IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

JAY VERMILLION,)
)
Plaintiff,)
)
VS.) Case No. 1:15-CV-0605-RLY-TAB
)
MARK LEVENHAGEN, et al,)
)
Defendants.)

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ORAL AND VIDEOTAPED DEPOSITION OF DR. ROBERT MORGAN

May 21, 2019

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ORAL AND VIDEOTAPED DEPOSITION of DR. ROBERT MORGAN, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and numbered cause on the 21st day of May, 2019 from 9:31 a.m. to 4:23 p.m. at the Overton Hotel and Conference Center, 2322 Mac Davis Lane, Lubbock, Texas, 79401, before JAMIE JACKSON, CSR in and for the State of Texas, reported by machine shorthand, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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EXHIBITS

VIDEOGRAPHER: My name is Kathy Robertson, legal video specialist with McCorkle Litigation Services. I am the videographer on May 21st, 2019 for the reporting of the deposition of Dr. Robert Morgan being taken at the Overton in Lubbock, Texas at the time of 9:31 a.m. in the matter of Jay Vermillion versus Mark Levenhagen, et al. This is filed in the Southern District of Indiana, Case Number 1:15-CV-0605-RLY-TAB. Will counsel please introduce themself?

MS. FILLER: Maggie Filler for the Plaintiff Jay Vermillion.

MR. DICKMEYER: David Dickmeyer on behalf of the Defendants.

VIDEOGRAPHER: Will the court reporter please identify herself and swear in the witness?

MR. DICKMEYER: One second before we swear in the witness. I also have Ryan Guillory from the Attorney General's Office also representing the Defendants.

COURT REPORTER: I'm Jamie Jackson, the court reporter, and will you raise your right hand?

DR. ROBERT MORGAN

Having been first duly sworn, testified as follows:

EXAMINATION

BY MS. FILLER:

Q. Good morning.

A. Good morning.

Q. My name is Maggie Filler. I'm an attorney for the Plaintiff in this matter, Jay Vermillion. Could you please state your first and last name spelling your last name?

A. Robert Morgan, M-o-r-g-a-n.

Q. And have you been retained by the Defendants in this case?

A. I have.

Q. Dr. Morgan, you have been deposed before, correct?

A. Yes, I have.

Q. Approximately how many times?

A. I believe this is my fifth deposition.

Q. So then you're familiar with how a deposition generally works, correct?

A. Yes.

Q. I'm just going to give you a couple points of overview for how the deposition will go today, but I trust that you have familiarity with the process. Today

I'll be asking you a bunch of questions about the opinions that you've reached in this matter. The other lawyers here will be able to ask you questions as well, if they so choose. The court reporter is taking down everything that's said and will prepare a transcript of what's been said today. If you want to, you'll have an opportunity to review that transcript and make sure that you gave truthful and accurate testimony and correct any errors that you see in the transcript. Do you understand?

A. I do.

Q. Dr. Morgan, it's very important that you understand the questions that I ask and that you give accurate answers today. So if at any point there's a question that I ask that you don't understand, please let me know, all right?

A. I will.

Q. And you're doing a great job so far, but just a reminder to try and avoid unambiguous responses, such as "um-hum" or "um," that might not come across in the transcript.

A. Okay.

Q. Dr. Morgan, is there any reason why you'd be unable to give truthful and accurate testimony today?

A. No.

Q. What, if anything, did you do to prepare for today's deposition?

A. Exchanged emails with attorneys regarding the scheduling, and then I reviewed most of my file documents. I believe we had one telephone call, but it wasn't substantive to the nature of the deposition. More the logistics, I believe.

Q. And is that your file that you brought here today?

A. Yes.

Q. Could you -- we can go over that in more detail, but could you try and give me a catalog of what you believe you reviewed in advance of the deposition from that file?

A. Yes. I'm going to go ahead and look at the file.

Q. Sure.

A. I reviewed my expert report, I reviewed the stipulated protective order document that was provided to me, I reviewed the Plaintiff's Third Amended Prisoner Civil Rights Complaint, the expert report of Dan Pacholke, the expert report of Terry Kupers and the deposition of Jay Vermillion.

Q. Thank you.

A. Oh, I'm sorry, if I can add one thing?

Q. Yes, go ahead.

A. I looked through the list of sources that you submitted via an online link, a Dropbox. I looked at the materials in that folder.

Q. Could you tell me approximately how long you spent looking at the materials in that folder?

A. Twenty minutes.

Q. Would you say you were familiar with most of them?

A. Yes, I did not see anything I was not familiar with.

(EXPERT EXHIBIT NO. 1 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, I'm pass -- Dr. Morgan, I'm passing you what's been marked as Expert 1. Is this the report that you submitted in this case?

A. Yes, it is.

Q. And if you could turn to Attachment A to that report, I believe that's your CV?

A. Yes, it is.

Q. Dr. Morgan, let's start by just going over some of what's in your CV, okay?

A. Yes.

Q. Does this CV accurately describe your background and your qualifications?

A. Yes, it does.

Q. And I believe that it is signed May 4th, 2019?

The very -- page 29 of Attachment A.

A. Yes, that's correct.

Q. And so would you say that the CV then is up-to-date?

A. Yes.

Q. Is there anything missing that's more recent that is not included in the CV?

A. No.

Q. Dr. Morgan, you are a licensed psychologist in the State of Texas; is that right?

A. Yes.

Q. Have you ever had your license suspended?

A. No, I have not.

Q. Have you ever been professionally disciplined?

A. No, I have not.

Q. Are there any lawsuits regarding your conduct as a psychologist?

A. Pending?

Q. Have there ever been any lawsuits regarding your conduct as a psychologist?

A. There was a file when I was in the Kansas Department of Corrections, an inmate had filed suit against the Department and I was named in it. I had left the Department. I was a doctoral student at Oklahoma State University, found out after the fact that

the State had failed to represent me, so there was a -- I don't know what it's called.

Q. A default judgment?

A. A default judgment. So I wrote back and said, "I didn't know about this." I was a member, and they took care of it. And I don't -- I never heard anything else by way of outcome.

Q. Do you know anything about the substance of that complaint?

A. Yes. It was in regard to the practice of the segregation review board in a segregation unit. And as the mental health professional assigned to that unit, I was by default a member of the segregation review board. So it named the segregation review board, plus the warden, I believe, of the facility, and I was named with everybody else on the review board.

Q. Got it. Thank you.

A. Uh-huh.

Q. Have you ever been named in any lawsuit other than the case that you were just describing?

A. No, I have not.

Q. And Dr. Morgan, I understand that you are a Professor of Psychology at Texas Tech here in Lubbock; is that right?

A. That's correct.

Q. And if we look at the first page of your CV, you have a heading for Education. And if I understand this correctly, you have three degrees; is that right?

A. Yes.

Q. An undergraduate degree, a master's degree in Clinical Psychology, and a doctoral degree in Counseling Psychology, correct?

A. Yes, that's correct.

Q. Dr. Morgan, you are not a medical doctor, meaning you didn't go through medical training, right?

A. No, I did not.

Q. And you received your doctoral degree in Counseling Psychology from Oklahoma State University; is that correct?

A. Yes, it is.

Q. Can you explain for me, a lay person, the difference between Counseling Psychology and Clinical Psychology, please?

A. Yes. The differences are really theoretical by way of approach to one's work. The outcome is by way of what somebody will do with a clinical and counseling PhD are essentially the same. I've contributed to research on that. There's a body of literature to that. We do the same things, we do psychological assessments, we provide psychotherapy, do crisis interventions,

psychotherapy being individual and group. We teach, we do research. Essentially the practice is the same. The approach is theoretically a little bit different.

Q. Can you explain that theoretical approach difference that you've described?

A. I can try. It's not well articulated at the professional level or in the literature. Typically, Clinical Psychology will take a bit more of a medical model, diagnose and treat the disorder, in a nutshell.

Counseling Psychology views itself as a profession. The Counseling Psychologists within the field view ourselves as a bit more holistic in that we want to consider the entirety of an individual's life situation. So things like work and family function can also impact how one's coping or functioning with any particular problem. So it's not simply diagnose and treat the problem, but more broadly treat the whole individual.

Clinical Psychologists do that as well, but historically they're more rooted in what we would call the medical model, diagnose and treat, where we tend to be a bit broader and more holistic.

Q. Thank you for that description.

A. Yes.

Q. Dr. Morgan, turning to the Academic

Position/Appointments section of your CV, it looks to me like your first academic position came after you received your master's degree when you were teaching at a Junior College in Kansas; is that correct?

A. Yes. I taught one semester of Introductory Psychology course.

Q. And then after you finished your post-doc, you started at Texas Tech; is that right?

A. That's correct.

Q. And so all of these academic positions from about 2000 forward will be here at Texas Tech?

A. Yes, that's correct.

Q. And then the next heading of your CV is Publications and Presentations. Do you see that?

A. Yes, I do.

Q. And that is further subdivided and begins with a section on Refereed Journals. Does the term "Refereed Journals" refer to peer review journals?

A. Yes, it does.

Q. And does that mean that a piece is accepted for -- when a piece is accepted for publication it has to be subjected to peer review by others in the field?

A. Correct.

Q. And I've counted here you have a number of peer review publications. My count is 82. Does that sound

about right?

A. That sounds about right.

Q. And these are listed in reverse chronological order by publication date; is that right?

A. Yes.

Q. And if we look at the third page of your CV, I see one article with a lead author Chadick entitled "The psychological impact of solitary: A longitudinal comparison of general population and long-term administratively segregated male inmates," and that has a 2018 publication date. Is that one of the articles that you've cited in your opinions in this case?

A. Yes, I did.

Q. And also seen on page 3, I see a 2017 piece where you are the lead author, and it appeared in Corrections Today, "Questioning solitary confinement: Is administrative segregation as bad as alleged;" is that right?

A. Yes.

Q. And Dr. Morgan, is Corrections Today the magazine of the American Corrections Association?

A. Yes.

Q. And so as I understand it then, the peer review process would involve other correctional professionals; is that right?

A. Yes.

Q. This isn't a peer review process where that article was subjected to peer review by other research psychologists, right?

A. No, other professionals in the field, not necessarily psychologists.

Q. And the circulation of this magazine would be primarily to correctional administrators and officials; is that right?

A. It would include that -- that group, but other folks might access or subscribe to the journal as well.

Q. Are you a member of the ACA?

A. I am not.

Q. And this piece, as I understood it, essentially described the results of your 2016 meta-analysis; is that right?

A. That was one piece -- component of it.

Q. What were the other components?

A. Following up on an article by Dr. Metzer to outline best practices for mental health services in segregation.

Q. Is Dr. Metzer the same Dr. Metzer who was involved in the Colorado study from 2010?

A. Yes, he was.

(EXPERT EXHIBIT NO. 2 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, I'm going to pass you what's been marked as Expert Exhibit 2, and could you please tell me if this is the article we've just been discussing, "Questioning solitary confinement: Is administrative segregation as bad as alleged," that appeared in Corrections Today?

A. Yes, it is.

Q. If you could turn to page 21, and I notice here that you have recommendations for the use of administrative segregation?

A. Yes.

Q. Is this some of what you were just describing that you include recommendations in this piece?

A. Yes, that's correct.

Q. And if we look at the second recommendation towards the bottom, "the recommendation is to provide therapeutic and stepdown programs for inmates serving significant time in AS." What would "significant time" be?

A. I didn't conceptualize a time period when I wrote this. If I was to think about it now and put a time period to it, I would certainly say a year or more, possibly. I would need to think it through, but possibly as much as six months.

Q. And you cite an example of therapeutic programs

as including, "Stepping Up, Stepping Out, A mental health treatment program for inmates detained in restrictive housing." Is that your program, Dr. Morgan?

A. That one is, yes.

Q. And is there a book in which you describe this stepdown program?

A. Yes, we have a treatment manual. And to be clear, it's -- I'm the second author. So there's a first author, so it's a team approach. Yes, we have the treatment manual, and that manual is being published by a publisher.

