



**Written Testimony of Professor Laura Rovner
Before the Senate Judiciary Committee,
Subcommittee on the Constitution, Civil Rights, and Human Rights
*Hearing on Reassessing Solitary Confinement:
The Human Rights, Fiscal, and Public Safety Consequences***

June 15, 2012

Chairman Durbin, Ranking Member Graham and Honorable Committee members,

My name is Laura Rovner and I am an Associate Professor of Law and Director of Clinical Programs at the University of Denver Sturm College of Law, where I also founded and teach in the Civil Rights Clinic. The lawyers and students in the Civil Rights Clinic have represented a number of prisoners held in solitary confinement in state and federal prisons in Colorado, including several men confined in the federal “supermax” prison (“ADX”).¹ Those cases involved claims that the conditions at ADX violate the Eighth Amendment’s prohibition against cruel and unusual punishment² and that prolonged and indefinite confinement at ADX violates due process.³ Additionally, I have provided several declarations to the European Court of Human Rights regarding the conditions of confinement at ADX.⁴

I want to begin by thanking the Committee for holding this important hearing. The American public is entitled—and perhaps obligated as a matter of civic responsibility—to be informed about the state of our prisons. As Justice Kennedy eloquently stated in his 2003 address to the American Bar Association, “[w]hen the door is locked against the prisoner, we do not think about what is behind it.”⁵ Justice Kennedy urged “a greater responsibility...as a people, we should know what happens after the prisoner is taken away.” Prisons are part of our justice

¹ Additionally, separate from my employment with the University of Denver Civil Rights Clinic, I, along with co-counsel, represent two prisoners who have been held at the ADX for nearly a decade, some of that time under Special Administrative Measures (SAMs). *Ayyad v. Holder, et al.*, 05-cv-02342-WYD-MJW (D. Colo). SAMs are prisoner-specific confinement and communication rules, imposed by the Attorney General but carried out by the Federal Bureau of Prisons, that severely restrict a prisoner’s communication and increase his isolation.

² *Silverstein v. Bureau of Prisons, et al.*, 07-cv-02471-PAB-KMT (D. Colo.) (lawsuit claiming that BOP’s confinement of prisoner in extreme isolation for 28 years constitutes cruel and unusual punishment).

³ See *Saleh, et al. v. Bureau of Prisons*, 05-cv-02467-PAB-KLM (D. Colo.); *Rezaq v. Nalley*, 07-cv-02483-LTB-KLM (D. Colo.). These cases were consolidated on appeal. *Rezaq v. Nalley*, 677 F.3d 1001 (10th Cir. 2012).

⁴ *Babar Ahmad and Others v. the United Kingdom*, Application Nos. 24027/07, 11949/08 and 36742/08; *Bary and Al Fawwaz v. the United Kingdom*, Application Nos. 66911/09 and 67354/09.

⁵ Anthony M. Kennedy, Assoc. Justice, Supreme Court of the U.S., Address Before the American Bar Association Annual Meeting 2 (Aug. 9, 2003).

system, and public awareness of what goes on inside them is crucial to the transparency that is a central value of that system.

This transparency is particularly important – and elusive – in the context of ADX, the nation’s only federal supermax facility. BOP officials have repeatedly denied requests from human rights organizations and the media to tour the ADX and interview prisoners held there,⁶ which has resulted in a dearth of publicly available information about the nature of the conditions at ADX and the effects of those conditions on the men who are held there.

For that reason, I wish to devote my testimony to the use of solitary confinement in the Federal Bureau of Prisons, particularly at ADX. Others will testify in detail about the harmful psychological effects of solitary confinement,⁷ as well as provide empirical data about the increased costs associated with supermax confinement⁸ and the lack of evidence demonstrating that the use of solitary confinement has significantly reduced the levels of violence in prisons.⁹ Through my testimony, I seek to share some of the information about ADX that our legal clinic learned in the course of working with men who are held there, with the hope that this can serve as a basis for further investigation and oversight by the Committee.

Conditions of Confinement at ADX

ADX is the Bureau of Prisons’ only designated supermax facility, though the BOP holds people in segregation in the Special Housing Units of its other prisons for both disciplinary and “administrative” reasons.¹⁰ ADX is the most restrictive prison in the federal system. All of the

⁶ According to a Freedom of Information Act response provided in 2007, BOP officials denied “every single media request for a face-to-face interview with ADX prisoners from January 2002 through May 2007.” Alan Prendergast, “Fortress of Solitude,” *Westword*, Aug. 16, 2007, available at <http://www.westword.com/2007-08-16/news/fortress-of-solitude/>. One exception to this was a tour given to Human Rights Watch in 2007, which resulted in an eight-page single-spaced letter to the Director of the BOP detailing extensive and serious concerns about the conditions of confinement at the ADX, the vast majority of which still exist today. Ltr from J. Fellner & J. Daskal, Human Rights Watch, to Harley G. Lappin, Dir. of the Fed. Bureau of Prisons (May 2, 2007).

