

# A DEATH BEFORE DYING

Solitary Confinement on Death Row



July 2013



# **A Death Before Dying: Solitary Confinement on Death Row**

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# TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>2</b>
<b>TRAPPED IN A BROKEN SYSTEM.....</b>	<b>2</b>
<b>PUNISHMENT ON TOP OF PUNISHMENT .....</b>	<b>3</b>
<b>SURVEY REVEALS MAJORITY OF DEATH ROWS HOLD PRISONERS IN SOLITARY CONFINEMENT.....</b>	<b>4</b>
Cramped and Bare Cells Are the Norm.....	4
Most on Death Row Experience Extreme Isolation and Inactivity.....	5
Too Many on Death Row Are Denied Religious Services .....	5
<b>THE DEVASTATING EFFECTS OF PROLONGED SOLITARY CONFINEMENT ARE WELL KNOWN .....</b>	<b>6</b>
<b>“DEATH ROW PHENOMENON” AND STAGGERING DELAYS EXACERBATE DAMAGE .....</b>	<b>8</b>
<b>CONCLUSION .....</b>	<b>11</b>

## INTRODUCTION

Most death row prisoners in the United States are locked alone in small cells for 22 to 24 hours a day with little human contact or interaction; reduced or no natural light; and severe constraints on visitation, including the inability to ever touch friends or loved ones.

This stark reality endures at a time when the United States' experiment with the death penalty is at a crossroads. On one hand, in 2013, another state repealed the death penalty – Maryland. That makes six states in the last six years – Maryland, Connecticut, Illinois, New Mexico, New Jersey, and New York – that have repealed the death penalty, bringing the number of states without it to 18. Today, more than half of the states have either eliminated the death penalty completely or have not executed anyone for at least 10 years. Thirty states, plus federal and military jurisdictions, have not executed anyone in at least 5 years. This steady march toward repeal seems to indicate that it is only a matter of time before the Supreme Court will declare the death penalty cruel and unusual punishment and bar its use nationwide.

But until that time, many states will continue efforts to execute, often after death-sentenced prisoners have languished in solitary confinement on death row for years and even decades. Death row prisoners are subjected to these harsh conditions not because of their conduct in prison or any demonstrated dangerousness to staff or other prisoners. They are subjected to extreme isolation due to their sentences alone.

## TRAPPED IN A BROKEN SYSTEM

While many in the United States understand that part of the horror of the death penalty is living day in and day out with the threat of execution, most are unaware that the vast majority of death row prisoners also suffer under conditions of extreme isolation that compromise their physical and mental health and needlessly inflict pain and suffering. Indeed, researchers have found that the clinical effects of extreme isolation can actually be similar to those of physical torture.

<sup>1</sup> For this reason, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment found that solitary confinement conditions can amount to “inhuman and degrading treatment”<sup>2</sup> and the United Nations Special Rapporteur on Torture has called for a global ban on solitary confinement in excess of 15 days.<sup>3</sup>

Death row prisoners spend years and years on death row for a number of reasons. The length of time is often needed for lawful appeals, but these processes are too often extended by serious breakdowns in our legal system; inadequate counsel for the poor; prosecutors' suppression of evidence favorable to defendants; ill-advised and illegal execution protocols; and the appeals, legal



Texas' death row, where prisoners have spent an average of nearly 11 years before execution.

Photo Credit: Texas Department of Corrections, 2008

challenges, and stresses on judicial resources related to these problems. All of these factors contribute to the time spent on death row.

The injustice of the death penalty system and its lack of fairness have been proven again and again as shown by the dozens of individuals – 142 as of July 2013 – found innocent after years on death row. Scores of other defendants have been found to be illegally sentenced to death and have had their sentences, and often even their convictions, reversed by the courts. For example, in Pennsylvania, where 202 prisoners are currently imprisoned on death row, a recent study documented 142 cases in which a jury handed down a murder conviction and death sentence but where an appellate court, finding serious legal error, later threw out the murder conviction, the death sentence, or both.<sup>4</sup>

#### **A VIEW FROM THE ROW:**

“I saw guys who dropped their appeals because of the intolerable conditions. Before his execution, one inmate told me he would rather die than continue existing under these inhumane conditions. I saw guys come to prison sane, and leave this world insane, talking nonsense on the execution gurney. One guy suffered some of his last days smearing feces, lying naked in the recreation yard, and urinating on himself.”

