IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

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

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION *IN LIMINE* TO PROHIBIT PLAINTIFFS' EXPERT WITNESSES FROM TESTIFYING ABOUT INTERVIEWS WITH INMATES AND FROM PRESENTING CUMULATIVE TESTIMONY

Defendants' motion is an untimely *Daubert* challenge cloaked as a motion *in limine*. Defendants have known about Dr. Haney's interview methodology and Dr. Hendricks's clinical evaluations since both experts served their reports in May 2023. The Court set a September 8, 2023 *Daubert* deadline. ECF No. 262. Defendants did not challenge Dr. Haney's methodology, and their narrow challenge to portions of Dr. Hendricks's report was largely denied. They cannot revive those forfeited challenges on the eve of trial.

The motion also fails on the merits. Dr. Craig Haney is a Distinguished Professor of Psychology who has spent roughly five decades studying prison environments and has interviewed hundreds of correctional officials and incarcerated persons across twenty state prison systems and many federal prisons. Ex. 1 (Excerpt of Haney Rpt.) ¶ 7. Dr. Michael Hendricks is a licensed, board-certified clinical psychologist who has practiced since 1995 and has testified as an expert more than 1,700 times on mental-health issues. Ex. 2 (Excerpt of Hendricks Rpt.) ¶¶ 2, 9.

Unable to identify any sound basis for exclusion, Defendants resort to conclusory attorney argument against reliable expert testimony. Even setting aside Federal Rule of Evidence 803(4), which independently permits Dr. Hendricks to recount statements made for diagnosis, statements made to both experts are admissible under Rule 702 because Dr. Haney and Dr. Hendricks used the same reliable methodologies that they have employed for decades. Defendants identify nothing from either expert—or from their own experts—suggesting that social or clinical psychologists do not rely on inmate interviews. To the contrary, Defendants' own expert relied on extensive interviews with the named Plaintiffs, highlighting those interviews as "valuable" in reaching his opinions. And at most, Defendants' criticisms of cell selection and interview framing go to weight and can be tested through cross-examination.

Defendants' effort to bar Dr. Hendricks from discussing scholarly literature fares no better. Plaintiffs will not present duplicative testimony, but Dr. Hendricks may explain how the literature cited in his report informs his patient-specific clinical opinions—a role distinct from Dr. Haney's broader, class-wide analysis. Defendants' mischaracterization of Dr. Hendricks's role as limited solely to evaluating the named Plaintiffs does not justify a categorical prohibition.

The Court should therefore deny Defendants' belated motion in its entirety.

I. ARGUMENT

A. Dr. Haney's Interview Testimony Is Admissible.

Defendants' first argument is, at its core, a challenge to Dr. Haney's methodology: they contend that a "non-clinical social psychologist" would not "reasonably rely" on cell-front interviews, that his cell selection was biased, and that his questions were suggestive. These are quintessential *Daubert* challenges to the reliability of an expert's methodology. *See Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592–93 (1993). Defendants even cite the *Daubert* standard, arguing that the Court should exclude Dr. Haney's testimony because the "methodology

and content of the interviews lack sufficient indicia of reliability." Mot. at 5. Defendants have known about every aspect of this methodology since Dr. Haney served his report in May 2023 and sat for deposition in August 2023. ECF No. 262. The *Daubert* deadline was in September 2023. *Id.* Defendants chose not to file a *Daubert* motion challenging Dr. Haney's methodology. They cannot use a motion *in limine* as a vehicle to raise forfeited *Daubert* challenges on the eve of trial.

Even setting aside forfeiture, Defendants' arguments fail on the merits.

