Angeles), New College Graduate School of Psychology (San Francisco).

Prof'l Organizations:

American Psychiatric Association (Distinguished Fellow); Northern California Psychiatric Society; East Bay Psychiatric Association (President, 1998-1999); American Orthopsychiatric Association (Fellow); American Association of Community Psychiatrists; Physicians for Social Responsibility; National Organization for Men Against Sexism; American Academy of Psychiatry and the Law.

Committees and Offices:

Task Force on the Study of Violence, Southern California Psychiatric Society, 1974-1975
Task Force on Psychosurgery, American Orthopsychiatric Association, 1975-1976
California Department of Health Task Force to write "Health Standards for Local Detention Facilities," 1976-77.
Prison/ Forensic Committee, Northern California Psychiatric Society, 1976-1981; 1994-
Psychiatry Credentials Committee, Alta Bates Medical Center, Berkeley, 1989-1994 (Chair, Subcommittee to Credential Licensed Clinical Social Workers)
President, East Bay Chapter of Northern California Psychiatric Society, 1998-1999
Co-Chair, Committee on Persons with Mental Illness Behind Bars of the American Association of Community Psychiatrists, 1998-2003

Consultant/Staff Trainer:

Contra Costa County Mental Health Services; Contra Costa County Merrithew Memorial Hospital Nursing Service; Bay Area Community Services, Oakland; Progress Foundation, San Francisco; Operation Concern, San Francisco; Marin County Mental Health Services; Berkeley Psychotherapy Institute; Berkeley Mental Health Clinic; Oregon Department of Mental Health; Kaiser Permanente Departments of Psychiatry in Oakland, San Rafael, Martinez and Walnut Creek; Human Rights Watch, San Francisco Connections collaboration (Jail Psychiatric Services, Court Pre-Trial Diversion, CJCJ and Progress Foundation); Contra County Sheriff's Department Jail Mental Health Program; Consultant to Protection & Advocacy, Inc., re Review of State Hospital Suicides

Forensic Psychiatry (partial list):

Testimony in *Madrigal v. Quilligan*, U.S. District Court, Los Angeles, regarding informed consent for surgical sterilization, 1977
Testimony in *Rutherford v. Pitchess*, Los Angeles Superior Court, regarding conditions and mental health services in Los Angeles County Jail, 1977
Testimony in *Hudler v. Duffy*, San Diego County Superior Court, regarding conditions and mental health services in San Diego County Jail, 1979
Testimony in *Branson v. Winter*, Santa Clara County Superior Court, regarding conditions and mental health services in Santa Clara County Jail, 1981
Testimony in *Youngblood v. Gates*, Los Angeles Superior Court, regarding conditions and mental health services in Los Angeles Police Department Jail, 1982
Testimony in *Miller v. Howenstein*, Marin County Superior Court, regarding conditions and mental health services in Marin County Jail, 1982
Testimony in *Fischer v. Geary*, Santa Clara County Superior Court, regarding conditions and mental health services in Santa Clara County Women's Detention Facility, 1982

- Testimony in Wilson v. Deukmejian, Marin County Sup Court, regarding conditions and mental health services at San Quentin Prison, 1983
- Testimony in Toussaint/Wright/Thompson v. Enomoto, Federal District Court in San Francisco, regarding conditions and double-celling in California State Prison security housing units, 1983
- Consultant, United States Department of Justice, Civil Rights Division, regarding conditions and mental health services in Michigan State Prisons, 1983-4
- Testimony in Arreguin vs. Gates, Federal District Court, Orange County, regarding "Rubber Rooms" in Orange County Jail, 1988
- Testimony in Gates v Deukmejian, in Federal Court in Sacramento, regarding conditions, quality of mental health services and segregation of inmates with HIV positivity or AIDS at California Medical Facility at Vacaville, 1989
- Testimony in Coleman v. Wilson, Federal Court in Sacramento, regarding the quality of mental health services in the California Department of Corrections' statewide prison system, 1993
- Testimony in Cain v. Michigan Department of Corrections, Michigan Court of Claims, regarding the effects on prisoners of a proposed policy regarding possessions, uniforms and classification, 1998
- Testimony in Bazetta v. McGinnis, Federal Court in Detroit, regarding visiting policy and restriction of visits for substance abuse infractions, 2000
- Testimony in Everson v. Michigan Department of Corrections, Federal Court in Detroit, regarding cross-gender staffing in prison housing units, 2001
- Testimony in Jones 'El v. Litscher, Federal Court in Madison, Wisconsin, regarding confinement of prisoners suffering from severe mental illness in supermax, 2002
- Testimony in Russell v. Johnson, Federal Court in Oxford, Mississippi, regarding conditions of confinement and treatment prisoners with mental illness on Death Row at Parchman, 2003
- Testimony in Austin v. Wilkinson, Federal Court in Cleveland, Ohio, regarding proposed transfer of Death Row into Ohio State Penitentiary (supermax), August, 2005
- Testimony in Roderick Johnson v. Richard Watham, Federal Court in Wichita Falls, Texas, regarding staff responsibility in case of prison rape, September, 2005
- Testimony in DAI, Inc. v. NYOMH, Federal Court, So. Dist. NY, April 3, 2006, regarding mental health care in NY Dept. of Correctional Services
- Testimony in Neal v. Michigan DOC, State of Michigan, Circuit Court for the County of Washtenaw, January 30, 2008, File No. 96-6986-CZ, regarding custodial misconduct & sexual abuse of women prisoners
- Testimony in Hadix v. Caruso, No. 4:92-cv-110, USDistCt, WDistMichiganTestimony, USDistCt, WDistMichigan, Grand Rapids, Michigan, regarding mental health care in prison, April 29, 2008

Hospital Staff: Alta Bates Medical Center, Berkeley

Journal Editorial Positions:

Free Associations, Editorial Advisory Board
Men and Masculinities, Editorial Advisory Panel
Psychology of Men and Masculinity, Consulting Editor
Juvenile Correctional Mental Health Report, Editorial Board
Correctional Mental Health Report, Contributing Editor

Presentations and Lectures (partial list):

"Expert Testimony on Jail and Prison Conditions." American Orthopsychiatric Association Annual Meeting, San Francisco, March 30, 1988, Panel 137:
"How Expert are the Clinical Experts?"
"The Termination of Psychotherapy." Psychiatry Department Grand Rounds, Mills/Peninsula Hospitals, Burlingame, February 24, 1989.
"Big Ideas, and Little Ones." American Psychiatric Association Annual Meeting, San Francisco, April, 1989.
"Men in Psychotherapy." Psychiatry Department Grand Rounds, Mills/Peninsula Hospitals, Burlingame, September 29, 1989.
"Psychodynamic Principles and Residency Training in Psychiatry." The Hilton Head Conference, Hilton Head Island, South Carolina, March 15, 1991.
Panelist: "The Mentally Ill in Jails and Prisons," California Bar Association Annual Meeting, Anaheim, 1991.
"The State of the Sexes: One Man's Viewpoint." The Commonwealth Club of California, San Mateo, March 25, 1992.
Keynote Address: "Feminism and the Family." 17th National Conference on Men and Masculinity, Chicago, July 10, 1992.
Panel Chair and Contributor: "Burnout in Public Mental Health Workers." Annual Meeting of the American Orthopsychiatric Association, San Francisco, May 22, 1993.
Panel Chair and Contributor: "Socioeconomic Class and Mental Illness." Annual Meeting of the American Psychiatric Association, San Francisco, May 26, 1993.
"Public Mental Health." National Council of Community Mental Health Centers Training Conference, San Francisco, June 12, 1993.
Psychiatry Department Grand Rounds: "Men's Issues in Psychotherapy." California Pacific Medical Center, San Francisco, February 24, 1993.
"The Effect of the Therapist's Gender on Male Clients in Couples and Family Therapy." Lecture at Center for Psychological Studies, Albany, California, April 15, 1994.
"Pathological Arrhythmicity and Other Male Foibles." Psychiatry Department Grand Rounds, Alta Bates Medical Center, June 7, 1993.
Roger Owens Memorial Lecture. "Prisons and Mental Illness." Department of Psychiatry, Alta Bates Medical Center, March 6, 1995.
Keynote Address: "Understanding Our Audience: How People Identify with Movements and Organizations." Annual Conference of the Western Labor Communications Association, San Francisco, April 24, 1998.

- "Men in Groups and Other Intimacies." 44th Annual Group Therapy Symposium, University of California at San Francisco, November 6, 1998.
- "Men in Prison." Keynote, 24th Annual Conference on Men and Masculinity, Pasadena, July 10, 1999.
- "Trauma and Posttraumatic Stress Disorder in Prisoners" and "Prospects for Mental Health Treatment in Punitive Segregation." Staff Training Sessions at New York State Department of Mental Health, Corrections Division, at Albany, August 23, 1999, and at Central New York Psychiatric Institution at Utica, August 24.
- "The Mental Health Crisis Behind Bars." Keynote, Missouri Association for Social Welfare Annual Conference, Columbia, Missouri, September 24, 1999.
- "The Mental Health Crisis Behind Bars." Keynote, Annual Conference of the Association of Community Living Agencies in Mental Health of New York State, Bolton Landing, NY, November 4, 1999.
- "Racial and Cultural Differences in Perception Regarding the Criminal Justice Population." Statewide Cultural Competence and Mental Health Summit VII, Oakland, CA, December 1, 1999.
- "The Criminalization of the Mentally Ill," 19th Annual Edward V. Sparer Symposium, University of Pennsylvania Law School, Philadelphia, April 7, 2000.
- "Mentally Ill Prisoners." Keynote, California Criminal Justice Consortium Annual Symposium, San Francisco, June 3, 2000.
- "Prison Madness/Prison Masculinities," address at the Michigan Prisoner Art Exhibit, Ann Arbor, February 16, 2001.
- "The Mental Health Crisis Behind Bars," Keynote Address, Forensic Mental Health Association of California, Asilomar, March 21, 2001.
- "Madness & The Forensic Hospital," grand rounds, Napa State Hospital, 11/30/01.
- Commencement Address, The Wright Institute Graduate School of Psychology, June 2, 2002.
- "Mental Illness & Prisons: A Toxic Combination," Keynote Address, Wisconsin Promising Practices Conference, Milwaukee, 1/16/02.
- "The Buck Stops Here: Why & How to Provide Adequate Services to Clients Active in the Criminal Justice System," Annual Conference of the California Association of Social Rehabilitation Agencies, Walnut Creek, California, 5/2/02.
- Keynote Address, "Mental Illness in Prison," International Association of Forensic Psychotherapists, Dublin, Ireland, May 20, 2005
- Invited Testimony (written) at the Vera Institute of Justice, Commission on Safety and Abuse in America's Prisons, Newark, NJ, July 19, 2005
- Invited Testimony at the National Prison Rape Elimination Commission hearing in San Francisco, August 19, 2005
- Lecture, Prisoners with Serious Mental Illness: Their Plight, Treatment and Prognosis," American Psychiatric Association Institute on Psychiatric Services, San Diego, October 7, 2005

- Grand Rounds, "The Disturbed/Disruptive Patient in the State Psychiatric Hospital," Napa State Hospital, June 26, 2007
- Lecture, "Our Drug Laws Have Failed, Especially for Dually Diagnosed Individuals," 19th Annual Conference, California Psychiatric Association, Huntington Beach, CA, October 6, 2007
- Panel: "Mental Health Care and Classification," Prison Litigation Conference, George Washington University Law School, Washington, D.C., March 28, 2008.
- Keynote Address: "Winning at Rehabilitation," Annual Meeting of the Forensic Mental Health Association of California, Monterey, California, March 18, 2009
- Panel: "Construction of Masculinity and Male Sexuality in Prison," UCLA Women's Law Journal Symposium, Los Angeles, April 10, 2009
- Panel: "Solitary Confinement in America's Prisons," Shaking the Foundations Conference, Stanford Law School, October 17, 2009.
- Commencement Address, San Francisco Behavioral Health Court Graduation Ceremony, October 21, 2009.
- Panel: "Negotiating Settlements of Systemic Prison Suits," Training & Advocacy Support Center, Protection & Advocacy Annual Conference, Los Angeles, June 8, 2010.
- Grand Rounds, "Recidivism or Rehabilitation in Prison?," Alta Bates Summit Medical Center, November 1, 2010
- Keynote Address: "Prison Culture & Mental Illness: a Bad Mix," University of Maryland Department of Psychiatry Cultural Diversity Day, Baltimore, Maryland, March 24, 2011.
- Grand Rounds, "The Role of Misogyny & Homophobia in Prison Sexual Abuse," Alta Bates Summit Medical Center, October 17, 2011
- Special Guest, "Offering Hope and Fostering Respect in Jail and Prison," 2011 ZIA Partners UnConvention, Asilomar Conference Center, October 24, 2011.
- Invited Lecture, "Suicide Behind Bars: The Forgotten Epidemic," 2011 Institute on Psychiatric Services, American Psychiatric Association, San Francisco, October 28, 2011.
- Lecture: "How Can We Help Persons with Mental Illness in the Criminal Justice System?," Solano County Re-entry Council, Fairfield, CA, January 15, 2012.
- Lecture: "The Prison System in the U.S.A.: Recent History and Development, Structure, Special Issues," Conference of the American Bar Association Rule of Law Initiative, Cross-National Collaboration: Protecting prisoners in the US and Russia, Moscow, Russia, January 20, 2012.
- Continuing Medical Education (CME) Presentation: "Correctional Psychiatry Overview," The Center for Public Service Psychiatry of Western Psychiatric Institute and Clinic (co-sponsored by the American Association of Community Psychiatrists), national videoconference originating in Pittsburg, PA, February 2, 2012.
- Grand Rounds, "Mental Health Implications of the Occupy Movement," Alta Bates

Summit Medical Center, October 8, 2012

Invited Speaker: "Solitary Confinement: Medical and Psychiatric Consequences,"
Session: Multi-Year Solitary Confinement in California and the Prisoner
Hunger Strikes of 2011-2012, American Public Health Association Annual
Meeting, Moscone Convention Center, San Francisco, October 29, 2012.
Keynote Address: "Solitary Confinement and Mental Health," Conference of the
Midwest Coalition for Human Rights, Northeastern Illinois University,
Chicago, November 9, 2012.

Books Published:

Public Therapy: The Practice of Psychotherapy in the Public Mental Health
Clinic. New York: Free Press/ MacMillan, 1981.

Ending Therapy: The Meaning of Termination. New York: New York University
Press, 1988.

(Editor): Using Psychodynamic Principles in Public Mental Health. New
Directions for Mental Health Services, vol. 46. San Francisco: Jossey-
Bass, 1990.

La Conclusione della Terapia: Problemi, metodi, conseguenze. Rome: Casa
Editrice Astrolabio, 1992. (trans. of Ending Therapy.)

Revisioning Men's Lives: Gender, Intimacy and Power. New York: Guilford
Publications, 1993. (trans. into Chinese, 2000).

Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do
About It. San Francisco: Jossey-Bass/Wiley, 1999.

(Co-Editor): Prison Masculinities. Philadelphia: Temple University Press, 2001.

Other Publications:

"The Depression of Tuberculin Delayed Hypersensitivity by Live Attenuated
Mumps Virus," Journal of Pediatrics, 1970, 76, 716-721.

Editor and Contributor, An Ecological Approach to Resident Education in
Psychiatry, the product of an NIMH Grant to the Department of Psychiatry
and Human Behavior, Drew Medical School, 1973.

"Contact Between the Bars - A Rationale for Consultation in Prisons," Urban
Health, Vol. 5, No. 1, February, 1976.

"Schizophrenia and History," Free Associations, No. 5, 1986, 79-89.

"The Dual Potential of Brief Psychotherapy," Free Associations, No. 6, 1986, pp.
80-99.

"Big Ideas, and Little Ones," Guest Editorial in Community Mental Health Journal,
1990, 26:3, 217-220.

"Feminist Men," Tikkun, July/August, 1990.

"Pathological Arrhythmicity in Men," Tikkun, March/April, 1991.

"The Public Therapist's Burnout and Its Effect on the Chronic Mental Patient."
The Psychiatric Times, 9,2, February, 1992.

"The State of the Sexes: One Man's Viewpoint," The Commonwealth, 86,16,
April, 1992.

"Schoolyard Fights." In Franklin Abbott, Ed., Boyhood. Freedom, California:

- Crossing Press, 1993; Univeristy of Wisconsin Press, 1998.
- "Menfriends." Tikkun, March/April, 1993
- "Psychotherapy, Neutrality and the Role of Activism." Community Mental Health Journal, 1993.
- "Review: Treating the Poor by Mathew Dumont." Community Mental Health Journal, 30(3), 1994, 309-310.
- "The Gender of the Therapist and the Male Client's Capacity to Fill Emotional Space." Voices, 30(3), 1994, 57-62.
- "Soft Males and Mama's Boys: A Critique of Bly." In Michael Kimmel, Ed., The Politics of Manhood: Profeminist Men Respond to the Mythopoetic Men's Movement (And Mythopoetic Leaders Respond). Philadelphia: Temple University Press, 1995.
- "Gender Bias, Countertransference and Couples Therapy." Journal of Couples Therapy, 1995.
- "Jail and Prison Rape." TIE-Lines, February, 1995.
- "The Politics of Psychiatry: Gender and Sexual Preference in DSM-IV." masculinities, 3,2, 1995, reprinted in Mary Roth Walsh, ed., Women, Men and Gender, Yale University Press, 1997.
- "What Do Men Want?, review of M. Kimmel's Manhood in America." Readings, 10, 4, 1995.
- Guest Editor, issue on Men's Issues in Treatment, Psychiatric Annals, 2,1, 1996.
- "Men at Work and Out of Work," Psychiatric Annals, 2,1, 1996.
- "Trauma and its Sequelae in Male Prisoners." American Journal of Orthopsychiatry, 66, 2, 1996, 189-196.
- "Consultation to Residential Psychosocial Rehabilitation Agencies." Community Psychiatric Practice Section, Community Mental Health Journal, 3, July, 1996.
- "Shame and Punishment: Review of James Gilligan's Violence: Our Deadly Epidemic and its Causes," Readings, Sept., 1996.
- "Community Mental Health: A Window of Opportunity for Interracial Therapy," Fort/Da, 2,2, 1996.
- "Men, Prison, and the American Dream," Tikkun, Jan-Feb., 1997.
- "Dependency and Counter-Dependency in Couples," Journal of Couples Therapy, 7,1, 1997, 39-47. Published simultaneously in When One Partner is Willing and the Other is Not, ed. Barbara Jo Brothers, The Haworth Press, 1997, pp. 39-47.
- "Shall We Overcome: Review of Jewelle Taylor Gibbs' Race and Justice," Readings, December, 1997.
- "The SHU Syndrome and Community Mental Health," The Community Psychiatrist, Summer, 1998.
- "Review of Jerome Miller's Search and Destroy," Men and Masculinities, 1, 1, July, 1998.
- "Will Building More Prisons Take a Bite Out of Crime?," Insight, Vol. 15, No. 21, June 7, 1999.
- "The Mental Health Crisis Behind Bars," Harvard Mental Health Letter, July, 2000.
- "Mental Health Police?," Readings, June, 2000.

- "The Men's Movement in the U.S.A.," in Nouvelles Approches des Hommes et du Masculine, ed. Daniel Weizer-Lang, Les Presses Universitaires du Mirail, Toulouse, France, 2000.
- "Symptoms, Meanings and Social Progress," Voices, 36, 4, 2000.
- "Psychotherapy with Men in Prison," in A New Handbook of Counseling & Psychotherapy Approaches for Men, eds. Gary Brooks and Glenn Good, Jossey-Bass, 2001.
- "A Very Wise Decision by the Montana Supreme Court," Correctional Mental Health Report, 5,3, 35-36, Sept./Oct, 2003.
- "Review of William Roller's The Dead are Dancing," Psychiatric Services, 54,11,1660-1661, 2003.
- "The Future of Correctional Mental Health," Correctional Mental Health Report, 6,1, May/June, 2004.
- "Foreword," David Jones (ed.): Working with Dangerous People: The Psychotherapy of Violence, Oxon, UK: Radcliffe Medical Press Ltd., 2004.
- "Malingering in Correctional Settings," Correctional Mental Health Report, 5, 6, 81-, March/April, 2004.
- "Prisons," in Michael Kimmel & Amy Aronson (eds.), Men & Masculinities: A Social, Cultural, and Historical Encyclopedia, Santa Barbara, CA & Oxford, GB, ABC Clio, pp. 630-633, 2004.
- "Mental Illness," in Michael Kimmel & Amy Aronson (eds.), Men & Masculinities: A Social, Cultural, and Historical Encyclopedia, Santa Barbara, CA & Oxford, GB, ABC Clio, pp. 537-539, 2004.
- "Toxic Masculinity as a Barrier to Mental Health Treatment in Prison," Journal of Clinical Psychology, 61,6,1-2, 2005.
- "Posttraumatic Stress Disorder (PTSD) in Prisoners," in Managing Special Populations in Jails and Prisons, ed. Stan Stojkovic,Kingston, NJ: Civic Research Institute, 2005.
- "Schizophrenia, its Treatment and Prison Adjustment," in Managing Special Populations in Jails and Prisons, ed. Stan Stojkovic, Kingston, NJ: Civic Research Institute, 2005.
- "The Prison Heat Issue," Correctional Mental Health Report, 7,2, July/August, 2005.
- "How to Create Madness in Prison," in Humane Prisons, Ed. David Jones, Oxford: Radcliffe Publishing, 2006.
- "Conditions on death row, Terrell Unit, Texas," in M. Mulvey-Roberts (Ed.), Writing for their lives: Death Row USA (pp. 69-77). Carbondale: University of Illinois Press, pp. 69-77, 2006.
- "Prison madness in Mississippi," in M. Mulvey-Roberts (Ed.), Writing for their lives: Death Row USA, Carbondale: University of Illinois Press, pp. 281-287, 2006.
- "Working with Men in Prison," In International Encyclopedia of Men and Masculinities, 1 vol., eds. M. Flood, J.K. Gardiner, B. Pease, and K. Pringle. London & New York: Routledge, 2007.
- "Post-Incarceration Civil Commitments and Public Mental Health: An Essay," Correctional Mental Health Report, 9,4, 2007.

- "Violence in Prisons, Revisited," Hans Toch & Terry Kupers, Journal of Offender Rehabilitation, 45,3/4, 49-54, 2007.
- "Posttraumatic Stress Disorder in Prisoners," Correctional Health Care Report, Vol. 9, Nos. 2 & 3, January/February, 2008
- "Prison and the Decimation of Pro-Social Life Skills," in The Trauma of Psychological Torture, Editor Almerindo E. Ojeda, Vol 5 of Disaster and Trauma Psychology Series, Series Editor Gilbert Reyes, Westport, Connecticut: Praeger, 2008
- "What To Do With the Survivors?: Coping With the Long-Term Effects of Isolated Confinement." Criminal Justice and Behavior, Vol. 35 No. 8, August 2008, pp. 1005-1016
- "Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs," T.A. Kupers, T. Dronet, M. Winter, et al., Criminal Justice and Behavior, October, 2009.
- "Mutual Respect and Effective Prison Management," in Transforming Corrections: Humanistic Approaches to Corrections and Offender Treatment, Editors David Polizzi & Michael Braswell, Durham: Carolina Academic Press, pp. 121-134, 2009.
- "Preparing an Expert's Report," Correctional Mental Health Report, 12,1, 2010
- "Treating Those Excluded from the SHU," Correctional Mental Health Report, 12,4, 2010.
- "The Role of Misogyny and Homophobia in Prison Sexual Abuse," UCLA Women's Law Journal, 18,1, 2010.
- Stuart Grassian & Terry Kupers, "The Colorado Study vs. the Reality of Supermax Confinement," Correctional Mental Health Report, Vol. 13, No. 1, May/June, 2011
- "Preparing an Expert's Report," in Practical Guide to Correctional Mental Health and the Law, by Fred Cohen (with Terry Kupers,) Kingston, NJ: Civic Research Institute, 2011
- "The Role of Psychiatry in Correctional Settings: A Community Mental Health Model," Correctional Mental Health Report, Vol. 13, No. 3, September/October, 2011
- "Testimony of Terry Kupers, M.D., at August 23, 2011 Hearing of California Assembly Public Safety Committee Regarding Conditions at Pelican Bay State Prison Security Housing Units," Correctional Law Reporter, Vol XXIII, No. 4, December/January 2012
- "A Community Mental Health Model for Corrections," Correctional Mental Health Report, Vol. 13, No. 5, January/February, 2012

Terry A. Kupers, M.D.

Depositions and Court Testimony in Past Four Years

- Deposition in Hadix v. Caruso, No. 4:92-cv-110, USDistCt, WDistMichigan, by video from Emeryville, CA, Jan. 18, 2008, regarding mental health care at certain prisons
- Testimony in Neal v. Michigan DOC, State of Mich, Circ. Ct for Co. of Washtenaw, Case No. 96-6986-CZ, Ann Arbor, Michigan, Jan. 30, 2008, regarding custodial misconduct/sexual assault against women prisoners
- Testimony in Hadix v. Caruso, No. 4:92-cv-110, USDistCt, WDistMichigan, Grand Rapids, Michigan, April 29, 2008, regarding mental health care at certain prisons
- Deposition in Verdekel v. County of Los Angeles, No. CV 06-1518 JFW (PLAx), USDistCt, CentrDistCA, June, 2008 in Oakland, regarding death in custody
- Deposition in Brandon v. Smith, US Dist Ct, Central Dist Illinois, No. 06-1316, 8/20/08 in Oakland, CA, regarding death in jail custody
- Testimony in Neal v. Michigan DOC, State of Mich (second trial), Circ. Ct for Co. of Washtenaw, Case No. 96-6986-CZ, Ann Arbor, Michigan, October 16, 2008, regarding custodial misconduct/sexual assault against women prisoners
- Deposition in Jimmy Haws v. County of Monterey, Case No. C07 02599 JF, US Dist, NoCal, San Jose Div, in San Francisco, March 19, 2009, regarding double-celling and violence in jail.
- Testimony in Verdekel v. County of Los Angeles, No. CV 06-1518 JFW (PLAx), USDistCt, CentrDistCA, in Los Angeles, Aug. 6-7, 2009, regarding death in custody.
- Deposition in Kodimer v. City of Escondido, No. 07-CV-2221-BEN, re suicide attempt in jail, Orange County, October 2, 2009, regarding suicide attempt in custody.
- Testimony in Westefer v. Snyder, No. 00-162-GPM, US Dist Ct So Dist IL, regarding due process for confinement at Tamms Correctional Facility in Illinois, testimony via video from San Francisco, October 30, 2009, regarding psychiatric effects of isolated confinement.
- Testimony in Estate of N. Bashaw v. State of Oregon, Sup Ct No. 08-08-6824-L, regarding suicide in prison, Vale, Oregon, December 17, 2009, regarding suicide in custody.
- Deposition in Marcus Lyons vs. Village of Woodridge, No. 08CV05063, US Dist Ct No Dist ILL, Eastern Div, taken in Oakland, California, , May 24, 2010, regarding effects of prison term on an innocent individual.
- Testimony in Katka v. Montana DOC, Superior Court, Helena, Montana, Cause No. BDV 2009-1163, July 20, 21, 2010, regarding treatment for prisoner with mental illness.
- Deposition in Clarence Elkins v. Summit County, Ohio, USDistCtNoDistOhio, Case #5:06CV3004, Oakland, California by video, regarding effects of prison term on an innocent individual.
- Deposition in Crawford v. Finley et al, USDistCtCntrlDistCA, Case No. CV09-3956-GHK-E, December 10, 2010, Oakland, California, regarding mental health care of a juvenile in corrections.
- Testimony in Henry Kodimer v. City of Escondido, County of San Diego et al., USDistCt, SoDistCA, Case No. 07-CV2221, February 11, 2011, San Diego, regarding the quality of mental health care of a San Diego County jail inmate.
- Deposition in Logan v. Burge, USDistCt,NoDistIllinois, Case No. 09 cv 5471, September 26, 2011, San Francisco by Video to Chicago, regarding the psychiatric impact of false conviction and incarceration.

