UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
Big Stone Gap Division

WILLIAM THORPE, *et al.*, Plaintiffs, v. VIRGINIA DEPARTMENT OF CORRECTIONS, *et al.*, Defendants.	Civil Action No. 2:20-CV-00007-JPJ-PMS **REDACTED**

DEFENDANTS' MOTION *IN LIMINE*, AND MEMORANDUM IN SUPPORT OF MOTION *IN LIMINE*, TO PROHIBIT PLAINTIFFS' EXPERT WITNESSES FROM TESIFYING ABOUT INTERVIEWS WITH INMATES AND FROM PRESENTING CUMULATIVE TESTIMONY

Individual Defendants Harold Clarke, Randall Mathena, H. Scott Richeson, David Robinson, Henry Ponton, Marcus Elam, Denise Malone, Tori Raiford, Jeffrey Kiser, and Carl Manis (collectively, "Defendants")[1] move *in limine* for entry of an Order prohibiting Plaintiffs' expert witnesses Craig Haney and Michael Hendricks from testifying about the content of their respective interviews with inmates. Any such testimony would be hearsay without exception and be cumulative under the Federal Rules of Evidence. Therefore, such evidence should be excluded.

Defendants also move in limine for an entry of an Order prohibiting Plaintiffs' expert witness Michael Hendricks from testifying regarding the state of the scientific literature on solitary confinement. Such testimony would be cumulative of testimony that Plaintiffs intend to elicit from another expert, Craig Haney, and should thus be excluded.

BACKGROUND

[1] The Virginia Department of Corrections is not a party to Plaintiffs' Eighth Amendment and Due Process claims.

Craig Haney ("Dr. Haney") is a psychologist with a Ph.D. in social psychology and a J.D. Expert Report of Craig Haney, Ph.D., J.D., ¶ 4 (May 26, 2023) ("Haney Report") (relevant portions attached as Exhibit 1). He was retained by counsel for Plaintiffs to form expert opinions on various issues, including the conditions that constitute "solitary confinement" and the current state of scientific knowledge on the effects of "solitary confinement." *See* Haney Report ¶ 1. Dr. Haney is not a clinical psychologist and has never treated patients as a psychologist; nor does he diagnose mental illnesses. Tr. Craig W. Haney Deposition, Vol. 1, at 16:2–17:16. (Aug. 17, 2022) ("Haney Dep. Vol. 1")(relevant portions attached as Exhibit 2). Rather, he maintains "***academic*** expertise" in the topic of "solitary confinement" and uses scientific literature as the basis upon which his expert opinions rest. Tr. Craig W. Haney Deposition, Vol. 2, at 127:17–128:2; 130:8–13 (Aug. 17, 2023) ("Haney Dep., Vol. 2") (emphasis added) (relevant portions attached as Exhibit 3). Indeed, in forming his expert opinion in this case, Dr. Haney "rel[ied] on that literature and knowledge of that literature to formulate an understanding of what is commonly understood as solitary confinement." *Id.* at 127:17–128:2. Yet, in the course of his involvement in this case, Dr. Haney [redacted] with approximately 24 inmates at Security Levels S and 6 at Red Onion State Prison, and longer interviews with a subset of those inmates. *Id.* at 136:4–18, 158:16–19; Haney Report ¶ 13.

Michael Hendricks ("Dr. Hendricks") is a licensed clinical psychologist. Report of Michael L. Hendricks, Ph.D., ABPP, at ¶2 (May 26, 2023) ("Hendricks Report") (relevant portions attached as Exhibit 4). He was retained by Plaintiffs' counsel to evaluate the named Plaintiffs and [redacted] *Id.* ¶ 1. To do so, he both interviewed various named Plaintiffs, who made various out-of-court statements to him, and

reviewed certain scientific literature (including many of the same studies that Dr. Haney reviewed)[2] regarding the purported effect of solitary confinement.

ARGUMENT

I. The Court should prohibit Dr. Haney from testifying about statements made to him by inmates at Red Onion State Prison.

Dr. Haney was engaged by Plaintiffs to opine on the features and effects of "solitary confinement" as that term is used in the scientific, legal, and correctional contexts. *See* Haney Report ¶ 1. Indeed, of the seven issues that Dr. Haney was asked by Plaintiffs to analyze, five relate to confinement generally, and not to VDOC specifically. *Id.* (listing the issues on which he was retained to opine as follows: [redacted]

Dr. Haney was only engaged to opine on two issues that specifically related to VDOC: (1) [redacted] and (2) [redacted]

[2] In fact, Dr. Hendricks reviewed numerous articles authored by Dr. Haney as part of his literature review. *See* Hendricks Report at pp. 83–86.