-Anthony Graves, who spent years on Texas’ death row in solitary confinement for a crime he did not commit.

## **PUNISHMENT ON TOP OF PUNISHMENT**

While death row prisoners fight for their lives in these failed and failing systems, they spend years and years subjected to the devastating effects of solitary confinement. Ultimately, some will “volunteer” to die rather than continue to live under such conditions. Many will be broken beyond repair – their minds gone before the state ever executes them. All will suffer needlessly.

As policy leaders, lawyers, judges, advocates and the public struggle with how to “fix” or end the death penalty, they must also recognize that the current system inflicts a double punishment on death-sentenced prisoners which is neither required by law nor in any way mandated by the sentence imposed by the judge or jury. This punishment is years and years spent in agonizing solitary confinement while pursuing lawful appeals.

Regardless of their stance on the death penalty, the people of the United States understand that a fair justice system must be a humane justice system. And by this measure, we are currently failing. It is time for reformers on both sides of the death penalty debate to recognize the hidden harms of solitary confinement inflicted on death row prisoners across the country. Solitary confinement is not part of the sentence. In order to build a criminal justice system that accurately reflects our values, we must end the routine use of solitary confinement of death row prisoners.



A solitary confinement cell on Texas’ death row.  
Photo Credit: Texas Department of Corrections, 2008

Regardless of their stance on the death penalty, the people of the United States understand that a fair justice system must be a humane justice system. And by this measure, we are currently failing. It is time for reformers on both sides of the death penalty debate to recognize the hidden harms of solitary confinement inflicted on death row prisoners across the country. Solitary confinement is not part of the sentence. In order to build a criminal justice system that accurately reflects our values, we must end the routine use of solitary confinement of death row prisoners.

This briefing paper offers a first critical overview of solitary confinement on death row. It explores the results of an ACLU survey of death row conditions nationwide and the legal and human implications of the death row prisoners locked in solitary confinement for years and even decades.

The data that follow are the result of a survey completed by advocates for death row prisoners and others knowledgeable about death row conditions. Adequate and reliable responses were received from 26 states.<sup>5</sup>

## **SURVEY REVEALS MAJORITY OF DEATH ROWS HOLD PRISONERS IN SOLITARY CONFINEMENT**

Nationally, more than 3,000 prisoners are confined on death rows in 35 states (including two that have repealed the death penalty, but so far have allowed pre-existing death sentences to stand). According to the *American Bar Association's Standards for the Treatment of Prisoners*, death row prisoners, while permissibly separated from other prisoners, should be housed in conditions comparable to those in general population. Administrative segregation or solitary confinement should only be used for brief periods for reasons related to discipline, security, or crime.<sup>6</sup> Despite this clear best practice standard, the overwhelming majority of death-penalty states house death row prisoners in solitary confinement. Our survey revealed that the vast majority of these states confine death row prisoners in segregation or solitary-type conditions based *solely* on their death sentences. Contrary to the American Bar Association standards, most death row prisoners cannot be moved to less restrictive conditions based on good conduct. Simply put, they are condemned to solitary for life, a kind of death before dying.

### **Cramped and Bare Cells Are the Norm**

Death row prisoners are housed alone in tiny cells, ranging from just 36 square feet to little more than 100 square feet. Most are the size of an average bathroom. Most cells generally contain a steel bed or concrete slab, steel toilet, and small writing table. The majority of death row prisoners eat alone in their cells, fed on trays inserted through a slot in the door. They also receive the majority of their medical and mental health care through these slots. Face-to-face contact with another human being is rare.