⁷ See, e.g., Craig Haney, *The Social Psychology of Isolation: Why Solitary Confinement is Psychologically Harmful*, 181 PRISON SERVICE JOURNAL 12 (2009); Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450 (1983); Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQUENCY 124 (2003); HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON, (Am. Psychol. Ass’n. 1992).

⁸ See, e.g., Jeffrey Ross, *Supermax Prisons*, 44 SOCIETY 3 (March/April 2007), available at <http://www.convictcriminology.org/pdf/jross/SupermaxPrisons.pdf> (estimating average cost increase of \$50,000 to house inmate in supermax confinement rather than general population).

⁹ Terry A. Kupers, et al., *Beyond Supermax Administrative Segregation: Mississippi’s Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. & BEHAV. 1037, 1041 (2009) (describing Mississippi’s experience of reducing solitary confinement population from 1200 to 150, resulting in reduction of prison violence levels by 70%).

¹⁰ According to one report, there are 11,000 people in some form of segregation in BOP facilities. Stephanie Chen, “Terrible Tommy” Spends 27 Years in Solitary Confinement,” CNN, Feb. 25, 2010: http://articles.cnn.com/2010-02-25/justice/colorado.supermax.silverstein.solitary_1_solitary-confinement-federal-prison-system-cell?_s=PM:CRIME.

prisoners in ADX are in solitary confinement. In an interview with “60 Minutes,” a former ADX warden described it as “a clean version of hell.”¹¹

ADX has been criticized by Amnesty International and Human Rights Watch for its inhumane conditions.¹² In the main unit of ADX,¹³ prisoners are in solitary confinement for twenty-two hours a day, five days a week and twenty-four hours a day for the other two days, in cells that measure 87 square feet. Each cell contains a poured concrete bed and desk as well as a steel sink, toilet, and shower. ADX prisoners eat all meals alone inside their cells, within arm’s length of their toilet. Each cell has a small window to the outside; however, the only view is of the cement “yard.” Prisoners at ADX cannot see any nature—not the surrounding mountains or even a patch of grass.

The only time prisoners are regularly allowed outside of their cells is for limited recreation, which occurs either in an indoor cell that is empty except for a pull-up bar, or in an outdoor solitary cage. The outside recreation cages are only slightly larger in size than the inside cells and are known as “dog runs” because they resemble animal kennels. The warden can (and does) cancel recreation for any reason he deems appropriate, including weather, shakedown, or lack of staff. Some prisoners are required to undergo a strip search as a precondition to any out-of-cell exercise. Accordingly, ADX prisoners sometimes go for days without ever leaving their cells.

Direct contact with others is rare. The prison was specifically designed to limit all communication among the people that it houses. Accordingly, the cells have thick concrete walls and two doors, one with bars and a second made of solid steel. The only “contact” ADX prisoners have with other inmates in the main unit is attempted shouting through the thick cell walls, doors, toilets, and vents. All visits are non-contact, meaning the prisoner and visitor are separated by a plexiglass barrier. Most ADX prisoners remain shackled at their hands and feet throughout the non-contact visits.

Formal opportunities for rehabilitation are extremely limited. All educational programming occurs via closed-circuit television in the prisoners’ cells. “Classes” consist of broadcasting shows such as “World of Byzantium,” “Parenting I and II,” and “Peloponnesian War I and II,” with the prisoner filling out a short quiz. There is no interaction with an educator or other students.

While in the main, the BOP does not dispute that these are the conditions at ADX, some of its officials have repeatedly taken the position, as a semantic matter, that solitary confinement does

¹¹ See CBS News – 60 Minutes, “Supermax – A Clean Version of Hell,” June 9, 2009, <http://www.cbsnews.com/stories/2007/10/11/60minutes/main3357727.shtml>.

¹² Ltr. from HRW, to Harley G. Lappin, *supra* note 6; Amnesty International, “United States of America, Cruel and Inhuman: Conditions of Isolation for Detainees at Guantanamo Bay,” AI Index: AMR 51/051/2007, April 2007.