Reliance on inmate interviews. Defendants' central contention is that a social psychologist would not "rely on such interviews in determining, 'based on a review of key policies, procedures, and related documents,' whether the conditions at issue in this case constitute solitary confinement." Mot. at 4. According to Defendants, "[c]onducting interviews with select inmates thus was outside the scope of what an expert in the field would reasonably rely [sic] in forming his opinion." *Id.* But Defendants achieve this argument only by ignoring large swaths of Dr. Haney's opinions. In the same paragraph that Defendants selectively quote, Dr. Haney states that he was also retained to opine on "whether those conditions, practices, and procedures expose the group of prisoners subjected to them to the same risks of harm from solitary confinement that are described in the scientific literature." Ex. 1 (Excerpt of Haney Rpt.) ¶ 1. That opinion, whether the conditions at Red Onion actually expose inmates to the harms documented in the literature, is precisely the kind of question that requires speaking with the people living under those conditions. Ex. 3 (Haney Dep. Tr.) at 135:4–19. Dr. Haney did so, interviewing dozens of inmates using a structured protocol. To be clear, Defendants do not argue that Dr. Haney plans to testify about anything outside his report. Instead, they isolate one facet of his multi-part opinion, the "review of key policies, procedures, and related documents," and declare inmate interviews irrelevant to it, while ignoring the remainder of his opinions for which those interviews are directly probative.

Defendants' broader attempt to cast inmate interviews as an improper basis for a social psychologist's opinions fares no better. Defendants cite no expert, no treatise, and no case for this proposition. Their own rebuttal expert, Dr. Morgan, said nothing about it. The record, by contrast, refutes it. Dr. Haney has spent many decades conducting interviews in correctional settings. Ex. 1 (Excerpt of Haney Rpt.) ¶ 7. As noted, he has toured and interviewed persons in prisons, including solitary confinement units, in approximately twenty different state systems. *Id.* His methodology has been accepted by the United States Supreme Court and numerous federal courts. *Id.* ¶ 8 & n.2 (citing *Brown v. Plata*, 563 U.S. 493 (2011)). As his report states, "I followed the procedure and standard methodology that I have employed for approximately the past forty-plus years, whenever I have been retained to evaluate and form opinions about conditions of confinement." *Id.* ¶ 31.

Defendants offer no basis to conclude that this Court should be the first to reject a methodology that has been accepted at the highest levels of the federal judiciary for decades. They remain free to cross-examine Dr. Haney on any aspect of his interviews. That is the proper vehicle for challenges to a methodology they believe is lacking, not exclusion of the expert's opinions. *See Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 261 (4th Cir. 1999) ("As with all other admissible evidence, expert testimony is subject to being tested by '[v]igorous cross-examination, [and] presentation of contrary evidence.'" (quoting *Daubert*, 509 U.S. at 596)).

Cell selection. Defendants assert that Dr. Haney's method of approaching cells was "biased" because it did not meet the APA's definition of random sampling, which "relies on the use of a *chance* process to minimize risk of researcher bias." Mot. at 5 (emphasis added). But Defendants' only support is testimony from Dr. Haney stating that he "selected inmates to interview by approaching 'various cells by chance.'" *Id.* Defendants wholly fail to explain how this does not accord with the APA definition and, even if it did not, how such selection procedure

was biased. The record shows that Dr. Haney's methodology was sound. Dr. Haney testified that he went to cells "in no particular order," did not target any particular area or cell, had no idea who was in any cell or their classification level, and approached "various cells by chance." Ex. 3 (Haney Tr.) at 167:15–168:13. For his confidential in-depth interviews, he used a computer-generated random number table to select nine inmates from his 28 cell-front interviewees. *Id.* at 210:18–211:18. Defendants' quibble about whether this satisfies a textbook definition of "random sampling" goes to the *weight* of Dr. Haney's testimony, not its admissibility. *Cf. Manpower, Inc. v. Ins. Co. of Penn.*, 732 F.3d 796, 808 (7th Cir. 2013) ("[T]he Supreme Court and this Circuit have confirmed on a number of occasions that the selection of the variables . . . is normally a question that goes to the probative weight of the analysis rather than to its admissibility.").