[redacted] *Id.*

Dr. Haney's interviews with various inmates are not data upon which an expert in the field of non-clinical social psychology would reasonably rely in forming an opinion on the particular questions upon which he was retained to opine. *See* Fed. R. Evid. 703 (stating that an expert witness may rely on inadmissible facts or data in forming their opinion as long as "experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject"). In forming an opinion on the features and effects of "solitary confinement," in general, as that term is used in the scientific, legal, and correctional contexts, a non-clinical social psychologist would not reasonably rely on "brief cell-front interviews" with a mere 24 inmates at one prison and longer interviews with a smaller subset of those inmates. Haney Dep., Vol. 2 136:4–18, 158:16–19; Haney Report ¶ 13. Nor would a non-clinical social psychologist rely on such interviews in determining, [redacted] whether the conditions at issue in this case constitute solitary confinement. Haney Report ¶ 1 (emphasis added). Dr. Haney's retainment on this issue was explicitly confined to review of [redacted] *Id.* Conducting interviews with select inmates thus was outside the scope of what an expert in the field would reasonably rely in forming his opinion.

Nor would an expert reasonably rely on his own interviews with a smattering of prisoners in opining on [redacted] *Id.*. That issue does not concern inmates' subjective experience, but rather whether the "conditions, practices, and procedures" of the prison expose those inmates to the same

risks of harm as described in the scientific literature. Additionally, a non-clinical psychologist who has never seen patients and specializes in the academia of social psychology would not reasonably rely on a handful of interviews he himself conducted in determining whether inmates are exposed to certain harms. *See* Haney Dep., Vol. 1 at 16:2–17:16.

Further, an expert would not reasonably rely on Dr. Haney's interviews of a handful of prisoners because both the methodology and content of the interviews lack sufficient indicia of reliability. First, Dr. Haney selected inmates to interview by approaching "various cells by chance." Haney Dep., Vol. 2 at 168:7–13. This procedure unambiguously does not meet the APA's definition of random sampling, which is important to ensure that the participants in a study are representative of the target population such that the results can be generalized to that population.[3] The APA defines random selection as "a procedure for random sampling of a set of participants or units from a larger set that relies on the use of a chance process to minimize risk of researcher bias, either conscious or unconscious." *Random Selection*, APA Dictionary of Psychology, https://dictionary-apa-org.libdata2015.hilbert.edu/random-selection. Although Dr. Haney may assert that he approached cells "randomly," his approach does not account for researcher bias, including implicit bias, that true random sampling is designed to prevent.

Second, an expert would not reasonably rely on Dr. Haney's interviews because Dr. Haney approached the inmates in a way that was likely to garner biased data. Dr. Haney reported that introduced himself to his chosen inmates by stating, "I've been asked by the lawyers who represent prisoners in a lawsuit about conditions in Restrictive Housing to try to understand what it's like to live in this unit, and I wonder if I can ask you some questions about your day-to-day life inside

[3] *See* Mohamed Elfil and Ahmed Negida, *Sampling methods in Clinical Research; an Educational Review*, National Library of Medicine (Jan. 14, 2017) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5325924/.

this unit." Haney Dep., Vol. 2, at 174:1–7. Dr. Haney also asked questions in a highly suggestive manner. He reported that he began each interview by stating:

> I'm going to ask you about things about people who are in Restrictive Housing, solitary confinement sometimes experienced and sometimes don't, and I'm going to ask you for you if these were things that have bothered you in the last three months. And if they have, I'll ask you a little bit more about how much.

Id. at 216:15–17:2. Dr. Haney explained that he included a "control question" to ensure that inmates were answering truthfully, which was whether the inmate experienced a "tingling sensation" in their fingers or toes, which is "not necessarily a symptom of psychological distress." *Id.* at 234:3–22. However, he stated that even when inmates answered affirmatively, it "doesn't mean they are not answering accurately to the other questions." *Id.* at 235:10–20. Dr. Haney's approach risked improperly incentivizing inmates to highlight or exaggerate negative aspects of their experience in VDOC's Step Down program because they may have assumed that their reports to someone aiding "lawyers who represent prisoners" would benefit them or improve their conditions in some way.

Because Dr. Haney's interviews with inmates fall outside of the scope of material upon which an expert would typically rely, the portions of Dr. Haney's opinion relying on the interviews is not admissible. He should not be permitted to testify regarding statements made to him by inmates at Red Onion State Prison.

II. The Court should prohibit Dr. Hendricks from repeating at trial out-of-court statements made by the named Plaintiffs during his interviews of them.

While an expert may rely on hearsay in forming his opinion, the expert may not parrot the hearsay to the factfinder. Committee Notes on Fed. R. Evid. 703, 2000 Amendment (stating that though experts are allowed to rely on hearsay in forming their opinions, the "underlying information is not admissible simply because the opinion or inference is admitted"). "[A]n expert's

use of testimonial hearsay is a matter of degree." *United States v. Johnson*, 587 F.3d 625, 635 (4th Cir. 2009).