- Deposition in Nordstrom, Deanne L. vs. Spokane County, US DistCt, EDist of Washington, Case No. CV-08-374-EFS, November 3, 2011, involving psychiatric consequences of jail sexual abuse.
- Deposition in Darryl Burton v. City of St. Louis, USDistCt, EDMissouri, November 14, 2011, San Francisco by video to Chicago & St. Louis, involving psychiatric impact of false conviction and incarceration.
- Testimony by phone in Bradley Anderson v. Farryl Anderson, 3rdDistCt, Granite County, Montana, Cause No. DR-12-03, divorce/custody hearing.

EXHIBIT V

USA

**THE EDGE OF
ENDURANCE**

**PRISON CONDITIONS IN
CALIFORNIA'S SECURITY HOUSING
UNITS**

**AMNESTY
INTERNATIONAL**



Amnesty International Publications

First published in September 2012 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Copyright Amnesty International Publications 2012

Index: AMR 51/060/2012
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publishers.

Amnesty International is a global movement of 3 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

**AMNESTY
INTERNATIONAL**



CONTENTS

1. Introduction and overview	2
I. Scope of the report.....	4
2. Background.....	5
I. California SHU reform proposals and realignment.....	6
II. The 2011 hunger strike.....	7
3. International law and standards on the treatment of prisoners and use of solitary confinement.....	9
4. US law and standards.....	11
5. Conditions in Pelican bay SHU.....	14
I. Conditions inside the cells.....	15
II. Lexan cells.....	16
III. Exercise.....	17
IV. Conditions unnecessarily and disproportionately harsh.....	18
6. Conditions in Corcoran SHU.....	19
7. Contact with the outside world.....	20
8. In-cell programming and privileges.....	23
9. Psychological and physical effects of confinement: Madrid v Gomez and beyond.....	25
10. Suicides.....	27
11. Long terms effects of isolation.....	29
12. Medical care and mental health care in SHU housing	
I. Medical care.....	30
II. Mental health care.....	32
III. Mental health monitoring of prisoners in Pelican Bay SHU.....	33
IV. Corcoran and Enhanced Outpatient hub.....	34
13. Women prisoners in the SHU.....	35
14. Criteria and current procedures for SHU assignments.....	37
I. Prisoners serving indeterminate SHU terms on the basis of gang validations.....	38
II. Concerns about gang validation criteria.....	39

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

III. Concerns about due process and the harsh consequences of an indeterminate SHU assignment..... 39

15. CDCR's proposed reforms of criteria for indeterminate SHU assignments and introduction of step-down program..... 42

 I. The Step down procedure..... 44

 II. Concerns about continued isolation during the step-down program..... 45

16. Conclusions and recommendations..... 47

1. INTRODUCTION AND OVERVIEW

More than 3,000 prisoners in California are held in high security isolation units known as Security Housing Units (SHUs), where they are confined for at least 22 and a half hours a day in single or double cells, with no work or meaningful rehabilitation programs or group activities of any kind. Over 1,000 are held in the SHU at Pelican Bay State Prison, a remote facility where most prisoners are confined alone in cells which have no windows to the outside or direct access to natural light. SHU prisoners are isolated both within prison and from meaningful contacts with the outside world: contact with correctional staff is kept to a minimum, and consultations with medical, mental health and other staff routinely take place behind barriers; all visits, including family and legal visits, are also non-contact, with prisoners separated from their visitors behind a glass screen.

Under California regulations, the SHU is intended for prisoners whose conduct endangers the safety of others or the security of the institution. Around a third of the current population are serving fixed SHU terms of SHU confinement (ranging from a few months to several years) after being found guilty through the internal disciplinary system of specific offences while in custody. However, more than 2,000 prisoners are serving "indeterminate" (indefinite) SHU terms because they have been "validated" by the prison authorities as members or associates of prison gangs. According to figures provided by the California Department of Corrections and Rehabilitation (CDCR) in 2011, more than 500 prisoners serving indeterminate SHU terms had spent ten or more years in the Pelican Bay SHU; of this number, more than 200 had spent over 15 years in the SHU and 78 more than 20 years. Many had been in the SHU since it opened in 1989, held in conditions of extreme isolation and environmental deprivation.

No other US state is believed to have held so many prisoners for such long periods in indefinite isolation. The main route out of the SHU for prisoners with alleged gang connections has been to "debrief", a process requiring them to provide information on other gang members which many decline to undertake because of the threat of retaliation. Although prisoners may also be released from the SHU if they have been "inactive" as a gang member or associate for six years, many prisoners have been held long beyond this period. Until now, these prisoners have had no means of leaving the SHU through their own positive behaviour or through participating in programs. Many prisoners have spent decades in isolation despite reportedly being free of any serious rule violations and - if they are serving a "term to life" sentence - without any means of earning parole. Prisoner advocates and others have criticized the gang validation process as unreliable and lacking adequate safeguards, allowing prisoners to be consigned to indefinite isolation without evidence of any specific illegal activity, or on the basis of tenuous gang associations, on evidence often provided by anonymous informants.

In March 2012, the CDCR put forward proposals which, for the first time, would provide a "step-down program" (SDP) for prisoners serving indeterminate SHU terms, using what the department has called a "behaviour-based model" to enable them to earn their way back to the general prison population. Amnesty International welcomes in principle plans to provide a route out of isolation through prisoners' own behaviour. However, the SDP - which would take place in four stages, each lasting a minimum of one-year - does not allow any group interaction for at least the first two years. No changes to the physical conditions of confinement are proposed for the Pelican Bay SHU, where prisoners would spend at least two years in the same isolated conditions of cellular confinement as they are now. Prisoners could still be held in indefinite isolation if they fail to meet the criteria for the SDP. In continuing to confine prisoners in prolonged isolation - albeit with shorter minimum terms than under the present system - California would still fall short of international law and standards for humane treatment and the prohibition of torture and other ill-treatment.

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

Amnesty International does not seek to minimize the challenges faced by prison administrators in dealing with prison gangs and individuals who are a threat to institutional security and recognizes that it may sometimes be necessary to segregate prisoners for disciplinary or security purposes. However, all measures must be consistent with states' obligation under international law and standards to treat all prisoners humanely. In recognition of the negative effects of such treatment, international and regional human rights bodies and experts have called on states to limit their use of solitary confinement, so that it is imposed only in exceptional circumstances for as short a period as possible. As described below, Amnesty International considers that the conditions of isolation and other deprivations imposed on prisoners in California's SHU units breach international standards on humane treatment. The cumulative effects of such conditions, particularly when imposed for prolonged or indefinite periods, and the severe environmental deprivation in Pelican Bay SHU, in particular, amounts to cruel, inhuman or degrading treatment, in violation of international law.

Amnesty International's recommendations to the California authorities, developed in more detail at the end of the report, include:

- Limiting the use of isolation in a SHU or similar environment so that it is imposed only as a last resort in the case of prisoners whose behaviour constitutes a severe and ongoing threat to the safety of others or the security of the institution.
- Improving conditions for all prisoners held in SHUs, including better exercise provision and an opportunity for more human contact for prisoners, even at the most restrictive custody levels.
- Allowing SHU prisoners to make regular phone calls to their families.
- Reducing the length of the Step down Program and providing meaningful access to programs where prisoners have an opportunity for some group contact and interaction with others at an earlier stage.

Immediate removal from isolation of prisoners who have already spent years in the SHU under an indeterminate assignment.

In making these recommendations, Amnesty International is aware that CDCR has faced a number of challenges in recent years, including cuts to its budget for rehabilitation programs. However, as its own figures show, the SHUs cost significantly more to run than general prison population facilities, despite providing the barest minimum amenities for those confined in them. As some other states have shown, cutting down on "supermax" confinement has released resources for alternative strategies to improve prisoner behaviour, including gang diversion programs.

Table 1: Pelican Bay Annual housing costs 2010-2011 as provided by the California Department of Corrections and Rehabilitation at http://www.cdcr.ca.gov/COMIO/Uploadfile/pdfs/Pelican_Bay.pdf

	Security Housing Unit (SHU)	General Population (GP)	Administrative Segregation Unit (ASU)	Psychiatric Services Unit (PSU)
Inmate Population	1, 111 inmates	1, 271 inmates	403 inmates	116 inmates
Annual housing costs	\$70, 641 per SHU inmate	\$58, 324 per GP inmate	\$77, 740 per ASU inmate	\$171, 857 per PSU inmate

Amnesty International recognizes that the responsibility for implementing humane and effective prison programs does not lie solely with the prison department but also with the state legislature and other branches of government. The organization urges these bodies to ensure that CDCR is able to fulfil its obligations by providing adequate funding for programs that will ultimately enhance

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

public safety as well as humane treatment for those incarcerated.

SCOPE OF THE REPORT

In November 2011, an Amnesty International delegation toured the SHU units at Pelican Bay State Prison, the California State Prison at Corcoran and Valley State Prison for Women. During the tours, the delegates were able to speak with a number of prisoners as well as with prison staff.¹ This report includes findings from these tours as well as information from sources including CDCR, prisoners, prisoner advocates and human rights groups in California. It contains the organization's comments and observations on the new reform proposals and makes recommendations, with reference to international and US standards. Amnesty International welcomes the openness of CDCR in granting its request to visit the facilities. The organization notes that the department has been in dialogue with a range of stakeholders and others in preparing its reform proposals, including the "mediation team" of advocates who liaised with prisoners during the recent hunger strike (see below). It hopes that CDCR will consider the recommendations in this report along with those of other parties.

Amnesty International's report focuses mainly on conditions in the SHUs at Pelican Bay and Corcoran, the two facilities which house most of the state's SHU population which is overwhelmingly male. Fifty-eight women were housed in the Valley State Prison SHU at the time of Amnesty International's visit. However, the unit has since closed and female SHU prisoners transferred to the California Institution to Women. Only a few women in California are serving indeterminate SHU terms for alleged gang associations; most are reportedly serving fixed terms for disciplinary infractions. Apart from some specific gender-based issues relating to the role of male staff and privacy in women's security housing, its recommendations on conditions apply to all SHU prisoners.

Following Amnesty International's visit, the organization sought information from CDCR on the demographics of SHU prisoners, including race, age and committal offence, which the department had indicated it would provide. The organization is disappointed that this and other information requested following its visit had not been made available at the time of writing. However, a study looking at the race of prisoners paroled from CDCR in 2007 who had previously served SHU terms showed that 55% were Hispanic, more than their proportion of the overall parole population that year (42%); 25.8% were White, slightly under their proportion of the parole population (29.4), while 15.9% were Black, less than their proportion (23.5%) of parolees in general.² This indicates that the racial/ethnic composition of prisoners in the SHU units generally reflects the racial make-up of prison gangs, although not all gang members or associates are reportedly leaders or play a major role in gang activity.³

With regard to age, the minimum age for entry into the adult prison system is 18. According to CDCR statistics, 13.5% of the adult institutional population in December 2009 was aged between 18 and 24, with 30% aged between 18 and 30. 15.5% were aged 50 and over, with the mean age being 37. Out of nine prisoners Amnesty International interviewed in the SHU, two were under 20 when they entered the SHU.

2. BACKGROUND

California is one of more than 40 US states to house prisoners in high security isolation facilities, often termed "super-maximum security" prisons. Although no exact data is available, as many as 25,000 prisoners are estimated to be held in such facilities, with thousands more held in solitary confinement for varying periods in disciplinary or administrative segregation cells at any given time.⁴ While prison authorities have always been able to segregate prisoners for their own protection or as a penalty for disciplinary offences, super-maximum security facilities differ in that they are designed to remove large numbers of prisoners from the general prison population and confine them long-term to isolation cells as an administrative control measure. States started building such prisons (or units within prisons) from the late 1980s, with the largest expansion during the 1990s.⁵

Early research on the extent of super-maximum security custody in the USA in the 1990s had California with the highest number of places. Although accounting for almost 15% of the total of such beds, California nevertheless came close to the state average for the proportion of prisoners in such conditions – 1.9% as against the average of 1.8% - because its total prison population was so large.⁶ This contrasted markedly with, for example, the United Kingdom which then held about 50 or 0.1% of its 45,000 prisoners in its highest and most restrictive form of custody for control purposes in Close Supervision Centres.

The growth of super-maximum security facilities has been linked to the huge rise in the numbers of people incarcerated in the USA from the late 1970s onwards, together with a shift away from rehabilitation as a goal of imprisonment to more emphasis on punishment and control. Between 1980 and 2009 the US prison population quadrupled to reach more than two million, an increase largely driven by heavier penalties resulting in more people serving longer sentences than ever before. As prison building costs escalated, many states cut funding for rehabilitation, education and other programs. With prisoners held in overcrowded conditions, many of them young and under-educated and with little to occupy themselves, incidents of violence and disorder increased.

The rationale given by the authorities for building super-maximum facilities was that isolating the most dangerous or disruptive prisoners would make the rest of the prison population safer. Although super-maximum prisons undoubtedly house some highly dangerous offenders, it has been shown that not all prisoners fit this category; many prisoners who end up in such units have mental illness or behavioural problems and have sometimes been confined for repeated, relatively minor rule infractions and disruptive behaviour. While prisoners are usually placed in such facilities as an "administrative" measure, the conditions – as seen in California and elsewhere – are often highly punitive in effect, with prisoners confined alone to small cells with few possessions or amenities and no access to work, vocational or other programs. As described below, the rationale for such facilities has been increasingly challenged, on grounds of the negative effects of such confinement on prisoners' mental and physical health, as well as on grounds of their cost and effectiveness as a management tool.

California was at the forefront of moves to toughen penalties, and its prison population escalated during the 1980s and 1990s following the introduction of some of the nation's harshest sentencing laws.⁷ Once a leader in the philosophy of rehabilitation, California also passed legislation which expressly described punishment rather than rehabilitation as the central aim of imprisonment.⁸ Pelican Bay SHU, which opened in 1989, was one of the first super-maximum security facilities specifically designed to be "non-programming", that is, constructed with no communal space for recreation, education or any other group activity.⁹ California State Prison at Corcoran opened a year earlier in 1988, retrofitted to include several SHU units, currently with a SHU population of over 1,300. Since then, California has also built a SHU unit at the California Correctional Institution at Tehachapi (housing some 840 prisoners in 2011) and a smaller unit at California State Prison, Sacramento. The above are all facilities for males. A smaller SHU unit at Valley State Prison for Women was recently transferred to the California Institute for Women. Although the percentage of prisoners in California's SHUs – just over 2% - remains not much greater than the reported US

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

average in "super-maximum" custody, the sheer numbers (more than 3,000) are higher than in most states as is the length of time many prisoners have been housed in such units. There are also thousands of prisoners held for shorter periods in isolation in administrative segregation units throughout the state.

The California authorities have said that the SHUs were created in response to the serious violence and threats to security largely caused by prison gangs. They have pointed to a dramatic drop in the number of prison homicides after Pelican Bay and Corcoran SHUs were opened. However, there is some dispute about how far the use of super-max units has led to a fall in violence, in California or elsewhere.¹⁰ One study has shown that, while violence in California's prisons reached a peak in the mid 1980s and declined thereafter, assault rates started to rise again from the mid 1990s onwards, and that homicides remained higher than the average in both Pelican Bay and Corcoran prisons.¹¹ In testimony at a hearing to a state legislative committee in August 2011, CDCR spokesperson Scott Kernan said he believed the violence would have been even higher had they not had the SHUs. However, many penal experts have argued that, even if SHUs have some incapacitating effect, violence and disruption can be better controlled by alternative measures, such as more effective prison management, increased vigilance over contraband and weapons, and programs to divert prisoners from gang-related activities.

Prison reform experts have also pointed out that, even where it is necessary to segregate some prisoners, they should not be cut off from rehabilitation programs. Most prisoners, even those in SHU confinement, will eventually be released. As described below, the damaging effects of prolonged isolation and confinement to a cell may persist long after prisoners are released back to the community. Prison reformers have argued that the high cost of super-maximum confinement should be seen not only in financial terms but also in terms of the risk to public safety of warehousing prisoners in stark conditions, with little human interaction or access to meaningful programs.

In recent years, a number of US states have started to rethink their use of super-maximum confinement. There has also been renewed recognition among penal experts and administrators of the value of rehabilitation programs for prisoners and parolees in general. In July 2005 in California, the former Department of Corrections "changed its name and mission to address the rehabilitation and re-entry needs of incarcerated females and males" and set up more programs aimed at reducing recidivism. While reforms to supermax housing have often been driven by litigation and/or the need to cut costs, several states have reported positive outcomes in terms of improved prisoner behaviour and reductions in violence after they reduced their use of isolation and introduced better conditions for high risk prisoners.¹²

CALIFORNIA SHU REFORM PROPOSALS AND REALIGNMENT

In California, CDCR has proposed reforms which it says will ultimately reduce the numbers in the SHU by changing the criteria for assigning alleged gang members or associates to the SHU and providing access to a step-down program. These proposals have been made in the context of wider moves to reduce the state's prison population. In August 2009, a three-judge panel ordered California to reduce overcrowding in its 33 prisons to 137.5% of its design capacity, after finding that overcrowding was the "primary reason" the state had been unable to deliver adequate medical and mental health care to its inmate population. The order was upheld by the US Supreme Court in May 2011.¹³ The state has since enacted several bills to move low level offenders from state authority to the counties (local authorities) under a process known as "realignment". Under this process, less serious offenders will now serve their sentences in local jails instead of state prisons and most people on parole will be supervised at county rather than state level. By June 2012, the state prison population had fallen to some 136,000 inmates - down from a peak of 173,000 in 2006 - with further reductions anticipated for the future.¹⁴

CDCR has said that "realignment" and the resulting reduction in overcrowding provided the opportunity to revise its SHU policies, as well as to focus on providing more effective rehabilitation programs for the inmate population in general. However, a number of challenges remain. Although it has achieved significant reductions to its prison population, California still has more prisoners than any other US state apart from Texas and more than most other countries.¹⁵ The department

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

has already experienced substantial reductions in its budget and staffing in recent years, despite reportedly having one of the lowest ratios of staff to inmates of any state. While further cuts are intended to reflect reductions in the numbers of prisoners, there is concern that they may not leave sufficient funds to provide adequate programs for the remaining population. This concern was reflected in a February 2012 report by the Legislative Analyst on the budgetary implications of realignment, which states that CDCR "is not currently delivering rehabilitation programs for inmates and parolees as effectively as possible".¹⁶ The report recommended that the Legislature not approve a proposed further reduction of \$101 million to rehabilitation programs until CDCR had presented a plan on how it will implement effective programming under realignment.

As described in this report, Amnesty International does not believe that the current proposals to reform SHU policies and provide a step-down program for prisoners in isolation go far enough to bring the system into compliance with the USA's obligations for the humane treatment of prisoners. Amnesty International urges the legislature and CDCR to ensure that sufficient resources are available to provide meaningful programs to all prisoners.

THE 2011 HUNGER STRIKE

"During the hunger strike he was taken to a Pelican Bay Administrative Segregation Unit (ASU) with eleven other hunger strike leaders. He was in ASU with no warm clothes, bed blankets, possessions (including writing materials). The air conditioning was turned right up while he had just a t-shirt and trousers."

Wife of gang validated SHU prisoner, one of the hunger striker leaders - this information was corroborated by one of the lead hunger strikers with whom the Amnesty International delegation spoke

On 1 July 2011, prisoners in the SHU initiated a hunger strike to protest against their conditions of confinement, bringing the issue into the public spotlight.¹⁷ The strike spread to prisons across the state, with more than 6,000 prisoners participating at one point. The hunger strikers' demands for improved conditions in the SHUs give an indication of just how stark those conditions were: they included requests for access to personal items such as being able to purchase wall calendars, "watch caps" (outdoor headwear when exercising in bad weather), "sweat pants" (to keep warm) and at least some basic in-cell art materials. They also asked to be able to have an annual photograph taken to send to their families (a common practice allowed to most prisoners).

The strike ended on 20 July after CDCR agreed to make some modest changes immediately (allowing prisoners to have "watch caps", wall calendars and some other personal items), and said it was undertaking a policy review to address the wider demands. One of the hunger strikers' "core demands" was that California comply with the US Commission on Safety and Abuse in Americas Prisons 2006 recommendation to end long term solitary confinement and make segregation a last resort. The strikers also called for prisoners who had served ten or more years of indefinite SHU confinement to be released to the general prison population. Other demands included better food (following repeated complaints that the food provided to SHU prisoners was often cold and lacking nutrition) and requests that SHU inmates with chronic health problems be moved to the New Folsom Medical SHU facility.

Following concern among prisoners about what they perceived as a lack of progress in implementing changes, the hunger strike resumed briefly in late September 2011, but was called off after meetings between prisoner representatives and CDCR and further assurances that CDCR would institute changes. While no disciplinary action had been taken against the first hunger strikers, the second hunger strike was treated by CDCR as a major rule violation and some prisoners were punished by having their property and canteen privileges confiscated. Fifteen of the strike leaders were reportedly moved to harsh conditions in administrative segregation cells for a short period. Amnesty International wrote to CDCR at the time, urging it to take action to end to the hunger strike by providing assurances on improvements both to conditions and the procedures by which prisoners are assigned to the SHU, rather than through disciplinary action resulting in still harsher conditions.¹⁸

3. INTERNATIONAL LAW AND STANDARDS ON THE TREATMENT OF PRISONERS AND USE OF SOLITARY CONFINEMENT

The USA has ratified the United Nations (UN) Convention against Torture and the International Covenant on Civil and Political Rights (ICCPR) both of which affirm the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment under international law (articles 1 and 16 of the Convention against Torture and article 7 of the ICCPR). Additionally, the ICCPR, in Article 10, requires that "all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person".

The UN Human Rights Committee, the body which monitors states' compliance with their obligations under the ICCPR, has stated that humane treatment of those deprived of their liberty is a "fundamental and universally applicable rule" which imposes a positive obligation on states towards those who are deprived of their liberty and which complements the prohibition on torture or other cruel, inhuman or degrading treatment or punishment. International standards also provide that prisoners should not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty or restrictions that are unavoidable in a closed environment.¹⁹ States are obliged to provide prisoners with services to meet their essential needs. These essential needs include adequate food and water, washing and sanitary facilities, bedding and clothing, health care, access to natural light, physical exercise, facilities to allow religious practice, and communication with others. In this regard the Human Rights Committee has, in its General Comment on Article 10 and frequently when commenting on states parties' reports, cited the standards set out in the UN Standard Minimum Rules for the Treatment of Prisoners (SMR); although not as such having the legally binding force of a treaty, the SMR set out minimum standards which the UN Special Rapporteur on Torture has said are "widely accepted as the universal norm for the humane treatment of prisoners".²⁰

Key standards for the treatment of prisoners are also set out in the Basic Principles for the Treatment of Prisoners, adopted by the UN General Assembly in 1990, which reiterates that all prisoners should be treated with the respect due to their inherent dignity and value as human beings (Principle 1) and, among other things underlines that except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain all their human rights (Principle 5); specifically they state that all prisoners must have the right to take part in cultural activities and education aimed at the development of the human personality (Principle 6), and they must have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

The Human Rights Committee has emphasized that the prohibition of torture and other cruel, inhuman or degrading treatment under international law "relates not only to acts that cause physical pain but also to acts that cause mental suffering" and has stated, specifically, that prolonged solitary confinement may breach this prohibition.²¹

The Human Rights Committee and the Committee against Torture (CAT) (the monitoring body of

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

the Convention against Torture) have criticized the harsh conditions of isolation in some US "super-maximum" facilities as inconsistent with the USA's obligations under the above treaties. In 2006, the Human Rights Committee reiterated its concern that "conditions in some maximum security prisons are incompatible with the obligation contained in article 10(1) to treat detained persons humanely", citing, in particular, prolonged cellular confinement, lack of adequate exercise and the "depersonalized environment" found in such units.²² The Committee also observed that such conditions "cannot be reconciled with the requirement in Article 10 (3) that the penitentiary system shall comprise treatment the essential aim of which shall be the reformation and social rehabilitation of prisoners".²³ The CAT has urged the USA to review "the regime imposed on detainees in supermaximum prisons, in particular the practice of prolonged isolation", noting the effect of such treatment on prisoners' mental health.²⁴

International and regional human rights and other bodies have long expressed concern about the use of solitary confinement in prisons because of the physical and mental harm and suffering this may cause. The Basic Principles for the Treatment of Prisoners, states under Principle 7 that efforts to abolish solitary confinement as a punishment, or restrict its use, should be undertaken and encouraged. The European Prison Rules, adopted by the Council of Europe in 2006, state that solitary confinement should be imposed as a punishment "only in exceptional cases and for a specified period of time that shall be as short as possible".²⁵ The Istanbul Statement on the Use and Effects of Solitary Confinement, adopted at the International Psychological Trauma Symposium in December 2007, recommends clear limits on the use of solitary confinement in the criminal justice system, given the serious psychological and other consequences of such treatment. The jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights has also has in a number of cases found solitary confinement to breach the prohibition of torture and other ill-treatment and the obligation of humane treatment under the respective regional human rights conventions.²⁶

In August 2011, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment issued a detailed report reviewing the practice of solitary confinement, which he defined as "the physical and social isolation of individuals who are confined to cells for 22-24 hours a day".²⁷ The report cited the findings of regional and international human rights bodies and experts, and reviewed studies showing the severe negative effects isolation can have on prisoners' physical and mental health, even when imposed for limited periods.