Interview framing. Defendants also argue that Dr. Haney's introductory statements and questions "incentivized" inmates to exaggerate, and Defendants complain about Dr. Haney's control question to assess whether inmates were answering thoughtfully or merely responding affirmatively to every question. These are precisely the kind of methodological details that Defendants can explore on cross-examination. *See Bresler v. Wilmington Trust Co.*, 855 F.3d 178, 195 (4th Cir. 2017) (holding that challenges to the "accuracy" of an expert's assumptions, i.e., the values the expert chose to assign to certain variables, go to weight, not admissibility).

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In short, Defendants' objections are untimely *Daubert* challenges to Dr. Haney's methodology and, in any event, identify issues that go to the weight of his opinions, not their admissibility.

B. Dr. Hendricks's Clinical Testimony Is Admissible.

Defendants' argument attempting to exclude Dr. Hendricks's expected testimony turns Rule 703 on its head. Dr. Hendricks conducted comprehensive psychological evaluations of named

Plaintiffs that included clinical interviews, review of records, and standardized psychological testing with embedded measures of malingering (i.e., fabrication or exaggeration). Ex. 2 (Excerpt of Hendricks Rpt.) ¶¶ 12–13. His typical interview lasted approximately three hours; for some Plaintiffs, total contact time was approximately five and a half to six hours. Ex. 5 (Hendricks Dep. Tr.) at 264–265. Those were not casual conversations. They were structured, multi-hour diagnostic evaluations in which testing was selected based on each Plaintiff's reported symptoms and reading level and included embedded validity measures for malingering, exaggeration, inconsistent responding, and insufficient effort. *See* Ex. 2 (Excerpt of Hendricks Rpt.) ¶¶ 12–16. That is the core methodology of clinical psychology. *Id.* ¶ 124 ("An appropriate evaluation should include, at a minimum, an in-depth interview to establish the individual's current mental health status and mental health history."). Thus, Defendants essentially ask this Court to prohibit a clinical psychologist from explaining his clinical findings, as an expert's discussion of what a patient reported during a diagnostic evaluation is simply part of describing the data considered in reaching the diagnosis. *See Westfield Ins. Co. v. Harris*, 134 F.3d 608, 612 (4th Cir. 1998) (noting that physicians base their "diagnosis on information from numerous sources and of considerable variety, including statements by patients and relatives" (quoting advisory committee notes)).

This is not merely "parroting" hearsay. Dr. Hendricks references Plaintiffs' statements to explain the clinical data and reasoning underlying his diagnoses and opinions. Rule 703 expressly permits experts to rely on facts or data reasonably relied upon by experts in the field, and clinical psychologists plainly rely on clinical interviews. Ex. 2 (Excerpt of Hendricks Rpt.) ¶ 124. Preventing Dr. Hendricks from discussing those interviews would sever the connection between his opinions and their clinical basis, forcing him to offer conclusions without explaining how he reached them. Rule 702 contemplates the opposite: expert testimony must be supported by

sufficient facts and reliable methodology, and the factfinder must be able to assess the expert's reasoning. Fed. R. Evid. 702(a) (expert testimony should "help the trier of fact to understand the evidence or to determine a fact in issue").

Defendants' position is further undermined by their own expert. Dr. Saathoff, a psychiatrist retained by Defendants who interviewed the same named Plaintiffs, filled his report with lengthy quotations from those interviews, and even reported portions of those interviews in the inmates' "own words." *See, e.g.*, Ex. 4 (Saathoff Rpt.) at 8–11. He further acknowledged that the interviews "were valuable to achieve an understanding of [the inmates'] experiences in the Step-Down Program." *Id.* at 121. That is hardly surprising given that Dr. Saathoff relied *only* on inmate interviews and a review of their records in reaching his opinions. Defendants therefore cannot credibly argue that experts in the field would not reasonably rely on inmate interviews in forming opinions when their own expert utilized the same methodology and expressly recognized its value. The statements Dr. Hendricks relies on in reaching his opinions are therefore admissible under Rule 703.