Q. Is that coming out this summer?

A. I don't know when that's coming out. It's -- it's in the publisher's hands, and we've made whatever rec -- revisions that they requested, so now it's just waiting to go through the printing process. I don't know if it will be out this summer or later in the fall.

Q. And if I'm understanding you correctly, there is already, though, a therapeutic manual that is available to prisons that wish to implement this stepdown approach?

A. Yes, absolutely.

Q. I want to talk more about this Stepping Up, Stepping Out as we go forward today. But would you agree that at least one of the purposes of including

this Stepping Up, Stepping Out Program here in the Corrections Today piece is that you were hoping that correctional administrators would read your article and develop an interest in your recommendation for the Stepping Up, Stepping Out Program?

A. No, actually. I don't think a correctional administrator will be inclined to pass that onto their mental health professionals. There's other ways to advertise, if I were to advertise the program. I simply listed that and the other treatment program here as an example of what we're referring to when we say "You need to provide therapeutic services in segregated or restricted housing units."

Q. So the market for your Stepping Up, Stepping Out Program is mental health professionals as opposed to correctional administrators?

A. Yes.

Q. And are you marketing actively to correctional -- excuse me, are you marketing actively to mental health professionals the Stepping Up, Stepping Out Program?

A. What do you mean by "marketing"? I'm not sending out fliers, I'm not emailing people. I get contacted by people, and then I'll distribute whatever -- whatever they want or need, including that program. It's never really been my practice to market, so I -- I would say,

no, I don't market it.

Q. Do you know if correctional mental health professionals receive the Corrections Today magazine?

A. I don't know if they do or don't.

Q. Do you?

A. I do not. I look at it -- if I can elaborate?

Q. Yes, please.

A. I look at it on occasion online to look at the table of contents, but I don't -- I don't subscribe to the journal.

Q. Dr. Morgan, looking at page 4 of your CV staying under the Peer Reviewed Publications, I see the third listing from the top is "Quantitative synthesis of the effects of administrative segregation on inmates while being published in psychology, public, policy and law." And would this be your 2016 meta-analysis study?

A. Yes, that's correct.

Q. Are there any other peer reviewed publications regarding administrative segregation in your CV?

A. No.

Q. The next section of your CV starting on page 9 is "Books," correct?

A. Yes.

Q. And I've counted here 11 books that you have published. The first one is listed as the "Stepping Up,

Stepping Out, a mental health treatment program for inmates in restrictive housing." Is this the book that we were just discussing that's currently in press?

A. Yes, it is.

Q. Can you describe the Stepping Up, Stepping Out Program?

A. Yes. It's a modification of a comprehensive treatment program for individuals with serious mental illness that are in the justice system, changing life, changing outcomes. That was a treatment program that I began developing in -- roughly around 2005, 2006 and was published in 2018. That was for -- again, specifically for individuals with serious mental illness in corrections generally.

And doing some -- some work with Correct Care at the time, who was working with the Kansas Department of Corrections, I was a consultant on some work they were doing around the issue of segregation. And through that work, it became clear that they needed a treatment program, or that the field needed a treatment program, so one of my students at the time, who's no longer a student, now a colleague, we modified changing lives, changing outcomes to fit for inmates in segregation. So we changed the content a little bit to focus on both coping with segregation, but also changing

behaviors that results in ones being placed in segregation. So it was both treatment and rehabilitation oriented.

And because of the nature of segregation, we needed to develop a program that could be administered with minimal therapeutic time in face-to-face work with the client. So it's largely a self-study by way of format, but guided by a clinician. That's the general summary.

Q. And if I understand you correctly, this is a treatment program that is meant for prisoners to do inside of their cells while they're in segregation?

A. Yes, that's correct.

Q. In other words, it's not meant to be out-of-cell group therapy based?

A. We didn't design it that way. It certainly could be structured that way, and the content most definitely would be relevant, but we didn't structure it that way. I wouldn't recommend against clinicians using the program in that manner. It's just not how we structured it.

Q. Do you know how many prison systems are currently using this Stepping Up, Stepping Out Program?

A. I know of one, for sure, and my colleague Dr. Batastini is in discussions with others. But I know of

one, for sure.

Q. Which one is that?

A. Missouri Department of Corrections.

Q. Is your colleague Dr. Batastini the former student you were referring to?

A. Yes.

Q. And where does Dr. Batastini work?

A. She's at Southern Mississippi University.

Q. And how is Dr. Batastini identifying other prisons to try and have them use your Stepping Up, Stepping Out Program?

MR. DICKMEYER: Objection. Form. Calls for speculation. You can answer.

THE WITNESS: They're reaching out to her. She lets me know when somebody's contacted her, because I have more experience in navigating those discussions and any consultations. So she simply responds to requests from agencies or individuals.

Q. (BY MS. FILLER:) And how do people know to contact Dr. Batastini?

MR. DICKMEYER: Objection. Calls for speculation. You can answer.

THE WITNESS: Word-of-mouth. Maybe they've seen it or seen reference to it.

Q. (BY MS. FILLER:) Any presentations or things

like that that you might be giving at workshops or conferences?

A. Yes, we've given a few presentations at conferences. It's listed in a couple of different publications.

Q. How many prison systems is Dr. Batastini in talks with as to having them use the Stepping Up, Stepping Out Program?

MR. DICKMEYER: Objection. Calls for speculation. You can answer.

Q. (BY MS. FILLER:) To your knowledge?

A. One for sure, and I believe she's talked to a few others, but I don't know where that's at. But one that she's in more extended discussion with.

Q. Returning to the book section of your CV, it looks like there are -- five of the books listed here are different editions of the text "Careers in Psychology;" is that right?

A. Yes.

Q. Is that a book of advice for people who are considering different psychology careers?

A. That's a good way to say it, yes.

Q. Are any of these other books related to the topic of solitary confinement or segregation?

A. Not specifically.

Q. Are any -- do any involve the discussion of segregation in prisons?

A. Yes.

Q. Which would that be?

A. The Encyclopedia of Criminal Psychology at the top of page 10.

Q. Any others?

A. No.

Q. And the Encyclopedia of Criminal Psychology says it's in press; is that right?

A. Yes.

Q. Do you know when it will be coming out?

A. Any day. Any day. I heard that it was available online, but I haven't had a chance to check yet. That would have been just in the last couple of days.

Q. Is this a encyclopedia of different chapters of which you're the editor?

A. Yes.

Q. And are there specific chapters dedicated to segregation?

A. Yes, that's correct. I wouldn't say chapters. I would say entries, simply because they're less detailed than a traditional book chapter. But yes, there's a number of entries and -- 540, I believe, is the number of entries and some deal with the issue of segregation.

Q. Thank you for the clarification. You mention in your report that Dr. Kupers is contributing to this Encyclopedia; is that right?

A. Yes, he did.

Q. Is his contribution at all related to the topic of segregation?

A. His contribution was about imprisonment broadly. I believe -- I would have to check the entry, but I believe he discussed briefly in there segregation.

Q. Who are the other authors who are writing about segregation in your Encyclopedia?

A. You would think I would know that, but with 540 entries, I -- I would have to look.

Q. Are there 550 separate authors -- 540?

A. No, no. I would estimate 350, maybe 400 authors. I don't remember who -- that's embarrassing. I don't remember who wrote the segregation entries.

Q. And then the next section of your CV under "Publications" lists chapters and books; is that right?

A. Yes.

Q. And this is a listing of where you've contributed chapters to books that other folks have edited?

A. Yes.

Q. And to my review, it looks like none of these pertain to administrative segregation or solitary

confinement, but could you please tell me if that's accurate?

A. None of them are specific to the issue of segregation. A couple would discuss segregation in them.

Q. Could you just tick off the ones that would include a discussion?

A. Morgan, Bolanos, Grabowski in press on page 10. I believe we discussed segregation in that one. On page 11, Morgan, Van Horn, MacLean, Hunter and Bower. We discussed segregation in that one. I believe that's all.

Q. And both of those are in press, right?

A. Correct.

Q. So not available to me, right?

A. I could send them to you.

Q. That would be helpful. And then the next section is "Non-refereed Publications." So these would be publications that were not subjected to peer review; is that right?

A. Yes.

Q. And none of these discuss administrative segregation; is that right?

A. Correct.

Q. And then we move on to the "Conference

Presentations," and there are a number of these that you have listed here from the past three years. I noticed a presentation on page 13 from March of 2018, "Inmates' Mental Health Functioning in Prison and the Effects of Administrative Segregation." Do you see that presentation? It's the sixth entry.

A. Yes.

Q. And can you describe the topic of that presentation, please?

A. Yes. That's an assessment of inmates in Correctional Services of Canada, pre and post segregation placement, with mental health measures.

Q. Was that assessment conducted as part of your involvement in the Canada litigation regarding segregation?

A. No, it was not.

Q. And is that -- are the findings from that published anywhere?

A. No. We have completed a manuscript, and we submitted it to the Correctional Services of Canada because the lead author, Dr. Jeremy Mills, is a CSC employee. The work was sanctioned by CSC. So before we can publish it, he needs to gain approval.

Q. And what were the findings of your research?

A. That -- we looked at a couple of things. That

incarceration over time did not negatively impact one's behavioral functioning or mental health functioning over time. And when you compare -- when we compared inmates who had been in segregation on mental health measures at time of release from the institution relative to their pretest, so upon entry, so we tested them when they came into the prison, we tested them when they left the prison, whether they'd been placed in segregation or not did not impact their mental health functioning.

Q. Upon release from prison?

A. Upon release.

Q. And I didn't see this study described anywhere in the report that you submitted in this case; is that right?

A. That's correct.

Q. So are you not planning to rely on the work that you've done in that study in this case as it wasn't in your report?

A. I don't have authorization to use the report, so I am not using it.

Q. And then on page 14 of your presentations, I noticed one entitled, "Administrative Segregation: Who is in? A poster presentation at the annual meeting of the APA in Washington." What was the subject of that poster presentation?

A. That's using an archive data set from the Department of Justice and looking at -- it's a national survey of inmates and looking at who gets placed in segregation. It's a descriptive study.

Q. Describing things like demographics of the population?

A. Yes.

Q. And then there's another conference presentation from July of 2017, "Administrative Segregation: A research synthesis and a review of who is in." Is that similar to the poster presentation that you gave at the APA?

A. That's a summary of both, that study we were just talking about with the archival data set and the review of the meta-analyses that we had previously completed.

Q. The meta-analysis that was published in 2016?

A. Yes.

Q. And there's one more from the same summer of 2017. Looks like you had a busy summer, Doctor. "Administrative segregation: Who is in and for how long," presented at the annual meeting of the Canadian Psychological Association. What was the topic of that presentation?

A. That's again using that archival data set and looking at descriptively who's getting sentenced to

segregation and for how long.

Q. Did I miss any presentations listed in your CV that would relate to administrative segregation? And actually, I'll note I think there is one more on page 16.

A. Yes.

Q. Batastini, Morgan and Levulis?

A. Yes, there's that one. I don't see any others in the last three years.

Q. So the 2016 presentation with Batastini and Levulis was regarding "The psychological impact of solitary: A longitudinal comparison of general population and long-term administratively segregated inmates." Would that pertain to the meta-analyses from 2016?

A. No, that pertains to the Chadick Paper from 2018.

Q. Regarding the Kansas longitudinal study?

A. Correct.

Q. And the next section of your CV is "Workshops Presented," and I see on page 17 of your CV the title "Stepping Up, Stepping Out: A Mental Health Treatment Program for Inmates Detained in Restricted Housing." Looks like you and Dr. Batastini gave a one-day training workshop regarding the Stepping Up, Stepping Out Program; is that right?

A. Yes.

Q. And it was sponsored by Corizon Health Care, which is a private medical contractor to prisons?

A. Correct.

Q. Who attended that training?

A. That was attended by mental health treatment providers that were providing mental health services in segregation units at -- I believe it was four different institutions within the Missouri Department of Corrections.

Q. So after Missouri decided to start using the Stepping Up, Stepping Out Program, did you offer this training for how to use the program?