The Special Rapporteur stressed that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects, and contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society. He noted that reduced social stimulus resulting from solitary confinement, even over a short period, can have detrimental effects on an individual's mental health, and that this effect is exacerbated when individuals in solitary confinement are supervised with almost no human interaction. He stated that, depending on the conditions, length, effects and other circumstances, it can amount to torture or cruel, inhuman or degrading treatment or punishment. He urged states to abolish its use for juveniles and persons with mental disabilities and for prolonged or indefinite periods. He stressed that it should be used only exceptionally, as a last resort, and for as short a time as possible, with procedural safeguards including that those subjected to it must have a genuine opportunity to challenge the confinement and its underlying justification through a process of administrative review and through the courts. Throughout there should also be a documented system of regular monitoring and review of prisoners' mental and physical condition by qualified independent medical personnel accountable to an authority outside the prison administration; any deterioration of the inmate's mental or physical condition should trigger a presumption that the conditions of confinement are excessive and activate an immediate review.

4. US LAW AND STANDARDS

The US Supreme Court has not ruled that solitary confinement, even when imposed indefinitely, is *per se* a violation of the US Constitution. However, there is a growing consensus among the US courts that housing mentally ill prisoners in "super-maximum security" isolation units is incompatible with the Eighth Amendment prohibition of "cruel and unusual punishment" under the US Constitution. One of the landmark rulings was *Madrid v Gomez* (1995), which ordered the removal of seriously mentally ill prisoners from the Pelican Bay SHU on the ground that conditions put them at high risk of suffering "very severe injury to their mental health".²⁸ However, the court stopped short of ruling that conditions for all prisoners at Pelican Bay SHU were unconstitutional (although, as discussed below, there is some evidence that neither the *Madrid* court nor the designers of the unit had envisaged such long term confinement there).

Judge Henderson, in delivering the *Madrid* ruling, noted that, "the record demonstrates that the conditions of extreme social isolation and reduced environmental stimulation found in the Pelican Bay SHU will likely inflict some degree of psychological trauma upon most inmates confined there for more than brief periods". However, he held that, "while the conditions in the SHU may press the outer bounds of what most humans can psychologically tolerate, the record does not satisfactorily demonstrate that there is a sufficiently high risk to all inmates of incurring a serious mental illness from exposure to conditions in the SHU to find that the conditions constitute *per se* deprivation of a basic necessity of life".²⁹

The court noted in its ruling that the California authorities had a legitimate penological interest in restricting the social activity of certain inmates. While Judge Henderson observed that some aspects of the SHU – such as windowless cells, lack of any view or equipment in the exercise yards – appeared to have tenuous links with what was necessary on security grounds, the court deferred to the considerable discretion afforded states by the federal courts to determine the specific conditions of confinement. Thus, the ruling left unchanged the physical conditions in the SHU.

While the impact of many years of indefinite SHU confinement in the conditions at Pelican Bay might persuade a court today to reach a different decision, the ruling reflects the very high threshold set by the US courts in deciding claims of cruel prison conditions. The US Supreme Court has held that for conditions to amount to "cruel and unusual punishment" they must be so severe as to deprive the inmate of a "basic necessity of life".³⁰ This has been interpreted to include the physical requirements of food, clothing, shelter, medical care and personal safety.³¹ However, the courts have been less willing to consider psychological pain or deterioration in a prisoner's mental state as sufficient to judge conditions unconstitutional, except in very severe cases.³²

Since *Madrid*, other US courts have held that housing seriously mentally ill prisoners in "supermax" conditions is unconstitutional. However, Amnesty International believes that insufficient attention has been paid by the US courts – or by legislators and prison administrators – to the mental pain and suffering endured by all prisoners, whether or not they are assessed as suffering from serious mental illness, who are subjected to prolonged isolation and environmental and other deprivations.

The USA has sought to limit the application of international human rights law in its conduct by entering reservations to article 7 of the ICCPR and article 16 of the Convention against Torture as a condition of ratifying the treaties. The reservations state that the US considers itself bound by the articles only to the extent that "cruel, inhuman or degrading treatment or punishment" means the "cruel and unusual treatment or punishment" prohibited under the US Constitution. In its initial report to the Human Rights Committee on its obligations under the ICCPR, the US administration, then under President Bill Clinton, explained its reservations by stating that certain US practices had withstood judicial review in the US courts under constitutional provisions which were arguably narrower than the scope of Article 7. The report cited, as an example, prolonged judicial proceedings in cases involving capital punishment, which the Committee had suggested could

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

constitute cruel, inhuman or degrading treatment or punishment in contravention of Article 7, and it noted that "the Committee has also indicated that the prohibition may extend to other practices as corporal punishment and solitary confinement."³³

Amnesty International has repeatedly called on the USA to withdraw its reservations as defeating the object and purpose of the treaties in question and therefore incompatible with international law.³⁴ The Human Rights Committee has also noted with concern the restrictive interpretation made by the US of its obligations under the Covenant, as has the Committee against Torture.³⁵ In any event, the USA has made no similar reservation to Article 10 of the ICCPR which requires that all prisoners must be treated humanely, without exception. Given the clear consensus among international human rights bodies and experts that prolonged or indefinite solitary confinement is inhumane treatment, Amnesty International is concerned that US courts and governments continue to accept such practice.

While the US courts have taken a relatively narrow view of what are unconstitutional prison conditions – largely deferring to prison administrations on measures deemed necessary on security grounds – other US bodies have been more robust in expressing concern about the use of solitary confinement.

In its 2006 report *Confronting Confinement*, the Commission on Safety and Abuse in America's Prisons (a broad based panel co-chaired by a former US Attorney General and a former Chief Judge) called for an end to conditions of isolation in US prisons.³⁶ The report acknowledged that "Separating dangerous or vulnerable individuals from the general prison population is part of running a safe correctional facility". However, it found that in some systems, the "drive for safety, coupled with public demand for tough punishment has had perverse effects", with prisoners who were justifiably separated from the general population locked in cells with little opportunity to be productive or to prepare for release and others who were not a serious threat confined under the same conditions. The report noted that in some places "the environment in segregation is so severe that people end up completely isolated, living in what can only be described as torturous conditions".³⁷

The Commission recommended making segregation a last resort, for as brief a period as possible, with tighter admissions criteria and segregated prisoners given an opportunity to engage in productive activities. Noting higher recidivism rates among prisoners released directly from segregation, the Commission also recommended that inmates should spend time in a normal prison setting before being released to the community. The Commission called on US jurisdictions to "End conditions of isolation" and "Ensure that segregated prisoners have regular and meaningful human contact and are free from extreme physical conditions that cause lasting harm", citing as examples systems where prisoners are held in cells with few possessions and no natural light or view outside the cell and no contact with other prisoners or meaningful contact with staff.³⁸

In 2010, the American Bar Association (ABA) promulgated standards on the treatment of prisoners which included standards on segregation.³⁹ These state that segregated housing "should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner" (Standard 23-2.6). The standards state that segregation for more than one year should be imposed only if the prisoner poses a "continuing serious threat" (23-2.7); that "Conditions of extreme isolation should not be allowed regardless of the reasons for a prisoner's separation from the general population" (23-3.8 (b)); and that all prisoners in segregated housing should be provided with "meaningful forms of mental, physical and social stimulation", including, where possible, more out-of-cell time and opportunities to exercise in the presence of other prisoners (23-3.8 (c)). The standards also recommend a number of procedural protections for prisoners placed in segregated housing, including a hearing at which the prisoner has a reasonable opportunity to present witnesses and information and to participate in the proceedings, with regular, meaningful review (23-2.9).

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

5. CONDITIONS IN PELICAN BAY SHU

“You lay there in your concrete tomb trying to block out the cold especially in the winter when this place is like a morgue. The wall I lay next to is an exterior wall... it’s like sleeping next to a block of ice... sometimes the floor is warmer and there I will sleep”.

Letter written by an inmate who has been held in the Pelican Bay SHU for 16 years as a gang associate

The Pelican Bay SHU is a separate facility within Pelican Bay State Prison maximum security complex in Crescent City, situated in the far north of California close to the border with Oregon. At the time of Amnesty International’s visit to the prison in November 2011, around 1,100 prisoners were held in the SHU, slightly above the official capacity of 1056. According to CDCR, 98% of prisoners in PBSP SHU are validated gang members serving indeterminate SHU terms. Figures released by CDCR in 2011 revealed that more than 500 prisoners had spent over ten years in Pelican Bay SHU; of this number, 78 had spent 20 or more years in the SHU. Many prisoners have been there since the prison opened in 1989, held in conditions of severe isolation. Amnesty International considers that the design and operating procedures in the SHU fall short of international standards for humane treatment.

Modelled on the Special Management Unit in Arizona, Pelican Bay SHU is designed to minimize human contact and reduce visual stimulation.⁴⁹ It consists of a low level concrete structure divided into cell blocks. The cell blocks themselves are divided into “pods”, each containing eight cells arranged on two tiers. The cells have no windows and face a blank wall so that prisoners have no view and cannot see each other. Each pod is self-contained with an exercise pen at one end and a shower at the other so that, apart from visits or occasional trips to the law library or for medical treatment, prisoners need never leave the confines of the pod.

A central control area overlooks each cell-block, with TV screens giving a view into the pods. In general, correctional staff enter the pods only when delivering food to prisoners through slots in the cell doors, or when conducting cell searches. All doors are operated electronically and individually, so that a prisoner can be let out of his cell to go the exercise pen or shower cell without having contact with a guard or another prisoner. Prisoners are shackled with handcuffs and ankle chains whenever they are escorted outside the pod. Apart from visits by a chaplain, people outside the prison system rarely have access to the housing pods. Amnesty International’s delegates entered a pod in an area of D wing known as the “short corridor” where alleged gang leaders are held. One prisoner, who had been in the SHU for 22 years, told a delegate that they were the first outsiders he had seen in the cell block for years.

CONDITIONS INSIDE THE CELLS

Prisoners are confined to their cells for at least 22 and a half hours a day. The concrete cells measure approximately 80 square feet and are equipped with two built-in cement bunks against the back wall, a combined toilet and sink unit, a concrete slab which serves as a desk, a fixed stool and small shelf for a TV. Although the bunks allow for double occupancy, albeit in a very confined space, 90% of prisoners currently in Pelican Bay SHU are single-celled and have no physical contact with any other inmate. Prisoners have no work, vocational training, or recreational or group activities of any kind. All meals are taken in the cells, delivered through a slot in the door. The table, toilet and sink unit are positioned close to each other on one side of the cell. As Amnesty International has observed elsewhere, there is a concern about the possible health risks from spending so much time in a confined space, and eating all meals in close proximity to the open toilet.⁴¹

The 80 square feet cell size just meets the standard set by the American Correctional Association (ACA) for prisoners who spend more than 10 hours a day confined to a single cell. While the standard is not binding, it provides a nationally recognized benchmark for best practice.⁴² However, a cell sized 80 square feet falls short of this standard if it accommodates two prisoners. While most prisoners in Pelican Bay SHU are not currently double-celled, Amnesty is concerned that a purpose built, relatively modern facility has been designed to accommodate two prisoners in a space recommended for single occupancy. Although having a suitable cell-mate alleviates some of the effects of isolation, confining prisoners together in a small space for such prolonged periods may cause additional stresses.⁴³

The cell doors are constructed of heavy gauge perforated metal which, in the words of the federal judge in the *Madrid* ruling, "significantly blocks vision and light".⁴⁴ The only natural light source in each pod comes from a skylight in the ceiling of the central corridor, above and beyond the cell tiers. The cells are primarily lit with a fluorescent light which can be operated by the inmate, with lights in the corridor which stay on at all times but are reportedly dimmed at night. Amnesty International's delegates stood inside a vacant cell and noted that, when the cell light was turned off and the door closed, little natural light entered the cell which was very gloomy, despite it being a bright day. (While it was just possible to read without artificial light, it would be difficult to do this for any length of time or on a dull day.)

The lack of natural light in the housing cells contravenes the UN Standard Minimum Rules for the Treatment of Prisoners (SMR) which state that "In all places where prisoners are required to live or work, a) windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation" (Rule 11).⁴⁵ The UN Special Rapporteur on Torture has said that the provisions in the SMR relating to light and air are "of critical importance to the adequate treatment of detainees in solitary confinement."⁴⁶

The ACA standards also require that "all inmates' rooms/cells provide access to natural light" and that "segregation housing units provide living standards that approximate those of the general population" in prison.⁴⁷

The honeycombed-shaped perforations in the cell doors are designed to be small enough to prevent objects from being thrown through them, while allowing surveillance of the cell interior (CCTV cameras are positioned along the corridor for this purpose). However, it is difficult to focus when looking through the doors at close range. Amnesty International's delegates spoke to several prisoners at the cell door and found their vision became strained after just a few minutes of peering through the perforations in the thick steel. The doors thus have the dual effect of both hampering vision at close range (thereby hindering communication with anyone at the cell door), while allowing a full view into the cell from a distance. The latter means that prisoners are potentially on view at all times even when using the toilet which is situated at the front of the cell, and thus they have no privacy. The structure of the cell doors is just one example in the design of the SHU where, in Amnesty International's view, security considerations have taken precedence over the obligation

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

to provide a humane environment.

While the perforated doors allow entrance of some fresh air, prisoners have complained of cells becoming very cold in winter, particularly at night, and of not being provided with adequate clothing. The cold temperature is reportedly exacerbated by failure to insulate outside walls at the back of some cells, where the concrete bunks are situated. There are also reports that the ventilation system is inadequate, consisting of recycled air, releasing dust and particles, leading to respiratory problems.⁴⁸ While Amnesty International was unable to assess this through its visit, it believes that these complaints should be addressed. CDCR should ensure that cells are sufficiently insulated from cold, are maintained at adequate temperatures and with sufficient ventilation. All prisoners without exception should be provided with adequate clothing, blankets and headwear.

LEXAN CELLS

"He tells me the hardest thing to bear is the lack of human contact. In the SHU, you can't touch people; you lack sunlight, even noise. It is total sensory deprivation".

Wife of a gang validated prisoner who was one of the lead hunger strikers

In the cell block Amnesty International visited, the doors of the eight cells in one pod (F pod) were covered with sheets of unbreakable transparent plastic (Lexan). The plastic sheets are reportedly installed to prevent prisoners thrusting sharp objects or spitting or throwing faeces through the perforations in the cell doors. All of the cells were occupied at the time of the visit (one prisoner per cell) and the organization was told they would usually remain in the Lexan cells "for the duration" of their time in the SHU. Amnesty International is concerned that the Lexan covered cells further isolate prisoners and may worsen the air quality inside the cells by blocking air circulation through the perforated doors. According to testimony about the effect of Lexan cells elsewhere, they allow heat and humidity to build up within the cell during warm weather and muffle sound so that it is more difficult to communicate with someone behind Lexan doors.⁴⁹

Following its visit Amnesty International sought information from CDCR on the number of prisoners held in Lexan-covered cells at Pelican Bay SHU and the reasons why prisoners were held in such cells. This information had not been provided at the time of writing. However, each cell block in the SHU is reported to have one pod of Lexan covered cells. According to a prison mental health expert, most throwing of bodily wastes in prison (also known informally as "gassing") occurs in solitary confinement/isolation units, and, along with non-suicidal self-harm and smearing excrement on cell walls, is usually a symptom of mental health or behavioural problems stemming from, or exacerbated by, the harsh, isolative conditions of confinement.⁵⁰ One high ranking official is reported as saying that he had never heard of "gassing" before the advent of the SHU, but once Pelican Bay SHU opened, gassing became a frequent occurrence.⁵¹ Amnesty International appreciates that gassing is a particularly unpleasant experience for officers and may also, in some instance, carry a risk of harm. However, the organization is concerned that prisoners who engaged in disturbed behaviour such as spitting or throwing excrement should be held in Lexan cells instead of receiving treatment for their behaviour in a more therapeutic environment.

EXERCISE

"The roof is a wire mesh with a plexi-glass covering; if you look up your view is distorted by the mesh. You do not get any direct sunlight and you are under surveillance by the video camera the whole time"

Description of a SHU exercise yard in a letter written by an inmate who has been held in the SHU at Pelican Bay for 16 years

SHU Prisoners are allowed to exercise for an hour and a half a day, alone (or with a cell-mate in the few cases where they have one) in a bare, concrete yard at the end of each pod. The narrow yard

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

has 20 foot high walls, giving no view of the outside and the top is covered with a partially meshed plastic roof. Following the May 2011 hunger strike, CDCR agreed to allow prisoners to have a ball during exercise and was considering the installation of exercise equipment such as a "chin-up" bar. No exercise equipment had been installed in the yards at Pelican Bay or Corcoran SHU at the time of Amnesty International's visit, although the new step-down program states that "isometric exercise equipment" may be allowed during recreation as "deemed appropriate".⁵² No seating was provided in the exercise area, which is of concern given that many of the prisoners are elderly and some suffer from joint problems. It is reported that some prisoners do not always take their yard time because of the lack of facilities, or yard time is cancelled due to staff shortages or other disruptions; the yards also reportedly get flooded at times when the weather is wet (Crescent City has one of the wettest climates in California).

"He has constructed this routine as he doesn't want to have time to think about where he is...surprisingly he says that he feels 'time goes by too fast...I get up, I exercise, I clean my cell, I draw, I read, I write letters and then I go to sleep'".

Sister of prisoner issued with an indeterminate SHU sentence at Pelican Bay and held in solitary confinement for more than 21 years

International standards require that prisoners not engaged in outdoor work should have at least an hour of suitable exercise in the open air daily (SMR 21 (1)). The SMR further provide that "Young prisoners and others of suitable age and physique shall receive physical and recreational training during the period of exercise" and that, to this end, "space, installations and equipment should be provided" (SMR 21 (2)). While the time allowed in the yard meets the above minimum standard, if adhered to daily, Amnesty International does not believe that conditions in the exercise yards at Pelican Bay are adequate to qualify as "suitable outdoor exercise", particularly for prisoners otherwise confined to cells for long periods. As noted by the federal judge in the *Madrid v Gomez* ruling, "given their cell-like design and physical attachment to the pod itself, the pens are more suggestive of satellite cells than areas for exercise or recreation".⁵³ The need for adequate exercise is particularly important where prisoners are cut off from normal activities and spend long periods in their cells, and in view of the detrimental effects on health of lack of exercise.

One of the requests made by the hunger strikers across the state SHUs was that prisoners be provided with "watch" caps to wear during exercise. A CDCR memorandum to wardens during the hunger strike stated that "In some instances inmates are not being provided with the appropriate attire for inclement weather conditions when being released to the yard in the SHUs." The memorandum reminded staff to provide suitable clothing, noting that several notices about this had been issued since 2005.⁵⁴ During its visit to Corcoran SHU, one prisoner told Amnesty International that he and others were forced to improvise, cutting up T-shirts to make caps in cold weather. All prisoners now reportedly have watch caps and can purchase sweat pants and thermals.

CONDITIONS UNNECESSARILY AND DISPROPORTIONATELY HARSH

"I understand that I broke the law, and I have lost liberties because of that. But no one, no matter what they've done, should be denied fundamental human rights. Our constitution protects everyone living under it; fundamental rights must not be left at the prison door"

Letter written by gang validated inmate held in Pelican Bay SHU for 16 years having been imprisoned under the California "three strikes" law

As with a number of US supermax facilities built in the late 1980s and 1990s, Pelican Bay SHU was designed by architects working in close collaboration with correctional staff. While consultation with correctional staff is an appropriate part of the process, in practice this has sometimes resulted in an emphasis on security at the expense of the welfare of prisoners.⁵⁵ This is illustrated in Pelican Bay SHU by the design of the cells, the minimal provision for exercise and lack of any space for group activity or out of cell programs. The original design had no law library, despite prisoner access to a law library or other legal services provision being mandatory under the constitution. Following the *Madrid v Gomez* lawsuit, a law library was constructed out of one of the visiting areas.

According to one recent study, two high level correctional administrators who were involved with the building and financing of Pelican Bay in the 1980s had supported the construction of SHU

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

housing to isolate gang members and limit violence, but said that the isolation was never intended to be indefinite but rather limited to around 18 months – only a fraction of the time many prisoners have now spent there.⁵⁶

The conditions and regime of the Pelican Bay SHU are inconsistent with international norms which provide that imprisonment should not impose hardship beyond that inherent in the deprivation of liberty and maintenance of order. The Human Rights Committee, in its General Comment on Article 10 of the ICCPR emphasizes that persons deprived of their liberty may not be "...subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons...". (General Comment 21)

The SMR state, as a guiding principle that:

Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation. (Article 57)

Amnesty International considers that the restrictive conditions built into the design of the Pelican Bay SHU, and the lack of human interaction in an already isolated environment, are gratuitously harsh, going beyond what is necessary for security purposes. There is no justifiable penological reason for depriving prisoners even in a segregated environment of natural light, adequate exercise or meaningful human contact. Access to natural light and exercise are basic needs, essential for physical and mental health. As described below, many prisoners in the SHU are reported to suffer from chronic health problems due to their conditions of confinement.

6. CONDITIONS IN CORCORAN SHU

California State Prison, Corcoran (CSP-COR) has an even larger SHU population than Pelican Bay SHU. The prison houses prisoners at various security levels and was retrofitted soon after it opened in 1988 to include two SHU facilities. There were 1,350 prisoners in the SHU in November 2011, around half of whom were validated gang members or associates, with the other half serving fixed SHU terms for serious disciplinary infractions.

The cells in the SHU are similar to standard general population maximum security cells. They are arranged on two tiers overlooking a central space and are equipped with two bunks, a built-in toilet and sink unit, desk and space for a TV. Unlike Pelican Bay, each cell has a narrow window to the outside. The lights in the cells are controlled by guards and, although they are dimmed at night, some light is on 24 hours a day. The cell doors in the unit Amnesty International visited were constructed of perforated metal of a different design to those in Pelican Bay, the perforations being finer and easier to see through without distortion when talking to someone at the cell door. Some cells have solid metal doors – one prisoner said these cells “can get very hot in summer, especially with two guys”. The cells measure 80 square feet, and about half have two prisoners sharing, meaning the cell space falls below ACA standards for inmates confined to cells for 10 hours or more a day; despite the cramped space, some prisoners say they prefer to share a cell to relieve the isolation.

Prisoners in Corcoran SHU are confined to cells for 22 and a half hours a day and are subject to the same restrictions as in the Pelican Bay and other SHU facilities, with very limited possessions and amenities. One difference is that outdoor exercise takes place in individual cages. The yards have a view of other buildings within the prison confines and it is possible to communicate with prisoners in adjacent cages. However, the yards are too small to throw a ball and, at the time of Amnesty International's visit, had no equipment, although provision of some exercise equipment has been proposed as part of the “step-down” program. Three of the five prisoners the delegates interviewed said they had less than 10 hours a week of exercise: one said his building got 7 hours and not every day; another said he got around 7-9 hours a week but “sometimes we don't get it”; and a third said he did not always go to the yard from choice as there was no equipment and nothing to do. Amnesty International recommends that for prisoners confined to cells for prolonged periods the exercise yards be made larger to enable more effective exercise and prisoners be encouraged to take outdoor exercise daily.

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

7. CONTACT WITH THE OUTSIDE WORLD

“Since 2001 I’ve been trying to get a hardship transfer...due to my parents’ health and age they can no longer travel the long distance, 15-18 hours to Pelican Bay. I was told I couldn’t get a transfer but, that they might consider my transfer if I would debrief. In November 2009 my mom passed away, I never got to see her again, the last time I talked to her was in 1999.”

Letter written to Amnesty International by a prisoner who has spent more than 14 years in Pelican Bay SHU as an alleged gang associate

Prisoners in the SHU may correspond with their attorneys, families, friends and outside organizations, subject to certain restrictions. However, all visits, both social and legal, are non-contact, taking place behind a glass screen with communication through telephones in the visitation booths. In practice, many prisoners in Pelican Bay have few or no visits. This is largely due to the remote location of the prison and its distance from Los Angeles and Southern California where most prisoners, many of Hispanic origin, come from.

Prisoners have also expressed concern that social visits are allowed only at week-ends for a maximum of 1.5 to 2 hours on each day, which is said to be unduly restrictive, given the distance that relatives have to travel. Many other states and the federal system allow for longer visitation hours on more days of the week. A memorandum from CDCR in July 2011 stated that the department was unable to extend visiting periods in prisons due to budget constraints, but would endeavour to allow more than 2 hours if no-one was waiting for the next slot. While this may increase contact for some prisoners, Amnesty International has received letters from prisoners describing how they have not received visits in years, due to the expense and difficulty of relatives (including elderly parents) being able to travel to the prison. Some prisoners have spent more than a decade in the SHU without visits from their family.

"Every aspect of PBSP-SHU is oppressive/punitive – in an ongoing effort to break men down to debrief...e.g. zero amount of human contact – no phone calls – rare to zero visits with family or friends [visits are behind glass and over a phone]".

Letter sent to Amnesty International from prisoner held in Pelican Bay SHU

California SHU inmates are also denied regular telephone calls with their families, exacerbating their isolation from the outside world. Only prisoners undergoing “debriefing” are allowed to call their relatives at regular intervals; other SHU prisoners are only allowed a telephone call in an emergency, such as the death of a close relative. This is believed to be more restrictive than in most other US correctional systems, including the federal system where even at the most restrictive custody level in the high security unit at ADX-Florence prisoners are allowed two non-legal telephone calls a month. One of the demands of the hunger strikers was for increased family

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

contact, including one collect call a week home as well allowing extra time for visits and adding one extra visiting day a week.