#### **A VIEW FROM AN ACTIVIST:**

"Folks can disagree about the death penalty, but can anyone disagree that the warden is responsible for the prisoner's welfare until his execution? Many guys are released from death row because they are proven innocent – shouldn't a prisoner be allowed to prove his innocence while he awaits execution? Shouldn't he be allowed to prove his death sentence was wrongly handed down? Shouldn't he be allowed to try to get right with God, or to make apologies to his victims? Shouldn't he be allowed to spend time with his family before he goes? Solitary is crazy making. And it makes it impossible for the prisoner to do what society thinks he should be able to do before he is sent to his maker. He's still a person while he's here on earth; his punishment is supposed to be death, not day-by-day torture leading up to his execution."

## Most on Death Row Experience Extreme Isolation and Inactivity

Always sleeping alone locked in a tiny cell is one thing. But more damage is caused when prisoners are locked in these bathroom-sized cells for hours on end for months, years, and even decades – when their *whole life* exists in the cell. The survey revealed that 93 percent of states lock up their death row prisoners for 22 or more hours per day. Most of these prisoners live under conditions of extreme social isolation and enforced idleness.

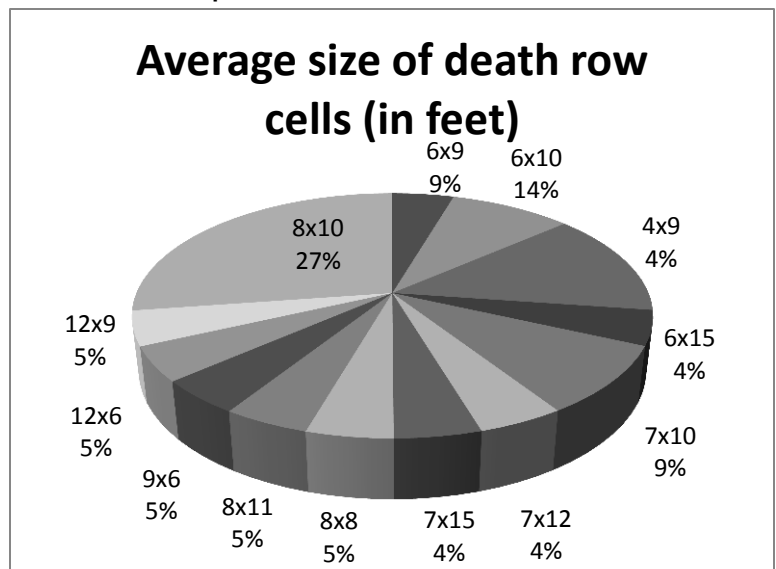
### Death Rows across the U.S. make their beds from:

- Steel: 60%
- Concrete: 13%
- Steel with mattress: 9%
- Concrete with pad: 6%
- Metal: 6%

For many death row prisoners, human contact is generally restricted to brief interactions with corrections officers and, for some prisoners, occasional encounters with healthcare providers or attorneys. An overwhelming majority of states do not allow death row prisoners to have access to work or employment opportunities, or provide access to educational or vocational programming of any kind.

The social isolation and forced idleness experienced by most on death row are exacerbated by extreme limits on visitation with loved ones. Most death row prisoners will never be able to touch or hug family members or loved ones, as 67 percent of states mandate no-contact visitation for death row prisoners. This means that all human interactions during family visits occur while the prisoner is behind some sort of barrier. Frequently, prisoners will also be in arm and leg restraints during visits.

Enforced idleness for most death row prisoners also takes the form of an extreme lack of the exercise and movement human beings need to maintain physical and mental health. In fact, 81 percent of states allow only one hour or less of exercise daily for death row prisoners. And nearly half provide only a cage, pen, or cell in which to exercise. Access to exercise equipment, or even a simple ball to bounce up and down, is extremely rare on death row. Many prisoners will go years without access to fresh air or sunshine.



## Too Many on Death Row Are Denied Religious Services

While prisoners' rights are limited in many ways, the right to free exercise of religion is protected under the First Amendment as well as two federal statutes providing heightened protection for

religious exercise in prison: the Religious Freedom Restoration Act (RFRA), which applies to federal and District of Columbia prisoners, and the Religious Land Use and Institutionalized Persons Act (RLUIPA), which applies to state and local institutions that receive money from the federal government (i.e., most local jails and every single state prison system).