Defendants' principal authority, *Synopsys, Inc. v. Risk Based Security, Inc.*, 2022 WL 3005990, at *7–*8 (E.D. Va. July 28, 2022), is readily distinguishable. That case involved an expert who sought to "parrot" what a lay witness had told him in a phone conversation about the specific facts of the case. That bears little resemblance to a board-certified clinical psychologist explaining the clinical significance of statements made during structured, multi-hour clinical interviews that form the basis of his diagnoses and opinions.

Defendants' proposed alternative—that Plaintiffs call each named Plaintiff to testify about what he told Dr. Hendricks—would add substantial trial time while providing little additional value. It would require multiple Plaintiffs to recount information already incorporated into Dr.

Hendricks's evaluation, only for Dr. Hendricks to then explain the clinical significance of those same reports. Expert testimony exists precisely to avoid that inefficiency. *See* Fed. R. Evid. 703, advisory committee's notes (providing the example of a physician testifying about patient statements, "[m]ost of [which] are admissible in evidence, but only with the expenditure of substantial time in producing and examining various authenticating witnesses"). While the named Plaintiffs can testify about their experiences, Dr. Hendricks provides something different: he synthesizes information gathered through clinical interviews, psychological testing, validity measures, and the relevant scientific literature to reach professional conclusions that no lay witness is qualified to offer. *See* Ex. 2 (Excerpt of Hendricks Rpt.) ¶¶ 12–16. That is precisely the type of assistance to the trier of fact contemplated by Rule 702.

Finally, Federal Rule of Evidence 803(4) creates an express exception for statements made for medical diagnosis. The rule provides a hearsay exception for statements that are "made for—and [are] reasonably pertinent to—medical diagnosis or treatment" and that describe "medical history; past or present symptoms or sensations; their inception; or their general cause." Fed. R. Evid. 803(4). That is precisely what the inmate evaluation statements to Dr. Hendricks are. And the Fourth Circuit has expressly held that Rule 803(4) applies to statements made to psychologists. *Morgan v. Foretich*, 846 F.2d 941, 949–50 (4th Cir. 1988) (reversing exclusion of a child's statements to her psychologist under Rule 803(4)). The court further held that it makes no difference whether the psychologist was consulted solely for purposes of litigation. *Id.* at 950 ("Rule 803(4) abolished the common-law distinction between the doctor who is consulted for the purpose of treatment and an examination for the purpose of diagnosis only: the latter usually refers to a doctor who is consulted only in order to testify as a witness.") (cleaned up).

Defendants' contention in a footnote, Mot. at 7 n.4, that Rule 803(4) does not apply because "Dr. Hendricks explained in his report that he was not interviewing them for purposes of diagnosis or treatment," is not supported by the record. To the contrary, Dr. Hendricks's report repeatedly discusses the psychological evaluations he performed and the diagnoses he reached or confirmed. *See, e.g.*, Ex. 2 (Excerpt of Hendricks Rpt.) ¶ 38 ("These symptoms, along with his scores on depression measures on the PAI, indicate the diagnosis of Major Depressive Disorder."); *id.* ("The combination of symptom reports and test results lead to the additional diagnoses of PTSD and Mild Neurocognitive Disorder."); *id.* ¶ 63 ("[S]elf-report and test results both support a diagnosis of Major Depressive Disorder, with paranoid features."). The named Plaintiffs' statements to Dr. Hendricks were made in the course of a psychological evaluation undertaken for diagnostic purposes and are therefore admissible under Rule 803(4).

C. Dr. Hendricks May Testify About the Scientific Literature.

Defendants' final argument—that Dr. Hendricks should be categorically barred from testifying about the scientific literature on solitary confinement because it would be "cumulative" of Dr. Haney's testimony—misapprehends both the record and the law. Dr. Hendricks was retained to evaluate named Plaintiffs and assess whether their confinement caused mental health consequences. He explained that his opinions are based on "my review of a number of publications and other materials, ongoing continuing education that I have received throughout the course of my career, my experience as a clinical psychologist, and the interviews and test results of the Plaintiffs in this case." Ex. 2 (Excerpt of Hendricks Rpt.) ¶ 12. That patient-specific clinical application of the literature is distinct from Dr. Haney's broader, class-wide analysis of the literature. The literature provides context for his clinical opinions—it is not an independent "literature survey."