¹³ This main unit is described by the BOP as “general population,” though all of the prisoners held there are in solitary confinement. It is, therefore, completely unlike regular “general population” or “GP” units where prisoners are permitted to be out of their cells for a number of hours each day, to hold jobs, and to have regular interaction with other people.

not exist in its facilities – including ADX.¹⁴ For example, when Dr. Donald Denney, Regional Psychology Director for the BOP’s North Central Region (which includes ADX), was asked about solitary confinement in a deposition, the following exchange ensued:

- Q: What do you understand the term “solitary confinement” to mean?
 A: And are you referring to the Bureau of Prisons or in general?
 Q: First, with the Bureau of Prisons.
 A: I’m not aware that the Bureau of Prisons has a policy related to solitary confinement.
 Q: Do you have a general understanding of what the term “solitary confinement” means?
 A: And again, we’re not talking about the Bureau of Prisons, correct?
 Q: Correct. Your own personal understanding.
 A: I would have my opinions about what that would mean, yes.
 Q: Can you explain to me what those are?
 A: Well, solitary confinement—“confinement,” if we break the words into pieces, would mean that a person was confined in a space. And “solitary” would mean by himself, absent of all other engagements.
 Q: Can you explain to me what you mean by all other engagements?
 A: Human contact, the ability to see others, lacking – basically being alone.¹⁵

The case in which Dr. Denney was deposed is *Silverstein v. Bureau of Prisons*, in which our client, Thomas Silverstein, has asserted that the BOP’s confinement of him in extreme isolation for twenty-eight years violates his constitutional rights.

The effect of solitary confinement conditions, particularly when they are endured for long periods of time, can be psychologically devastating. As Dr. Craig Haney observed in a

¹⁴ Instead, BOP officials speak in euphemisms such as “single-occupancy cells” and state that they have no definition of or reference for the term “solitary confinement” in the context of the BOP. For example, in a deposition given by then-ADX Warden Wiley in 2008, he testified as follows:

Q: Do you consider the ADX general population to be solitary confinement?

A: I do not. . . . I don’t have a definition of solitary confinement. I just know what I see on TV. And when they say solitary confinement on TV, they generally have a person in a place that’s dark and no contact with anyone. And they open a little slot and slide in a tin plate or something with bread and water or something like that. That’s my only frame of reference for solitary confinement. So based on that, my only knowledge of it, at the ADX, those are the differences.

Q: So you have no personal basis, apart from watching television, for the definition of solitary confinement?

A: I do not.¹⁴

Deposition of Warden R. Wiley, *Saleh et al., v. BOP*, 05-cv-2467 (D. Colo) at 248-49.

¹⁵ Deposition of Dr. Donald Denney, *Silverstein v. BOP*, 07-cv-2471 (D. Colo) at 22-23. Unlike the BOP, the federal courts have no problem recognizing that ADX is solitary confinement. *See, e.g., Jordan v. Sosa*, 654 F.3d 1012, 1015 (10th Cir. 2011) (“Plaintiff-Appellant Mark Jordan was incarcerated in solitary confinement at the administrative maximum security facility in Florence, Colorado (ADX)”); *Sattar v. Holder*, 2012 WL 882401, *1 (D. Colo. 2012) (“At ADX, inmates are housed in solitary confinement and are subject to highly restrictive conditions.”).

declaration he provided in Mr. Silverstein’s case, “the overwhelming consensus among persons who have actually conducted research on the effects of solitary confinement is clear: severe and prolonged isolation—the deprivation of meaningful social contact and the other deprivations that commonly occur in conjunction with it—is psychologically painful and can have harmful psychological consequences.” As described by Dr. Haney, some of those consequences include:

appetite and sleep disturbances, anxiety, panic, rage, loss of control, paranoia, hallucinations and self-mutilations. Moreover, direct studies of prison isolation have documented an extremely broad range of harmful psychological reactions. These effects include increases in the following potentially damaging symptoms and problematic behaviors: negative attitude and affect, anxiety, withdrawal, hypersensitivity, ruminations, cognitive dysfunction, hallucinations, loss of control, irritability, aggression, and rage, paranoia, hopelessness, a sense of impending emotional breakdown, self-mutilation and suicidal ideation and behavior.¹⁶

Some prisoners in ADX find the conditions of prolonged solitary so devastating that they protest in one of the few ways available to them: hunger strikes. Some of these men have refused food for upwards of three months, resulting in even greater suffering, risk of organ damage, and being subjected to painful force-feeding while restrained.¹⁷

Many Federal Prisoners Are in Solitary Confinement for Years

Especially troubling is the extraordinary length of time that some federal prisoners have been held in solitary confinement at ADX (and, in some cases, elsewhere). Perhaps the most extreme example of this is Mr. Silverstein, on whom the BOP imposed a “no human contact” order in 1983 and who has been held in solitary confinement ever since. But while Mr. Silverstein’s solitary confinement in the BOP is the longest period of which I am aware, there are many others who have spent years—and decades—in isolation in federal custody.