Despite the fact that Congress and the courts have recognized the importance of religious freedom in prison, death row prisoners are afforded little to no access to religious services. Indeed, 62 percent of states offer no religious services to death row prisoners and access to chaplains or other religious advisors is sporadic at best. This denial of such an important right enshrined in our Constitution and federal laws for condemned men and women raises troubling questions about capital punishment regimes nationwide. It is also likely to exacerbate the devastating effects of solitary confinement to which so many death row prisoners are subjected.



A solitary confinement cell on Texas' death row.  
Photo Credit: Texas Department of Corrections, 2008

#### **A VIEW FROM THE WARDEN:**

“As a former warden at San Quentin and life-long corrections professional, I know that safety for staff, prisoners, and the public is the utmost concern. But I also know we can do this in a humane way. Death rows should be designed to allow prisoners to leave their cells, participate in programs, and spend time on the yard without coming into physical contact with staff, but where they can be observed by staff visually, such as through screen or glass. Where prisoners are well-behaved, 23/1 solitary is ridiculous. Conditions of confinement should be responsive to behavior – prisoners should be able to earn their way into the least restrictive conditions consistent with meeting safety concerns. Privileges and incentives, like educational programs, contact visits, and phone calls, should be used to achieve the best security. The damage done to people through solitary confinement on death row is unnecessary and avoidable; fixing this problem is consistent with my number one concern, which is our overall public safety.”

-Jeanne Woodford, former warden, San Quentin State Prison, California

## **THE DEVASTATING EFFECTS OF PROLONGED SOLITARY CONFINEMENT ARE WELL KNOWN**

Empirical research consistently demonstrates that prisoners subjected to isolation suffer many of the same symptoms caused by physical torture.<sup>7</sup>

Research shows that people subjected to solitary confinement exhibit a variety of negative physiological and psychological reactions, including:

- Hypersensitivity to external stimuli;<sup>8</sup>
- Perceptual distortions and hallucinations;<sup>9</sup>



- Increased anxiety and nervousness;<sup>10</sup>
- Fears of persecution;<sup>11</sup>
- Lack of impulse control;<sup>12</sup>
- Severe and chronic depression;<sup>13</sup>
- Appetite loss and weight loss;<sup>14</sup>
- Heart palpitations;<sup>15</sup>
- Withdrawal;<sup>16</sup>
- Blunting of affect and apathy;<sup>17</sup>
- Talking to oneself;<sup>18</sup>
- Headaches;<sup>19</sup>
- Problems sleeping;<sup>20</sup>
- Confused thought processes;<sup>21</sup>
- Nightmares;<sup>22</sup>
- Dizziness;<sup>23</sup>
- Self-mutilation;<sup>24</sup> and
- Lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.<sup>25</sup>

As one prison psychiatrist has noted, “It’s a standard psychiatric concept, if you put people in isolation, they will go insane. ... Most people in isolation will fall apart.”<sup>26</sup>

In addition to increased psychiatric symptoms generally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement.<sup>27</sup> It is not unusual for prisoners in solitary to compulsively cut their flesh, repeatedly smash their heads against walls, swallow razors and other harmful objects, or attempt to hang themselves.<sup>28</sup> Although national data are not available for suicide rates of death row prisoners in solitary confinement, we know that approximately 50 percent of all prisoner suicides take place in isolation cells.<sup>29</sup> In California, for example, although less than 10 percent of the state’s prison population was held in isolation units in 2004, those units accounted for 73 percent of all suicides.<sup>30</sup> The psychologically-shattering effects of solitary confinement on those with mental illness are so well documented that every federal court to consider the question of whether placing the severely mentally ill in such conditions is cruel and unusual punishment has found a constitutional violation.<sup>31</sup> The leading psychiatrists’ professional organization in the United States, the American Psychiatric Association, recently issued a formal position statement that prisoners with serious mental illness should almost never be subjected to such treatment and in the rare event that isolation is necessary, they must be given extra clinical supports.<sup>32</sup>

Despite the legal and medical consensus on the harms produced by solitary confinement for persons with mental illness, no exceptions are generally made for the many men and women with serious mental illness confined in solitary on death rows around the country. The counter-therapeutic conditions imposed on seriously mentally ill death row prisoners are further exacerbated by the fact that access to mental health treatment is often perfunctory, irregular, and typically occurs “cell-side” through the bars or mesh of the prisoner’s cell door.