The new proposals by CDCR to allow prisoners to earn more privileges through a four-year step-down program, includes no change to the bar on phone calls for the first year. The proposals would allow prisoners who are "disciplinary free" (i.e. have not committed any rule violations) one single telephone call at the end of the first year and two at the end of the second year. Amnesty International considers that this remains too restrictive and that denial of regular phone contact, particularly when prisoners are incarcerated a long way from home and have few or no visits, is unnecessarily harsh, and falls short of international human rights standards.

International standards recognize the importance of prisoners maintaining family ties both for their wellbeing and to promote rehabilitation. The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) states that a prisoner "shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions" and that "If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence".⁵⁷ It is generally recognized that prisoners do better on release if they have good family and other outside support. Article 79 of the SMR states that "Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both".

Article 80 states: "From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation".

As noted below, a significant proportion of SHU inmates will eventually be released from prison. Strong family relations may also in some cases encourage prisoners to dissociate themselves from prison gangs. Two prisoners interviewed by Amnesty International who were in the gang "debriefing" process said that family ties, including marriage in one case, had been influential in their decision to renounce their gang membership.

Amnesty International has received several letters from prisoners who had spent many years in the SHU, stating that the authorities have told them they would have to debrief if they wanted better contact with their families, including being moved to a prison closer to home.

One prisoner of Mexican origin wrote in December 2011 that he had not had visits from his elderly parents since he was sent to Pelican Bay SHU in 1999 as they were too frail to travel the distance. He had applied for several years on hardship grounds for a transfer to a prison further south and nearer to his home, providing medical evidence of his parents' infirmities, but was told by the classification committee that "they might consider my transfer if I would debrief". He wrote, "in November 2009 my mom passed away, I never got to see her again; the last time I talked to her was in 1999". He alleged that correctional officers used his mother's death to pressure him again to debrief, telling him his 89 year old father needed him but he would not see him again if he stayed in the Pelican Bay SHU.

Another prisoner, who last had a visit from his disabled mother in 1992, said he had received only two 10-minute phone calls with her in the following years, one when his sister died in 1998 and one when his grandmother died in 2000. He added that "PBSP staff told me many times that if I wanted to be transferred closer to my mom so I could see her, all I had to do was debrief. She has since passed away".

"I was born and raised in San Diego and most of my family live there or farther away from Pelican Bay – literally 1000 miles away. During these 15 long years, my family (sister) has only been able to make one trip up here. I was allowed one 80 minute visit behind thick glass. There is absolutely no physical contact allowed with anyone. Imagine 10, 20, 30 years without even a hug or touch to your loved ones'

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

hands, OR hearing your mothers or child's voice on the phone".

Letter from a prisoner who has been held in the Pelican Bay SHU for 15 years

A prisoner wrote that he was transferred from Corcoran SHU to a high security medical unit at New Folsom Prison where he was told he could have a phone call with his family because of his serious medical condition; however, he alleged that, when the time came – and his father was waiting for the call – the captain who had allowed the phone call told him he had to "do something first" and a guard held a piece of paper up to his cell window with the word "debrief" written on it. He said that, when he declined to debrief, he never got to make the call.

Amnesty International recognizes that the authorities have a legitimate interest in encouraging prisoners to break ties to prison gangs. However, the right of prisoners to humane treatment, or transfers or phone calls that prisoners would otherwise be eligible for on compassionate grounds, should not be made conditional on prisoners debriefing. Moreover, the UN Body of Principles explicitly prohibits "taking undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to ... testify against a third person" (Principle 21).

Amnesty International urges the authorities to take steps to ensure that prisoners in Pelican Bay and other SHU facilities have better opportunities for contact with their families. This should include expanding visitation times, where possible. In line with practice in other states and the federal system, Amnesty International urges the authorities to allow all prisoners who are not under specific sanction for serious rule violations while in the SHU to have phone calls with their families at regular intervals. The authorities should also consider transferring prisoners who have spent several years in Pelican Bay SHU to prisons nearer to home.

8. IN-CELL PROGRAMMING AND PRIVILEGES

“With no goals to strive for, or hope for release out of isolation, I can sum up our existence in the SHU with two words, ‘soul-crushing’”.

Gang validated inmate currently held in Pelican Bay SHU on an indeterminate placement

SHU prisoners may purchase prison-issue TVs or radios and basic “canteen” items (such as hygiene products and certain snack foods) from the prison commissary. Personal possessions and materials for in-cell activities are extremely limited. Apart from photographs, in-cell possessions until recently were limited to a combination of up to five books, magazines or newspapers, a pen and some stationery sheets. SHU inmates are allowed to receive one personal package a year of up to 30 pounds of authorized items (including clothing), a quarter of the amount allowed annually to prisoners in the general prison population.

“I would grow my own hair so I could cut it to use as a paint brush and would invent my own colours...I’d use mustard, kool-aid and coffee. I would even rub the dye from images in paper magazines to make my own colours”.

Now released prisoner who spent nearly seven years in solitary confinement at Pelican Bay SHU

Since the 2011 hunger strikes, and in line with the prisoners’ modest requests for some additional in-cell materials, CDCR has allowed SHU prisoners wall calendars and those who have been “disciplinary free” (i.e. not under sanction for rule violations) for one year to purchase coloured chalk, pen fillers and drawing paper. Prisoners can also earn the right to have an annual photograph taken to send to their families. As noted above, they are also allowed to purchase “sweat pants” and “watch caps”, items denied to SHU prisoners before the hunger strike.

Although some SHU prisoners are able to undertake basic educational programs such as high-school level General Educational Development (GED), they cannot attend classes and access is reportedly limited due to a shortage of teaching staff available to deliver and monitor individual in-cell assignments. SHU inmates are also allowed to take college correspondence courses, which were previously withdrawn but reinstated in early 2011. However, access is also limited in practice as many prisoners do not have the necessary standard of literacy or cannot afford to buy books. A scheme to provide a library at Pelican Bay was in jeopardy as one of the outside colleges involved had its funding cut. While CDCR said it had reinstated “proctors” to monitor exams and allow prisoners to get credit for them, access is reported to be “inconsistent”.⁵⁸

Amnesty International’s delegates were told that only 37 prisoners out of over 1,000 prisoners in PB SHU were enrolled in a GED program at the time of their visit in November 2011, with 22 enrolled in college correspondence courses. A slightly higher number were enrolled in courses in Corcoran, with 65 prisoners in one unit of the SHU reported to be undertaking either GED or college correspondence courses at the time of Amnesty International’s visit. While some programming is provided via close circuit TV channels, the organization was told that education programs via TV are supplementary and not part of the core GED coursework.

The wife of an inmate currently held in the Pelican Bay SHU told Amnesty International that her husband would regularly read the dictionary in order to keep his mind active. For a while he also cared for a frog

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

which he had found in the exercise yard. He would collect worms and bugs to feed the frog. She explained that this interaction was particularly therapeutic for him having being held in solitary confinement without human contact for 16 years. When the hunger strikes began, as punishment for his participation, the guards took the frog away

"If you don't have someone to send you money (\$55 per month you are in a constant state of hunger as the food is barely adequate".

Mother of a 37 year old gang-validated inmate at Pelican Bay who has been held in solitary confinement for more than 12 years

Amnesty International considers that the limited in-cell activity available to SHU inmates and access to TV or radio does not compensate for the lack of human interaction, particularly when applied over months and years.

CDCR has proposed that the first two phases of the new "step-down program" include "in-cell studies designed to enhance life skills" such as anger management and "cognitive skill based programming". However, it is hard to envisage how prisoners can be expected to have any meaningful opportunity to develop skills such as anger management during those phases of the step down program when they remain confined to isolated cells, as proposed (see below).

The UN Basic Principles for the Treatment of Prisoners includes the provision that "All prisoners have the right to take part in cultural activities aimed at the full development of the human personality" (Principle 6). The SMR emphasize that prisoners should be given access to a range of social, educational and other programs to prepare for their eventual return to society. Failure to provide such programs to prisoners in long-term segregation is contrary to the USA's obligation under Article 10 (3) of the ICCPR which states that rehabilitation should be an essential aim of any penitentiary system. In its General Comment on Article 10, the Human Rights Committee observed that "No penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner".⁵⁹

While Amnesty International was unable to obtain an age breakdown of SHU prisoners, several of the prisoners it interviewed were in their late teens or early 20s when they entered the SHU and had been in the SHU for a decade or more without access to meaningful rehabilitation programs. The organization was told that a lot of prisoners entering SHU housing are in the 18-25 age range. It is generally recognized that young people in particular can be impulsive, impressionable and susceptible to change. While many are serving long prison sentences, most will eventually be released. It is important, both for their life chances and the safety of the wider community, to ensure that they have access to programs to enhance their chances of rehabilitation.

9. PSYCHOLOGICAL AND PHYSICAL EFFECTS OF CONFINEMENT: *MADRID V GOMEZ* AND BEYOND

“The biggest challenge of being held in the SHU is to keep you own head when people around you start to lose it and you can’t do anything...it is truly a hellish place to be. The SHU breaks men and it is a constant challenge to keep yourself from being broken”.

Pelican Bay SHU inmate who has been held in solitary confinement for ten years

As noted above, in 1995 the US federal court in *Madrid v Gomez* ordered the removal of prisoners from Pelican Bay SHU who were seriously mentally ill or at risk of serious mental illness. Those who met the criteria for exclusion included prisoners who already had a history of serious mental illness or had become severely psychotic while in the SHU. However, there is a significant body of evidence, in the USA and elsewhere, that solitary confinement and social isolation in conditions of reduced environmental stimulation can have serious detrimental psychological consequences, even in prisoners without pre-existing illness.⁶⁰

At the time of the *Madrid* ruling, Pelican Bay had been open for less than six years and most of the prisoners studied in connection with the lawsuit had been housed in the SHU for three years or less. In regard to those prisoners who had not demonstrated they had suffered sufficient harm for their treatment to be unconstitutional, the judge stated, “We cannot begin to speculate on the impact that Pelican Bay SHU conditions may have on inmates confined in the SHU for periods of 10 or 20 years or more”.⁶¹ As shown by figures provided by CDCR at the time of the hunger strike in 2011, hundreds of prisoners have now spent ten or more years in Pelican Bay SHU, including many who have been there since it opened in 1989. The physical conditions of their confinement have remained unchanged since *Madrid*.

The *Madrid* ruling cited a review conducted by Dr Stuart Grassian of 50 prisoners in Pelican Bay SHU who had already been identified as experiencing psychiatric problems.⁶² Dr Grassian found that most had suffered significant deterioration since they had been in the SHU, becoming actively psychotic and/or suicidal or developing serious psychopathological reactions to the SHU which included perceptual disturbances, intrusive thoughts, severe paranoia and panic disorder. These prisoners fell among the categories of prisoners who the court ruled should be excluded *per se* from the SHU.

However, a representative sample of 100 randomly selected Pelican Bay SHU prisoners studied by Professor Craig Haney during the same period found that, while a sizable minority showed signs of more extreme forms of mental illness, nearly all reported multiple symptoms of psychological distress, including intrusive thoughts, oversensitivity to external stimuli, difficulties with attention or memory, and social withdrawal as well as mood disorders and “feelings of depression or sadness that did not go away”.⁶³

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

Many of those same prisoners remain in the Pelican Bay SHU today, 17 years on.⁶⁴

A lawsuit filed in May 2012 on behalf of prisoners who had spent between 11 and 22 years in Pelican Bay SHU describes how individual prisoners have struggled to stave off psychosis and deal with persistent, severe, anxiety and growing feelings of rage by becoming increasingly withdrawn and numbing all feeling: one prisoner described himself as being "in a stupor much of the time", another as feeling "as if I am walking dead"; another how he feels he is "silently screaming 24 hours a day" and hears disembodied voices. Other conditions described by the plaintiffs, all of whom remain in the SHU, include chronic insomnia, hallucinations, mood swings, violent nightmares and panic attacks.⁶⁵

There are also prisoners in Pelican Bay S who have personality disorders or who exhibit chronic disturbed behaviour, who are not classed as seriously mentally ill and thus excludable from the SHU. As noted above (see 5 (ii)) they include prisoners held permanently in Lexan-covered cells for repeatedly spitting or throwing urine or faeces, behaviour rarely seen outside SHU units.

Prisoners in Pelican Bay SHU have also reported a range of physical problems and impairment resulting from, or exacerbated by, their conditions of confinement. Professor Haney found that well over half of the prisoners he evaluated for the *Madrid* litigation reported symptoms associated with hypertension, including "headaches, trembling, sweaty palms, and heart palpitations".⁶⁶ Other conditions reported more recently by prisoners or their advocates include deteriorating eyesight as a result of years of deprivation of natural light and confinement in spaces which obstruct vision (including photophobia, vision loss and difficulty focusing); problems with balance; joint problems due to lack of natural light (causing vitamin D deficiency) and exercise; chronic asthma exacerbated by the enclosed conditions; severe insomnia and memory loss. Prisoners have also reportedly suffered loss of skin pigmentation due to the lack of natural light. As described in a letter to the Receiver's Office in September 2011 from a lawyer who works closely with prisoners, "White prisoners are pale; brown prisoners are turning white; black prisoners are lightening to brown".⁶⁷

"Being housed in the SHU has left me looking like a ghost as my color has faded to a very pale shade as many inmates here do without any sunlight to beat down upon our faces. How I long to feel warmth steadily beating on me".

Letter written by a gang validated inmate who has been held in the SHU for 16 years

Similar harmful effects from isolated, cellular confinement have been reported elsewhere. For example, two prisoners in Louisiana have described physical disabilities resulting from years of 23-hour cellular confinement, including osteoarthritis aggravated by inadequate exercise, hypertension, heart disease and insomnia.⁶⁸ A study by health experts of prisoners in isolation units in the UK found inmates suffered from various physical disorders resulting from their restrictive conditions of confinement: these included impaired eyesight (due to the lack of any distance vision), weight loss, muscle wastage and memory loss.⁶⁹

While some degree of mental suffering may be an inevitable consequence of imprisonment, international standards are clear that conditions should not impose hardship beyond that which is necessary on security grounds, and must always be consistent with the obligation of humane treatment of prisoners. Amnesty International believes that the detrimental effects on mental and physical health and other harm and suffering endured by prisoners as a result of years of confinement in the excessively harsh conditions of the Pelican Bay SHU breaches international law and standards on humane treatment of prisoners and prohibiting torture or other cruel, inhuman or degrading treatment or punishment.

10. SUICIDES

The severe negative psychological consequences of isolation are reflected in data from various

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

jurisdictions showing that suicides occur more frequently in isolation units than in the prison population generally.⁷⁰ In California, over a five year period from 2006 to 2010, the number of prison suicides averaged 34 a year (higher than the national average),⁷¹ with 42% occurring in administrative segregation or SHU units.⁷²

Most suicides in isolation have taken place in administrative segregation units (ASUs). Although prisoners tend generally to be held for shorter periods in ASUs than in the SHU, conditions are harsh, with prisoners confined for 23 hours a day alone in small cells, some without electrical outlets for radio or TV.⁷³ As shown in Alex Machado's case, below, prisoners may also be held for long periods in ASUs while waiting for a space in the SHU.

At the time of writing, no break-down was available for the number of suicides which took place in segregation units in 2011. However, two of the 34 prison suicides reported in 2011 took place in Pelican Bay prison and both deceased were in isolation units when they took their lives. One prisoner (Alex Machado) was held in an Administrative Segregation Unit (ASU); the other (Johnny Owen Vick) was confined to a cell in the Psychiatric Services Unit where prisoners with SHU terms who have serious mental illness are housed (see 12 (ii) below).

Details of Alex Machado's case, made available by his family, reveal a picture of someone in severe psychological distress during the months leading to his death on 24 October 2011. Alex Machado had been transferred to Pelican Bay in February 2010 after he was validated as a gang associate and told he would serve an indeterminate SHU term. He was held in a solitary cell in the ASU, which serves as an "overflow" for gang-validated prisoners. According to his family, he had shown no significant psychological problems during his prior 11 years of incarceration and he had been literate and articulate, assisting other prisoners with their legal appeals. However, his mental state started to deteriorate significantly after a year of isolation in Pelican Bay. From January 2011 to June 2011, Alex Machado exhibited increasing anxiety and paranoia, according to prison mental health records, with reports noting that he suffered from anxiety, sleeplessness and panic attacks; he also reported being watched, suffering from visual hallucinations and hearing voices and knocking on his cell walls. The records also noted a decline in his attention to hygiene and grooming. On 12 June 2011, he was placed in a crisis cell for threatening to kill himself. He was returned to his cell but was removed shortly afterwards when a guard observed a noose (made from torn strips of mattress) hanging from the air-duct in his cell and faeces smeared on the wall. Days later, he was informed that his mental condition was serious enough to exclude him from being held in the SHU. However, he remained in the ASU, despite continuing to have "active psychotic symptoms". According to his family, his letters became less frequent and increasingly distorted in the final months of his life, during which he remained confined alone to a cell for 22 and a half or more hours a day

According to the autopsy report, Alex Machado was last seen alive at approximately 12.15 am on the day of his death "as he was examined and then cleared by medical staff for a complaint of heart palpitations". Thirty minutes later, an officer found him "hanging inside his cell". In February 2012, Amnesty International wrote to CDCR expressing concern about inmate allegations that Alex Machado had shown signs of distress for several hours before his death but guards took no action. CDCR did not respond to these specific allegations, stating only that "The performance and actions of medical and mental health staff were fully reviewed and have been addressed".⁷⁴

Amnesty International finds it deeply disturbing that any prisoner suffering from the mental health problems described above should continue to be housed in an isolation cell. The case appears illustrative of an ongoing pattern of failure by CDCR to address the health care needs of mentally ill and potentially suicidal inmates.

In California, prison suicides are investigated internally by CDCR and reviewed by clinicians who are not located at the institution where the deaths occurred. The clinicians' reports are then reviewed by the Special Master, a court-appointed monitor charged with overseeing the state's compliance with court-ordered reforms to prison mental health care. In late 2006, CDCR revised its suicide

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

prevention policies, following concern by the Special Master about the high rate of prison suicides, especially in segregation units. The reforms included increased monitoring of prisoners during their initial weeks in administrative segregation, as well as guard training in resuscitation techniques and crisis response and improved assessment and review procedures within the system generally.

Despite these measures, the annual reports of the expert medical adviser to the Special Master continued to raise many concerns about suicide prevention and response within CDCR institutions. The reports from 2006 to 2010, for example, found that, in 72% to 84% of suicides, there was at least "some degree of inadequate assessment, treatment or intervention", meaning that the incidents were "foreseeable and/or preventable" or "interventions that would have been appropriate were not implemented".⁷⁵ Concerns included CPR (cardiopulmonary resuscitation) and/or first aid not being performed in a timely manner; failure by prison staff to make use of available records on inmates' health history; failure to refer inmates to a higher level of care; and failure to provide adequate screening or monitoring of inmates. The reports also noted that the majority of prisoners who committed suicide in CDCR institutions had histories of mental health treatment and/or suicidal behaviour.

The last available report of the Special Master notes that, in 2010, CDCR "devoted a good deal of time and resources to improving their performance in the area of suicide prevention and review", noting that implementation of preventive strategies must continue to be a high priority.⁷⁶ However, the continued high rate of suicides in California prisons, and case of Alex Machado in particular, suggests that more needs to be done.

Amnesty International urges the department to ensure that all prisoners receive adequate monitoring for mental health problems and prompt intervention whenever a prisoner displays signs of distress or alerts are made by other prisoners. No prisoner with mental health problems should be held in isolation but should receive treatment in an appropriate mental health care facility. (See also Section 12 (ii) below) Conditions in ASUs should be reviewed and all prisoners held in ASU cells for longer than a few days, should have access to occupational materials and contact with the outside world through TV and/or radio to reduce the effects of extreme isolation and sensory deprivation.

11. LONG TERM EFFECTS OF ISOLATION

“The effect of years of solitary confinement is that you always want to be on your own...the loneliness follows you. I feel anxious in crowds and I don't like being around others. Sometimes I just want to run away and lock myself up...people who do manage to get out of the SHU keep their emotions and pain to themselves because they find it very hard to adapt”

Ex-prisoner who spent almost seven years held in solitary confinement in Pelican Bay

Studies have found that negative effects from prolonged isolation can continue long after release, including sleep disturbances, depression, anxiety, phobias, anger, impaired memory and problems with normal social interaction. This can make it more difficult for individuals, already facing challenges as ex-offenders, to successfully reintegrate into society after they are released from prison. In California, as in other states, most supermax inmates will eventually be released. One study found that, on average, 900 inmates were released on parole annually directly from Pelican Bay and Corcoran SHUs during the ten year period from 1997 to 2007.⁷⁷ While some prisoners had spent short periods in other units before being paroled, many were released directly to the street, often with no transitional programming, in some cases after years of solitary confinement or confinement with one other person for 22-24 hours a day. The study found that 62% of prisoners released from Pelican Bay or Corcoran SHU between January 1997 and December 2007 had been returned to prison for violating parole by March of 2008, compared to 46% of all prisoners released during the same period. While the study was unable to draw detailed conclusions from this aggregate data (e.g. the data was not broken down by criminal history of released offenders, age or length of time in the SHU), the figures suggested that prisoners released directly from the SHU may find it more difficult than other prisoners to adjust after release.

CDCR has recently started to include data on SHU releases in its own analyses of recidivism rates. The first CDCR report to include this data, published in November 2011, found that inmates who had spent time in the SHU during their incarceration had a 5% higher recidivism rate than those who had not.⁷⁸

Amnesty International believes that all prisoners serving time in isolation should have access to pre-release or transitional programs that would benefit their reintegration into society. While such programs may be costly, so too are the financial and social costs of SHU confinement. Resources could be better used to focus on providing effective treatment and rehabilitation programs, in line with the USA's international human rights obligations, rather than measures designed solely for incapacitation and security purposes.

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

12. MEDICAL AND MENTAL HEALTH CARE IN SHU HOUSING

"(My husband) has seen people driven insane in the SHU...especially inmates who don't get visits get crazy".

Wife of gang-validated prisoner who has been at Pelican Bay since 2000

MEDICAL CARE

International standards provide that all prisoners should have access to care to meet their medical needs. The Basic Principles for the Treatment of Prisoners state that prisoners "shall have access to the health services available in the country without discrimination on grounds of their legal situation" (Principle 9); the SMR provide, among other things, that "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals." (SMR 22(2))⁷⁹

Under US law, prison officials must provide adequate care for prisoners' "serious medical needs" and deliberate failure to do so has been held to violate the prohibition of cruel and unusual punishment under the Constitution.

"The more confinement a person is subjected to at Pelican Bay State Prison S.H.U. does slowly take its toll that costs the prisoner in the mind, body and family – without incentives – daily deprivation – the mind and body becomes stagnant – you can only exercise so much."

Letter written to Amnesty International by prisoner in Pelican Bay SHU

There has been ongoing litigation for more than a decade over California's failure to provide adequate medical care to prisoners. In a class action lawsuit, *Brown v Plata*, prisoners alleged that California's deliberate indifference to inmates' serious medical needs amounted to cruel and unusual punishment. The federal court agreed that the California had failed to provide a constitutional standard of health care and in 2002 the State settled the lawsuit by undertaking to reform the system. However, serious problems persisted and in 2006 the court appointed a federal Receiver to take over the management of medical care in all California state prisons in order to oversee the reforms.⁸⁰ In January 2012, the court found that, although there was still room for improvement, substantial progress had been made toward achieving a constitutional level of medical care for prisoners.⁸¹

However, there have been persistent complaints about inadequate provision of medical care for prisoners in Pelican Bay SHU. As noted under Section 9, above, prisoners are reported to suffer from a range of physical problems and illnesses resulting from, or exacerbated by, years of confinement to small cells with little exercise or access to natural light. Prisoners and some advocates have alleged that many of these prisoners, some now in their late 50s or 60s, are not receiving adequate treatment for chronic health problems, including some which are likely to have been caused or at least exacerbated by their detention conditions, such as vitamin D deficiency, osteoporosis, and eye problems. It has been alleged that prisoners have not been provided with medication or equipment to manage their health problems and attendant disabilities, and that there have been delays in treatment or referrals to medical practitioners. One prisoner with

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

advanced liver disease wrote to Amnesty International stating that repeated recommendations by a liver specialist that he be transferred to a hospital for surgical banding to prevent internal bleeding were ignored for two years, so that he suffered a near-fatal rupture by the time he was sent for the procedure. Another prisoner wrote that he suffered months in acute pain without medication after being diagnosed with a dental nerve disease.

When Amnesty International raised concern about the reports of poor medical care during its visit to Pelican Bay, its delegates were told that any prisoner with a serious medical need, including those in the SHU, would be referred to an outside hospital where necessary. The medical officer said that all individual complaints about medical care were referred to the Receiver.

"We (prisoners) are made to serve an indefinite SHU-term in solitary confinement unless we 'de-brief', and there are many ways to make you debrief. I will attempt to lay out them all: (1) deprive you of adequate medical treatment and make it clear to you that if you debrief you can get all the medical treatment you need (2) deprive you of an adequate diet nutritional and calories. The food that you are provided is so poorly prepared that you cannot even eat it. And the cooks/correctional officials etc. say if you want a well cooked meal or a balanced diet then debrief (3) when you make a complaint about being in an ice cold cell and needing extra linen the officer tell you 'why do you subject yourself to all this harsh treatment when you can just debrief' ...and if I do not debrief I am told I'll never be released from solitary confinement'.

Letter sent to Amnesty International by inmate currently held in solitary confinement in Pelican Bay SHU

Since its visit, several prisoners have written to the organization saying they have been told by institutional gang investigators (IGIs) that they will only get better medical care if they "debrief". The *Ruiz v Brown* lawsuit, cited above, alleged that "prisoners with medical concerns are routinely told by prison officials that if they want better medical care for their conditions or illnesses, or improved pain management, the way to obtain adequate care is to debrief".⁸² The lawsuit also alleges that, "The denial of adequate medical care at Pelican Bay is not isolated to a few doctors or correctional officials, but is rather a longstanding pattern and practice which, on information and belief, has been officially sanctioned by defendants for the purpose of coercing plaintiff class to debrief".⁸³

Amnesty International is not in a position to assess the substance of the above complaints but the allegations are serious. The organization urges CDCR and the Receiver to review specifically the provision of health care to prisoners in the SHU, in particular the "short corridor" (where long-term gang-validated prisoners are held, which has been the source of many of the complaints about inadequate health care). The prison authorities should also issue clear instructions that under no circumstances should medical treatment be used as an inducement to debrief. International standards are clear that all prisoners regardless of their custody status are entitled to treatment which meets their medical and mental health care needs. Prisoners suffering from chronic health problems as result of long-term SHU confinement with inadequate light and exercise should be prioritised for transfer to housing conditions which will not be detrimental to their health.