The cases Defendants cite in support establish only the unremarkable proposition that a court may exclude expert testimony that is genuinely repetitive or adds little to evidence already presented—not that experts performing distinct analytical roles may not rely on overlapping categories of evidence.[1] Dr. Hendricks's literature-based testimony will not be repetitive and is intended to add to his principal testimony regarding his clinical evaluations of named Plaintiffs. His reference to the literature provides context for those individual-patient evaluations rather than duplicating Dr. Haney's broader, class-wide analysis.

Nor does the "bolstering" doctrine help Defendants. The prohibition on bolstering concerns an expert testifying about another witness's credibility—not an expert offering testimony that is consistent with another expert's testimony. Even the case Defendants themselves cite recognizes this distinction. *United States v. Rodriguez*, 125 F. Supp. 3d 1216, 1236 (D.N.M. 2015) ("The bar on bolstering a witness'[s] testimony extends only to expert testimony concerning the witness' credibility and not to expert testimony that is consistent with another witness'[s] testimony."). Dr. Hendricks is not opining on or bolstering Dr. Haney's credibility. He is a different expert with a different role whose clinical analysis is also informed by a similar body of scientific research. Plaintiffs are mindful of trial efficiency and do not intend to present duplicative testimony, but the Court should not issue a categorical prohibition barring Dr. Hendricks from referencing any scientific literature discussed in his report.

[1] *See United States v. Williams*, 81 F.3d 1434, 1443 (7th Cir. 1996) (recognizing only that courts may exclude evidence that adds little probative force to other evidence while prolonging the trial); *Leefe v. Air Logistics, Inc.*, 876 F.2d 409, 411 (5th Cir. 1989) ("[D]iscourag[ing] attorneys from parading additional experts before the court" but setting no "precise limit on the number of experts who can testify in a given area."); *Bowman v. Corrs. Corp. of Am.*, 350 F.3d 537, 547 (6th Cir. 2003) (excluding cumulative expert testimony when "expert report 'read like a lawyer's brief'"); *Manning v. United States*, 726 F. App'x 188, 188–89 (4th Cir. 2018) (unpublished) (affirming exclusion of a second expert whose testimony was not timely disclosed and was cumulative).

II. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion *in limine* in its entirety.

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Respectfully Submitted,

/s/ *Jared Frisch*

Jared Frisch (pro hac vice)
Paul Wilson (pro hac vice)
Neal Hoopes (pro hac vice)
Covington & Burling LLP
850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: (202) 662-6000
jfrisch@cov.com
pwilson@cov.com
nhoopes@cov.com

Geri Greenspan (VSB #76786)
Vishal Agraharkar (VSB #93265)
Eden B. Heilman (VSB #93554)
Julia Kahn (VSB #101714)
ACLU OF VIRGINIA
P.O. Box 26464
Richmond, VA 23261
Telephone: (804) 523-2151
ggreenspan@acluva.org
vagraharkar@acluva.org
eheilman@acluva.org
jkahn@acluva.org

Kathryn Ali (VSB # 97966)
ALI & LOCKWOOD LLP
501 H. St. NE, Suite 200
Washington, DC 20002
Telephone: (202) 651-2475
katie.ali@alilockwood.com

Maxwell J. Kalmann (pro hac vice)
1818 Library Street, 10th Floor
Reston, VA 20190

(650) 586-1043
maxkalmann@meta.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September 2026, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all CM/ECF participants.

/s/ Jared Frisch
Jared Frisch (pro hac vice)
Covington & Burling LLP
850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: (202) 662-6000
jfrisch@cov.com