A. Yes, that's correct.

Q. Does Corizon Health Care provide contracts with the State of Missouri to provide mental health services?

A. They did at that time.

Q. Are you aware that Corizon once had a contract with the State of Indiana to provide health services to Indiana prisons?

A. No.

Q. Do you have any relationship with Wexford Health Services?

A. I don't believe so.

Q. And then returning to the workshops listings, on

page 18 there's a workshop entitled "Escaping the Cage: A Mental Health Treatment Program for Inmates Detained in Restricted Housing" that you gave in Maine to the Maine Department of Corrections. Can you describe the topic of that workshop, please?

A. That was a summary of -- that was a summary of effects of segregation on inmate mental health functioning and outlining what clinicians need to be considering and doing when working in a segregation unit, and I presented the structure or the nature of our treatment program.

Q. Did you receive any compensation for presenting either of these two workshops?

A. I did not for the presentation at Corizon. I believe I did for the presentation in Maine.

Q. And then turning to -- well, excuse me. Were there any other workshops in this section that pertain to administrative segregation or segregation?

A. No.

Q. And then under "Invited Addresses," I scanned this and it didn't look to me as though there were any addresses pertaining to segregation in prisons, but please tell me if I'm correct?

A. And if I can back up to one workshop?

Q. Yes, please.

A. On page 17, the second one listed, "Treating Justice Involved Persons with Mental Illness in Criminal Justice Settings," sponsored by WellPath, that was three days. It was the same workshop to basically all of the mental health professionals employed by WellPath to provide mental health services in the Massachusetts -- or yeah, Massachusetts prisons. And in that eight hours, I was asked to discuss, and so I think I discussed for an hour, maybe an hour and a half, issues related to providing mental health services to inmates in segregation.

Q. Did WellPath used to have a different name?

A. Correct Care.

Q. Correct Care. And so is WellPath contracting with the State of Massachusetts to provide mental health services to their prison population?

A. Yes.

Q. And were you compensated for that three-day workshop?

A. Yes.

Q. I hope so. Three days.

A. I haven't submitted a bill yet. With my pause, I realize, yes, I need to. But I will be, yes.

Q. All right. So any other workshops pertaining to administrative segregation --

A. No.

Q. -- besides those three?

"Invited addresses," do any of your invited addresses that you've listed here pertain to segregation in prisons?

A. No.

Q. And then if we turn to page 21 of your CV, you've listed research funding, right?

A. Correct.

Q. Did any of these research grants pertain to studying segregation in prison?

A. No.

Q. Have you ever applied for funding to perform studies on segregation in prisons and been denied funding?

A. Yes.

Q. Can you please describe that grant application to me, please?

A. Yeah, there's been a few. They were all centered around the same issue, trying to further understand and further assess mental health effects, health effects as well, that result from the use of segregation.

Q. What funding sources did you apply to?

A. National Institute of Justice.

Q. And is that the research arm of the Department of

Justice?

A. Yes.

Q. Did you apply for funding from NIJ to do the Kansas longitudinal study that we were talking about?

A. The published?

Q. (Nodding head.)

A. No.

Q. Did you apply to NIJ to do the meta-analyses?

A. No.

Q. Can you describe the research that you proposed to NIJ in a little bit more detail? For example, was there a specific prison system that you planned to study?

A. I submitted a couple of different applications, and it was a longitudinal study to follow people over time. One was proposed to be completed in Kansas. I might have had a couple that were proposed for Kansas. I can't remember if they were outside of Kansas or just Kansas.

Q. And when did you -- when was the latest decision that you received indicating that the NIJ wouldn't be able to fund the research?

A. On the issue of segregation?

Q. Yes, please.

A. I believe my last proposal for that was 2017.

Q. And were you informed of the reasons why they decided they couldn't fund your grant application?

A. Yes.

Q. And what were those reasons?

A. I would have to look at the reviews. I submit a number of grants. I don't -- I don't recall. In a general sense, I know there were some methodological concerns. Beyond that, I don't recall the specifics of concerns that were raised.

Q. Is there a peer review process when you submit a grant for funding from the NIJ?

A. Yes.

Q. And so the decision not to fund would come after the proposal had been reviewed by a group of peers?

A. Correct.

Q. Were the longitudinal studies that you proposed doing reliant on self-scoring instruments?

A. That would have been part of it, yes.

Q. And were they generally proposed studies to look at control groups in prison over time to assess the effect of segregation?

A. Yes.

Q. If I could draw your attention to the contract section of your CV on page 23, it looks to me that you have a contract with the Crosby County Community

Supervision and Corrections Department to provide substance abuse and mental health services to Crosby County probationers?

A. Yes.

Q. And is that a contract that you supervise your students in administering those services?

A. Yes.

Q. And the services are being provided to folks who are out in the community, correct?

A. Two -- there's two settings. One is a regular probation office, so the clients are seen in the community. The other is a residential treatment facility, so the services are provided while they're in that placement.

Q. None of the services are provided to people in segregation in prison, right?

A. Correct.

Q. If we turn to "Professional Experience and Positions" section of your CV, Dr. Morgan, beginning on page 24. I see here that last year, you were appointed to the Board of Directions (sic.) for the National Commission on Correctional Health Care Educational Foundation. Can you describe what the National Commission on Correctional Health Care is?

A. Yes. And actually there's a typo. That should

say 2019. That appointment was just in the last six weeks or so.

The National Commission on Correctional Health Care provides training and resources to individuals involved in correctional healthcare, broadly speaking, to include mental health. That's the primary mission.

Q. Would you agree that it's the preeminent organization for mental healthcare professionals working in corrections?

A. Say that one more time?

MS. FILLER: Could you repeat it back?

COURT REPORTER: "Would you agree that it's the preeminent organization for mental healthcare professionals working in corrections?"

THE WITNESS: I wouldn't disagree with that.

Q. (BY MS. FILLER:) Is there another organization that is also an organization of mental health professionals working in the correction setting?

A. Not -- not at the scale of NCCHC, but a psychiatric -- the American Psychiatric Association, the American Psychological Association certainly provides resources, education, legal assistance, things of that nature. But that's -- that's a broader scope for those organizations. So if you're looking just specifically

at individuals providing health and mental healthcare, again, I wouldn't disagree that NCCHC is the preeminent body.

Q. And what is the Education Foundation?

A. That is a foundation that is just being developed, and they've just appointed the board of directors. Well, actually I don't know if they've appointed everybody. I know they appointed me to the board of directors. The president called and asked if I would serve and appointed me. So it's going to be a group -- a foundation that furthers the educational mission of NCCHC.

Q. And I see that since 2013 you've been a consultant for WellPath, which, as you said, is formerly Correct Care Solutions, in Nashville, Tennessee. Is that the headquarters of WellPath, Nashville?

A. Yes.

Q. And what is the nature of your contract with WellPath?

A. In 2013 when it was Correct Care, I was again assisting them, as I mentioned earlier, with reviewing mental health services in segregation in Kansas. Post that, it's been mainly providing training services to their employers -- or employees.

Q. And which state systems have you provided those

services to?

A. Maine and Massachusetts?

Q. And I see you were also at one time from 2013 to 2015 a consultant with the State of California Department of Justice. Was that in relation to the lawsuit regarding Pelican Bay?

A. Yes, it was.

MS. FILLER: Let's take a five-minute break.

THE WITNESS: Okay.

VIDEOGRAPHER: We're now off the record at 10:28.

(Break.)

VIDEOGRAPHER: We're now back on record at 10:34.

THE WITNESS: May I revisit one of our previous questions --

Q. (BY MS. FILLER:) Yes.

A. -- regarding authors of entries regarding segregation in the Encyclopedia?

Q. Uh-huh.

A. I believe one was written by Dr. Paul Chandrow (phon.). I believe one was written by Dr. Jeremy Mills. I submitted one. And I believe there were maybe one or two other entries, but I don't recall who authored those.

Q. How about Craig Haney, did he submit anything regarding segregation?

A. No.

VIDEOGRAPHER: Do you have your mike on?

MS. FILLER: I do not.

Q. (BY MS. FILLER:) I didn't have my mike on for that question, so I'll repeat it. Did Dr. Craig Haney submit any of the entries regarding segregation to your Encyclopedia?

A. No, he did not.

Q. Did you ask him to do so?

A. Not on segregation. I asked him on at least one other entry, but not on segregation.

Q. What entry was that?

A. Death penalty.

Q. Thank you for that clarification. Dr. Morgan, if we could look at the professional experience and position section of your CV again, staying on page 24, you have listed here that from 2001 to the present you've had your own practice doing Criminal Forensic Psychology here in Lubbock, Texas; is that right?

A. Yes.

Q. Is that primarily competency exams for criminal defendants?

A. It would include competency exams, criminal

responsibility and criminal risk.

Q. All pertaining to criminal cases, correct?

A. Correct.

Q. And that work in your private practice doing Criminal Forensic Psychology does not include assessing the effects of solitary confinement or segregation, correct?

A. Well, that would include my work on the various cases that I've been an expert in.

Q. So when you list your crim -- your Criminal Forensic Psychology practice, you're listing the work you've done on behalf of criminal defendants, as well as the work you've done in cases such as this one?

A. Correct.

Q. How many hours per week do you devote to your private forensic practice evaluating criminal defendants?

A. It varies, but I've reduced that aspect of my correctional practice. I would say now on average two to three hours a week, but I don't have cases every week. So it's a matter of taking -- I'll take six to ten cases a year. So I would say it averages out to two to three hours per week.

Q. When did you begin reducing that aspect of your practice?

A. In 2012 when I left -- I left Regional Mental Health and Mental Retardation, now known as Starcare, when I left that agency, I significantly reduced my number of hours per week.

Q. And I see where that's listed here in your CV that from 2002 to 2012 you were the Director of Forensic Services and the Director of Post-doctoral Fellowship Program in Forensic Psychology at the Lubbock Regional Mental Health Mental Retardation Center.

A. Correct.

Q. And what was that center?

A. That's the local community health provider.

Q. And I can't help but notice that in 2005 you were a consultant for the Dallas Cowboys?

A. I was a consultant for Brain Power, which was a private company providing services for the Dallas Cowboys at the NFL Combine.

Q. That's very cool.

A. It's a -- that's a cool item to have on the vitae.

Q. Was that Sports Psychology, or what was the nature of your work there?

A. Yes. I signed a non-disclosure agreement, but in a general sense, it was trying to help identify good fit for NFL prospects.

Q. So let's talk specifically about your work inside of prisons. I understand that after you received your undergraduate degree you took a psychology internship at a federal prison in Leavenworth; is that right?

A. That was during my master's program. That was the first summer actually of my master's program.

Q. Hence, your description of it as an internship?

A. Correct.

Q. And so were you working under the supervision of a psychologist at that time?

A. Yes.

Q. And did your work at the federal prison in Leavenworth, Kansas involve working with people in segregation?

A. No.

Q. Then after you received your master's degree but before receiving your doctorate, you started working as a mental health professional in two state prisons in Kansas; is that right?

A. Yes.

Q. And I notice that you referred to the position as "Mental Health Professional" as opposed to "Psychologist." Is there a reason for that distinction?

A. Yes, two. Mental Health Professional was the professional title that we all had. And when I say "we

all," I mean my colleagues who were hired to provide mental health services. "Psychologist" is a protected term, and I wasn't licensed in the State of Kansas at the master's or doctoral level, so I couldn't call myself a psychologist. And the professional term title -- the professional title was Mental Health Professional.

Q. And I understand that states sometimes give waivers to their licensure requirements for people who work in prisons?

A. Yes.

Q. Was that -- was there a waiver for you to do the work of a psychologist but without the licensure?

A. That's correct. The work of a master's level psychologist in Kansas at the time was called RMLP, Registered Master's Level Psychologist. I was allowed to work at that level without pursuing the actual licensure.

