



F30 The Science and Law of Solitary Confinement

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After attending this presentation, attendees will better understand the scientific studies of the psychological effects of solitary confinement and whether those effects constitute “cruel and unusual punishment” contrary to the 8th Amendment of the United States Constitution.

This presentation will impact the forensic scientific community by providing attendees with a competency regarding the psychological and legal impacts of solitary confinement.

Solitary confinement in the United States typically means isolating a prisoner in a cell for 22 to 24 hours a day without any meaningful human contact or interaction. As of 2013, there were more than 12,000 federal inmates in solitary, and estimates of the national total exceed 80,000.¹ It was first used in the United States in the early 18th century but was abandoned, only to be reborn in the “law and order” era of the 1980s, when rehabilitation ceased to be an active goal of corrections.

Psychiatrists, psychologists, and criminologists have studied the effect of such isolation on mental health. Criminal justice advocates and the courts are now considering whether such treatment amounts to “cruel and unusual” punishment in violation of the 8th Amendment.

Numerous studies have found that isolation and sensory deprivation causes drastic reactions such as hallucinations, confusion, lethargy, anxiety, panic, time distortions, impaired memory, and psychotic behavior.² All of the major studies have found that solitary confinement produces a higher rate of psychiatric and psychological health problems than “normal” imprisonment.³ There is general agreement among many of those who have studied solitary confinement that this mode of imprisonment can produce severe effects.⁴

The United States Supreme Court first discussed the issue of solitary confinement as early as 1890, in a case concerning solitary confinement of a prisoner under sentence of death in the state of Colorado.⁵ The court ruled that solitary confinement “was an additional punishment of the most important and painful character” and described how inmates had reacted to solitary confinement in United States 19th-century prisons: “A considerable number of prisoners fell, after even a short confinement, into a semi fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.”

Notwithstanding this early condemnation, virtually every United States court has found that solitary confinement does not constitute “cruel and unusual punishment.”⁶ The Supreme Court has held that the 8th Amendment may be violated by the conditions of incarceration if they are imposed with “deliberate indifference” or if the conditions violate “the minimal civilized measure of life’s necessities.”^{7,8} Both elements must be present to establish a constitutional violation but “deliberateness” has been somewhat ameliorated.⁹

The legal question is whether the demonstrated psychological harm of solitary confinement represents the denial of a minimal life necessity. The Court has not directly addressed this question but has indicated that deprivation of adequate mental health care violates a duty to provide “basic sustenance” to prisoners.¹⁰ It has not addressed whether the recklessness associated with the imposition of solitary confinement would amount to deliberate indifference.

Reference(s):

1. U.S. Gov’t Accountability Office, GAO-13-429. *Bureau of Prisons: Improvements Needed in Bureau of Prisons’ Monitoring and Evaluation of Impact of Segregated Housing*. 14 (2013), available at <http://www.bjs.gov/content/pub/pdf/csfcf05.pdf>, archived at <http://perma.cc/Q9L9-E73B>; and see Sadie Dingfelder, Psychologist Testifies on the Risks of Solitary Confinement. *Monitor on Psychol.* Oct. 2012, at 10, available at <http://www.apa.org/monitor/2012/10/solitary.aspx> (testimony of Professor Craig Haney).
2. Zuckerman et al. 1962; Brownfield 1965; Schultz 1965; Vernon 1965; Rasmussen 1973; Zubek 1973; Andersen 1992; Haney and Lynch 1997.
3. Peter Scharff Smith. The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature. 34. *Crime & Just.* 441 (2006).
4. See, e.g., Gray 1847; Hinkle and Wolff 1956; Koch 1982; Grassian 1983; Haney and Lynch 1997; Gamman 2001; Smith 2004.
5. *In re Medley*, 134 U.S. 160 [1890]; Boston 2000, p. 1.
6. Hafemeister, T. and George, J. The Ninth Circle of Hell: An Eighth Amendment Analysis of Imposing Prolonged Supermax Solitary Confinement on Inmates with a Mental Illness. 90 *Denver U. L. R.* 1 (2012).
7. *Estelle v. Gamble*. 429 U.S. 97 (1976).
8. *Rhodes v. Chapman*. 452 U.S. 337 (1981).
9. *Wilson v. Seiter*. 501 U.S. 294 (1991); *Helling v. McKinney*. 509 U.S. 25 (1993); *Farmer v. Brennan*. 511 U.S. 825 (1994).
10. *Brown v. Plata*. 131 S. Ct. 1910 (2011).

Solitary Confinement, Cruel and Unusual, 8th Amendment