In January 2012, the court in *Plata v Brown* instructed the parties involved in the case (the plaintiffs, CDCR and Receiver) to prepare for the eventual ending of the Receivership so that the state could resume control of prison medical care. The state Legislative Analyst Office (LAO) noted in report in April 2012 that, "Given CDCR's poor track record in providing medical care to inmates, it would be unwise to return control of the inmate medical program to the department without first establishing independent oversight and evaluation".⁸⁴ The LAO recommended that the Legislature create a new oversight board, independent of CDCR, to oversee the delivery of inmate medical care to ensure that the state delivered a constitutional level of medical care, and that the Legislature "might also consider requiring the board to oversee inmate mental health and dental care programs".⁸⁵ Amnesty International recommends that the remit of any oversight mechanism include specific reference to the need for review of medical and mental health care for prisoners in segregation units (SHU and ASUs) given the isolated nature of such units and specific health care issues that may arise as a result of such confinement.

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

MENTAL HEALTH CARE

As a result of the *Madrid v Gomez* ruling prisoners diagnosed with serious mental illness are no longer held in Pelican Bay SHU. The exclusionary criteria include prisoners with major depressive or psychotic disorders, schizophrenia, organic brain damage, mental retardation and "severe personality disorder that is manifested by frequent episodes of psychosis or depression and results in significant functional impairment", as well as inmates who have a prior history of psychosis as a result of SHU confinement. (SHU Mental Health Services Delivery System, (MHSDS) 2009 Revision). Prisoners sentenced to SHU terms who are diagnosed with serious mental illness are housed in the 127-bed Psychiatric Services Unit (PSU) at Pelican Bay prison or are sent to another facility for treatment.⁸⁶

Psychiatric Services Unit

Prisoners assigned to the PSU at Pelican Bay are held in single cells which have narrow windows to the outside and windows in the cell doors. According to the Mental Health Services manual for the PSU, PSU inmates receive individualized treatment plans and have at least ten hours a week of "scheduled structured therapeutic activities".⁸⁷ The manual does not specify whether whether this always takes place outside the cell but during its visit to Pelican Bay, Amnesty International was told that PSU prisoners receive therapy sessions outside their cells for a few hours a week. These take place with a psychologist or mental health clinician, either individually or in a small group setting. The group therapy room, observed by the organization during its visit, is an enclosed area in the middle of the unit where prisoners are confined to six individual holding cells with the therapist sitting in front of the cells. There are also cells for individual therapy which are the size of a telephone booth and have solid walls on three sides with mesh at the front; prisoners can sit and have sessions unrestrained in these booths, with the psychologist or other clinician outside. The booths viewed by Amnesty International appeared dark inside and not an ideal therapeutic setting. However, the organization was told all sessions must take place either in the booths or at the cell door, for security reasons.

PSU prisoners have the same amount of outdoor exercise - 10 hours a week - as ordinary SHU inmates, but this is taken in individual outdoor cages instead of an enclosed yard with little sunlight and no view. The PSU exercise cages Amnesty International saw during its visit had a view of the hills and forest in the distance and the cages were close enough to allow prisoners to communicate with the person next to them. Although the cages are an improvement on the SHU yards, they had no equipment and were too small to throw a handball. None of the cages was occupied at the time of Amnesty International's visit (even though the weather was fine) and staff said that prisoners did not always choose to take exercise or that it was sometimes cancelled if the weather was bad.

Although the PSU provides a less harsh environment than the SHU and prisoners receive some out of cell therapy and other treatment, inmates are still confined alone to cells for long periods. Amnesty International believes cell door consultations should be minimised due to lack of privacy and where possible more out of cell therapy should be provided, including in secure dayrooms as an alternative to the booths. Prisoners should be encouraged to take outdoor exercise, both for their physical and mental health, with improvements to the size of the outdoor space, with provision of a covering and equipment or other amenities.

Example of holding cells, similar to those used during therapy sessions in Pelican Bay SHU. Image courtesy of American Friends Service Committee

MENTAL HEALTH MONITORING OF PRISONERS IN PELICAN BAY SHU

International standards, and those set by US professional organizations, require careful monitoring of all prisoners held in isolation due to the negative impact this can have on the psychological health of individuals even without pre-existing illness. The UN SMR require daily monitoring of prisoners placed in "close confinement" (Rule 32). The (US) National Commission for Correctional Health Care (NCCCHC) has observed that conditions in super-maximum security isolation facilities "Even for the most stable individuals ...may precipitate mental health or health difficulties" and that "daily contact by medical staff and at least weekly contact with mental health staff is required",

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

noting that such contacts "must be meaningful and allow sufficient interaction for such assessments to take place".⁸⁸ Under its strategic plan for 2010-2015, CDCR has said it intends that 90% of its health care programs will be in "substantial compliance" with NCCHC standards by June 2015.⁸⁹

Clinicians at PSU said they conducted mental health screening of all new arrivals at PBSP and also received inmates from the SHU for treatment at PSU, through referrals by both custody and medical staff. They also said that prisoners themselves can seek a mental health evaluation at any time and that mental health clinicians regularly visited the SHU units. According to the CDCR manual for mental health provision in the SHUs, the objective is for clinical rounds to be conducted "every other week" in order "to identify mental health needs for all inmates who are not currently in [mental health services delivery system]"; the manual states that these rounds are provided by Primary Clinicians in PBSP SHU and Licensed Psychiatric Technicians (LPTs) in other SHUs. However, this falls short of the frequency of monitoring recommended by the NCCHC, above.

Amnesty International is concerned that the isolated nature of the SHU pods and difficulties of communication through cell doors mean that prisoners may not receive the monitoring they require; a prison doctor, while defending cell front consultations as necessary for security purposes, conceded that it was difficult to see the face of an inmate through the perforated cell door.

Concerns about the adequacy of mental health care in Pelican Bay SHU were raised in the *Ruiz v Brown* class action lawsuit, which claims that, during the "rounds" of the SHU pods every two weeks, a psychologist "walks past eight cells in approximately 30 seconds", calling out to prisoners and asking if they are "okay", and that prisoners in neighbouring cells will be fully aware when someone calls out for help. The lawsuit states that "There is no opportunity during this brief encounter for a private consultation with a mental-health practitioner".⁹⁰ According to the lawsuit, beyond a "brief intake screening" on arrival to the SHU, the only mental health assessment that many SHU prisoners receive occurs at the Institutional Classification Committee hearings every 180 days, at which a mental health staff member is present. The lawsuit states that, at these hearings, "Each prisoner is asked two standard questions: (1) whether he has a history of mental illness; and (2) whether he wants to hurt himself or others. These questions are asked in front of the Warden, Correctional Captain, and numerous other correctional staff. No further mental health evaluation occurs".⁹¹

Mental health screening and monitoring is essential to identify those who become psychotic or suffer other serious mental illness requiring removal from the SHU under the *Madrid v Gomez* ruling. However, as noted above, there are prisoners in Pelican Bay reportedly suffering from various behavioural and mental health problems which do not meet the criteria for serious mental illness that would exclude them from the SHU, and who will thus remain in the SHU regardless of the mental health provision available. This is of concern given that conditions such as those in Pelican Bay SHU are liable to be inherently damaging to the physical and mental health of prisoners. Amnesty International urges the authorities to take steps to ensure that no prisoners with mental illness or mental or behavioural disabilities are held in solitary confinement and subjected to the harsh and punitive conditions existing in Pelican Bay SHU.

As noted above, in the case of Alex Machado (see Section 10) there is concern that prisoners who are a potential suicide risk have not been adequately treated while in administrative segregation units other than the SHU, including in Pelican Bay. All prisoners held in segregation units should have adequate mental health monitoring and access to treatment and should not remain for prolonged periods in solitary confinement.

CORCORAN SHU AND ENHANCED OUTPATIENT HUB

Prisoners with serious mental illness are excluded by policy only from Pelican Bay SHU, given the unique harshness of the conditions in that facility. Prisoners with serious mental illness can be held in other SHU facilities and treated under the Correctional Clinical Case Management System (CCCMS) or, if more intervention is required, referred to a prison Enhanced Outpatient Program (EOP) or another mental health facility. In Corcoran, prisoners classified as needing treatment under the

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

CCCMS may be held in the SHU if they are "stabilised" on medication. While they are monitored by mental health staff, they are subject to the same general conditions as all SHU prisoners, confined to cells for 22 and a half hours a day. Amnesty International was told by staff that CCCMS inmates are seen almost daily by nurses dispensing medication, at least monthly by a clinician and every 90 days by the psychiatrist.

Corcoran prison also has an EOP hub in the Administrative Segregation Unit (ASU) which houses SHU inmates with serious mental illness who require more active intervention and monitoring, who will be referred to other psychiatric facilities if beds are available. EOP prisoners also spend most of their time confined to cells but are reportedly seen daily by licensed nursing staff and at least weekly by a mental health clinician.

While CDCR guidelines provide that consultations must be conducted in a confidential setting as far as possible, the Corcoran chief psychologist told Amnesty International that consultations and therapy for SMI SHU inmates (including those in the EOP/ASU hub) always takes place either at the cell door or in a holding booth within the consultation room, for security reasons. He expressed the view that SMI inmates housed in the Corcoran SHU received humane treatment, with some outdoor exercise and access to therapeutic materials in their cells. However, Amnesty International believes that prisoners with serious mental illness should not be housed in an environment where they are confined to cells for prolonged periods with little opportunity for social or therapeutic interaction. Amnesty International notes that the manual for the delivery of mental health services for prisoners in the SHU states that "While some therapeutic activities may take place within the cell, wherever possible treatment activities should take place outside the cell".⁹²

13. WOMEN PRISONERS IN THE SHU

Fifty-eight women were serving SHU terms in Valley State Prison for Women at the time of Amnesty International's visit in November 2011. As with the male SHU population, women SHU inmates are confined to a cell for at least 22 and a half hours a day, alone or with a cell-mate, and have no access to prison work, training or vocational programs.

Nearly all female SHU prisoners are serving defined SHU terms for disciplinary offences, reportedly ranging from a few months to a year or more. While the organization was unable to obtain a breakdown of offences for which women had been sentenced to the SHU, a senior staff member said that most were there for "assaultive" or "disruptive" behaviour. Some assaults involved throwing bodily waste or spitting at a prison staff member, which, as noted above, is indicative of mental health or behavioural problems. There were women in the SHU who were in the prison's "Correctional Clinical Case Management System" and thus receiving treatment or monitoring for mental illness. A team of mental health professionals was on duty during week-days and on call at week-ends. There was treatment room in the unit, with therapy taking place in individual booths. Staff reported that some women found it easier to cope in the SHU than in the general prison population, as did one of the prisoners interviewed by Amnesty International. However, the organization remains concerned that prisoners, especially those with mental illness or emotional or behavioural problems, are confined to cells for such long periods in what amount to punitive conditions.

In early 2012, the female SHU population was moved from Valley State Prison to the California Institution for Women (CIW), where part of the facility has been converted into a SHU unit. There were 68 prisoners in the CIW SHU as of June 2012. According to figures provided by CDCR in July 2012, 50 inmates in the SHU and the adjacent administrative segregation unit (ASU) were in the Correctional Clinical Case Management System.⁹³ As the SHU/ASU combined reportedly houses fewer than 100 prisoners, this indicates that a significant proportion of the inmates confined to the units, and thus in isolation, suffer from mental illness.

Around two-thirds of the custody staff at CIW are male, similar to the proportion in Valley State prison. While there is a slightly lower ratio of male to female staff in the CIW SHU during the morning shift (60% male officers to 40% female officers), there are more male custody officers working other shifts. Only male staff are assigned to the SHU/ASU during the night shift and 75% of custody staff working the afternoon and early evening shift are male.⁹⁴ This is contrary to international standards which provide that female prisoners should be attended and supervised only by female officers, and that male staff providing services in female facilities should always be accompanied by a female officer (SMR 53(2) and (3)). The UN Rules for the Treatment of Women Prisoners (Bangkok Rules), adopted by the UN General Assembly in November 2010 confirmed the principles in the SMR.⁹⁵

The authorities have stated that anti-discrimination employment laws, as well as specific labour agreements involving correctional officers in California, mean that CDCR cannot refuse to employ male guards in women's prisons; however international standards provide that measures designed solely to protect the rights and special status of women are not considered discriminatory ((Principle 5 (2), Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment). Restrictions on the access of male staff to areas of prisons where women are showering or undressing are necessary to protect the right of detainees to privacy.

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

The presence of unsupervised male staff in women's correctional facilities raises a range of concerns for the protection of human rights. There have been widespread reports of sexual misconduct by male correctional staff against women inmates in prisons across the USA, including in California. During a previous Amnesty International visit to Valley State prison in 1998, prisoners reported that it was common for some male officers to watch them dressing and undressing in their cells and to touch their genitals while conducting frisk searches (pat-down searches of clothed inmates), and to use sexually offensive language.⁹⁶ While male officers in California are no longer permitted to carry out any searches of female inmates, and there are reportedly improved procedures for addressing sexual misconduct, the organization remains concerned by procedures which allow male custody staff unsupervised access to women's housing units. This is of particular concern in the SHU, where prisoners are able to be observed at all times in their cells.

Under prison regulations, female SHU inmates, like male prisoners, must be "in full view" at all times. In Valley State SHU, only female officers were allowed in the central observation booth, as this gave a full view into the showers. However, the showers were sited in the main unit where male and female custody staff patrolled; the showers had open bars with a covered section in the middle described as a modesty panel, but did not afford total privacy. Within the cells, the toilet and sink were situated by the cell doors which had windows looking onto the tier patrolled by male and female staff. It was reported that most women wanted to cover their cell windows while washing at the sink but that the practice was against the rules. Amnesty International believes that allowing male staff to patrol areas where women may be viewed in their cells while dressing or washing, or when taking showers, is inherently degrading and a violation of the right of prisoners to be treated with respect for their human dignity, and the right to privacy, as enshrined in the ICCPR.

Amnesty International recommends that as a general rule female prisoners should be supervised only by female staff, in line with the SMR. The UN Human Rights Committee, in commenting on the USA's report on its implementation of its obligations under the ICCPR, has recommended that "legislation allowing male officers access to women's quarters should be amended to provide at least that they will always be accompanied by women officers." (CCPR/C/USA/CO/3/Rev.1, 2006: 33).

Amnesty International recommends that in order to comply with the SMR and the Human Rights Committee's recommendations, male staff should not be deployed in the women's SHU area or, at a minimum, all areas of the SHU should at all times be attended and supervised by female staff and that at no time should any areas of the SHU be attended by male staff alone. Male staff should be not be required or permitted to carry out duties or enter locations in the SHU where they can observe women in the shower or at other times when they are undressed. As the organization has noted in previous reports, a growing number of jurisdictions in the USA have placed certain restrictions on male duties in women's prisons and the US courts have upheld such restrictions as lawful.⁹⁷ In some states this has included prohibition of male staff from working in female housing areas or in female bathroom or shower areas.

14. CRITERA AND CURRENT PROCEDURE FOR SHU ASSIGNMENTS

“People are validated on the basis of one individual saying “I heard him say something...or I saw him do something” There is no policing of the system, they do whatever they want and they get away with it. The SHU units are like torture chambers...my main issue is with the solitary confinement and the validation”

Sister of a 50 year old gang validated prisoner, originally sentenced to 15 years to life; he has now been imprisoned for 25 years and has been in solitary confinement for a total of 21 years

Amnesty International was unable to obtain a detailed break-down of the current California SHU population; however, based on the overall figures on numbers in the SHU, it appears that around a third are serving determinate (fixed) SHU terms for serious offences or rule violations set out under Title 15 of the California Code of Regulations, Section 3315. Guidelines for the length of fixed SHU terms range from two months to five years for offences including sexual misconduct, harassment, threats, assaults, escape attempts, weapons possession and murder (Section 3341.5). Some of the offences carrying a SHU term include acts which are classified as serious assaults or other offences but may also be symptoms of behavioural or mental health problems.⁹⁸ Offences listed as serious rule violations (SRV) carrying a potential SHU term also include offences such as “Tattooing or possession of tattoo paraphernalia”, “Self mutilation or attempted suicide for the purpose of manipulation” and “A repeated pattern of rule violations for the same offense”.

Prisoners charged with serious disciplinary offences are entitled to some due process protections in the internal proceedings against them, although these are less than those required in a criminal trial. They include written notice of the charges and a statement of the evidence to be relied on, a hearing before an impartial officer at which the prisoner may produce documents in his or her defence and has a conditional right to call and question witnesses. The accused prisoner will also be assigned a staff member to assist in the investigation and/or preparation and presentation of a defence, where this is considered necessary for a fair hearing.⁹⁹ Prisoners accused of criminal misconduct while in prison may also have their cases referred to the prosecutor for trial in the criminal courts which could result in an additional prison sentence within the range set for the criminal offence. Once a prisoner has been found guilty of an offence carrying a possible SHU term, the Institutional Classification Committee (ICC)¹⁰⁰ decides on whether or not the prisoner will be assigned to the SHU and sets the term according to the guidelines for that offence. Prisoners serving determinate SHU terms can have their terms reduced for good behaviour. The term may be extended if the prisoner commits repeat offences while in the SHU, or they may be retained in the SHU if their release is considered to constitute a severe security risk.¹⁰¹

The large majority of the California SHU population – some 2,280 prisoners¹⁰² – have been assigned
Index: AMR 51/060/2012

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

to indeterminate (indefinite) SHU terms on the basis of being "validated" as a member or associate of a prison gang. Validations are made through an internal procedure and prisoners can be assigned to indefinite SHU terms by CDCR without being accused or convicted of any offence or rule violation.

In his 2011 report on solitary confinement, the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment urged states to adopt procedural safeguards when imposing solitary confinement, in order to reduce the chances of it being applied in an "arbitrary or excessive" manner. His recommendations included providing individuals with a "genuine opportunity to challenge both the nature of their confinement and its underlying justification through a process of administrative review"; informing the detained person of what he or she must do to be removed from solitary confinement; a meaningful appeals process and review by an independent body, as well as an opportunity to appeal to the courts.¹⁰³

SHU terms in California are subject to administrative review, but there is no external review of such assignments other than through the courts. As described below, prisoner advocates and others have criticised the internal review process as failing to provide adequate safeguards, particularly for prisoners given indefinite SHU terms on the basis of a gang validation. While prisoners may bring court actions challenging their gang validations or SHU assignments or conditions, prison administrators are afforded wide discretion in measures taken on security grounds and prisoners face significant obstacles in bringing such actions.¹⁰⁴

PRISONERS SERVING INDETERMINATE SHU TERMS ON THE BASIS OF GANG VALIDATIONS

"My position remains... California Department of Corrections/PBSP-SHU policies and practices, have violated our human rights and subjected us to torture – for the purpose of coercing inmates into becoming informants against other inmates, etc., for the state."

Letter written to Amnesty International by prisoner held in solitary confinement in Pelican Bay SHU

As noted above, for prisoners who are validated as gang members or associates, the main route out of the SHU to date has been to "debrief", a process which requires them to renounce their gang connections and provide detailed information on other alleged prison gang members or associates. This is a procedure which many prisoners decline to undertake for various reasons: they may not want to "snitch" on (inform on) other inmates on principle or because of the risk of retaliation against themselves or family members; in other cases prisoners dispute being involved in a gang or they dispute the level of their alleged involvement or deny any recent involvement, and thus maintain they have no evidence to provide. In 2005, CDCR introduced new regulations to provide an alternative route out of the SHU by creating a category of "inactive status", whereby SHU prisoners who can establish they have not been involved in gang activity for a minimum of six years may be considered for release from the SHU by the classification committee.

Despite the introduction of "inactive" status, hundreds of prisoners have continued to serve years of indefinite SHU confinement. In August 2011, CDCR spokesperson Scott Kernan reported that the average term served by prisoners in SHU housing was 6.8 years.¹⁰⁵ However, as described above, more than 500 prisoners in Pelican Bay in 2011 (around half the prison's SHU population) had spent over ten years in the SHU; 222 had been in the SHU for 15 or more years and 78 more than 20 years. Many had been in Pelican Bay SHU since it opened in 1989, all held under the same harsh conditions throughout that period, without any ability to change their situation through good behaviour or programming.¹⁰⁶ Amnesty International has received information about prisoners, some now in their late 50s or 60s, who have spent decades in the SHU without incurring any significant disciplinary write-ups; for some prisoners, their first major "rule violation" was for participating in the 2011 hunger strike.

CONCERNS ABOUT GANG VALIDATION CRITERIA

"So, the suffering is to make you feel hopeless, helpless...and your only way to stop the suffering is to debrief".

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

Gang validated inmate currently held in Pelican Bay SHU

Amnesty International is not in a position to evaluate in detail the criteria deployed in the gang validation process. However, there has been widespread criticism from prisoners, advocates and others that the present process is too discretionary and that, while three independent "source items" are required to validate someone as a gang member or associate, these need not relate to any specific gang-related activity or illegal act. The independent "source items" can include tattoos or being in possession of books or materials or, it is alleged, simply being seen talking to another alleged gang member in a unit where a prisoner is housed. If a prisoner is visited by someone suspected of being a gang member or associate, even if they are visiting as a relative, this can also be used against them. Information may also be based on confidential sources which can be impossible to challenge.¹⁰⁷

Under the regulations, the term "associate" is someone deemed to be involved "periodically or regularly with members or associates of a gang", and, it is alleged, can be loosely applied to include association with prisoners of similar background and the same racial group. Many prisoners have also complained that, despite being free of any gang activities or association for six years or more, they have not been held eligible for release from the SHU. Prisoners have allegedly been denied inactive status based solely on being on a list of names provided by anonymous informants, or for having certain drawings in their cell or being in possession of literature associated with political ideologies such as the Black Panthers.

The harsh conditions of the SHU have presented prisoners with what a federal court has described as "an overwhelming incentive for an inmate to embrace the risk of debriefing".¹⁰⁸ According to prisoner advocates and attorneys, pressure to debrief can serve to compound problems regarding the reliability of evidence. As one lawyer put it, if a prisoner is wrongly assigned to the SHU, or has no current information, but decides to debrief, "they won't have evidence to disclose, so they have a strong motive ... to name others/anyone". He referred to this as a "downward spiral" in which the named individuals will in turn be placed in the SHU, as can anyone associating with them.

CONCERNS ABOUT DUE PROCESS AND THE HARSH CONSEQUENCES OF AN INDETERMINATE SHU ASSIGNMENT

"I've been eligible for parole since 2004 – the parole board has told me [1998, 2001, 2003, 2008], if I ever expect to receive a parole date, I have to debrief and get out of SHU".

Letter written to Amnesty International by prisoner held in solitary confinement for more than 15 years as a gang associate

Concerns have been expressed about the fairness of both the initial gang validation process and the review of indeterminate SHU assignments. The federal courts have ruled that prisoners are entitled to some due process when they are assigned to an indefinite SHU term on the basis of a gang validation or other security ground.¹⁰⁹ However, because such assignments are considered to be an administrative measure and not "punishment", the due process protections required are less than in a criminal or serious disciplinary proceeding. The US Supreme Court has held that due process requirements are met where prisoners are given a statement of the reasons for their assignment to a "supermax" facility, which would "serve as a guide for future behaviour", have an opportunity to be heard in the matter, and the placement is subject to appeal and administrative review. (*Wilkinson v Austin*, 2005).¹¹⁰ There is no requirement for further due process protection, such as an adversarial proceeding or for the prisoner to be represented by counsel or be able to call or cross examine witnesses. The courts have ruled that there must be "some evidence" with "some indicia of reliability" to support a gang validation, but this standard is met if there is any evidence in the record that could support a validation. The Supreme Court has held that reviews of long-term segregation must be "meaningful" to avoid them being used as a "pretext for indefinite confinement",¹¹¹ however, no clear standard has been set as to what constitutes "meaningful" review of current supermax confinement and courts have upheld review procedures that provide only minimal protections.¹¹²

In California, Institutional Gang Investigators (IGIs) attached to each prison compile the evidence that forms the basis of a gang validation. Following challenges to the procedures in the courts,

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

prisoners are entitled to notice of the allegations, disclosure of all source items used in the validation review and copies of all non-confidential source documents. They are also entitled to an interview with the IGI at which they must have an opportunity to present their views about the evidence used for the validation verbally or in writing, and be provided with a written record of the interview. The "validation package" is then sent to the Office of Correctional Safety (OCS) at CDCR which reviews the record and accepts or rejects the validation. It is reported that the OCS very rarely rejects the validations and that, in practice, the IGIs are the "primary decision makers". Critics of the procedure have alleged that IGIs vary in terms of their competence and reliability, with different criteria sometimes applied in different institutions.¹¹³ Prisoners' lawyers and other advocates have further maintained that the OCS does not provide any meaningful independent oversight or investigation of the IGI decisions.

A prison classification committee reviews an indeterminate SHU placement every 180 days at a hearing the prisoner is entitled to attend; the prisoner may also present documentary evidence to support any application for change in status and may have a limited right to a staff assistant.¹¹⁴ However, under the present system, these reviews are reported to do little more than confirm the original assignment, unless the prisoner agrees to debrief or is eligible for consideration under the six-year "inactive" criteria. Amnesty International has received several letters from prisoners stating that they no longer attend the review hearings, something its delegates were also told during cell-front interviews. According to a recent class action lawsuit brought on behalf of prisoners who have served more than ten years in Pelican Bay SHU, "No examination of continued gang activity or association occurs at the 180 day review, nor is there any assessment of whether the prisoner's behaviour requires continued SHU placement. For this reason, such reviews are meaningless and few Pelican Bay SHU prisoners attend them."¹¹⁵

While the procedures fall short of the due process protections required if a prisoner is charged with a criminal or serious disciplinary offence, the consequences of a SHU assignment in California can be severe, not just in terms of the length of time prisoners may be isolated and deprived of access to work, vocational training or other programs, but also in terms of the time served in prison. Reportedly, around a quarter of the SHU population are serving "term to life" sentences (known as "indeterminate sentences"), where a minimum term is imposed up to life imprisonment (for example "7 years to life" or "25 years to life"). Prisoners with these sentences are eligible for a parole hearing once they have served the minimum eligible release date given in their sentence. Amnesty International has been told that, in practice, prisoners serving term to life sentences will never be granted parole while they are in the SHU. This is said to be partly because they have no access to programs which would enable them to show that they meet the criteria for parole eligibility but also because of what has been referred to as an "unwritten policy" of not granting parole to alleged gang affiliates serving SHU terms.¹¹⁶ Amnesty International has heard from prisoners who served their minimum term years ago but have been denied parole solely on the basis of being in the SHU; some have reportedly been told by parole board members that they will not get parole unless they debrief. Also, due to legislative changes in 2010, prisoners serving determinate prison sentences can no longer earn "good conduct" credits (to reduce the time served) while they are in the SHU for alleged gang affiliations and thus will spend longer in prison than if they were in the prison general population.