Q. And did you begin at El Dorado prison?

A. Yes, El Dorado.

Q. El Dorado?

A. Yes.

Q. Not an obvious pronunciation.

A. No.

Q. How long did you work there?

A. I worked for the department for two years. I was at El Dorado all total approximately one and a half years.

Q. And was that from 1992 to 1993 period?

A. Yes. I was at El Dorado for about a year and roughly two months, and then I was transferred to Winfield Correctional Facility. And prior to leaving for a return to school to go for my PhD, they were going to need to replace me at Winfield Correctional Facility, and I asked to go back to El Dorado to finish out my time.

Q. Staying with El Dorado for a moment, did you work with a prison population in segregation?

A. Yes, I did.

Q. And what was your role?

A. I was the designated mental health professional for one of the two segregation units.

Q. At that time, were you aware of any risks to segregation -- any risks of segregation to prisoners' mental health?

A. Yes.

Q. What were the risks that you were aware of at that time?

A. That -- that placing an inmate in segregation could -- could contribute to deterioration in mental

health functioning.

Q. Did you serve on the segregation review board at El Dorado?

A. I did.

Q. You mentioned that at the earlier -- at the start of our deposition?

A. Yes.

Q. What was your role on the segregation review board?

A. My role was to assess mental health functioning and provide information to the review board with regard to an inmate's mental health functioning while placed in segregation. The review board could then use that information in decision-making.

Q. Why was there a mental health perspective included in the segregation review board's work?

A. That was policy.

Q. Do you agree with that policy?

A. Yes.

Q. And why, in your opinion, is that important?

A. Because placing somebody in segregation presents risk for mental health decompensation.

Q. And so if there's evidence of mental health decompensation, you want to be able to present that to the segregation review board?

MR. DICKMEYER: Objection. Form.

Q. (BY MS. FILLER:) Is that fair?

A. Yes, that's fair.

Q. So that they can make a decision to transfer that person out of segregation or provide additional mental health services, whatever the need may be?

MR. DICKMEYER: Objection. Form.

THE WITNESS: Yes, there would be -- there would be a -- it would be to identify what -- what interventions would be most appropriate and helpful for the inmate.

Q. (BY MS. FILLER:) Would one of those interventions possibly be transfer out of segregation?

A. Yes.

Q. How often did the segregation review board meet?

A. Every 30 days.

Q. Was it every 30 days for --

A. I'm sorry, inmates were reviewed, I believe, every 30 days. The board met -- I think we met every week.

Q. That was precisely my followup question, so thank you for the clarification.

A. Yes.

Q. And did the prisoner appear before the segregation review board?

A. That was their option. They were presented the opportunity. Some came and some did not.

Q. What was the average stay of prisoners in segregation at the El Dorado facility when you were there?

A. There were two different units, one was what we referred to as the short-term unit, and the other was the long-term. Those weren't the official designations. Those were -- that was our language, and the time different at both.

Q. Could you give me the average stay for the short-term unit?

A. That included both disciplinary, administrative segregation. The disciplinary segregation, the average length of stay would have been relatively short, 30 to 60 days. The longer term, the admin segregation would have been, I'd say, an average of a year.

Q. And how about the long-term unit?

A. That was -- that was substantially longer. I would estimate an average of two to three years.

Q. Are you aware of any changes in El Dorado's use of segregation since you were there in 1992 to 1993?

A. Yes.

Q. And what are those changes?

A. They had made some changes prior to the

consultation work I did with Correct Care in 2013. They had implemented group therapy. They were working to reduce the segregation population. They had changed the structure of El Dorado as a facility with the priority or emphasis on reducing segregation. I don't know of any changes in policy.

Q. Do you agree that the El Dorado facility and the Kansas Department of Corrections was attempting to limit their reliance on segregation?

A. They were when I was contracting with Correct Care in 2013.

Q. Going back to the 1992 to 1993 period when you were working there, what percentage of the prisoners in the units you worked with had a serious mental illness?

A. I would estimate 20 to 30 percent.

Q. And how many suicides occurred in segregation during your tenure there?

A. None.

Q. And did you work in the short and long-term segregation units or just one of those?

A. I was the primary mental health person, professional, designated to the short-term. I provided backup coverage in the long-term.

Q. How often were you actually working in the long-term segregation unit?

A. Not that often. I would say a few times a year.

Q. And --

A. No, it would be a little bit more than that. I don't know. I would say eight to ten times a year.

Q. And you mentioned that you also worked at the Winfield Prison in Kansas, but for roughly six months; is that right?

A. Correct.

Q. And did you do any work with the population in segregation when you were at Winfield?

A. Yes.

Q. And what was the average length of stay for that segregation population?

A. Two to three days.

Q. And I understand you also completed a predoctoral internship in Correctional Psychology at FCI Petersburg; is that right?

A. Yes.

Q. So that would have been while you were in pursuit of your doctoral degree?

A. Yes. It was an academic requirement to complete a year long full-time APA, American Psychological Association, accredited internship.

Q. And was that -- was it from 1998 to 1999 roughly?

A. Yes.

Q. And what was the nature of your work during that internship?

A. I served three different rotations and a one-day out placement. The one-day out placement was at a forensic hospital, a secure forensic hospital. So I would assist on competency to stand trial evaluations, treatment of people acquitted of -- by way of not guilty by reason of insanity, things of that nature.

The three rotations I did inside the institution was a general correctional mental health rotation, a forensic rotation where we provided competency and again criminal responsibility evaluations for federal courts. As part of that rotation, and that was a four-month rotation, I also provided services to inmates in segregation.

And then my third rotation was a substance abuse treatment rotation. And as part of that rotation, I also provided services -- FCI Petersburg was a medium secure facility. They had a minimum security camp. And as part of the substance abuse rotation, I would provide certain -- general mental health services out in the minimum security camp.

Q. Did the minimum security camp have a segregation unit?

A. No, it did not.

Q. How long was the rotation during which you provided some treatment to prisoners in segregation?

A. Four months.

Q. And were you exclusively working in the segregation unit during those four months?

A. No.

Q. How many days per week did you spend in the segregation unit?

A. Probably one. There would be times where it would be more, but on average one.

Q. And what was the nature of the work that you did with the prisoners in segregation?

A. Mental health rounds and crisis intervention.

MS. FILLER: Let's take a quick five-minute break.

THE WITNESS: Okay.

VIDEOGRAPHER: We're now off the record at 10:55.

(Break.)

VIDEOGRAPHER: We're back on the record at 11:04.

Q. (BY MS. FILLER:) Dr. Morgan, right before the break, we were talking about your time working in the federal prison in Virginia as an intern during your doctoral studies, right?

A. Yes.

Q. And you described as part of one of your rotations performing some mental health rounds in a segregation unit; is that right?

A. Yes.

Q. And did you perform rounds on everyone in the segregation unit or only those prisoners who were already on a mental health caseload?

A. No, when I did rounds, it was for everybody in the segregation unit.

Q. And was the goal of those rounds to identify prisoners who were deteriorating in segregation conditions?

A. It was to identify inmates that might be deteriorating, but also if they just had any general mental health needs that were going unmet or unattended to.

Q. So as I understand it, your work working in segregation units in prison was in Kansas between 1992 and 1993 and in a federal prison in Virginia for a rotation between 1998 and 1999; is that right?

A. That -- yes, that's correct, and then consulting with Correct Care in 2013. And then as part of my practice here when I do forensic mental health evaluations, many times they're at the jails and many

times it's with inmates in segregation. So I've evaluated a number of inmates that -- both male and female that were placed in what would be considered segregated housing. But it was as a forensic mental health evaluation, not as a person responsible for their healthcare -- or mental healthcare.

Q. And when you were consulting with Correct Care, what was the nature of your work in the segregation units?

A. I toured several segregation units and worked with Correct Care to design or to try to improve their mental health services within those units.

Q. Did you assess any prisoners who were in segregation?

A. I met with some inmates, a handful of inmates, and had opportunity to ask questions. I wouldn't say -- I didn't do an assessment of their functioning. It was more asking and assessing the nature of segregation in that facility, their experience in segregation. So it was more of a broad-based assessment.

Q. And forgive me, you've probably mentioned this, but what facility was that?

A. That would have been in Larned Correctional Facility in Larned, Kansas. We also -- I also toured Lansing Correctional Facility in Leavenworth as part of

that work. That would be it.

Q. Is Larned a maximum security facility?

A. That's a psychiatric and health designated. I believe it was a maximum security facility. That's where inmates that were having severe psychiatric problems or, in some cases, severe health problems would be transferred.

Q. And they would be held in segregation?

A. Some.

Q. What was the average stay in segregation at Larned?

A. I didn't work there, and I don't recall -- I don't recall a discussion of that nature, so I don't know.

Q. And when you met with people in segregation as part of your forensic mental health evaluations, did you say that would be in a jail setting?

A. Oh, yes, sorry. Yes, that would be typically county jails.

Q. And would you agree that the length of stay in segregation in a jail is usually shorter than length of stay in a prison?

A. No, not necessarily. No.

Q. No? Why not?

A. In my experience doing these evaluations, I would

be evaluating inmates that were awaiting trial a couple of years, and a significant portion, if not all of that, might have been in segregation. Segregation in jail for a couple of years would be longer than some folks in prisons. It would be comparable to some inmates in prisons, and it would be shorter than many inmates serving segregation time in prisons.

Yeah, usually in my forensic mental health work, if an inmate was in segregation they'd been there for a bit of time.

Q. And did that forensic mental health evaluation involve assessing the effect of segregation on their mental health?

A. They were forensic mental health evaluations for purposes of a legal matter. It would include an assessment of mental health functioning, but not specific to the issue of segregation.

Q. And what we've just covered in terms of your work in prison facilities, is that the prison experience that you are relying on in giving opinions in this case?

A. Actually no, I'm missing a couple of key experiences. My work on matters such as this. So touring and meeting with inmates in Pelican Bay State Prison, touring facilities in Alabama, touring facilities in Canada, also interviewing inmates in

Canada. Those experiences as well.

Q. Let's talk about some of those cases then.

A. Sure.

Q. If you turn to Attachment B of your CV, I see that you've listed cases where you've testified over the past four years?

A. Yes.

Q. And several of these appear to pertain to competency evaluations, such as we were discussing. So State of Texas versus Rudolfo Gill and State of Texas versus Marcus Gonzales; is that right?

A. Correct.

Q. And I see a couple of cases here from Canada, the first matter Christopher Brazo?

A. Brazeau.

Q. Brazeau. And the third listing, Corporation of the Canadian Civil Liberties Association. Were those both cases from Canada?

A. Yes, that's correct.

Q. So looking at the Brazeau Case, what was your involvement in that matter?

A. I was retained to give expert opinion on the issue of effects of segregation in a class action. Yeah.

Q. Did your assignment in that case change over

time?

A. Yes. Initially, it was to provide an opinion with regard to the effects of segregation, and then subsequent, it was to provide expert opinion -- rebuttal expert opinion to plaintiff's experts' reports.

Q. What was the subject matter of the litigation?

A. Broadly speaking, the effects of segregation.

Q. Was it specific to seriously mentally ill prisoners?

A. Yes, I believe so. Yes.

Q. And did you tour prisons as a part of your work on that case?

A. I did.

Q. How many prisons?

A. Four.

Q. And did you evaluate prisoners as part of your work on the Brazeau Case?

A. I did an interview with -- with three. I believe it was three inmates.

Q. Were they in segregation at the time?

A. They were.

Q. And what were your opinions in that case?

A. Broad -- gees, give me a second. Generally, that the effects of segregation -- segregation could put inmates at risk for mental health decompensation. And

it was my opinion that some inmates placed in segregation would experience harms as a result of that placement, others would not, and some inmates would improve based on that -- during their time in segregation. That was my overall opinion.

Q. And what was the result of that litigation?

A. I was just sent a copy of that result, and I have not had a chance to read it in detail, but I believe the plaintiffs prevailed.

Q. And didn't the court award 20 million dollars in damages in that case?

A. I don't know.

(EXPERT EXHIBIT NO. 3. MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, I'll pass you what's been marked as Expert Exhibit 3. Does this appear to be the -- a copy of the decision that you've been sent in the Brazeau matter?