### **“VOLUNTEERS” AND SUICIDES:**

Facing isolated conditions, helplessness, despair, and the anxiety and anguish of waiting to die for years on end, many death row prisoners take control in the only way they know: they drop their legal appeals and “volunteer” for execution.

To date, more than 10 percent of the 1,323 executions since 1976 were of those who dropped their appeals and sought execution. Death-row suicides are also common. Texas has seen 10, including six since 2004.

The prospect of executing the third “volunteer” in Oregon was a specific reason for Governor Kitzhaber to announce an execution moratorium. As he observed, only those who “volunteer” are executed, making a mockery of the idea that justice is “swift and certain.”

### **“DEATH ROW PHENOMENON” AND STAGGERING DELAYS EXACERBATE DAMAGE**

Michael Selsor spent over 36 years on Oklahoma’s death row prior to his execution in 2012. Manuel Valle spent 33 years on Florida’s death row before his 2011 execution. According to the Bureau of Justice Statistics, the average time spent on death row by prisoners executed in 2010 was 14.8 years.<sup>33</sup> From 2000 to present, the average time from sentence to execution in Texas, one of the country’s most active death rows, has been nearly 11 years.<sup>34</sup> Several states have death row prisoners who have served more than three decades on death row; two decades on the row is not uncommon.

Death row prisoners spend long periods of time on death row while pursuing their legal appeals, which is a time-consuming process. For all death row prisoners, these years in solitary confinement take their toll on the mind, on the ability to pursue appeals, and on the will to live. The impact of solitary confinement adds to questions already raised at the local, state, and national level over the fairness of the death penalty in both its conception and its implementation.

### **SUFFERING OF INNOCENTS:**

The devastating impact of solitary confinement on death row is not suffered only by the guilty or those correctly sentenced to death. Nationally, 142 death row prisoners have been freed from death rows after they were proven innocent – that’s more than one innocent person released for every 10 executions since 1976.<sup>35</sup> The average time between conviction and exoneration was nearly 10 years.<sup>36</sup> Until they win relief, all innocent prisoners are subjected to the same inhumane conditions as their guilty counterparts.

The Supreme Court has never addressed whether prolonged confinement on death row before execution violates the Eighth Amendment. Some members of the court, however, have engaged in a discussion on the issue in opinions attached to the court’s brief orders declining to decide this issue.

Justices Stephen Breyer and John Paul Stevens have written opinions addressing this issue. The international community has been uniform in finding that it is “an inhuman act to keep a man facing the agony of execution over a long extended period of time.”<sup>37</sup> Courts in Canada, India, Zimbabwe, the Bahamas, Uganda, and Guyana have adopted this principle.<sup>38</sup> So too have human rights courts. Most famously, the European Court of Human Rights, in *Soering v. United Kingdom*, specifically recognized “death row phenomenon” and found that the United Kingdom could not extradite a potential capital defendant to Virginia because the delay between his sentence and execution (there, estimated to be a relatively brief 6- to 8-year period) would amount to “cruel, inhuman, [or] degrading treatment or punishment” forbidden by the European Convention on Human Rights.<sup>39</sup> The Inter-American Court of Human Rights has held likewise.<sup>40</sup>

Answering the argument that the delay between sentence and execution is caused by the condemned person’s appeals, the court in *Soering* noted that “just as some lapse of time between sentence and execution is inevitable if appeal safeguards are to be provided to the condemned person, so it is equally part of human nature that the person will cling to life by exploiting those safeguards to the full. However well-intentioned and even potentially beneficial is the provision of the complex of post-sentence procedures in Virginia, the consequence is that the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death.”<sup>41</sup>

On this issue, Justice Stevens was blunter, stating that “[j]udicial process takes time, but the error rate in capital cases illustrates its necessity. We are duty bound to insure that every safeguard is observed when a defendant’s life is at stake.”<sup>42</sup>