Some prisoners rights lawyers have expressed concern that, in practice, the review of indeterminate SHU assignments in California falls short of the minimal standard approved by the US Supreme Court in *Wilkinson v Austin*. Unlike the procedure for assignment to the Ohio State Penitentiary (the subject of the *Wilkinson* decision), for example, California prisoners are not necessarily provided with notice of the specific factual reasons for an indeterminate SHU assignment nor as in Ohio do they have two levels of appeal; the classification committee is not required to provide a written statement of every basis for the recommendation to retain a prisoner in the SHU at the review hearing, unlike in Ohio.¹¹⁷

15. CDCR'S PROPOSED REFORMS OF CRITERIA FOR INDETERMINATE SHU ASSIGNMENTS AND INTRODUCTION OF STEP-DOWN PROGRAM

“I’ve already been in SHU since 1988, what do I need to work on? What exactly are they going to see in my attitude and actions during the four phases of the step-down program that they haven’t seen already in the past twenty plus years during my extreme isolated confinement?”

Pelican Bay SHU inmate's response to policy reforms, May 2012

During Amnesty International's meetings with CDCR staff in November 2011, the department stressed that there were inmates in the SHU with serious gang connections, but acknowledged that they “over-validated” and that there were prisoners in the SHU who did not warrant such a restrictive level of housing. CDCR also acknowledged that there were people assigned to the SHU as gang associates who had no direct role in gang activity. CDCR stated that the reforms under consideration were aimed at making the system fairer as well as targeting resources more effectively, taking into account the high cost of SHU confinement and the need to manage a tight budget. Amnesty International was told that the process would ultimately reduce the SHU population to ensure that only prisoners who could not be safely housed in a less secure setting would be assigned to the SHU.

In March 2012, CDCR published its proposals for reform in a document entitled *Security Threat Group Prevention, Identification and Management Strategy*. The strategy outlined proposals for 1) amending current policy on identifying and managing gang members and other disruptive groups and 2) implementing a new, “behaviour based” step down process for gang members or associates who are assigned to the SHU.

The new proposals broaden the criteria to include management not just of prison gangs originating within prison, but also “other criminal gangs, such as street gangs or disruptive groups comprised of members and associates”. CDCR will no longer utilize the terms “Prison Gangs” and “Disruptive Groups”, and all will now fall within a new category of a Security Threat Group (STG). CDCR will certify the existing main prison gangs, and other groups identified as presenting a “severe threat” to staff safety and institutional security, as STG-I. Other groups, such as those associated with street gangs, who according to CDCR may play a secondary role to the main prison gangs, will be

USA: THE EDGE OF ENDURANCE
 PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

labelled STG-II.

Under the proposals, only validated STG-I Members will be automatically assigned to the SHU, based on the validation alone. Prisoners who are validated as STG-I Associates (individuals not formally accepted into a gang but who are involved "periodically or regularly with gang members or associates") "will not routinely be placed in SHU, based solely on their validation", but SHU assignment in these cases will depend upon whether or not they engaged in "serious disciplinary and/or criminal gang behaviour."¹¹⁸ The proposals state that STG-II Members and Associates will not be automatically assigned to the SHU, but may be considered for placement if they are found to engage in "repetitive criminal gang behaviour".

The reforms include proposals to make the gang validation process more objective by introducing a "weighted" point system alongside the three independent source items that are already required. This means that at least 10 points will be required to validate someone as an STG member or associate, based on a weighted scale (e.g. a symbol, clothing or hand signals associated with a certified gang, or written materials containing a gang symbol, would incur 2 points, information from an informant 3 points, visits from an alleged gang member or associate 4 points, and so on).

However, the proposals will still use the same criteria as under the present system to validate someone as an STG member or associate. This means that a prisoner can still be validated as an STG-I member and assigned to an indeterminate SHU term on the basis of symbols, or who he associates or is seen with, without evidence of actual gang-related activity. Continued placement in the SHU "based on membership and not behaviour" has been described by advocates as one of the main problems with the new proposals. There is also concern that, without the need to provide evidence of specific criminal or gang-related activities in order to validate someone, the distinction between who is a "member" and who is an "associate" may remain blurred in practice, with some prisoners who have only loose gang associations being wrongfully assigned to the SHU.

Under the proposals, the IGIs will continue to conduct the investigations into gang activity and prepare the validation packages for OCS approval. Prisoner representatives and others have expressed concern that no substantial "due process" changes have been proposed to the system, and that there remain insufficient checks and balances.¹¹⁹ CDCR is reported to have responded to some of these concerns by considering allowing prisoners some representation at their initial classification hearing and adding another layer of administrative review. However, no details of any amendments to the proposals had been published as of August 2012.

Some advocates have expressed concern that broadening the criteria for an STG group to include prisoners who are associated with street gangs or other groups could potentially increase assignments to the SHU. However, CDCR has stated it anticipates that its proposals will decrease the number of people held in the SHU, and in Administrative Segregation Units (which often serve as a SHU overflow), by making SHU-assignments for most STG members or associates based on serious criminal behaviour or rule violations, and by allowing a route out of the SHU through the step-down process, which would replace the six-year "inactive" status.

While measures to reduce the number of prisoners held in security housing units are a positive step, in Amnesty International's view the proposals should ensure that only prisoners who present a clear and present threat, who cannot be safely housed in a less secure setting, are assigned to the SHU. Given the serious consequences of SHU confinement, the authorities should ensure that STG validations are based on a thorough and impartial investigation, and only with concrete evidence of gang-related activity posing such a clear and present threat; that prisoners have a fair opportunity to contest the evidence; and that such decisions are subject to regular, meaningful review.

THE STEP-DOWN PROCEDURE

The proposals include a new step-down program (SDP) for prisoners assigned to indeterminate SHU housing based on STG validation. CDCR has described the SDP as an "incentive based multi-step process" involving "structured activities and programming", aimed at preparing inmates for

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

eventual release back to the general prison population or Special Needs Yard (SNY).¹²⁰

The SDP consists of five steps, the first four of which would take place within the SHU, each step lasting a minimum of 12 months. The SDP would replace the six-year inactive review, allowing prisoners to work their way out of the SHU in four years, should they successfully pass through the required steps. The proposals make clear that prisoners can only complete the steps "providing they remain free of gang activity and demonstrate compliance with the program requirements".¹²¹

Under Steps 1 and 2, prisoners will remain confined to their cells for 22 and a half hours a day, with 10 hours out of cell exercise a week. The proposals state that recreation may include the use of "isometric and exercise equipment as determined and deemed appropriate", otherwise there is no change to their physical conditions of confinement. All meals would continue to be eaten inside the cell and access to personal possessions and hobby-craft materials would remain limited. Prisoners undergoing Steps 1 and 2 of the SDP – which is described by CDCR as an "observation phase" – will be required to undertake "in-cell studies designed to enhance life skills" such as anger management and other cognitive skill based programming. The prisoner's progress will be assessed by the institutional classification committee (ICC) every six months, and, if judged to have completed one step successfully after 12 months, will move to the next step.

Step 3 would involve some peer interaction of "mixed gang affiliations", with program components "to include both individual and group meetings that provide anger management, parenting, academic and substance abuse programs, and other self help groups". Group meetings would be limited in size and prisoners would be held in individual "therapeutic treatment modules": individual cages about the size of a telephone kiosk. Otherwise, the only change to conditions is an increase in canteen money (from 25% to 40% of what is allowed to general population inmates), no significant increase in-cell possessions, (allowing up to ten (non-educational) books or magazines and the addition of dominoes). The proposals include no change to the amount of outdoor recreation and all meals would be eaten in the cells as at present.

Step 4 would include some expanded programs, including some work and educational programs within the unit, with individual and group therapeutic treatment, in modules, as above "or unrestrained as determined by ICC". The proposals would also allow "Yard interaction with inmates of diverse affiliations" after six months of programming in Step 4. Meals would also be consumed within the section with other SDP inmates.

Prisoners completing all four steps of the SHU SDP will be released into a maximum security (level 1V) general population setting or a SNY for a 12 month observation period. If they complete this phase "with no documented evidence of continued gang involvement" they will have completed the program and may be transferred to any other facility consistent with their classification score. These prisoners will remain on "monitored" status for the rest of their sentence and could be sent back to the SHU at any time (via ICC review) if they commit a serious disciplinary offence or demonstrate "new criminal gang behaviour".

The opportunity for prisoners to earn their way out of the SHU through renouncing their gang membership and "debriefing" would continue to exist as an alternative to SDP. The proposals state that, at any stage of the SDP, the inmate can be asked to be put into the debriefing program instead.

CONCERNS ABOUT CONTINUED ISOLATION DURING THE STEP-DOWN PROGRAM

Amnesty International welcomes in principle proposals to introduce a step-down program to replace the present system where prisoners remain in the same harsh conditions for years on end, with no structured incentives to change their behaviour. However, the organization is deeply concerned that, under the new proposals, prisoners would remain confined to solitary or double cells for a minimum of two years, with no change to their isolated conditions of confinement. These concerns are compounded by the proposal that all male inmates undergoing steps 1 and 2 of the SDP (apart from those excluded on grounds of serious mental illness) will be housed in Pelican Bay

USA: THE EDGE OF ENDURANCE
 PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

SHU; thus some SHU inmates at present housed in other facilities may see their conditions actually worsen, by being confined to windowless cells in an even more isolated environment, with an exercise yard that offers no view to the outside.

Given the negative effects that prolonged isolation can have on physical and psychological health, it is hard to see how the in-cell "anger management" and cognitive programs offered during the first two steps of the SDP can have a positive impact when conducted in such a restrictive setting. It is also unclear how a prisoner's progress can be measured in the absence of any group interaction and with so little time spent outside the cell. While no details have been provided of how the in-cell programs will be delivered, they are likely to be via closed-circuit TV, given the high cost of delivering face-to-face programming in a SHU setting. Even after two years of clear conduct, prisoners would still spend most of their time confined to isolation cells in phase three, with the only inter-action with other inmates taking place in individual cages ("therapy modules").

The CDCR proposals state that "failure to complete program requirements and/or confirmed criminal gang behaviours during any program step", will require the offender to "repeat or regress to a prior step as determined by ICC". Prisoner advocates have expressed concern that correctional staff and IGIs will still exercise considerable influence on who remains in the SHU, particularly in the absence of positive opportunities to demonstrate good behaviour as indicated above. The proposals state that the prisoner must be "free of gang activity" in order to complete the program, and that staff will monitor and report any gang behaviour. Some prisoners have expressed a fear that without clear behavioural-based criteria as to what actually constitutes gang activity, they may still be held in the SHU indefinitely, without posing a danger to others or to institutional security.

Some other states have introduced systems which enable high risk prisoners to participate in meaningful programs and return safely to the general prison population within a far shorter time frame than is proposed in California.

In Connecticut, prison gang members assessed as a security threat undergo a three-phase program, where they can progress through all three phases and back to the general prison population within a period of nine months.¹²² Prisoners, who must renounce gang activity in order to complete the program, are housed two per cell at all three phases and, after six months (phase 3), have access to a dayroom and gymnasium as well as interactive programs and counselling. Evaluations of the program, which has been running since 1994, have reported it to be a success, with low recidivism rates (measured by return to gang activity) among prisoners who have completed it.¹²³

From late 2007 to early 2009 Mississippi reduced its most secure segregated population by 80% following reforms to the criteria for assigning prisoners to the unit (Unit 32 at the state prison at Parchman). Those who remained in Unit 32, who included STG leaders, were given opportunities to move at an early stage from the "closed tier" (cellular isolation) section to an "open tier" where they had group programs, access to sporting activities and congregate dining, before moving out of the unit altogether. According to Mississippi Corrections Department Deputy Commissioner Emmitt Sparkman,

"We were able to identify inmates who were a threat and those people remained in segregation. But they participated in programs, we gave them more freedoms, and we saw a huge decrease in violence in that unit Once prisoners in Unit 32 saw the incentives they could get, every week we saw inmates progress to the next level".¹²⁴

Unit 32 was closed altogether in 2010, and use of long-term segregation has reportedly been reduced throughout the state with no adverse effects on institutional safety.

An external review of administrative segregation in the Colorado prison system in 2011 found a two-year average length of stay in isolation units to be too long. Consultants for the National Institute of Corrections recommended a structured level system for prisoners classified as a high security risk which would allow them to be returned to the general prison population within nine months if compliant with the program, with specific rules and privileges at each stage; the report criticized existing programs provided at the state's "supermax" facility (Colorado State

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

Penitentiary) as being of "questionable value", noting that almost all programs and activities were provided by staff at the cell-side and there were no procedures for reducing use of restraints and allowing group activities.¹²⁵

Colorado has since taken steps to reduce the numbers of prisoners in long-term isolation, joining a growing number of other states who have reduced, or are in the process of reducing, their "supermax" populations, including Illinois, Maine, Ohio and Washington.

EXISTING SHU PRISONERS

CDCR's reform proposals include plans to review the cases of all existing SHU prisoners. Amnesty International understood from a meeting with CDCR in November 2011, that the review would decide which prisoners, under the revised criteria, no longer needed to be in the SHU and that it could go ahead before the reforms were finalised. However, as far as the organization is aware, as of August 2012, few, if any, prisoners had yet been released under this process.

Prisoners who are retained in the SHU will be eligible to participate in the SDP. The strategy document states that "offenders will normally begin the SDP in Step 1" (p. 27). However, the proposals appear to give some discretion to the prison authorities on what step to place a prisoner in the SDP.¹²⁶ Amnesty International wrote to CDCR in early July 2012 to seek clarification of how existing prisoners would be dealt with under the proposed reforms. Specifically, the organization sought clarification on whether prisoners who have already spent several years in SHU confinement without a serious disciplinary record will be eligible to move straight to steps 3 or 4 of the SDP, so that they can begin integrated activities right away, rather than spending a minimum of two more years in isolation and a third year in near-total isolation. Amnesty International also asked whether whether gang associates who no longer fit the SHU criteria will be considered for immediate transfer to the general prison population, and whether any such transfers have taken place. The organization regrets that it had not received a response to its inquiry at the time of writing.

16. CONCLUSIONS AND RECOMMENDATIONS

“Torture...to torture people. There are no rehabilitation programmes, no church, no education, no supplies for artists. They say we can't have cell mates because it would be too dangerous but that is not true. It's not true when they say that everyone held in the SHU is the 'worst of the worst'. Many of the inmates have been held in solitary confinement for more than 15 years, some for more than 20. Even for me after being in solitary confinement for almost seven years...that rush of loneliness still vibrates through me...so try to imagine effect on their minds”

Response from ex-prisoner who spent nearly seven years in Pelican Bay SHU, when asked what he thought was the objective for the practise of long-term isolation

In presenting the findings of this report, Amnesty International recognizes that the authorities have an obligation to ensure the safety of all inmates and that it may be necessary to segregate prisoners at times for disciplinary or security reasons. However, all measures must be consistent with states' obligation under international human rights law and standards to treat all prisoners humanely, and refrain from torture or other ill-treatment. As described above, Amnesty International considers that the conditions of isolation and other deprivations imposed on prisoners in California's SHU units breach international standards on humane treatment, and that prolonged or indefinite isolation, and the severe social and environmental deprivation existing in Pelican Bay SHU in particular, constitutes cruel, inhuman or degrading treatment or punishment in violation of international law.

In line with international human rights law and standards, Amnesty International urges that solitary confinement, whether for disciplinary or administrative purposes, is used only as a last resort, for the minimum period possible. All prisoners in segregated security housing should have access to adequate out of cell time and exercise, and (if held for other than brief periods in disciplinary segregation) access to meaningful rehabilitation programs both in terms of their right to humane treatment and to aid prisoners' eventual return to society. While the reforms currently under consideration contain some improvements to the present system, by for example, excluding prisoners from an automatic SHU assignment based solely on validation as an STG "associate", they do not go far enough. There are continuing concerns about both the fairness of the procedures for assigning prisoners to what could still be indefinite SHU terms, and about the length of time in which prisoners will remain in solitary confinement during the step down process.

In light of these concerns and the findings of its report, Amnesty International makes the following recommendations to the California authorities.

1. Recommendations for assignment to the SHU

- Ensure that only prisoners who are a severe, continuing threat, whose behaviour cannot be managed in a less restrictive setting, are held in the SHU.

- The criteria for SHU assignment for STG members should be based on concrete evidence of illegal, gang-related activity rather than membership or association alone, with prisoners given a fair opportunity to rebut the evidence used to validate such assignments.

- All prisoners assigned to the SHU as a "gang associate" or who have already spent years in indeterminate SHU assignments should be immediately removed from isolation. Prisoners should be transferred to the general prison population where possible, or to a transitional unit, depending on their individual circumstances.

- Placements in the SHU should be made only after an impartial hearing at which the prisoner has fair representation and a meaningful opportunity to contest the assignment and the right to appeal. The procedural protections should include those recommended in ABA standards, such as a reasonable opportunity for prisoners to present witnesses. Prisoners should be provided with regular, meaningful review of their SHU assignment through a similar impartial proceeding. Specific factual reasons should be provided for every decision to assign or retain someone in the SHU, with individualised guidance provided for what a prisoner needs to do to be released from the SHU.

2. Recommendations on conditions in SHU housing

- All prisoners in segregated housing should be held in humane conditions with adequate access to outdoor exercise and natural light and more out of cell time.

- If prisoners continue to be housed in Pelican Bay SHU, the conditions should be urgently modified to improve the living environment so that prisoners even in the most restrictive custody setting have better facilities for outdoor exercise, access to natural light and more human contact.

- Amnesty International recommends that CDCR introduce measures that allow some group interaction for prisoners at all stages of SHU confinement, both to benefit their mental health and wellbeing and to provide incentives and allow their behaviour to be measured. This could include allowing prisoners to exercise in small groups in a secure outdoor setting and/or have access to a day-room.

- The step down program should be modified to provide prisoners with an opportunity to work their way out of the SHU to the general population in months rather than the four years currently proposed.

- Opportunities should be provided for all prisoners in SHU housing to have access to meaningful programs, including educational, recreational and rehabilitation programs.

- Contact with family members should be encouraged, by providing adequate opportunities for visitation and by allowing all SHU prisoners to make regular phone calls to their families. Amnesty International recommends that prisoners who are disciplinary free be allowed two non-legal phone calls a month, as is permitted in high security units in the federal system. The authorities should extend the visiting hours for prisoners held in Pelican Bay SHU, given the remote location of this facility. The authorities should also consider transferring prisoners who have spent several years in Pelican Bay SHU to prisons nearer to home.

- Ensure adequate mental health monitoring of all SHU prisoners, including opportunities for prisoners to consult with mental health care professionals in private. Prisoners suffering from mental health problems should not be confined to cells for prolonged periods but should receive treatment in a therapeutic setting.

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

- All SHU prisoners should have access to adequate health care; given the isolated environment, there should be systems to ensure regular, independent review of health care provision in SHU facilities.
- Prisoners who have developed serious health care problems as a result of their SHU confinement (whether physical or mental) should be removed to an appropriate facility where their health care needs can be met.
- The use of Lexan (plastic) covered cells should be discontinued, or used only as a short-term emergency measure, given that they serve to further isolate prisoners already confined to cells and may worsen conditions inside the cell. Prisoners who engage in disturbed behaviour, such as spitting or throwing bodily waste, should receive treatment for their behaviour in a more therapeutic setting.
- Female SHU prisoners should at all times be attended and supervised by female staff and at no time should any areas of the SHU be attended by male staff alone. Male staff should not be required or permitted to carry out duties or enter locations in the SHU where they can observe women in the shower or at other times when they are undressed.

3. Conditions in administrative segregation units (ASUs)

- Given the severe effects of isolation in ASUs as well as SHUs, and statistics showing a higher risk of suicide among inmates in ASUs than the prison general population, conditions in ASUs should be improved and all prisoners subjected to regular, careful monitoring of their mental health. Prisoners showing signs of mental illness or psychological distress while in segregation units should be immediately removed from extreme isolation. All prisoners held in ASU cells for longer than a few days should have access to occupational materials and contact with the outside world through TV and/or radio to reduce the effects of extreme isolation and sensory deprivation.
- The state Legislature and Governor should ensure that all prisoners, including those in the SHU, have access to effective rehabilitation programs and that such programs are adequately funded.
- The state Legislature should ensure through regular monitoring and oversight that all prisoners in the state correctional system are held in conditions that conform to international standards.

ENDNOTES

¹ The organization spent a day in each prison and spoke to staff and prisoners, interviewing 11 prisoners. Although the prison authorities selected the prisoners who agreed to be interviewed, and the interviews took place in the presence of prison staff, they included prisoners who had spent many years in the SHU and prisoners undergoing debriefing as well as those who had declined to debrief, as requested by Amnesty International. The delegates also spoke randomly to prisoners at the cell doors as it toured units in the SHUs at Corcoran and Pelican Bay. Amnesty International's delegates were Roy King, Emeritus Professor of Criminology and Criminal Justice, University of Wales and Honorary Senior Research Fellow, Institute of Criminology, University of Cambridge and Angela Wright and Tessa Murphy of the International Secretariat of Amnesty International in London, UK.

² "Parole, Snitch, or Die: California's Supermax Prisons & Prisoners, 1987-2007, by Keramet Reiter, Institution for the Study of Social Change, UC Berkeley, 7 July 2010. CDCR statistics on the racial makeup of the institutional population in 2007 were 39.8% Hispanic, 28.9% Black and 25.8% White. CDCR uses "Hispanic" as a race category although the US Census uses "Hispanic" as an ethnicity category.

³ In California, as in other states, gangs, including prison gangs, are largely divided along racial/ethnic lines. The prison gangs considered to be the most serious, according to CDCR's threat criteria, are the Mexican Mafia, Nuestra Familia and the Texas Syndicate (of Hispanic or Mexican American or Latino immigrant origin), Northern Structure (associated with Nuestra Familia but with a mixed racial make-up); the Aryan Brotherhood and its affiliate the Nazi Low Riders (white supremacists), and the Black Guerilla Family.

⁴ No exact figures are available as national studies have found it difficult to compare numbers across states due to different definitions by states of what constitutes "supermax" housing and with shifting practices due to court decisions. However, a survey by the Urban Institute found that, as of 2004, 44 states had "supermax" facilities housing some 25,000 inmates (*A Critical Look at Supermax Prisons*, Daniel P. Mears, Corrections Compendium, 2005). A census of state and federal prisons in 2005 conducted by the US Department of Justice's Bureau of Justice Statistics found there were 81,622 prisoners held in some form of "restricted housing" at that time.

⁵ In the 19th century prisoners were often held in total isolation as a form of penitence, but the practice was abandoned after concern at the inhumane effects of such treatment. The first modern supermax prison was the federal prison at Marion, Illinois, where prisoners were placed in "lockdown" and confined to cells following the murder of two prison guards in 1983; the prison continued to hold prisoners in 23 hour cellular confinement for the next 23 years but is no longer an isolation facility. It has been replaced in the federal system by the federal prison ADX in Florence, Colorado, where some 500 prisoners are held in long-term isolation.

⁶ See King, Roy D. The rise and rise of supermax: an American solution in search of a problem, *Punishment and Society*, 1 (2) 163-186, 1999. King's research found that California had 2,942 beds out of a total of 19,630 in 34 states in the mid 1990s.

⁷ These included California's "three strikes law" which triggers a sentence of 25 years to life for any offender with two prior felony convictions, including for non-violent offences.

⁸ The Determinate Sentencing Act, 1976.

⁹ One of the first was the Special Management Unit (SMU) in Arizona, which opened in 1987 and on which Pelican Bay was modelled (see *Cruel Isolation, Amnesty International's concerns about conditions in Arizona Maximum Security Prisons*, AI Index: AMR 51/023/2012.)

¹⁰ A 1999 National Institute of Corrections report evaluating of the effects of supermax in reducing violence found "There exists little or no hard data comparing such perceived impacts on entire systems versus the fiscal cost to gain such results" (Chase Riveland, *Supermax Prisons: Overview and General Considerations*, p. 2.) A later study of corrections systems in Arizona, Illinois and Minnesota found no evidence that segregating prisoners reduced overall levels of inmate on inmate violence and had mixed results on whether supermax confinement increased staff safety (Chad S. Briggs et al, "The Effects of Supermax Security Prisons on Aggregate Levels of Institutional Violence", *Criminology* 41 (2003), 1341-76.)

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

¹¹ Reiter Keramet, *Parole, Snitch or Die*, *supra* at note 2, p. 43.

¹² They include Mississippi, where incidents of violence and use of force dropped by 70% after the state cut its supermax population of more than 1,000 prisoners and introduced group activities and programs for the remaining inmates, leading senior corrections officials to support eventual closure of the unit in 2010. Ohio reduced its supermax population by 89% with no increase in violence.

¹³ The decision followed extensive litigation on the state's failure to provide adequate medical and mental health care brought in two lawsuits, *Coleman v Brown*, filed in 1990, and *Plata v Brown*, filed in 2001.

¹⁴ AP, Don Thompson, 14 June 2012.

¹⁵ Although California ranks 18th in the USA in the rate at which it incarcerates its population, it still incarcerates at a rate higher than most other countries. The current incarceration rate of sentenced prisoners in California state prisons is 595 per 100,000 population (*Public Policy Institute of California, April 2012*). By comparison, the incarceration rate in 2008 (including pre-sentenced inmates) in England and Wales was around 153/100,000, France, 96/100,000 and Germany 89/100,000), *World Prison List, International Centre for Prison Studies, Kings College, London, UK*. In England and Wales, with a population of 56 million, compared to California's 38 million, the current prison population is 82,000 prisoners, the highest per capita in Western Europe.