A. Yes.

Q. And if you turn to page 6 of this opinion, which also has the Bates stamp Vermillion 4375, under subpart H do you see where it says that the court assesses those damages as 20 million dollars?

A. I do.

Q. If you could turn to page 36 of this exhibit, Dr. Morgan, which is Bates labeled Vermillion 4405 --

A. I'm there.

Q. -- and do you see a bullet point paragraph regarding you?

A. I do.

Q. And on the second page, it says -- well, end of page 36 beginning of 37, it indicates that, "Dr. Morgan was retained to opine as to the appropriateness of mental health services provided to six inmates and whether the services were commensurate with professional standards."

A. Yes.

Q. Does that accurately describe your work in this case?

A. Yes, I recall that now.

Q. And then it also goes onto say, "Dr. Morgan was also a witness in other Canadian proceedings where he", should have been, "was deposed about the effects of solitary confinement on the mentally ill." Is that accurate?

A. Yes.

Q. Is one of those cases the Corporation of Canadian Civil Liberties Association case that you've listed here --

A. Yes, that's correct.

Q. -- on your CV?

A. Yes.

Q. Are there any other Canadian cases that you've been retained as an expert in?

A. Yes.

Q. And what's the name of that case, please?

A. I was just recently retained, so I'm working on it currently. It's Conrey, C-o-n-r-e-y, Francis versus the Queen Majesty of Ontario.

Q. And what is the subject matter of that case?

A. It's regarding the effects of segregation on inmates' mental health functioning. It is also a class action suit.

Q. And were you retained by the defendants in that case?

A. Yes.

Q. And if you could turn to page 40 of this exhibit, Bates labeled Vermillion 4409, please?

A. I'm there.

Q. And it's -- we're under a section entitled, "The battle of the experts" and there's a paragraph here, 181, and it states that you were retained to give evidence about the quality of psychiatric care and were not actually called to give evidence about your own research on the effects of segregation or your meta-analysis in this case, the Brazeau Case; is that

right?

A. Correct.

Q. It goes onto say that, nevertheless, you were extensively cross-examined on this work and heavily critiqued by Drs. Grassian and Haney for your review article. Do you recall being questioned about the meta-analysis as part of this case?

A. Yes, I do.

Q. And do you recall the critiques from Drs. Grassian and Haney?

A. Yes.

Q. And then in the next paragraph, 182, the court says, "Essentially, I do not give much weight to Dr. Morgan's meta-analysis conclusions." Were you aware of the court's view of your meta-analysis?

A. I was aware of that.

Q. Do you know why the court decided not to give much weight to your meta-analysis in this Brazeau Case?

A. I do not.

Q. And if you could flip ahead to page 53, which is Bates labeled Vermillion 4422?

A. I'm there.

Q. Okay. This section describes another expert for the defense, a Dr. Glancy. Do you -- are you familiar with the work of Dr. Glancy?

A. Where are you on here?

Q. Paragraph 260, for example.

A. Oh, yes.

Q. Who is Dr. Glancy?

A. I don't -- I don't recall what his role was. I'd have to go back to my notes on that. I recall clearly Dr. Haney's and Grassian's role. I don't recall Dr. Glancy's role.

Q. Is he a psychologist?

A. I don't -- I don't recall.

Q. And paragraph 261 states, "Dr. Morgan also disagreed with Dr. Glancy's suggestion that administrative segregation can be beneficial for some inmates." Did the court accurately characterize your testimony in that case?

A. That doesn't sound right. I would have to go back and look at my report, but that doesn't sound right.

Q. So you disagree with this statement?

A. As I'm reading it, it doesn't sound accurate to me, but I would need to go back and check my report.

Q. This is describing the cross-examination, which I understand in Canadian law terms would be similar to what we Americans call a deposition.

A. Yes.

Q. Do you recall disagreeing with Dr. Glancy's suggestion that administrative segregation can be beneficial for some inmates under deposition questioning?

A. I don't recall disagreeing with that.

Q. So you think that the court has misunderstood your deposition testimony?

MR. DICKMEYER: Objection. Asked and answered. You can answer.

THE WITNESS: I would say I would need to see the broader context, because it -- I've given the opinion a number of times that there are some inmates that once placed in segregation will evidence improved mental health functioning. So I don't recall Dr. Glancy's opinions, but if he suggested that administrative segregation can be beneficial for some inmates, I -- it -- I don't know why I wouldn't have agreed with that, so I would need to go back and look at the greater context. I'm not saying the court is -- that they mischaracterized or had it wrong, but I would need to look and see why would I have disagreed with what he said, what was the context there.

Q. (BY MS. FILLER:) The Canadian Civil Liberties Association Case that you've also listed at Attachment B, could you describe your involvement in that case,

please?

A. Yes. It was giving -- given several mandates, largely centered around the effects of mental health functioning as it pertains to segregation, the results of segregation. That was the general matter. I had several mandates in that -- in that case.

(EXPERT EXHIBIT NO. 4 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, you've just been passed what's been marked as Expert Exhibit 4. Does this appear to be your expert report?

A. Yes, it does.

Q. And does it appear to be the expert report that you submitted in connection with this case, the Canadian Civil Liberties Association versus the Queen?

A. Yes, it does.

Q. Do you stand by the opinions that you've described in this report?

A. Yes.

(EXPERT EXHIBIT NO. 5 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, I just passed you what's been marked as Expert Exhibit 5. Does this appear to be the cross-examination, slash, deposition testimony that you gave in the Canadian Civil Liberties versus the Queen Case?

A. Yes, it does.

Q. And you provided this testimony under oath; is that correct?

A. That's correct.

Q. And did you give true and accurate testimony in association with this case?

A. Yes.

MS. FILLER: Can we go off the record for a moment?

VIDEOGRAPHER: We're now off the record at 11:31.

(Break.)

VIDEOGRAPHER: We're now back on the record at 11:33.

(EXPERT EXHIBIT NO. 6 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, I'm passing you what's been marked as Expert Exhibit 6, and does this appear to you to be the exhibits that were associated with the deposition you gave in the Canadian Civil Liberties Association Case?

A. It appears to be.

Q. And for the record, this is Bates labeled Vermillion 3375 forward. And Dr. Morgan, you can put that aside for now, but we will come back to some of the articles in there.

A. Okay.

Q. And do you recall as part of that deposition going through and identifying the studies that you relied on in your 2016 meta-analyses?

A. Yes.

Q. And so those studies should be contained in the exhibit that we've just looked at, correct?

A. Yes.

(EXPERT EXHIBIT NO. 7 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, I just passed you what's been marked as Expert Exhibit 7. Does this appear to be the Court of Appeals decision in the Corporation of the Canadian Civil Liberties Association matter that we've been discussing?

A. It appears to be so, yes.

Q. Have you reviewed this opinion?

A. I have not.

Q. Do you know what the result of the case was when it went up on appeal?

A. It was not favorable to the defendants. That's the extent of my -- my knowledge.

Q. Are you aware that as a result of this decision by the Court of Appeals for Ontario in Can -- in Ontario that the court held that segregation for more than 15 consecutive days violated the Canadian Constitution?

A. Yes, I was made aware of that.

Q. And does that contradict your expert opinions in this case?

A. Can you read back the opinion?

Q. The question?

A. Yeah.

COURT REPORTER: "Are you aware that as a result of this decision by the Court of Appeals for Ontario in Can -- in Ontario that the court held that segregation for more than 15 consecutive days violated the Canadian Constitution?"

THE WITNESS: And your question was do I disagree with that?

COURT REPORTER: "And does that contradict your expert opinions in this case?"

THE WITNESS: Yes.

(EXPERT EXHIBIT NO. 8. MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, you've been passed what's been marked as Expert Exhibit 8, which is the lower court opinion in the same case we've been discussing, the Corporation of the Canadian Civil Liberties Case; is that correct?

A. Yes.

Q. So this is the opinion that went up on appeal, which we were just discussing?

A. Yes.

Q. Thank you. Returning to your Attachment B of your CV, you have listed here the matter Dunn versus Dunn. Would that be the Alabama Case that you described earlier?

A. Yes.

Q. And what was your involvement in the Alabama Case?

A. Similar to the other matters. This was again the issue of mental health effects resulting from segregation.

Q. And did you tour Alabama prisons as part of your work on this case?

A. Yes, I did.

Q. And as I understand it, you didn't have the opportunity to meet with prisoners; is that right?

A. That's correct.

Q. And was that because there was insufficient time?

A. Yes.

(EXPERT EXHIBIT NO. 9 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, I just passed you what's been marked as Expert Exhibit 9. Does this appear to be your expert rebuttal report prepared for the Alabama matter?

A. Yes, it does.

Q. Do you stand by the opinions that you expressed

in this expert report?

A. I do.

(EXPERT EXHIBIT NO. 10 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, you've just been passed what's been marked as Expert Exhibit 10. Does this appear to be a transcription of the deposition testimony that you offered in the Alabama matter?

A. Yes, it does.

Q. And were you testifying under oath in that case?

A. Yes, I was.

Q. Did you provide true and accurate testimony?

A. Yes.

Q. And did you provide any testimony in court in the Alabama Case?

A. No.

Q. Why not?

A. I wasn't called.

Q. Do you know -- was there a trial?

A. Yes.

Q. And are you aware of the reasons why you were not called to testify?

A. No.

Q. Are you aware of the results of the Dunn, et al versus Dunn, et al Case?

A. No.

Q. You can put that down.

A. Okay.

Q. And returning to Attachment B of your CV, you next have listed Holder versus Saunders, which was a Kentucky case, and I understand that that case had to do with a prisoner-on-prisoner assault?

A. Yes.

Q. And unlike some of these other cases we've been discussing, you weren't called upon to evaluate the effect of segregation on mental health; is that right?

A. Correct.

Q. This was a different issue?

A. This was a different issue.

Q. Then the last case you have listed as Ashker versus the Governor, and this would be the California Case involving Pelican Bay?

A. Correct.

Q. And what was your involvement in that case?

A. Assessing the conditions of confinement for class members and providing rebuttal testimony -- or rebuttal expert opinion to plaintiff's experts.

Q. And who were the plaintiff's experts in that case?

A. Drs. Kupers and Haney.

Q. Did that encase -- and did that case involve

people who had been in solitary confinement for over ten years?

A. Yes.

Q. And how many prisoners did you meet with during that case?

A. I met with ten -- nine class members, I believe it was, and about 40 additional inmates. So approximately 50 inmates in total.

Q. And what were your findings?

A. It was my opinion that although segregation places inmates at risk for mental health decompensation that that's not universally the case and that the California Department of Corrections and Rehabilitation had policies and guidelines in place to ensure appropriate care and services for inmates in their care while in segregation. I believe that was the primary -- those are the two primary opinions.

Q. And are you aware that the case has since settled?

A. Yes, I was aware of that one.

Q. Are you familiar with the basic components of the settlement agreement?

A. I'm aware that as a -- as a condition of that settlement that California was significantly reducing segregation population. Beyond that, I don't know, but

I'm aware of that.

Q. Do you think that's a good thing, in your opinion?

A. To reduce segregation?

Q. (Nodding head.)

A. Yes, absolutely. To reduce the use of segregation, yes, absolutely.

(EXPERT EXHIBIT NO. 11 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, you've just been passed what we've marked as Expert Exhibit 11. Does this appear to be a declaration that you submitted in regards to the Ashker Case?

A. Yes, it does.

Q. And does this pertain to opposition to Plaintiff's Motion for Class Certification? If you look at just the second page.

A. Yes.

Q. And was the class certified?

A. Yes, it was.

Q. And as I understand it, you produced a second expert report; is that right?

A. Correct.

Q. And did that report include detailed information about prisoners' mental health history?

A. Yes, it did.

Q. So I don't have that report because I understand it's under seal.

A. Okay.

Q. Have you been retained as an expert on any other cases involving the effects of administrative segregation, other than the ones we've just talked about?

A. Yes.

Q. And what are those cases, please?

A. It's a case in California. I just went blank on the plaintiff's name. Give me a second, Ransom (phon.). Ransom v -- the governor at the time.