The BOP has been resistant to efforts to obtain data about the duration of prisoners’ confinement at ADX, even from the European Court of Human Rights which made repeated requests for this information in connection with litigation seeking to stop the extradition to the United States of several men charged with terrorist crimes on the grounds that the conditions at ADX could be in violation of the European Convention on Human Rights.¹⁸ Consequently, attorneys and others have been forced to conduct their own research to obtain information as best they can. One attorney explained his methodology like this: “I sent letters to 130 prisoners who I had identified as being housed at ADX. The survey did not include every prisoner at ADX, and there may be prisoners who have spent long periods of time at ADX whom I have not identified. As you might expect, my letters to prisoners under SAMs were returned, and so their data is not included in the results. We received a total of 61 results.” Even with this admittedly small and imperfect

¹⁶ Expert Report of Dr. Craig Haney, *Silverstein v. BOP*, 07-cv-2471 (D. Colo.), at 8-9.

¹⁷ Human Rights Watch has documented that such force-feeding is done in a manner that is unnecessarily punitive and painful, and that hunger-strikers are often moved to “dry cells” with no mattress, clothes or basic hygiene products as punishment for the strike. Letter from J. Fellner and J. Daskal, Human Rights Watch, to Federal Bureau of Prisons, May 2, 2007, *supra* note 6.

¹⁸ See note 4, *supra*.

sample (the ADX generally holds approximately 400 prisoners on any given day), this attorney found that “at least 43 prisoners have been locked down at ADX and Marion for over 8 years.”¹⁹

There is No Meaningful Process Governing How—or Whether-Prisoners are Removed from ADX

Compounding the lengthy periods of time that some prisoners are held at ADX is the fact that most of these men do not know when – or whether – they will ever be removed from solitary confinement. Unlike prisoners who are put in solitary confinement for disciplinary reasons, most prisoners at ADX have been placed there for administrative reasons, pursuant to a “classification decision” made by the BOP. In other words, these men are not at ADX for a set period of time, but are there for as long as the BOP determines is appropriate. There is nothing to prevent the BOP from keeping these men in solitary confinement for the rest of their lives, and in some cases that appears to be the plan of the Bureau. This can be so even where a prisoner – such as Mr. Silverstein – has demonstrated *decades* of clear conduct.

As Dr. Haney has observed, “[r]esearch indicates that the negative effects of general environmental stress are moderated by perceived control. That is, when people come to believe that they cannot control the psychologically or physically threatening conditions to which they are exposed, the resulting stress is intensified. This general, common sense proposition applies to prisons in general and to conditions of solitary confinement in particular. Prisoners who do not know whether or when they will be released experience the pains of this kind of isolated confinement more acutely.”²⁰

Not only does the lack of guidance about what they can do to be released from solitary confinement exacerbate the mental health effects of isolation, there is empirical evidence that it *negatively* impacts institutional safety. There are studies that demonstrate, in the context of incarceration, prisoners will be more likely to comply with prison rules and less likely to recidivate if they perceive authority is exercised in a fair, transparent, and unbiased manner. As noted by amici in *Rezaq v. Nalley*, “[t]he classification and program assignment procedures currently in place at ADX do not appear to include any opportunity for inmates to state their case to a neutral third party, fail to ensure consistency of treatment across cases, do not evince respect for inmates’ dignity, and are unlikely to foster trust in prison authorities.”²¹

¹⁹ Ltr. From M. Donatelli to [redacted] ADX prisoner, Mar. 23, 2011.

²⁰ Haney report, supra note 16 at 49.

²¹ Brief of Behavioral Scientists, Social Psychologists, Criminologists and Former Correctional Officials as *Amici Curiae*, *Rezaq v. Nalley*, 11-1069, U.S. Court of Appeals for the Tenth Circuit, at 12-13. *Amici* further explain:

Beliefs about the fairness of institutions influence the legitimacy of those institutions and individuals’ propensity to cooperate with their authority. *See, e.g.*, Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 L. & SOC’Y REV. 513, 530-34 (2003) (finding that public perceptions of procedural fairness “impact people’s compliance with law, their willingness to cooperate with and assist the police, and whether the public will empower the police”). Conversely, research suggests “that unjust situations and outcomes lead to frustration and strain, which can ultimately cause crime and delinquency.” Eric G. Lambert et al., *The Relationship among Distributive and Procedural Justice and Correctional Life Satisfaction, Burnout, and Turnover Intent: An Exploratory Study*, 38 J. CRIM. JUSTICE 7 (2010). When people perceive that they have been treated fairly, they are