¹⁶ *The 2012-13 Budget, Refocusing CDCR After the 2011 Realignment*, LAO report, 23 February 2012.

¹⁷ The concern generated by the hunger strike led to a hearing on solitary confinement by the Public Safety Committee of the California State Assembly on 23 August 2012 (organized by the chair of the Public Safety Committee Tom Ammiano), at which prisoners' relatives, former SHU prisoners, advocates, penal reformers, representatives of religious organizations and CDCR testified.

¹⁸ See public statement 4 October 2011: *Amnesty International Calls for Urgent Reforms to California security housing units as the prison hunger strike resumes* <http://www.amnesty.org/en/library/asset/AMR51/085/2011/en/>

¹⁹ Human Rights Committee General Comment 21; similar principles are affirmed under the UN Standard Minimum Rules (Article 57) and the Basic Principles for the Treatment of Prisoners (Principle 5).

²⁰ Interim Report by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 5 August 2011, United Nations General Assembly A/66/268/, para 46 (hereafter referred to as the "Interim Report of the SR).

²¹ Human Rights Committee General Comment 20 on Article 7 of the ICCPR.

²² Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee 2006, para 36 (CCPR/C/SR.2395, 27 July 2006).

²³ *Ibid*, para 32.

²⁴ Conclusions and recommendations of the Committee against Torture on the second report of the USA, para 36, CAT/C/USA/CO/2, 18 May 2006.

²⁵ The European Prison Rules were adopted by the Committee of Ministers of the Council of Europe in January 2006, and approved by all 47 member states of the Council of Europe for guidance in legislation, policies and practice of the countries concerned.

²⁶ The case law looks at the individual circumstances of each case and cases may not be totally analogous in every respect to cases elsewhere; however, for example, in *Ramirez Sanchez v France*, Application No. 59450/00, the European Court of Human Rights found that solitary confinement, even if only partial, cannot be imposed on a prisoner indefinitely. The Inter-American Court of Human Rights has held that prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, and that isolation in a small cell without ventilation or natural light together with restriction of visiting rights constitutes a form of cruel, inhuman and degrading treatment (*Loayza-Tamayo v Peru*, IACHR, Series C, No.33, para 58 (1997).

²⁷ *Interim Report of the SR, supra* at note 21.

²⁸ *Madrid v Gomez*, 889 F. Supp.1146 (N.D. Cal 1995)

²⁹ *Madrid v Gomez*, at p. 59

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

³⁰ Prisoners must establish they are deprived the minimal civilized measure of life's necessities", (*Wilson v Seiter*, 501 U.S. at 298 (1991)). In order to establish that a deprivation violates the Eighth Amendment, a claim must not only satisfy the objective test of a sufficiently serious deprivation, but also a subjective test in which it must be shown that the authorities were aware of, and showed "deliberately indifference" to the risk of harm posed by the conditions (*Wilson v Seiter*, at 303); the prison authorities must "know of and disregard an excessive risk to inmate health and safety" (*Farmer v Brennan*, 511 U.S. at 837 (1994));

³¹ e.g. *Farmer v Brennan*, 511 U.S. at 825,831

³² A further obstacle to prisoners bringing claims on grounds of mental injury is the Prison Litigation Reform Act (PLRA) passed by Congress in 1995 which provides that "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. section 1997 e (e).

³³ Initial report of the USA to the Human Rights Committee, 24/08/94. CCPR/C/81/Add.4., paras 176 and 177.

³⁴ Under treaty-based and customary rules of international treaty law, states may not enter reservations which are incompatible with the object and purpose of a treaty (Vienna Convention on the Law of Treaties, adopted 22 May 1969, entered into force 23 May 1980).

³⁵ The Human Rights Committee has stated it is "particularly concerned at reservations to article 6, paragraph 5, and article 7 of the Covenant, which it believes to be incompatible with the object and purpose of the Covenant" (Concluding Observations of the Human Rights Committee: United States of America, U.N.Doc. CCPR/C/79/Add.50, A/50/40 (1995, para 279). The CAT has expressed concern about "The reservation lodged to article 16, in violation of the Convention, the effect of which is to limit the application of the Convention", Conclusions and Recommendations of the Committee against Torture: United States of America, 15,05,2000. (A/55/44, para179 (b)).

³⁶ *Confronting Confinement*, report of the Commission on Safety and Abuse in America's Prisons, June 2006. The Commission was established by the Vera Institute of Justice in 2005 and conducted a year-long inquiry which included public hearings in four major cities. It was co-chaired by former US Attorney General Nicholas B. Katzenbach and the Hon John Gibbons, former Chief Judge of the US Court of Appeal for the Third Circuit. Its 20 members included prison administrators, prisoner-rights advocates, religious representatives and members of both main political parties. <http://www.vera.org/content/confronting-confinement>

³⁷ *Confronting Confinement*, pages 53-61

³⁸ *Ibid*, at p. 57

³⁹ ABA Criminal Justice Standards on Treatment of Prisoners, approved by the ABA House of Delegates, February 2010. ABA standards are not binding but are "grounded in legal and constitutional principles" and have "guided the development of law and practice in the American criminal justice system" (Statement submitted to Hearing before Senate Judiciary Committee, 19 June 2012).

⁴⁰ Arizona SMU, which opened in 1986, was the first "purpose-built" "supermax" facility in the USA.

⁴¹ *Amnesty International, Conditions for Death Row Prisoners in H-Unit, Oklahoma State Penitentiary*, Roy King, (AI Index: AMR 51/35/94), May 1994 p. 16; *Cruel Isolation, Amnesty International's Concerns about Conditions in Arizona Maximum Security Prisons* (AI Index AMR 51/023/2012), April 2012, p 4.

⁴² CDCR Operations Manual states that all wardens in the division of adult facilities "shall have systems in place to ensure that ACA standards have been reviewed and, where appropriate, incorporated into local operations" (Operations Manual Article 26, 14090.4). CDCR has also reported that it is working towards seeking ACA accreditation in designated California facilities (CDCR Division of Adult Institutions Strategic Initiatives 2011-2012; the designated facilities were not named in this document).

⁴³ Amnesty International has described how holding two prisoners for 22 or more hours a day in a small cell in enclosed, isolated environment can cause particular stresses on prisoners and that inappropriate double-celling can be dangerous, leading to attacks by inmates on cell-mates (*USA: Conditions for death row prisons in H-Unit, Oklahoma State Penitentiary*, 1994 (AMR 51/34/94)). The Madrid v Gomez ruling also noted with concern lack of clear criteria for double-celling inmates in Pelican Bay SHU and cases where prisoners had been victims of in-cell assaults by their cell-mate, Madrid ruling , 43-44: two-thirds of the SHU population were double-celled at that time.

USA: THE EDGE OF ENDURANCE
 PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

⁴⁴ *Madrid v Gomez*, 889 F. Supp. 1146, p. 38

⁴⁵ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

⁴⁶ *Interim Report of the SR*, *supra* at note 21, p. 14

⁴⁷ Standards for Adult Correctional Facilities, 4th Edition (4-4147-148, 4-4140). The ACA standards appear to allow for a natural light source within 20 feet of a cell rather than directly into the cell; as Amnesty International has noted elsewhere, this standard may have been acceptable for old-style facilities with open barred-cells but is not in the organization's view an adequate standard for a modern facility, particularly with solid cell doors.

⁴⁸ A letter to the Office of the Receiver (appointed by a federal court to supervise medical care in California prisons) from Carol Strickman, staff attorney at Legal Services for Prisoners with Children, dated 2 September 2011, outlining a range of concerns about the health of SHU prisoners, states that the ventilation system at Pelican Bay is inadequate, with recycled air entering the cells "full of dust and other particles, causing complainants to suffer respiratory complications in their breathing".

⁴⁹ Terry A. Kupers, M.D. M.S.P, a clinical psychiatrist with expertise in mental health issues relating to prisoners, testified in an Arizona case that Lexan made the cell "significantly hotter and more humid than it would otherwise be", and that it also "greatly intensifies the isolation". He spent several minutes inside an empty Lexan cell and noted that "While one can hear a person speaking through the lexan, the voice is more muffled than when one speaks through the grid without a lexan cover." (extract from testimony of Kupers in the case of Arizona death row inmate Robert Comer, 2002). Similar testimony has been given in a case in Mississippi.

⁵⁰ Amnesty International correspondence with clinical psychiatrist Terry Kupers (see note 47 *supra*). Kupers, explained how such behaviour can result from mounting anger in reaction to the harsh isolative conditions in such units, with fewer appropriate means for the prisoner to express him or herself; see also Kupers, Terry A, *How to Create Madness in Prison*, David Jones, Ed, Humane Prisons. Oxford: Radcliffe Publishing, 2006.

⁵¹ Reiter, Keramet, *Parole, Snitch or Die*, *supra* at note 2, p. 22.

⁵² CDCR Security Threat Group Prevention, Identification and Management Strategy, page 33.

⁵³ *Madrid v Gomez*, p. 38

⁵⁴ Undated memorandum regarding Security Housing Unit Concerns issued by CDCR in mid-2011 to the wardens of Corcoran, Pelican Bay and other state prisons.

⁵⁵ One example criticized by Amnesty International for failing to ensure humane conditions is H-Unit in Oklahoma State Penitentiary, an isolation unit which was planned and designed by an informal committee of Department of Corrections personnel as a "non-contact" facility (*Amnesty International, Conditions for Death Row Prisoners in H-Unit, Oklahoma State Penitentiary, USA*, by Professor Roy King, AI Index: AMR 51/35/94).

⁵⁶ *Parole, Snitch and Die*, *supra* at note 2, p. 16

⁵⁷ Principles 19 and 20 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly, Res. 43/173, 9 December 1988.

⁵⁸ According to a class action lawsuit filed in May 2012 on behalf of prisoners in Pelican Bay SHU, while prisoners who can afford them are allowed to take correspondence courses, "there has been no consistent access to proctors for exams that would allow prisoners to get credit for their coursework" (*Ruiz v Brown*, Case No: 4:-cv-05796-CW, Plaintiffs' Second Amended Complaint, at page 14)

⁵⁹ Human Rights Committee General Comment 21, 1992

⁶⁰ Findings of studies published in numerous articles, (e.g. Grassian, "Psychiatric Effects of Solitary Confinement" Wash U. J.L and Policy (2006)) and in court rulings and testimony. See generally Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 Crime and Just. 441 (2006).

⁶¹ *Madrid v Gomez*, p. 60

⁶² *Madrid v Gomez*, pages 39-42. Dr Stuart Grassian is a Board Certified psychiatrist on the faculty of Harvard
 Index: AMR 51/060/2012

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

Medical School. His reports, based on studies of solitary confinement, include Grassian. S., *Psychopathological Effects of Solitary Confinement*, American Journal of Psychiatry, 140, 1450-1454 (1983) and *Psychiatric Effects of Solitary Confinement*, 22 Wash U. Journal of Law and Policy, Vol: 22:325 (2006).

⁶³ Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, Crime & Delinquency, 49, 124-156 (2003), and in Statement to the California Assembly Committee on Public Safety, Hearing on SHU Conditions in California Department of Corrections and Rehabilitation, 23 August 2011.

⁶⁴ A class action lawsuit filed in May 2012 on behalf of prisoners who had spent between 11 and 22 years in Pelican Bay SHU (*Ruiz v Brown*, Case No. 4:09-cv-05796-CW. Plaintiffs' Second Amended Complaint). The complaint describes *inter alia* the ongoing physical and mental effects of prisoners' prolonged isolation, including severe anxiety, headaches, chronic fatigue, insomnia, panic attacks, hallucinations, concentration and memory loss, numbness, pages 27-30.

⁶⁵ *Ruiz v Brown*, pages 28-30.

⁶⁶ Statement to the California Assembly, *supra* at note 65.

⁶⁷ Letter from Carol Strickman, staff attorney at Legal Services for Prisoners with Children, to the Office of the Receiver, 2 September 2011. The Receiver is a medical officer appointed by a federal court in 2005 to oversee reform of health care provision in California prisons, under litigation charging that the state had failed to provide adequate health care to inmates (*Plata v Brown*).

⁶⁸ *Wilkerson et al v Stalder et al*, Civil Action No 00-303, US District Court, M.D. La, Report and Recommendations of Magistrate Judge Dalby, 11 August 2007.

⁶⁹ 1997 report by three independent psychiatrists who examined prisoners held in Special Security Units. An official inquiry by the UK prison service recommended that prisoners held in the unit should be retained there for as short a period as possible and more provision should be made for mental stimulation and physical exercise and prisoners should have open visits with members of their immediate family. The findings are described in Amnesty International report, *UK Special Security Units – Cruel, Inhuman and Degrading Treatment*, 1997 (AI Index: EUR 45/06/97)

⁷⁰ E.g. White T. Schimmel D, Frickey R: A comprehensive analysis of suicide in federal prisons: a fifteen year review. *Correctional Health Care* 9:321-23, 2002; *Confronting Confinement*, the 2006 report of the Commission on Safety and Abuse in America's Prisons (op cit at note [ADD] cites a national study finding two-thirds of suicides in US jails took place in a control unit (Hayes and Rowan, 1988). Data from various US states in recent years, including Oregon and Ohio, have shown suicide rates occurred disproportionately in segregation units.

⁷¹ The California prison suicide rate for 2005-2010 averaged 21.7 per 100,000 prison population compared to the national average in US state prisons for 2005-2007 of 16.6/100,000 (latest figures provided by the US Department of Justice's Bureau of Justice Statistics.

⁷² Source: annual reports prepared by Dr Raymond F. Patterson, M.D., expert adviser to the Special Master, and reports of the Special Master to the US District Court for the Eastern District of California. The reports were submitted as part of the Special Master's continuing review of CDCR's compliance with court-ordered remedies in the *Coleman v Brown*, lawsuit, case No. CIV S-90-0520 LKK JKM P (E.D. Cal.). The annual suicide numbers were 43 (2006); 34 (2007); 37 (2008); 25 (2009), 35 (2010).

⁷³ In 2007, following concern by the Special Master about the rising number of suicides in administrative segregation units, CDCR instructed all institutions to assess their logistical abilities to provide in-cell radios and TVs to inmates in such units for non-disciplinary reasons. Some have since been converted to allow such equipment in order to reduce extreme conditions of isolation. However, during Amnesty International's visit to Pelican Bay in November 2011, it noted that a "stand-alone" ASU facility in Pelican Bay, which was built just a few years ago, still had no outlets for radio or TV.

⁷⁴ Letter to Amnesty International from CDCR, 27 March 2012.

⁷⁵ Reports to the Special Master on suicides in CDCR facilities by Dr Raymond F. Patterson, M.D, for Calendar Years 2006, 2007, 2008/9 (combined report) and 2010.

⁷⁶ Special Master's Report, filed 9 November 2011, *Coleman v Brown* (see note 68, *supra*).

⁷⁷ *Parole, Snitch or Die*, *supra* at note 2, at p. 49-50.

USA: THE EDGE OF ENDURANCE
 PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

⁷⁸ *2011 Adult Institutions Outcome Evaluation Report*. The study found that prisoners who had spent some time in the SHU during their incarceration and were released on parole during Financial Year 2006/7 had a 5% higher recidivism rate (measured by returns to prison) than other inmates released during the same period. This was aggregate data and did not include a breakdown of the percentage released directly to the street from the SHU or other factors. However, adding SHU releases to the populations of offenders in CDCR analysis for lawmakers and other decision-makers is a welcome development.

⁷⁹ Standards on medical services are contained under 22-23 of the SMR. The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment also provide that medical care and treatment "shall be provided whenever necessary" and that "This care and treatment shall be provided free of charge". (Principle 24).

⁸⁰ A Receiver is an impartial agent appointed by a court for a period of time to take control of assets which are the subject of litigation, and to report to the court. The Receiver appointed pursuant to the *Plata v Brown* litigation is responsible for delivering health care in all 33 adult correctional institutions and to bring the level of medical care to a standard which no longer violates the US Constitution, after which the court will return control of prison medical care to the State.

⁸¹ From report of the California Legislative Analyst's Office (LAO), *Providing Constitutional and Cost-Effective Inmate Medical Care*, April 2012. Under US law, prison officials must provide adequate care for prisoners' "serious medical needs" and deliberate failure to do so ("deliberate indifference") violates the prohibition of cruel and unusual punishment under the Eighth Amendment to the US Constitution.

⁸² *Ruiz v Brown*, *supra*, note 66, p. 16

⁸³ *Ibid*, pages 16,17.

⁸⁴ LAO report, April 2012, see note 87, above, p. 15

⁸⁵ *Ibid*, page 21.

⁸⁶ Prisoners with serious mental illness can be held in other SHU facilities and treated under the Correctional Clinical Case Management System or, if more intervention is required, referred to a prison Enhanced Outpatient Program or another mental health facility.

⁸⁷ Mental Health Services Delivery System, Chapter 9: Psychiatric Services Unit, 2009 Revision.

⁸⁸ 2008 NCCHC Standard for Health Services for Jails and Prisons. Standard E-09 (prison:essential).

⁸⁹ CDCR Strategic Plan 2010-2015.

⁹⁰ *Ruiz v Brown*, *supra* at note 66, p 17

⁹¹ *Ibid*

⁹² Mental Health Services Delivery System, Chapter 8, Security Housing Unit, 12-8-13, 2009 Revision.

⁹³ Prisoners may be assigned to ASUs for various reasons, including for disciplinary offences or pending investigations, for their own protection, or while waiting a placement in the SHU. In general prisoners spend less time in ASU than in the SHU, although in some cases they can be held there for months, or even longer.

⁹⁴ Based on figures provided to Amnesty International by CDCR in July 2012

⁹⁵ <http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>

⁹⁶ *USA: The Findings of a Visit to Valley State Prison for Women, California*, AI Index: AMR 51/053/1999
<http://www.amnesty.org/en/library/info/AMR51/053/1999>

⁹⁷ See, for example, *Women in Custody*, <http://www.amnestyusa.org/pdf/custodyissues.pdf>

⁹⁸ One listed offence is "throwing a caustic substance on a non-inmate", meriting a SHU term of two to six months or even longer if a more serious charge results. Sexual offences such as "indecent exposure", also listed as an offence carrying a SHU term of three to nine months, may also be indicative of mental health problems.

⁹⁹ Under California regulations an inmate will be assigned an employee to assist in the investigation when required due to the complexity or seriousness of the case or where it is unlikely the charged inmate can collect

USA: THE EDGE OF ENDURANCE
PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

and present the necessary evidence due to restricted housing circumstances or where determined to be necessary for a fair hearing. Prisoners are not entitled to legal representation at internal disciplinary hearings but may be assigned a staff assistant at the hearing. A finding of guilt in a disciplinary hearing is based on the preponderance of the evidence rather than beyond all doubt as required in a court of law.

¹⁰⁰ The ICC consists of prison staff members, chaired by the Warden or Deputy Warden or designee and is an administrative procedure, not a disciplinary hearing.

¹⁰¹ An inmate may be retained in the SHU after serving a fixed term if his or her release would "severely endanger the lives or inmates or staff, the security of the institution, or the integrity of an investigation into suspected criminal activity or serious misconduct" (Title 15, Section 3341.5, 8B).

¹⁰² This was the figure of gang-related SHU inmates given to Amnesty International during a meeting with CDCR in November 2011 (the largest number housed in Pelican Bay, others in Corcoran, Tehachapi and a small unit in California State Prison, Sacramento).

¹⁰³ *Interim report* of the SR, *supra* at note 21, paras 89, 94-98.

¹⁰⁴ Under the Prison Litigation Reform Act of 1995, prisoners must first exhaust administrative remedies before bringing federal civil rights claims before the courts and the process can be protracted. In practice, individual claims against prisoners' security classifications or prison housing assignments, whether in the state or federal courts, are rarely successful. As noted under Section 4 of this report, the US courts have taken a restrictive view of what constitutes "cruel and unusual punishment" in terms of prison conditions and prisoners have to prove they are deprived of basic essentials of life, with knowledge and deliberate indifference by prison officials to a substantial risk of harm, a high barrier to surmount.

¹⁰⁵ Testimony to California Assembly's Public Safety Committee hearing on 23 August 2011.

¹⁰⁶ Some prisoners have spent longer in solitary confinement as they were placed in SHU housing before Pelican Bay opened; a class action lawsuit filed by the Centre for Constitutional Rights and others in May 2012 cites the case of one prisoner who had been in solitary confinement since 1984: 28 years, and others who had spent 27 and 26 years in solitary, all based on alleged gang associations (*Ruiz v Brown*, *supra* at note 66, p.9).

¹⁰⁷ Charles Carbone, an attorney specialising in prisoner rights, in his testimony to a California Assembly hearing on SHU confinement in August 2011, reported that there were hundreds of prisoners in the SHU based on evidence that is "completely and utterly confidential" (from transcript of hearing on 23 August 2011). According to the *Ruiz v Brown* lawsuit CDCR continue to rely on "laundry lists" and on informants who identify no specific gang activity to retain prisoners in the SHU under the six-year inactive review, despite an agreement under the settlement of a 2004 lawsuit (*Castillo v Almeida*) that a confidential source must identify specific gang activity or conduct before such information can be considered as a source item (*Ruiz v Brown*, at pages 25, 26).

¹⁰⁸ *Griffen v Gomez*, Case No. C 98-21038 JW.

¹⁰⁹ The courts have ruled that prisoners have a protected liberty interest in avoiding being held in conditions which constitute an "atypical and significant hardship" in relation to the "ordinary incidents" of prison life (*Sander v O'Connor*), and thus are entitled to due process protections under the Fifth and Fourteenth Amendments of the US Constitution in decisions to place or retain them in such conditions. The courts have held that indefinite confinement to a supermax facility constitutes an "atypical" hardship under this standard.

¹¹⁰ In its key ruling in *Wilkinson v Austin*, 545, U.S. 2009 (2005) (No.04-495), the US Supreme Court held that indefinite confinement in Ohio State Penitentiary (OSP), the state's supermax facility, constituted "an atypical hardship" and inmates were thus entitled to some due process protection in decisions to transfer them to, and retain them in, the facility. The court held that Ohio's informal, non-adversarial procedures for placement in the facility were adequate to safeguard the due process requirement under the Constitution. The ruling did not prescribe the procedures all states must use in assigning inmates to supermax facilities but indicated the minimal standard adequate to meet the due process requirement in such cases.

¹¹¹ *Hewitt v Helms*, 459 U.S. 460, 477 n.9 (1983)

¹¹² For example, in *Wilkinson v Austin*, (*supra* at note 119) the Supreme Court upheld procedures that provide for a review of supermax placement after 30 days and thereafter annually; there was no need under Ohio's procedures to provide a detailed statement of the reasons for the assignment or any clear notice of what conduct is necessary for a prisoner to be removed from isolation. In some systems, including the federal system,

USA: THE EDGE OF ENDURANCE
 PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS

the initial reasons for placement may be grounds for continuing segregation and this has been upheld by the courts.

¹¹³ See, for example, testimony to the California Assembly's Public Safety Committee hearing on 23 August 2011, including testimony of Charles Carbone, an attorney specialising in prisoner rights. During a meeting with CDCR at its headquarters in November 2011, Amnesty International's delegates were informed that the OCS had rejected only two of the IGI validation recommendations in the past 18 months, although no official statistics were available.

¹¹⁴ However, unlike a hearing on a serious disciplinary charge, the indeterminate SHU review hearings do not provide the prisoner with the right to a staff employee to assist in the investigation of any challenge to the assignment the inmate may wish to put forward, nor does the prisoner have the right to call any witnesses (see Prison Law Office, Gang Validation and Debriefing, July 2012).

¹¹⁵ *Ruiz v Brown*, *supra* at note 66,, at p. 20. As the lawsuit also states, the only review at which the classification committee will review whether the prisoner should be released from the SHU occurs once every six years, at the six year "inactive" review.

¹¹⁶ The Complaint in *Ruiz v Brown* alleges that "an unwritten policy prevents any prisoner held in the SHU from being granted parole", citing the cases of four prisoners serving indeterminate SHU terms who are eligible for parole "but have been informed by the parole boards that they will never attain parole so long as they are housed in the SHU (*Ruiz v Brown*, p. 18).

¹¹⁷ Letter to California state governor Jerry Brown, 2 July 2011, from Staughton and Alice Lynd, attorneys who represented the class of prisoners that were the subject of the lawsuit giving rise to the *Wilkinson v Austin* ruling.

¹¹⁸ *STG Prevention, Identification and Management Strategy* document, 1 March 2012, at page 36 (hereafter referred to as *STG Management* document, 1 March 2012).

¹¹⁹ A committee of prisoner and human rights advocates and others which was set up to mediate between prisoners and CDCR during the hunger strike and has continued with this role in relation to the proposed reforms.

¹²⁰ SNYs are protective custody units for prisoners who have dropped out of gangs and for other prisoners considered vulnerable, such as sex offenders.

¹²¹ Security Threat Group Prevention, Identification and Management Strategy, p. 36

¹²² The program consists of a four month initial review period after which the prisoner may enter the active phases of the program, with structured activities and possibly work in the unit (phase II, lasting a minimum of 90 days and phase III, lasting a minimum of 60 days).

¹²³ See Connecticut Department of Corrections website, report, Recidivism, 23 February 2012, stating that more than 5,000 prisoners have been involved in the gang management program, with a recidivism rate (return to gang activity) of approximately 8%. See also "Connecticut Program Turns Gang Members Around", www.corrections.com/news/article/11234, 2003.

¹²⁴ Emmitt Sparkman on reducing the use of segregation in prisons, posted on website of Vera Institute of Justice, 31 October 2011. Reforms to Unit 32 were initiated through lawsuits filed by the National Prison Project of the American Civil Liberties Union and eventually implemented in full collaboration with Mississippi's Department of Corrections Commissioner Christopher Epps and Deputy Commissioner Sparkman.

¹²⁵ Colorado Department of Corrections Administrative Segregation and Classification Review, prepared by James Austin, Ph.D. and Emmitt Sparkman, published by the National Institute of Corrections, Washington, DC, October 2011 (pages 5, 18, 19).

¹²⁶ The Security Threat Group strategy document, cited above states that "newly validated members" shall be placed in Step 1 of the SDP; for STG-1 Associates discovered to have been involved in serious disciplinary behaviour "Placement into a specific step of the SDP will be determined by ICC dependent upon the severity and recency of the behaviour" (p. 36). Elsewhere, the document states that, at the classification review hearing, consideration will be given to "initial placement in the appropriate step of the SDP" (p. 11).