Q. Brown?

A. Or it might have been -- yeah, I believe it's Brown, but, I mean, I would --

Q. Sure.

A. -- have to check for sure, but the defendant is Ransom.

Q. Plaintiff is?

A. Sorry, the Plaintiff is Ransom. The issue again is effects resulting from segregation placement.

Q. How long has the plaintiff in that case been in segregation?

A. He was in segregation for two and a half -- two and a half to four years, something like that, if I

remember correctly.

Q. And have you given deposition testimony in that case?

A. No.

Q. Have you prepared an expert report in that case?

A. Yes.

Q. And to your knowledge, is the case still pending?

A. It is.

Q. Any other cases involving the effects of administrative segregation on mental health?

A. No.

Q. Have you ever been qualified to testify in federal court as an expert?

A. Not counting depositions, no.

Q. Have you ever been asked to consult as an expert and after your review of the case told the lawyers that you would be unable to provide the opinion they desire?

MR. DICKMEYER: Objection. Form.

THE WITNESS: No. I've consulted on cases where I've provided contrary opinions to what the retaining counsel wanted, but I never -- I didn't know that until it was time to submit an opinion and I submitted my report.

Q. (BY MS. FILLER:) Just so I'm understanding correctly, what -- your response was that you have been

asked to consult on a case and your ultimate conclusions as expressed in your report was different than desired?

A. Yeah, was not favorable to the retaining counsel.

Q. How many times has that happened?

A. A few. Yeah, I don't know. A few.

Q. Would those cases be involving the competency of criminal defendants?

A. Yes, those would be forensic mental health evaluations.

Q. When were you contacted to work on this case, meaning the Vermillion matter?

A. Yes. Yes. I received an email, I believe it was in -- I would have to check the dates, but I believe it was in April.

Q. April of this year?

A. Yes. Sorry, April of 2019.

Q. And who contacted you about working on this case?

A. David did.

Q. David Dickmeyer?

A. Yes, sorry.

Q. How many phone conversations have you had with the attorneys on this matter?

A. Three or four.

Q. And how long were those conversations?

A. I would say they ranged from 10 to 20 minutes.

Q. 10 to 20 minutes each?

A. Yes.

Q. How did Defense Counsel come to identify you as a potential expert in this case, if you know?

A. It was a referral from another psychologist.

Q. And who is that psychologist, please?

A. Dr. Joel Dvoskin.

Q. Do you mind spelling that last name for --

A. Sure.

Q. -- me and the court reporter?

A. D-v-o-s-k-i-n.

Q. And what's the nature of your relationship with Dr. Dvoskin?

A. We're colleagues.

Q. Where does Dr. Dvoskin work?

A. He's in Arizona, Tucson.

Q. Does he work for the prison system in Arizona?

A. No, he's in independent practice, and he's affiliated with the University of Arizona Medical School.

Q. Has Dr. Dvoskin ever referred any other cases to you?

A. He referred me to California for the Ashker Case. I was one of several names he referred.

Q. Do you have any relationship outside of this case

with the Indiana Department of Corrections?

A. No.

Q. And do you have any relationship outside of this case with any of the Defendants in this case?

A. No.

Q. Do you have any relationship with any of the attorneys for the Defendants in this case outside of this litigation?

A. No.

Q. And you charge $285 per hour for time spent on this case; is that right?

A. That's correct.

Q. Is that your standard rate?

A. Yes, it is.

Q. How much have you charged for your work on this case today?

A. I submitted a bill for, I don't know, 6 or 8 -- I don't remember if it was 6 or $8,000.

Q. How many hours have you charged for your work on this case?

A. I would have to look it up. It was approximately 24, 25.

Q. Did you bring your file today in response to a subpoena?

A. Yes.

Q. And did you bring your communications with Counsel as well?
A. Yes.
Q. Perhaps during one of the next breaks, I could take a look at those.
Do you have your report that I believe we looked at at the very start of the deposition in front of you there?
A. Yes.
Q. So let's turn back to your report, which has been marked as an exhibit, Expert Exhibit 1. Does this report contain all of your opinions in this case?
A. Yes.
Q. And if we look at page 5 of your report, I see that you have listed the facts and data considered?
A. Yes.
Q. Is this a complete list of the facts and data that you've considered in preparing this report?
A. Yes.
Q. Have you received any additional materials after finishing this report aside from the materials that I provided to Counsel?
A. No.
Q. What was your assignment in this case?
A. To provide expert opinion regarding the matter of

the effects of segregation and to review the expert reports of Dr. Kupers and Mr. Pacholke and provide any expert opinions in relation to those reports.

Q. Did your assignment change at any point?

A. No, it did not.

Q. And what methodology did you use to come to the conclusions expressed in your report?

A. Oh, a review of the literature, a review of all of the documents provided to me, an analysis of those documents, and that was pretty much it. An analysis -- let me, I guess -- an analysis of those documents in relation to my experience as well.

Q. And as I understand it, you didn't go to the great State of Indiana in connection with this case?

A. No.

Q. You did not go to any Indiana prisons?

A. I did not.

Q. Have you ever been inside of an Indiana prison?

A. I have not.

Q. And you did not interview any Indiana correctional staff?

A. I did not.

Q. Did not interview any Indiana mental health staff?

A. I did not.

Q. And you did not interview the Defendants in this case, meaning Mr. Levenhagen, Mr. Brennan, Ms. Nowotski (phon.) or Mr. Myers (phon.)?

A. I did not.

Q. And you also did not interview the Plaintiff in this case, Jay Vermillion?

A. That's correct.

Q. In looking at the materials that you've listed here, it appears that you didn't review any literature specific to Indiana segregation, such as Dr. Kupers' Cold Storage Report?

A. No.

Q. No you did not review that literature, correct?

A. Correct.

Q. Sometimes there's a double negative. I just want to check.

And so as I understand your testimony and your report, you evaluated Dr. Kupers' opinion as to the effect of solitary confinement on the Plaintiff, Jay Vermillion; is that right?

A. Yes.

Q. You did not reach your own opinion as to the effects of segregation on the Plaintiff?

A. Oh, that's correct, yes.

Q. Because in order to do that, you would have

wanted to interview Mr. Vermillion, right?
A. Absolutely.
MR. DICKMEYER: Objection. Form.
THE WITNESS: Sorry. Absolutely.
Q. (BY MS. FILLER:) Do you agree that a mental health professional has to evaluate someone to reach a conclusion as to their mental health?
MR. DICKMEYER: Objection. Form.
THE WITNESS: Yes.
Q. (BY MS. FILLER:) You wouldn't be able to testify as to a criminal defendant's competency unless you evaluated them in person, right?
A. Correct.
Q. Did you ask to evaluate Jay Vermillion?
A. No.
Q. Was it ever the plan for you to evaluate Mr. Vermillion?
A. It was discussed, but it was not the plan.
Q. Why didn't you evaluate him?
A. Primarily, time.
Q. I take it that part of your critique of Dr. Kupers' opinion in this case is that he did not have any psychological testing done to assess the possibility of malingering; is that fair?
A. That's fair.

Q. And why didn't you yourself perform any psychological testing to assess malingering of Mr. Vermillion?

A. I didn't conduct any assessment of Mr. Vermillion.

Q. And I believe your response before was primarily time?

A. Yeah, I did not have opportunity.

Q. Do you agree that the conditions in segregation vary across facilities in prison systems?

A. I do.

Q. Do you agree that those conditions are important in assessing the effects of segregation on prisoners?

A. I do.

Q. For example, do you agree that the degree of isolation varies across prison segregation units?

MR. DICKMEYER: Objection. Form.

THE WITNESS: I do.

Q. (BY MS. FILLER:) And is it important in evaluating a segregation unit to be aware of the degree of isolation?

A. Yes.

Q. So why is it that you did not tour the prison where Jay spent most of his time in segregation -- sorry, Jay Vermillion?

A. I was not given any specific opinions with regard to Mr. Vermillion's mental health functioning, mental state or his psychological functioning.

Q. Would it have been helpful in formulating your opinions to inspect the prison where Mr. Vermillion spent most of his time in segregation?

A. Not the opinions as offered. If I were to -- well, I'll stop.

Q. Please go ahead.

A. If -- if I had been asked to give an opinion as to Mr. Vermillion's mental state as it pertained to the effects of segregation, then absolutely it would have been important to tour the facility and interview and evaluate Mr. Vermillion.

Q. Do you know the name of the prison at issue in this case?

A. Not off the top of my head, but it's in the records. I was not famil -- familiar with that prison prior to my involvement in this case.

Q. And your report doesn't describe the segregation unit at issue in this case, correct?

A. Correct.

Q. Do you know any of the unique characteristics of the segregation unit where Mr. Vermillion was housed?

A. No, not beyond what was reported in Dr. Kupers'

and Mr. Pacholke's report.

Q. And what were the characteristics that they identified?

A. The structure, the nature of the structure of the environment, temperature, things of that nature.

Q. Temperature. What about the structure?

A. The nature of doors that limits communication, things of that nature.

Q. Would that be the boxcar doors?

A. Yes.

Q. Do you agree that some segregation units have open steel barred doors?

A. I have not seen that, but yes.

Q. You're familiar with the general idea that some segregation units have more or less isolating door structure?

A. Yes, I am.

Q. Are you familiar with the unique characteristics of the prison where Mr. Vermillion was held with regard to access to the outdoors?

A. Just as described by Dr. Kupers and Mr. Poche --

Q. Pacholke?

A. Pacholke.

Q. And how did they describe that?

A. That they're very limited in nature. Basically,

a concrete room with an open roof.

Q. And in your opinion, did that have an effect on prisoners' mental health?

MR. DICKMEYER: Objection. Form.

THE WITNESS: It can.

Q. (BY MS. FILLER:) What are the rates of suicide in segregation versus prison general population?

A. Oh, they're higher in segregation.

Q. Significantly higher?

A. I would say so.

Q. Do you agree that among mental health professionals it is generally accepted that solitary confinement poses a risk of harm to prisoners?

A. I would agree with that.

Q. And is part of the reason for that consensus because the risk of suicide is so much higher in segregation?

A. That would be part of it, yes.

Q. Is another part of the reason for that consensus observations of prisoners who have decompensated to a very serious degree while in segregation?

MR. DICKMEYER: Objection. Form.

THE WITNESS: That would be part of it as well, yes.

Q. (BY MS. FILLER:) And another part of the reason

for that consensus is that for quite a long time it has been understood that depriving a person of human interaction is generally bad for mental health?

MR. DICKMEYER: Objection. Leading.

MS. FILLER: State for the record that this is a cross-examination of Defendant's expert, so I don't think there's an issue with leading.

Q. (BY MS. FILLER:) You can answer.

THE WITNESS: Would you repeat that, please?

COURT REPORTER: "And another part of the reason for that consensus is that for quite a long time it has been understood that depriving a person of human interaction is generally bad for mental health?"

THE WITNESS: I would agree.

Q. (BY MS. FILLER:) Do you agree that the literature on segregation demonstrates that some inmates placed in segregation will suffer negative effects on their mental health?

A. Yes.

Q. And does the negative effects include anger, sleeplessness, elevated levels of hopelessness and anxiety?

A. It can.

Q. Do those negative effects also include the development of previously undetected psychiatric

symptoms, including suicidal thoughts and depression?

A. It can.

Q. Do you agree that as a result of the risk of harm to prisoners in segregation, prison staff have to take precautions if they use segregation as a correctional practice?

A. I do.

Q. Do you agree that one of those precautions is making sure that only people who really need to be in segregation should be there?

MR. DICKMEYER: Objection. Form.

THE WITNESS: I would agree with that.

Q. (BY MS. FILLER:) And do you also agree that prison staff should regularly review people in segregation to make sure that they still really need to be in segregation?

A. I would agree with that.

Q. Indeed, that was part of your role on the segregation review board in Kansas, correct?

A. Correct -- no. No, I wasn't responsible for that -- for the decision-making. I was simply responsible for providing information regarding any impacts or negative harms that were resulting as a result of segregation placement. The decision-making was outside of my control.