#### **A VIEW FROM THE BENCH:**

Building on the opinion he penned in 1995 in *Lackey v. Texas*, involving a man imprisoned for 17 years before execution, now retired Supreme Court Justice John Paul Stevens wrote in 2009 of a Florida man who had spent 32 years on death row before his execution:

“As he awaits execution, petitioner has endured especially cruel conditions of confinement, spending up to 23 hours per day in isolation in a 6- by 9-foot cell. Two death warrants have been signed against him and stayed only shortly before he was scheduled to be put to death. The dehumanizing effects of such treatment are undeniable. Moreover, as I explained in *Lackey*, delaying an execution does not further public purposes of retribution and deterrence but only diminishes whatever possible benefit society might receive from petitioner’s death. It would therefore be appropriate to conclude that a punishment of death after significant delay is “so totally without penological justification that it results in the gratuitous infliction of suffering.”

## **CONCLUSION**

While the courts determine whether states are entitled to execute our fellow human beings, some prisoners will endure conditions of solitary confinement for years and decades on end, followed, for some, by a long-delayed execution. Especially as we move toward becoming a country without capital punishment, this human rights violation requires immediate attention.

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<sup>1</sup> Hernán Reyes, *The Worst Scars Are In The Mind: Psychological Torture*, 89 INT. REV. OF THE RED CROSS 591 (2007); Metin Basoglu, et al., *Torture vs. Other Cruel, Inhuman and Degrading Treatment: Is the Distinction Real or Apparent?*, 64 ARCHIVES GEN. PSYCHIATRY 277 (2007).

<sup>2</sup> EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, 21<sup>ST</sup> GENERAL REPORT OF THE CPT 76 (2011), available at <http://www.cpt.coe.int/en/annual/rep-21.pdf>.

<sup>3</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) [by Juan Mendez] available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

<sup>4</sup> R. Dunham, THE FIRST 100 RE-SENTENCINGS: SUBSEQUENT DISPOSITIONS OF PENNSYLVANIA CAPITAL CASES REVERSED IN POST-CONVICTION, Villanova Law School, Jan. 28, 2013, available at <http://www.deathpenaltyinfo.org/arbitrariness-pennsylvanias-costly-and-broken-death-penalty-system> (as visited on April 30, 2013).

<sup>5</sup> Surveys were completed by capital defense attorneys who regularly visit prisoners on death rows and, in some limited cases, other persons with direct knowledge of death row conditions.

<sup>6</sup> ABA Crim. Just. Standards on the Treatment of Prisoners, Standard 23-2.6.(a) (2010), available at <http://www.abanet.org/crimjust/policy/midyear2010/102i.pdf>.

<sup>7</sup> Reyes, *supra* note 1; Basoglu, *supra* note 1.

<sup>8</sup> Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450, 1452 (1983).

<sup>9</sup> *Id.*; Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124, 130, 134 (2003); *see generally* R. Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988).

<sup>10</sup> Grassian, *supra* note 8, at 1452-53; Haney, *supra* note 9, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. CORRECTIONAL HEALTH CARE 39, 48 (1994); *see generally* S.L. Brodsky & F.R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988).

<sup>11</sup> Grassian, *supra* note 8, at 1453.

<sup>12</sup> *Id.*; Holly A. Miller & G. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIMINAL BEHAV. AND MENTAL HEALTH 85, 92 (1997).

<sup>13</sup> Grassian, *supra* note 8, at 1453; Miller & Young, *supra* note 12, at 92; Haney, *supra* note 9, at 131.

<sup>14</sup> Haney, *supra* note 9, at 130; *see generally* Korn, *supra* note 9.

<sup>15</sup> Haney, *supra* note 9, at 131.

<sup>16</sup> Miller & Young, *supra* note 12, at 91; *see generally* Korn, *supra* note 9.

<sup>17</sup> *Id.*

<sup>18</sup> Haney, *supra* note 9, at 134; *see generally* Brodsky & Scogin, *supra* note 10.

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<sup>19</sup> Haney, *supra* note 9, at 133.