EXHIBIT W

1 JULES LOBEL (*pro hac vice*)

Email: jll3@pitt.edu

2 ALEXIS AGATHOCLEOUS (*pro hac vice*)

Email: aagathocleous@ccrjustice.org

3 RACHEL MEEROPOL (*pro hac vice*)

Email: rachelm@ccrjustice.org

4 CENTER FOR CONSTITUTIONAL RIGHTS

666 Broadway, 7th Floor

5 New York, NY 10012

6 Tel: (212) 614-6478

Fax: (212) 614-6499

7 GREGORY D. HULL (Bar No. 57367)

8 Email: greg.hull@weil.com

9 BAMBO OBARO (Bar No. 267683)

Email: bambo.obaro@weil.com

10 WEIL, GOTSHAL & MANGES LLP

201 Redwood Shores Parkway

11 Redwood Shores, CA 94065-1134

Tel: (650) 802-3000

12 Fax: (650) 802-3100

13 Attorneys for Plaintiffs

14 (Additional counsel listed on attached page)

15 **UNITED STATES DISTRICT COURT**

16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 **OAKLAND DIVISION**

18
19 TODD ASHKER, DANNY TROXELL,
20 GEORGE RUIZ, JEFFREY FRANKLIN,
21 GEORGE FRANCO, GABRIEL REYES,
22 RICHARD JOHNSON, PAUL REDD,
23 LUIS ESQUIVEL, and RONNIE
24 DEWBERRY, on their own behalf, and on
25 behalf of a class of similarly situated
26 prisoners,

27 Plaintiffs,

28 v.

GOVERNOR EDMUND G. BROWN, et.
al.,

Defendants.

Case No.: 4:09-cv-05796-CW

CLASS ACTION

**DECLARATION OF
JULES LOBEL IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Honorable Claudia Wilken

1 I, JULES LOBEL, declare under penalty of perjury that:

- 2 1. I am an attorney duly admitted to practice law in the State of New York. I am admitted to
3 practice before this Court *pro hac vice*.
- 4 2. I am the President of the Center for Constitutional Rights (“CCR”) and the Bessie McKee
5 Wathour Endowed Chair Professor at the University of Pittsburg School of Law. CCR
6 serves as co-counsel for Plaintiffs in this action, along with attorneys from the law firms of
7 Weil, Gotshal & Manges LLP (“Weil”), the Law Offices of Charles Carbone (“Charles
8 Carbone”), Siegel & Yee and civil-rights organizations California Prison Focus and Legal
9 Services for Prisoners with Children. I have personal knowledge of the matters stated herein,
10 or knowledge based on my review of documents in the possession of CCR.
- 11 3. CCR, Weil, Charles Carbone, Siegel & Yee, California Prison Focus, and Legal Services for
12 Prisoners with Children seek appointment as class counsel for the proposed Plaintiff class in
13 this action under Rule 23(g) of the Federal Rules of Civil Procedure. My Declaration states
14 facts related to myself, CCR and our prospective appointments; the other organizations are
15 filing separate declarations. As set forth below, CCR and I possess the class action
16 experience, knowledge of the relevant substantive areas of law, and resources necessary to
17 fairly and adequately represent the interests of the proposed Plaintiff class in this action.
- 18 4. CCR is a non-profit legal and educational organization dedicated to advancing and protecting
19 the rights guaranteed by the United States Constitution, federal civil rights law, and the
20 Universal Declaration of Human Rights. Founded in 1966, CCR has extensive experience
21 litigating federal class actions challenging solitary confinement in state prisons, racial
22 profiling by law enforcement, discrimination against racial and ethnic minorities in public
23 and private employment, harsh and unconstitutional treatment of state and federal prisoners,
24 and other modern-day manifestations of repression. Representative cases in which CCR has
25
26
27

1 acted as class counsel include *Austin v. Wilkinson*, 545 U.S. 209 (2005) (bringing an Eighth
2 Amendment and Fourteenth Amendment due process challenge to Ohio's practices with
3 respect to its supermaximum prison); *Gulino v. Board of Education of the New York City*
4 *School Districts*, 201 F.R.D. 326 (S.D.N.Y. 2001) (representing Black and Latino candidates
5 for New York City school teacher positions in Title VII challenge to New York City and
6 State teacher certification requirements); *Latino Officers Ass'n v. City of New York*, 99 Civ.
7 9568 (S.D.N.Y.) (representing minority New York City police officers in Title VII challenge
8 to New York Police Department's officer promotion and disciplinary policies and practices);
9 *Byrd v. Goord*, 00 Civ. 2135 (S.D.N.Y.) (constitutional challenge to New York State prison
10 collect call telephone system brought on behalf of family members of New York State prison
11 inmates); *Turkmen v. Ashcroft*, 02 CV 2307 (E.D.N.Y.) (representing class of individuals
12 claiming they were unconstitutionally detained after September 11, 2001, in violation of the
13 First, Fourth, Fifth, and Sixth Amendments); *United States and Vulcan Society, Inc. v. City of*
14 *New York*, 07-CV-2067 (E.D.N.Y.) (representing black firefighter candidates and black
15 firefighter fraternal organization in Title VII and constitutional challenge to racially
16 discriminatory hiring practices of the New York City Fire Department); and *Daniels v. City*
17 *of New York*, 198 F.R.D. 409 (S.D.N.Y. 2001) (challenging the NYPD's practices of racial
18 profiling and unlawful stop-and-frisks).

- 19
20
21 5. I lead the team of CCR attorneys working on this matter and am the President of CCR's
22 Board of Directors. I have extensive experience litigating civil rights and constitutional law
23 cases in multiple jurisdictions. I have authored numerous articles on constitutional law issues
24 in such journals as the Yale Law Journal, Virginia Law Review, UCLA Law Review, Cornell
25 Law Review, and the University of Pennsylvania Law Review. I have also authored multiple
26 articles and presentations on issues related to prisoner rights and solitary confinement,
27

1 including *Prolonged Solitary Confinement and the Constitution*, 11 U. PA. J. CONST. L. 115
2 (2008) (recently cited by the Tenth Circuit Court of Appeals in *Toevs v. Reid*, 646 F.3d 752,
3 758 (10th Cir. 2011); *Preventive Detention: Prisoners, Suspected Terrorists and Permanent*
4 *Emergency*, 25 T. JEFFERSON L. REV. 389-413 (Spring 2003), as well as presentations on the
5 issue at, among others, the University of Pennsylvania Law School, University of Pittsburgh
6 Law School, Ohio State Law School, Stanford Law School, and Harvard Law School. I have
7 recently taught classes on Human Rights Litigation, Litigation and Social Change, and
8 Constitutional Law at the University of Pittsburgh School of Law.
9

10 6. I have served as lead or co-counsel in a number of significant public interest litigations,
11 including arguing *Austin v. Wilkinson*, 545 U.S. 209 (2005), a case involving a due process
12 challenge to placement of prisoners in prolonged solitary confinement at a supermax prison,
13 before the United States Supreme Court. Other public interest litigations involving complex
14 questions of constitutional law in which I have been involved include *Holder v.*
15 *Humanitarian Law Project*, 130 S. Ct. 2705 (2010), *ACORN v. United States*, 618 F.3d 152
16 (2d Cir. 2010), *Dellums v. Bush*, 752 F. Supp. 1141 (D.D.C. 1990), and *Regan v. Wald*, 468
17 U.S. 222 (1984).
18

19 7. I am aware of no conflicts of interest between myself, CCR, and any members of the class
20 and subclass.

21 8. The CCR team includes Senior Staff Attorney Rachel Meeropol. Ms. Meeropol graduated
22 from The New York University School of Law in 2002 and has worked as a Staff Attorney or
23 Senior Staff Attorney at CCR since September, 2004. Ms. Meeropol has extensive
24 experience in class action civil rights litigation, including serving as lead attorney in *Turkmen*
25 *v. Ashcroft*, a class action challenging post-9/11 domestic immigration sweeps. She also
26 served as lead attorney in *Walton v. NYSDOCS*, *Byrd v. Goord*, a state and federal class
27

1 action challenging practices resulting in overcharging recipients of prisoner collect calls. She
2 has authored several publications, including *The Jailhouse Lawyers Handbook: How to Bring*
3 *a Federal Lawsuit to Challenge Violations of Your Rights in Prison* (2003 and 2010
4 editions), as well as given presentations on a variety of civil-rights-related subjects at various
5 law schools and community centers across the country.

- 6 9. The CCR team also includes CCR Staff Attorney Alexis Agathocleous. Mr. Agathocleous
7 graduated from Yale Law School in 2003, where he was recipient of the Coker Fellowship
8 and articles editor for the Yale Journal of Law and Humanities. Mr. Agathocleous has
9 extensive experience in civil rights and prisoner litigation, including serving as lead counsel
10 in *Aref v. Holder*, No. 10-0539 (RMA) (D.D.C. 2010), a case that challenges policies and
11 conditions at the Federal Bureau of Prisoners' Communication Management Units, and *Doe*
12 *v. Jindal*, 11-cv-388 (E.D. La.), a successful constitutional challenge to portions of
13 Louisiana's sex offender registration law. Mr. Agathocleous also served as plaintiffs'
14 counsel in *Goodman v. St. Paul*, 10-cv-1966 (D. Minn.), a federal civil rights action
15 challenging the arrest of journalists at the 2008 Republican National Convention which
16 resulted in a \$100,000 settlement for the plaintiffs as well as a consent agreement from the
17 St. Paul police department to change its practices, and *Vulcan Society, Inc. v. City of New*
18 *York*, 07-cv-2067 (E.D.N.Y.), a federal class action employment discrimination lawsuit
19 which resulted in a ruling holding New York City's Fire Department's hiring practices
20 broadly discriminatory and ordering major reforms. Prior to joining CCR, Mr. Agathocleous
21 was Director of the Reinvestigation Project at the Office of the Appellate Defender in New
22 York, and a Karpatkin Fellow at the American Civil Liberties Union.
23
24
25
26
27

1 10. CCR has committed substantial time and resources to represent the proposed class in this
2 case. CCR has been heavily involved in the investigation and litigation of this matter for
3 over a year and has sufficient resources to vigorously prosecute this case.
4

5 

6 _____
7 Jules Lobel
8 April 29, 2013
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ADDITIONAL PLAINTIFFS' COUNSEL

1
2
3 CHARLES F.A. CARBONE (SBN 206536)
4 Email: Charles@charlescarbone.com
5 EVAN CHARLES GREENBERG (SBN 271356)
6 Email: evan@charlescarbone.com
7 LAW OFFICES OF CHARLES CARBONE
8 P. O. Box 2809
9 San Francisco, CA 94126
10 Tel: (415) 981-9773
11 Fax: (415) 981-9774

12 MARILYN S. MCMAHON (SSBN 270059)
13 Email: Marilyn@prisons.org
14 CALIFORNIA PRISON FOCUS
15 1904 Franklin Street, Suite 507
16 Oakland, CA 94612
17 Tel: (510) 734-3600
18 Fax: (510) 836-7222

19 ANNE BUTERFIELD WEILLS (SBN 139845)
20 Email: aweills@aol.com
21 SIEGEL & YEE
22 499 14th Street, Suite 300
23 Oakland, CA 94612
24 Tel: (510) 839-1200
25 Fax: (510) 444-6698

26 CAROL STRICKMAN (SBN 78341)
27 Email: carol@prisonerswithchilodren.org
28 LEGAL SERVICES FOR PRISONERS WITH CHILDREN
1540 Market Street, Suite 490
San Francisco, CA 94102
Tel: (415) 255-7036
Fax: (415) 552-3150

EXHIBIT X

1 JULES LOBEL (*pro hac vice*)
 Email: jll3@pitt.edu
 2 ALEXIS AGATHOCLEOUS (*pro hac vice*)
 Email: aagathocleous@ccrjustice.org
 3 RACHEL MEEROPOL (*pro hac vice*)
 Email: rachelm@ccrjustice.org
 4 CENTER FOR CONSTITUTIONAL RIGHTS
 5 666 Broadway, 7th Floor
 New York, NY 10012
 6 Tel: (212) 614-6478
 Fax: (212) 614-6499

7
 8 GREGORY D. HULL (Bar No. 57367)
 Email: greg.hull@weil.com
 9 BAMBO OBARO (Bar No. 267683)
 Email: bambo.obaro@weil.com
 10 WEIL, GOTSHAL & MANGES LLP
 201 Redwood Shores Parkway
 11 Redwood Shores, CA 94065-1134
 Tel: (650) 802-3000
 12 Fax: (650) 802-3100

13 Attorneys for Plaintiffs
 14 (Additional counsel listed on attached page)

15 **UNITED STATES DISTRICT COURT**
 16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 17 **OAKLAND DIVISION**

18
 19 TODD ASHKER, DANNY TROXELL,
 20 GEORGE RUIZ, JEFFREY FRANKLIN,
 GEORGE FRANCO, GABRIEL REYES,
 21 RICHARD JOHNSON, PAUL REDD,
 LUIS ESQUIVEL, and RONNIE
 22 DEWBERRY, on their own behalf, and on
 behalf of a class of similarly situated
 prisoners,

23 Plaintiffs,

24 v.

25 GOVERNOR EDMUND G. BROWN, et.
 26 al.,

27 Defendants.
 28

Case No.: 4:09-cv-05796-CW

CLASS ACTION

**DECLARATION OF
 GREGORY HULL IN SUPPORT OF
 PLAINTIFFS' MOTION FOR CLASS
 CERTIFICATION**

Honorable Claudia Wilken

1 I, GREGORY HULL, declare under penalty of perjury that:

2 1. I am an attorney duly admitted to practice law in this Court, the State of California, the Ninth
3 Circuit, and all Federal Districts in California.

4 2. I am Senior Counsel in the Litigation Department of Weil, Gotshal & Manges LLP (“Weil”).
5 I have personal knowledge of the matters stated herein, or knowledge based on my review of
6 documents in the possession of CCR.

7
8 3. The Center for Constitutional Rights (“CCR”), Weil, the Law Offices of Charles Carbone
9 (“Charles Carbone”), Siegel & Yee, California Prison Focus, and Legal Services for
10 Prisoners with Children seek appointment as class counsel for the proposed Plaintiff class in
11 this action under Rule 23(g) of the Federal Rules of Civil Procedure. My Declaration states
12 facts related to myself and Weil’s appointment; the other organizations are filing separate
13 declarations. As set forth below, Weil possesses the class action experience, knowledge of
14 the relevant substantive areas of law, and resources necessary to fairly and adequately
15 represent the interests of the proposed Plaintiff class in this action.

16
17 4. Weil is an international law firm with over 2,000 attorneys. I joined Weil’s Litigation
18 Department in 2005, and have served as Senior Counsel since that time. I have practiced
19 complex litigation for more than forty years and have served as counsel in numerous class
20 actions. Among these are *Wilson v. Airborne Health, Inc.*, a class action alleging violations
21 of California’s unfair competition law, and *Confie Seguros Holding Co.*, a class action
22 alleging violations of California’s Insurance Code. I have served as counsel in hundreds of
23 other matters while at Weil and elsewhere. I also teach trial advocacy at Lincoln Law School
24 of San Jose. I have also served as a mediator in numerous matters and I have served as a
25 Judge Pro Tem for the San Francisco Superior Court.
26
27
28

1 5. I am aware of no conflicts of interest between myself, Weil, and any members of the class
2 and subclass.

3 6. The Weil team includes Carmen E. Bremer, a Litigation Associate in Weil's Patent Litigation
4 Department who has been litigating in federal court, including in the Northern District of
5 California, since 2003. Ms. Bremer has been named as a "Rising Star" for 2011, 2012 and
6 2013 by Texas Monthly magazine and an "Outstanding Young Associate" for 2009 by the
7 Human Rights initiative of North Texas. She focuses on patent litigation and appeals, but
8 devotes substantial amounts of her time to pro-bono matters.

9
10 7. In addition to Ms. Bremer and myself, Weil has committed substantial time and resources to
11 represent the proposed class in this case. Ms. Bremer and I supervise seven associates
12 working on this case, as well as paralegals and secretaries who have also been assisting.
13 Weil has been heavily involved in the investigation and litigation of this matter since June
14 2012 and, as one of the nation's largest law firms, has more than sufficient resources to
15 vigorously prosecute this case.
16

17 Dated: April 29, 2013

18 
19 _____
20 Gregory Hull

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADDITIONAL PLAINTIFFS' COUNSEL

CHARLES F.A. CARBONE (SBN 206536)
Email: Charles@charlescarbone.com
EVAN CHARLES GREENBERG (SBN 271356)
Email: evan@charlescarbone.com
LAW OFFICES OF CHARLES CARBONE
P. O. Box 2809
San Francisco, CA 94126
Tel: (415) 981-9773
Fax: (415) 981-9774

MARILYN S. MCMAHON (SSBN 270059)
Email: Marilyn@prisons.org
CALIFORNIA PRISON FOCUS
1904 Franklin Street, Suite 507
Oakland, CA 94612
Tel: (510) 734-3600
Fax: (510) 836-7222

ANNE BUTERFIELD WEILLS (SBN 139845)
Email: aweills@aol.com
SIEGEL & YEE
499 14th Street, Suite 300
Oakland, CA 94612
Tel: (510) 839-1200
Fax: (510) 444-6698

CAROL STRICKMAN (SBN 78341)
Email: carol@prisonerswithchilodren.org
LEGAL SERVICES FOR PRISONERS WITH CHILDREN
1540 Market Street, Suite 490
San Francisco, CA 94102
Tel: (415) 255-7036
Fax: (415) 552-3150

EXHIBIT Y

1 JULES LOBEL (*pro hac vice*)
Email: jll3@pitt.edu
2 ALEXIS AGATHOCLEOUS (*pro hac vice*)
Email: aagathocleous@ccrjustice.org
3 RACHEL MEEROPOL (*pro hac vice*)
Email: rachelm@ccrjustice.org
4 CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
5 New York, NY 10012
6 Tel: (212) 614-6478
Fax: (212) 614-6499

7
8 GREGORY D. HULL (Bar No. 57367)
Email: greg.hull@weil.com
9 BAMBO OBARO (Bar No. 267683)
Email: bambo.obaro@weil.com
10 WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
11 Redwood Shores, CA 94065-1134
Tel: (650) 802-3000
12 Fax: (650) 802-3100

13 Attorneys for Plaintiffs
14 (Additional counsel listed on attached page)

15 UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18
19 TODD ASHKER, DANNY TROXELL,
20 GEORGE RUIZ, JEFFREY FRANKLIN,
GEORGE FRANCO, GABRIEL REYES,
21 RICHARD JOHNSON, PAUL REDD, LUIS
ESQUIVEL, and RONNIE DEWBERRY, on
22 their own behalf, and on behalf of a class of
similarly situated prisoners,

23 Plaintiffs,

24 v.

25 GOVERNOR EDMUND G. BROWN, et. al.,

26 Defendants.
27
28

Case No.: 4:09-cv-05796-CW

CLASS ACTION

**DECLARATION OF
CHARLES CARBONE IN SUPPORT
OF PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

Honorable Claudia Wilken

1 I, CHARLES CARBONE, declare under penalty of perjury that:

2 1. I am an attorney duly admitted to practice law in this Court, the State of California, the
3 Ninth Circuit, and all Federal Districts in California.

4 2. I own the Law Offices of Charles Carbone, which specializes in prisoner rights
5 litigation.

6 3. The Center for Constitutional Rights ("CCR"), Weil, Gotshal & Manges, LLP
7 ("Weil"), the Law Offices of Charles Carbone, Siegel & Yee, California Prison Focus, and Legal
8 Services for Prisoners with Children seek appointment as class counsel for the proposed Plaintiff
9 class in this action under Rule 23(g) of the Federal Rules of Civil Procedure. My Declaration states
10 facts related to myself and my firm's application; the other organizations are filing separate
11 declarations. As set forth below, the Law Offices of Charles Carbone possesses the class action
12 experience, knowledge of the relevant substantive areas of law, and resources necessary to fairly and
13 adequately represent the interests of the proposed Plaintiff class in this action.
14

15 4. The Law Offices of Charles Carbone is a firm specializing in, and dedicated to,
16 prisoner rights cases, and was founded in 2001 to address such issues. I devote the majority of my
17 professional efforts to prisoner rights issues. In 2012 alone, I helped win dozens of parole grants
18 before the California Board of Parole, and reversed the California Board of Parole and the Governor
19 of the State on numerous Parole Hearings. In 2011, I helped win the release and/or parole dates for
20 over 40 life inmates in California's prisons, and was co-counsel on a case in front of the United
21 States Supreme Court, *Pollard v. Geo Group, Inc.*, related to liability for private prisons, and served
22 as a spokesman for the Special Housing Unit prisoners litigating the instant lawsuit. I have dozens
23 of other victories involving prisoner rights, including serving as lead counsel in a five-year suit
24 brought on behalf of prison gang members seeking to address a wide range of problems in California
25 SHU prisons. From 2001 to 2004 I was the Legal Director of California Prison Focus, a legal-
26
27
28

1 advocacy group which seeks to better the conditions of California prisoners and SHU prisoners. I
2 have been lead counsel in numerous prisoner rights lawsuits and policy efforts. I have also served as
3 an Adjunct Professor in the New College School of Law. And in 2000, I was an associate attorney
4 at the then firm of Girard & Green, LLP, which specialized in plaintiff-side consumer class action
5 litigation.

6 5. The Law Offices of Charles Carbone has assigned Evan Greenberg, one of its
7 associates, to work on this case. Mr. Greenberg is a 2010 graduate of the Santa Clara University
8 School of Law, *summa cum laude*, and has worked at the firm since February 2011. Mr. Greenberg
9 specializes his practice in criminal appeals, state and federal habeas petitions, and prisoners' rights
10 cases. Mr. Greenberg has prepared more than 20 habeas petitions challenging gang validations, and
11 is very familiar with the regulations and validation process that is challenged in this case. Mr.
12 Greenberg visited Pelican Bay State Prison and interviewed ten inmates over two days, including
13 plaintiffs Gabriel Reyes and Jeffrey Franklin, to investigate potential claims to assert in this case.
14 He has represented multiple clients before the California Parole Board and has argued in the
15 California Court of Appeal. Prior to working at our office, Evan worked at the American Civil
16 Liberties Union and the Northern California Innocence Project, the latter of which included
17 prisoners' rights work.

18
19
20 6. I am aware of no conflicts of interest between myself, my law offices, and any
21 members of the class and subclass.

22 7. I have committed substantial time and resources to represent the proposed class in this
23 case, and my firm has sufficient resources to vigorously prosecute this case.

24 8. The Law Offices of Charles Carbone has also teamed with Legal Services for
25 Prisoners with Children ("LSPC") to work on this case, including staff attorney Carol Strickman.
26 Ms. Strickman has thirty-five years of practice and is admitted in California state courts, the
27
28

1 Northern and Southern Districts of California, and the Ninth Circuit Court of Appeals. Ms.
2 Strickman and Legal Services for Prisoners with Children have had a relationship with Pelican Bay
3 SHU prisoners for several years. In early 2011, the organization distributed a survey about the
4 impact of a SHU placement on family relationships, which resulted in the report, "A Cage Within A
5 Cage." LSPC was also very involved in supporting the demands of the 2011 hunger strike. LSPC
6 personnel visited and corresponded with prisoners, helped recruit and send other attorneys and legal
7 workers to Pelican Bay, served on the Mediation Team, and acted as press spokespeople. LSPC
8 helped create the coalition that was formed to support the prisoners during this time. Later, LSPC
9 met with Amnesty International representatives and provided them with background information,
10 submitted a complaint about then-Chief Medical Officer Dr. Sayre with the California Medical
11 Board, and were instrumental in the August 2011 and February 2013 public hearings on the SHU by
12 the Assembly Public Safety Committee. Ms. Strickman is particularly knowledgeable about the
13 legislative changes eliminating conduct credit for gang-validated SHU prisoners.
14

15
16 9. My law firm has also teamed in this matter with California Prison Focus ("CPF"),
17 including Executive Director Marilyn McMahon. CPF investigates and exposes human rights
18 abuses in the California prison system with the goal of ending long term isolation, medical neglect,
19 and all forms of discrimination. Ms. McMahon was admitted to practice in California in 2010 upon
20 graduating from Golden Gate University School of Law. Ms. McMahon has been responsible for
21 coordinating dozens of legal visits to Pelican Bay Prison since before the July 2011 hunger strike,
22 and has corresponded with dozens of Pelican Bay SHU prisoners.
23

24 10. Also teaming with my law firm in this matter is Anne Weills, counsel to the law firm
25 of Siegel & Yee. Ms. Weills is admitted to practice before the California Supreme Court, the United
26 States Court of Appeals for the Ninth Circuit, and the Northern and Eastern District Courts of
27 California. Ms. Weills' more than twenty years of litigation experience includes about a dozen jury
28

1 trials and arbitration hearings, as well as one oral argument before the Ninth Circuit Court of
2 Appeals. Her practice emphasizes employment and labor matters with an emphasis on civil rights.
3

4
5 DATE: April 20, 2013



Charles Carbone

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADDITIONAL PLAINTIFFS' COUNSEL

CHARLES F.A. CARBONE (SBN 206536)
Email: Charles@charlescarbone.com
EVAN CHARLES GREENBERG (SBN 271356)
Email: evan@charlescarbone.com
LAW OFFICES OF CHARLES CARBONE
P. O. Box 2809
San Francisco, CA 94126
Tel: (415) 981-9773
Fax: (415) 981-9774

MARILYN S. MCMAHON (SSBN 270059)
Email: Marilyn@prisons.org
CALIFORNIA PRISON FOCUS
1904 Franklin Street, Suite 507
Oakland, CA 94612
Tel: (510) 734-3600
Fax: (510) 836-7222

ANNE BUTERFIELD WEILLS (SBN 139845)
Email: aweills@aol.com
SIEGEL & YEE
499 14th Street, Suite 300
Oakland, CA 94612
Tel: (510) 839-1200
Fax: (510) 444-6698

CAROL STRICKMAN (SBN 78341)
Email: carol@prisonerswithchilodren.org
LEGAL SERVICES FOR PRISONERS WITH CHILDREN
1540 Market Street, Suite 490
San Francisco, CA 94102
Tel: (415) 255-7036
Fax: (415) 552-3150