At ADX, the criteria for progression to and through the one program that provides the potential for leaving are so vague as to provide the prisoner with no meaningful notice of what, if anything, he can do to progress. These criteria include: “the institution’s safety and security needs; the safety and security needs of the inmate; the safety and security needs of other inmates; and the safety and security needs of the public.”²² While the BOP is rightfully permitted some discretion in who should be segregated, correctional experts urge that their discretionary decisions be based on objective data. One such expert in the *Silverstein* case has opined that “sound correctional practice, as well as fundamental notions of fairness and due process, requires providing prisoners with notice of the reason for their conditions, an explanation of what must be done to change those conditions, and giving them some ability to do so.”²³ The current regime at ADX does not provide any of these fundamental hallmarks of due process in any meaningful way.

The Extreme Nature of the Conditions at ADX Impacts America’s International Credibility on Human Rights Issues

Harold Koh, legal advisor to the State Department, has described the United States as the world’s indispensable force for human rights. Yet solitary confinement conditions like those at ADX are inconsistent with international human rights standards²⁴ and have been roundly condemned, including by the United Nations Special Rapporteur on Torture at the 19th session of the U.N Human Rights Council. At that session, the Special Rapporteur on Torture called on all countries to ban the use of solitary confinement, except in very exceptional circumstances, as a last resort, and for as short a time as possible. The Special Rapporteur concluded that solitary confinement is a harsh measure that may cause serious psychological and physiological adverse effects. He found that solitary confinement can amount to cruel, inhuman or degrading treatment or punishment and even torture. He recommended both the prohibition of solitary confinement and the implementation of alternative disciplinary sanctions. He also called for increased safeguards from abusive and prolonged solitary confinement, the universal prohibition of solitary confinement exceeding 15 days.²⁵

more likely to accept “the need to bring their behavior into line with the dictates of an external authority.” TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 25 (1990).

²² ADX Institution Supplement FLM 5321.06J(1), General Population and Step-Down Unit Operations, Nov. 21, 2011 at 10.

²³ Decl. of Correctional Expert Steve Martin in Support of Plaintiff’s Response to Defendants’ Motion for Summary Judgment, *Silverstein v. BOP*, 07-cv-2471-PAB-KMT (D. Colo), Ex. 10 at ¶ 31.

²⁴ The U.S. has ratified the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture, both of which prohibit torture or other cruel, inhuman or degrading treatment or punishment. Article 10 of the ICCPR further requires that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. The UN Human Rights Committee, the ICCPR treaty monitoring body, has further emphasized that the absolute prohibition of torture or 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 that prolonged solitary confinement may amount to torture or other ill-treatment.

²⁵ Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, delivered to the General Assembly, U.N. Doc. A/66/268 (Aug. 5, 2011).

While the U.S. is dismissive of international criticism of its own prison conditions, in judging other countries' human rights records, the U.S. State Department has regularly treated the use of prolonged solitary confinement as a human rights violation.²⁶ If the U.S. is to continue to hold itself out to the world as a standard-bearer of human rights, we must look closely at the use of solitary confinement here at home, including and especially in our federal prisons.

²⁶ Glenn Greenwald provides a powerful summary of this tendency:

[T]he U.S. Government routinely condemns similar acts—the use of prolonged solitary confinement in its most extreme forms and lengthy pretrial detention—when used by other countries. See, for instance, the 2009 State Department Human Rights Report on Indonesia (“Officials held unruly detainees in solitary confinement for up to six days on a rice-and-water diet”); Iran (“Common methods of torture and abuse in prisons included prolonged solitary confinement with extreme sensory deprivation . . . Prison conditions were poor. Many prisoners were held in solitary confinement . . . Authorities routinely held political prisoners in solitary confinement for extended periods . . .”); . . . Israel (“Israeli human rights organizations reported that Israeli interrogators . . . kept prisoners in harsh conditions, including solitary confinement for long periods”); Iraq (“Individuals claimed to have been subjected to psychological and physical abuse, including . . . solitary confinement in Ashraf to discourage defections”); Yemen (“Sleep deprivation and solitary confinement were other forms of abuse reported in PSO prisons . . .”).

U.N. to Investigate Treatment of Bradley Manning, SALON (Dec. 23, 2010, 5:24 AM), http://www.salon.com/2010/12/23/manning_4/singleton/.