<sup>20</sup> *Id.*

<sup>21</sup> Haney, *supra* note 9, at 137; *see generally* Brodsky & Scogin, *supra* note 10.

<sup>22</sup> Haney, *supra* note 9, at 133.

<sup>23</sup> *Id.*

<sup>24</sup> Grassian, *supra* note 8, at 1453; Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OFFENDER REHABILITATION 529, 539-40 (2009).

<sup>25</sup> Paul Gendreau, N.L. Freedman, & G.J.S. Wilde, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. ABNORMAL PSYCH. 54, 57-58 (1972).

<sup>26</sup> Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness* 149 n. 513 (2003).

<sup>27</sup> Expert Report of Professor Craig Haney at 45-46, n. 119, *Coleman v. Schwarzenegger/Plata v. Schwarzenegger*, No: Civ S 90-0520 LKK-JFM P, C01-1351 THE (E.D. Cal/N.D. Cal. Aug. 15, 2008).

<sup>28</sup> *See generally* J. Metzner & J. Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY LAW 104-108 (2010).

<sup>29</sup> *Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences: Hearing Before the Subcommittee on the Constitution, Civil Rights and Human Rights of the Senate Judiciary Committee*, 112<sup>th</sup> Cong. 8 (2012) (written testimony of Professor Craig Haney) (footnote omitted), *available at* [http://www.durbin.senate.gov/public/index.cfm/files/serve?File\\_id=60d33684-06d6-4cf1-bd95-58564e9dc8e8](http://www.durbin.senate.gov/public/index.cfm/files/serve?File_id=60d33684-06d6-4cf1-bd95-58564e9dc8e8).

<sup>30</sup> Expert Report of Professor Craig Haney *supra* note 29.

<sup>31</sup> *See, e.g., Ruiz v. Johnson*, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001) (“Conditions in TDCJ-ID’s administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiffs’ class made up of mentally-ill prisoners”); *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (holding that evidence of prison officials’ failure to screen out from SHU “those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there” states an Eighth Amendment claim).

<sup>32</sup> AM. PSYCH. ASSOC., POSITION STATEMENTS: SEGREGATION OF PRISONERS WITH MENTAL ILLNESS (2012), *available at* <http://www.psychiatry.org/advocacy--newsroom/position-statements>.

<sup>33</sup> *See* Bureau of Justice Statistics, *Capital Punishment, 2010 - Statistical Tables* (December 20, 2011), *available at* <http://bjs.gov/index.cfm?ty=pbdetail&iid=2236>.

<sup>34</sup> *See* Texas Department of Criminal Justice, *Death Row Facts*, *available at* [http://www.tdcj.state.tx.us/stat/dr\\_facts.html](http://www.tdcj.state.tx.us/stat/dr_facts.html).

<sup>35</sup> Death Penalty Information Center, *Innocence and the Death Penalty*, *available at* <http://www.deathpenaltyinfo.org/innocence-and-death-penalty> (stating current number of exonerations); Death Penalty Information Center, *Executions by Year Since 1976*, *available at* <http://www.deathpenaltyinfo.org/executions-year>

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[\[stating current number of executions\]](#).

<sup>36</sup> Death Penalty Information Center, *The Innocence List*, available at <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row>.

<sup>37</sup> *Pratt v. The Attorney General for Jamaica*, Privy Council Appeal No. 10, 22 (1993).

<sup>38</sup> *Cox v. Canada*, Comm. No. 539/1993, U.N. Doc. CCPR/C/52/D/539 (1993); *T.V. Vaitheeswaran v. State of Tamil Nadu*, 2 SCR 348 (1983); *Catholic Commission v. Attorney General*, 2 Z.L.R. 306, (Zimbabwe 1993); *Henfield v Attorney-General of The Bahamas*, AC 413 (PC 1997); *Susan Kigula and 417 Others*, No. 03 of 2006 (Uganda: Supreme Court 2009).

<sup>39</sup> *Soering v United Kingdom*, 14038/88, 07/07/1989

<sup>40</sup> *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94.

<sup>41</sup> *See supra* note 39.

<sup>42</sup> *Thompson v. Mcneil*, 129 S.Ct. 1299, 1300 (2009).