Q. Thank you for that clarification. Do you understand that the other correctional staff on the segregation review board were working to make sure that prisoners still needed to be there?

A. Yes.

Q. Dr. Morgan, in your 2016 meta-analyses, you say that "the results of the study are not justification for segregation's continued use at current levels or for an extreme length of time, e.g., several years;" is that right?

A. Yes.

Q. You still agree with that recommendation as the interpretation of your meta-analyses?

A. Yes, I do.

Q. And the studies included in your meta-analyses studied solitary confinement the maximum of one year; is that right?

A. Yes.

Q. And is the limitation on that meta-analysis part of the reason why you don't believe it is justification for segregation's use for an extreme length of time?

A. That certainly would have been part of the thinking process, but that's not the primary purpose of that statement.

Q. What is the primary purpose of that statement in

your report? I'm sorry, "report," I'm referring to the 2016 meta-analyses.

A. Yes.

Q. Not your report in this case.

A. Yes. The primary purpose was to guard against the instance where somebody, an agency, for example, takes the results of that meta-analysis and said -- and basically says, "Well, these results suggest it's not that harmful. We can leave them in here for long-term." That's not consistent with -- with our recommendations or opinions regarding correctional practice.

Q. And it's not consistent with the consensus in the medical community either?

A. Correct.

Q. In the -- your study of the -- your study on the meta-analyses from 2016, you also described segregation as "short-sighted and primitive." Do you recall that?

A. Yes.

Q. And can you describe what you meant by that?

A. Yes. The idea of segregation is to remove a dangerous inmate or an inmate that's causing problems from the general population and put them in a more secure environment, but it does little to change behavior. And the idea behind corrections is to change behavior and that there are better ways to do it than to

use segregation.

Q. Do you still agree with that statement that you made in your 2016 study?

A. I do.

Q. Do you agree that there should be limits placed on the use of solitary confinement?

A. In some cases, yeah. In some context, yes.

Q. What are those contexts and what would be the limits?

A. I think age is certainly a consideration and prior mental health functioning is a certain -- would need to be a consideration. The issue is if you place limits, it doesn't necessarily fit for everybody. Shorter is better, things of that nature. But putting a time to it and a limit to it is restrictive in a way that doesn't necessarily fit in a particular case. So I'm hesitant to say yes to limits, but certainly we need to take precautions to make sure we're protecting populations. Juveniles, I think, are at increased risk. People with serious mental illness, although not in my opinion at increased risk, there's other complications that we need to guard against. So those things need to be considered. But an absolute limit, I wouldn't go that far.

Q. As I understood your testimony, you agree that as

a general rule segregation should be used only as long as necessary with a goal of returning the prisoner to the general population?

MR. DICKMEYER: Objection. Form.

THE WITNESS: Yes.

Q. (BY MS. FILLER:) Are you aware of any professional organizations that have taken positions regarding solitary confinement and the risk to prisoners' health from that practice?

A. Yes.

Q. What are some of those professional organizations?

A. I believe the American Psychiatric Association. Did you say professional organizations -- mental health professional organizations?

Q. Yes.

A. American Medical Association has -- I don't recall if AMA has taken a specific stance. I'm not a physician, so I don't belong to that organization, so I can't recall if they have or not. But certainly American Psychiatric Association has.

Q. How about the American Psychological Association?

A. I would need to refresh my memory on that. I'm thinking through a specific document, and I don't recall if they took an actual position against administrative

-- or the use of segregation or not. I would have to refer back --

Q. What's the document you're thinking of?

A. I'd have to look it up.

Q. So as you sit here today you're not thinking of a specific document, but you're thinking that they might have one; is that right?

A. Well, I'm thinking of a document, but I'm not remembering the --

Q. The name of it?

A. -- the name and the outlet actually. I don't believe it was in a journal article, so it's more of a position statement, and I would have to look at it.

Q. Are you a member of the American Psychological Association?

A. I am.

Q. How about the NCCHC, do they have a position regarding solitary confinement?

A. I don't recall what their specific position is.

Q. Do you recall if they have a position?

A. No.

Q. What is the position of the American Psychiatric Association?

A. To reduce the use of segregation.

Q. Because it is harmful for mental health?

A. Yes.

MR. DICKMEYER: Objection. Form.

THE WITNESS: Sorry.

Q. (BY MS. FILLER:) And we've been talking about mental health professional organizations. Are there other professional organizations beyond simply the mental health context that have taken positions regarding solitary confinement and the risk to mental health?

A. Yes.

Q. And what are those organizations, please?

A. The ACLU, for example. The United Nations has taken a stance. I'm trying to think of other professional organizations, and there's a few, but primarily I think the United Nations and the ACLU.

Q. And what are their positions?

A. The same, that the use of segregation should be reduced due to cause of harm.

Q. And the United Nations' position is that segregation should never last longer than 15 days; is that right?

A. That's correct.

Q. What about the Department of Justice, do they have a position regarding segregation or restrictive housing that you're aware of?

A. Yes.

Q. What is their positions?

A. Again, reduce the use of segregation due to harms.

Q. What about the American Correctional Association, the ACA, are you aware if they have a position statement or take any position regarding segregation?

A. No.

Q. No, you're not aware?

A. Yeah, I'm not -- I'm not recalling a position by ACA.

(EXPERT EXHIBIT NO. 12 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, I passed you what's been marked as Expert Exhibit 12. Does this appear to you to be a position statement on solitary confinement from the National Commission on Correctional Health Care?

A. It does.

Q. And would this be the same organization in which you are recently appointed to the board of directors for their educational foundation?

A. Yes.

Q. Have you ever reviewed this position statement before, Dr. Morgan?

A. I'm sure I have. I don't recall specifically

looking at this, but I'm sure I've reviewed it.

Q. If I could turn your attention to the second page of this position statement, the very top. "The inherent restriction and meaningful social interaction and environmental stimulation and the lack of control adversely impact the health and welfare of all who are housed in solitary confinement." Did I read that correctly?

A. You did.

Q. And do you agree or disagree with that statement?

A. I would disagree.

Q. And the basis for your disagreement?

A. Basically, just the one piece where it says "of all who are held."

Q. And what are you relying on to support your disagreement with that aspect of the statement?

A. My understanding of the state of research and my experience.

Q. And the next sentence, "While there is a school of thought that suggests that solitary confinement in facilities that meet basic standards of humane care has relatively little adverse effect on most individuals mental or physical health, this is not the view of most international organizations." Did I read that correctly?

A. Yes.

Q. And would you say that you're a member of the school of thought that suggests that solitary confinement in facilities meeting basic standards has relatively little adverse effect?

A. Can you repeat that last part of that question?

COURT REPORTER: "And would you say that you're a member of the school of thought that suggests that solitary confinement in facilities meeting basic standards has relatively little adverse effect?"

THE WITNESS: I would say I'm certainly perceived as being in that -- of that school of thought.

Q. (BY MS. FILLER:) Are you -- is that a false perception in some ways?

A. In some ways, yes, absolutely.

Q. Can you elaborate?

A. Yeah. Segregation can have significant effects, harmful effects, it's my opinion and -- that it's not universally experienced. And so there are some people that will go in segregation and not experience harms. And when you look at the totality of the population, the harms will typically be more minor than other people would suggest. But that doesn't mean that segregation can't be and isn't, in some cases, harmful, and quite harmful at times.

Q. We can put that aside. Is your view of the harms of solitary confinement that you've just expressed outside of the mainstream?

MR. DICKMEYER: Objection. Form.

THE WITNESS: Yes.

Q. (BY MS. FILLER:) You are familiar with the Plaintiff's expert, Dr. Kupers, I gather?

A. I am.

Q. And you kindly mention in your report that you do know Dr. Kupers to be a respected psychiatrist; is that right?

A. Yes.

Q. And you mentioned earlier that you are including a chapter from Dr. Kupers on imprisonment and stress in your Encyclopedia; is that right?

A. Yes.

Q. And I gather that your goal as an editor of the Encyclopedia is to collect writings from reputable figures in the field?

A. Most reputable.

Q. And as an editor, you have a responsibility to make sure that the research and views you're including are of a high quality?

A. Yes.

Q. So you feel confident in the quality of Dr.

Kupers' work, at least with respect to his contributions to your Encyclopedia?

A. Yes.

Q. And in your rebuttal repor -- rebuttal report, you also conclude that Dr. Kupers adequately summarized the literature on the effects of solitary confinement; is that right?

A. That he adequately summarized?

Q. That he adequately -- perhaps what you meant is adequately summarized the literature describing the harms of solitary confinement? This is on page 6 under "Critique of Expert Report," Section A, first paragraph, last sentence.

A. Oh, thank you. What I meant to -- what I'm meaning there is that this body of work that is cited here that reports on the harms of segregation, he adequately summarized that literature.

Q. So let's talk about some of your critiques of Dr. Kupers' assessment of the Plaintiff. How would you describe Dr. Kupers' findings regarding the effects of solitary confinement on Mr. Vermillion? And what I'm hoping you can respond to is can you describe the substance of his findings?

A. With regard to specifically the mental health effects from segregation?

Q. (Nodding head.)
A. That -- that it was harmful.
Q. That Mr. Vermillion suffered psychiatric harm from his experience in segregation?
A. Yes.
Q. And you say, "That in reaching these conclusions, Dr. Kupers failed to account for the fact that the records from Mr. Vermillion's medical history in the department didn't reflect psychiatric complaints."
A. That was one of my criticisms, yes.
Q. Dr. Morgan, can we agree that there have been cases where a prisoner has committed suicide without there being evidence in the medical record of complaints?
A. Yes.
Q. And can we also agree that the records that you reviewed that you've identified as contrary to Dr. Kupers' assessment were records from monthly mental health rounds?
A. During his time in segregation, yes.
Q. These were not sitdown comprehensive mental health assignments, right -- mental health assessments, correct?
A. I did not --
MR. DICKMEYER: Objection. Form. Go ahead.

THE WITNESS: I did not see evidence of that.

Q. (BY MS. FILLER:) And what Dr. Kupers did was sit down with Mr. Vermillion and perform a comprehensive clinical interview, correct?

A. Yes.

Q. And Dr. Kupers' interview of Mr. Vermillion then was substantively very different than the monthly mental health contact -- contacts that are described in the mental health record, correct?

MR. DICKMEYER: Objection. Calls for speculation. You can answer.

THE WITNESS: I would agree, yes.

Q. (BY MS. FILLER:) Do you know how long Dr. Kupers evaluated Mr. Vermillion for?

A. I believe the face-to-face interview was about three and a half hours, and he had two subsequent telephone conversations with the Plaintiff, one was for 30 minutes and the other was, I think, 20 minutes.

Q. Do you agree that Dr. Kupers' evaluation of Mr. Vermillion face-to-face and over the phone is the most comprehensive evaluation of Mr. Vermillion's mental health that was completed during his incarceration --

MR. DICKMEYER: Objection. Calls for speculation.

Q. (BY MS. FILLER:) -- based on your review?
A. Based on my review, yes.
MS. FILLER: Let's take a break and change the tape.
VIDEOGRAPHER: We're now off the record at 12:31.
(Break.)
VIDEOGRAPHER: We're now back on the record at 1:19.
Q. (BY MS. FILLER:) Dr. Morgan, before we broke for lunch, we were discussing your critique of Dr. Kupers' assessment of Mr. Vermillion and the mental health rounds and the records from those rounds that were in the evidence you reviewed. Does that refresh your recollection as to where we left off?
A. Yes.
Q. Do you know how long the mental health staff spent at Mr. Vermillion's cell door when doing their monthly rounds while he was in segregation?
A. No.
Q. Do you know whether it was difficult for them to communicate through the cell door?
A. No.
Q. Are you aware that Dr. Kupers toured the facility where Mr. Vermillion was in segregation?

A. Yes.

Q. And are you aware that he actually was able to observe a member of the mental health staff performing rounds at that facility?