Rule 702 applies to a court's analysis of expert testimony, regardless of "whether the trier of fact is a judge or a jury." *UGI Sunbury LLC v. A Permanent Easement for 1.7575 Acres*, 949 F.3d 825, 832 (3d Cir. 2020). That Rule allows a court to admit expert testimony only if it "will aid the . . . trier of fact to understand or resolve a fact at issue." *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 260 (4th Cir. 1999). For example, in *Synopsys, Inc. v. Risk Based Sec., Inc.*, the court prohibited an expert from testifying in a bench trial about his hearsay conversations with the plaintiff's former employee. No. 3:21cv252, 2022 WL 3005990, at *7–*8 (E.D. Va. July 28, 2022). The court held that "[t]hat type of parroting would not prove helpful where [plaintiff] may instead present [the former employee's] testimony directly to the Court." *Id.* at *8.

So too here. If Dr. Hendricks were to testify regarding specific statements that named Plaintiffs made to him in the course of his interviews, such hearsay testimony would not aid the Court where Plaintiffs may instead present their testimony directly to the Court. While Dr. Hendricks may testify that he interviewed Plaintiffs and administered certain tests – and may disclose the results of those tests – he may not simply parrot Plaintiffs' out-of-court statements. Only Plaintiffs themselves may testify about what they told Dr. Hendricks and be subjected to cross examination. Permitting Dr. Hendricks to testify as to Plaintiffs' underlying statements would only serve to impermissibly bolster Plaintiffs' testimony and waste time. Therefore, the Court should prohibit Dr. Hendricks from repeating at trial the out-of-court statements of Plaintiffs made during Dr. Hendricks's interviews with them.[4]

[4] Nor are the named Plaintiffs' statements to Dr. Hendricks admissible under Fed. R. Ev. 803(4), as Dr. Hendricks explained in his report that he was not interviewing them for purposes of diagnosis or treatment. Hendricks Report at 1.

III. The Court should prohibit Dr. Hendricks from testifying at trial about his review of the scientific literature because such testimony would be cumulative.

Evidence of Dr. Hendricks's review of the scientific literature should be excluded at trial because such testimony would be cumulative of Dr. Haney's testimony. "Evidence is 'cumulative' when it adds very little to the probative force of the other evidence in the case, so that if it were admitted its contribution to the determination of truth would be outweighed by its contribution to the length of the trial[.]" *United States v. Williams*, 81 F.3d 1434, 1443 (7th Cir. 1996). "It is within the power of the district court to exclude testimony that is repetitious and cumulative of testimony already before the court." *Leefe v. Air Logistics, Inc.*, 876 F.2d 409, 410 (5th Cir. 1989); *see also Manning v. United States*, 726 F. App'x 188, 188–89 (4th Cir. June 13, 2018) (affirming district court's exclusion of second expert witness in a bench trial in part because "the expert offered only cumulative evidence as to causation"). "A district court is free to exclude any expert testimony . . . if the testimony is cumulative or redundant under Fed. R. Evid. 403." *Bowman v. Corr. Corp. of Am.*, 350 F.3d 537, 547 (6th Cir. 2003). "It is inappropriate for an expert witness to bolster the credibility of another witness[.]" *United States v. Rodriguez*, 125 F.Supp.3d 1216, 1252 (D.N.M. 2015).

Dr. Hendricks was retained by Plaintiffs to evaluate the named Plaintiffs and assess their mental health; in contrast, Dr. Haney was retained to analyze the state of the scientific literature regarding solitary confinement. *See* Hendricks Report at ¶1; Haney Report at 1–2. In his report, Dr. Hendrick acknowledges that he was [redacted] and [redacted] – not to opine on the literature. Hendricks Report at ¶¶1–2. Yet Dr. Hendricks opined about his [redacted] Hendricks Report at ¶¶12, 19-24. Dr. Hendricks should be prohibited from testifying at trial

regarding these publications and any materials relating to the scientific literature of prison conditions or solitary confinement because such testimony would be "repetitive and cumulative" of Dr. Haney's testimony. *See Leefe*, 876 F.2d at 410. Because Dr. Haney's report was substantially based on such scientific literature, Dr. Hendricks's testimony in this area would add little probative value and would merely serve to prolong the trial and impermissibly bolster the testimony of Dr. Haney. Therefore, the Court should exclude from evidence at trial Dr. Hendricks's testimony regarding his review of the scientific literature.

CONCLUSION

For these reasons, VDOC respectfully requests that the Court prohibit Plaintiffs from introducing any evidence or argument referencing prohibit plaintiffs' expert witnesses from testifying about interviews with inmates and from presenting cumulative testimony.

August 24, 2026

Respectfully submitted,

/s/ *Maya M. Eckstein*

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2026, I caused a copy of the foregoing to be electronically filed using the CM/ECF system, which will send notification to counsel of record of such filing by operation of the Court's electronic system. Parties may access this filing via the Court's electronic system. Additionally, the sealed documents have been delivered to all counsel of record via electronic mail.

By: /s/ *Maya M. Eckstein*
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