A. Yes.

Q. Would you agree then that Dr. Kupers, who actually had the opportunity to observe a mental health staff professional performing rounds at the same facility where Mr. Vermillion was held, is in a better position to opine as to the quality of mental health rounds --

MR. DICKMEYER: Objection. Form.

Q. (BY MS. FILLER:) -- at that facility?

A. Yes.

Q. Have you ever offered any opinions as to the proper standard of care in performing mental health rounds in segregation?

A. Yes.

Q. And what have you said is the appropriate frequency in which those rounds should be conducted?

A. A minimum of once a week.

Q. Are you aware that the mental health rounds at issue in this case were monthly?

A. That was my observation based on the record.

Q. And so based on your opinion, that would not be

sufficient to mitigate the harm of segregation?

MR. DICKMEYER: Objection. Form.

THE WITNESS: I would agree.

Q. (BY MS. FILLER:) And do you agree that some prisoners do not want to be seen as mentally ill because it makes them appear weak in front of their peers in prison?

MR. DICKMEYER: Objection. Form.

THE WITNESS: Yes.

Q. (BY MS. FILLER:) And do you agree that prisoners' tendency to minimize or underreport mental health symptoms is important to consider when evaluating the effect of solitary confinement?

A. Yes.

Q. As I understood your report, you think it's possible that Mr. Vermillion would avoid raising mental health complaints with mental health staff during cell side rounds; is that right?

A. Yes, that's possible.

Q. But your opinion is that Mr. Vermillion would have asked for an out-of-cell meeting if he was actually suffering; is that right?

A. It's my opinion that he most likely could have.

Q. And what is the basis for your opinion that Jay could have received out-of-cell meetings with mental

health staff had he just asked?

A. It's my opinion that he could have asked. I can't testify or state an opinion as to whether if he would have received an out-of-cell consultation, but general practice would suggest that he would.

Q. You don't have any specific information as to the availability of out-of-cell mental health treatment in the segregation unit where Mr. Vermillion was held during the time he was held there?

A. That's correct, I do not.

Q. Are you aware of a lawsuit that was filed against the Indiana Department of Corrections on behalf of seriously mentally ill prisoners who had been held in segregation? This was a class action.

A. No. Mr. Pacholke's report referred to some prior litigation, but I don't know the specifics of that and if that's what you're referring to.

Q. So I take it then that you are not aware and did not consider in formulating your opinions in this case that the judge in that case on behalf of seriously mentally ill prisoners found that the Indiana Department of Corrections was not providing adequate out-of-cell mental health assessments for prisoners in segregation?

A. No.

(EXPERT EXHIBIT NO. 13 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, I've just passed you what's been marked as Expert Exhibit 13. This is the case Indiana Protection and Advocacy Service Commission versus the Commission of the Indiana Department of Corrections, and you'll see that it's an entry following bench trial and that the district court judge was Judge Pratt. Do you see that on the first page?

A. Yes.

Q. And if you could please turn to page 11 of this entry and opinion, which has the Bates stamp Vermillion 1643, and I want to draw your attention to the last paragraph on that page. It says starting at the second sentence, and I'm reading directly from the entry and opinion here, "The pervasive function of mental health staff within the IDOC has become a mixture of responding to crises and responding to prisoner requests to be seen. The 30-day reviews are ineffectual because of insufficient mental health staff and because of the circumstances on the unit, meaning the inability of custody staff to regularly place the prisoner in a setting where reasonable privacy and communication can be attained. Although the loss of privacy is a condition of imprisonment, the loss of privacy and communication with medical staff restricts the

prisoners' ability to be candid when providing information," end quote. Dr. Morgan, were you aware of that finding at the time that you authored your report in this case?

A. No.

Q. Does that change your opinion as to the availability of out-of-cell mental health care for Mr. Vermillion if he had a concern about confidentiality?

A. It certainly raises questions if he could have received an out-of-cell contact.

Q. If you could turn to page 16, Vermillion 1644, which is the next page -- or the page that we left off on rather. If we could look at the very bottom paragraph of -- it says page 12 of the entry and opinion, Vermillion 1644.

A. Okay. I'm there.

Q. It's the paragraph starting, "A number of facilities."

A. Yes.

Q. It says, "A number of facilities, including Pendleton, Putnamville and the WCU, do not interview prisoners with Axis II diagnoses outside of their cells. Prisoners, even those with Axis I diagnoses, frequently are not removed for an out-of-cell evaluation every 30 days but have them at their cell fronts, even though

the prisoner has not refused to leave his or her cell. At times, prisoners are not removed for the out-of-cell evaluation because there are insufficient correctional staff to move the prisoners or because of other scheduling difficulties that are no fault of the prisoner."

And continuing this next paragraph describes how, "conversation with the therapist even in private may be only a few minutes, prisoner believes it's not useful and not worth the shackling." And then in the middle of that paragraph goes onto find, "That the evaluations when they occur are generally very cursory."

Would these findings -- strike that. Were you aware of these particular findings from Judge Pratt at the time that you authored your opinion in this case, the Vermillion Case?

A. No.

Q. And does Judge Pratt's findings as to the adequacy of mental healthcare and the availability of out-of-cell mental health evaluations cause you to perhaps reconsider your opinion that Mr. Vermillion would have been asking for out-of-cell mental health evaluations if he was experiencing psychiatric distress?

MR. DICKMEYER: Objection. Form. You can answer.

THE WITNESS: It certainly raises questions with regard to, as I noted, the potential to request out-of-cell consultations. In terms of changing my opinions, no.

Q. (BY MS. FILLER:) And why is that that -- what we've just reviewed doesn't change your opinion?

A. Well, because I haven't given any opinions with regard to Mr. Vermillion's mental health functioning and why he did or didn't receive mental health services. If I were to do such an evaluation, this would certainly be part of the consideration there.

Q. Well, let me just understand then so that we're on the same page. As I read your report, you criticized Dr. Kupers for accepting Mr. Vermillion's representations even though those representations were inconsistent with the monthly mental health segregation rounds; is that right?

A. Yes.

Q. And Dr. Kupers said that in his view, the monthly segregation rounds were not very probative because Mr. Vermillion had concerns about the confidentiality of those mental health rounds, right?

A. Yes.

Q. And what we've just reviewed from Judge Pratt indicates that in fact there wasn't really another

option for prisoners in segregation at that time; is that right?

A. That's what Judge Pratt is indicating here, yes.

Q. So doesn't it stand to reason then that Mr. Vermillion might have had, as Dr. Kupers found, significant distress during segregation, but felt that asking for out-of-cell mental health services was not going to be successful?

MR. DICKMEYER: Objection. Form. Calls for speculation. You can answer.

THE WITNESS: That certainly might have been the case.

Q. (BY MS. FILLER:) Based on what we've just reviewed here, the findings from Judge Pratt?

A. Yes, that might have been the case.

Q. And based on the findings from Judge Pratt then, Dr. Kupers' conclusion that Jay's explanation for why those mental health segregation rounds did not evidence significant distress is, in fact, entirely reasonable?

MR. DICKMEYER: Objection. Form.

THE WITNESS: It could be, yes.

Q. (BY MS. FILLER:) I mean, isn't it a reasonable conclusion for Mr. Vermillion to say, "I'm not going to ask for out-of-cell mental health services because I'm not going to get them"?

MR. DICKMEYER: Objection. Asked and answered. Form. You can answer.

THE WITNESS: I would agree that's reasonable.

Q. (BY MS. FILLER:) You also criticized Dr. Kupers, and I think this is a related critique, but that he's not adequately considered the possibility that Mr. Vermillion was malingering during his evaluations, correct?

A. Yes.

Q. And I want to be really clear about what you're saying here. I think that what I've read in your report is that you agree that Dr. Kupers did, in fact, consider the possibility that Jay might be exaggerating?

A. Yes.

Q. But you critique Dr. Kupers because in your view he didn't take adequate steps to assess whether Jay Vermillion was malingering when he met with him?

A. That's a fair summary, yes.

Q. Dr. Kupers is a psychiatrist, right?

A. Yes.

Q. And you are not a psychiatrist?

A. Correct.

Q. And although there are areas where the practices of psychiatry and psychology overlap, they're not the

same, right?

A. Correct.

Q. And one area where it's different is that psychologists, such as yourself, don't prescribe psychiatric medication, right, as a general rule?

A. As a general rule, yes.

Q. And so if a psychologist thinks that psychiatric medication is indicated for a patient, he'll typically refer the patient to a psychiatrist, right?

A. Typically, yes.

Q. But only if they think that there's a need or a potential need for the medication, right?

A. Yes.

Q. Otherwise, there'd be no need for a referral to the psychiatrist, correct?

A. Correct.

Q. Another of the areas where there's a difference in practice is that psychiatrists don't administer psychological tests, right?

A. In general -- as a general rule of practice, correct.

Q. Otherwise, they're taking your job, right?

A. There would be that potential, yes.

Q. And is it your position that Dr. Kupers, even though he's a psychiatrist, should have administered a

psychological test to rule out malingering?

A. Yes.

Q. But he wouldn't do that himself, would he?

A. It would be my opinion that anybody conducting forensic examination seeks the appropriate training to administer whatever method is needed to answer the questions. There are psychiatrists that can administer malingering tests. You just simply have to get the appropriate training.

Q. Or he could --

A. Or refer it out.

Q. -- refer it to a psychologist who --

A. Yes.

Q. -- does that kind of evaluation for a living, right?

A. Sure, that would be another option, yes.

Q. But Dr. Kupers would only need to order psychological testing if there's an indication, right, an indication that psychological testing was needed?

A. Yes.

Q. Just like a psychologist referring a patient to a psychiatrist for medication, you do the referral only if there's an indication that it's needed?

A. Yes.

Q. Or like an ER doctor, right, you're not going to

just ask for a CAT scan unless there's an indication of the CAT scan's necessity, correct?

A. Yes.

Q. And here, Dr. Kupers understood that as with any time you evaluate someone they might be malingering, right?

A. I assume he did.

Q. But he found no clinical evidence of that, and so he didn't order psychological testing, right?

A. That's my understanding, yes.

Q. And there's nothing generally wrong with that approach, right?

A. In a non-forensic context? No.

Q. So your opinion then is that anytime there's a legal case involved, there must be psychological testing?

A. No, absolutely not.

Q. So why don't you tell me the difference, because you just said in a forensic setting?

A. Sure. When there's a case of disability or harm and a person is indicating harm because of the -- not only potential, but the benefit for feigning disability or harm, malingering should be a standard practice.

Q. And --

A. And not rely on our clinical judgment.

Q. Okay. So if I understand you correctly, whenever there is a legal case where the person at issue stands to benefit, has some interest in the outcome of the case, then clinical judgment isn't enough?

A. Yeah. Generally speaking, yes, I would agree with that. When it's a forensic context, yes.

Q. You -- your report relies on a discussion of this issue, and we can pull it up in the report. I believe it's page 12. You discuss the importance of ruling out malingering, and it's a text by the lead author Melton?

A. Yes.

Q. Are you familiar --

A. That's a textbook, yes.

Q. Okay. And let's look at your report. So on page 12, the last paragraph, fourth line, "In fact, it is increasingly recognizing that interview -- it is increasingly recognized that interview-based approaches to detecting malingering are of such limited utility that tests specially designed to detect malingering should be a routine part of forensic practice," and you cite the Melton textbook; is that right?

A. Yes.

(EXPERT EXHIBIT NO. 14 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, you've just been passed what's been marked as Expert Exhibit 14. Would

this be the textbook that you're citing?

A. Yes.

Q. And I want to draw your attention to the Bates stamp as Vermillion 5139, subsection A, "General strategies for detecting feigning of symptoms." Do you see that there?

A. Yes.

Q. So this would be a section on general strategies for detectoring -- detecting malingering, right?

A. Correct.

Q. And it says, "A number of strategies are available for systematically investigating response style. The most common and venerable method is the clinical interview, usually consisting of a mental status examination or other relatively unstructured interview procedure." Did I read that correctly?

A. Yes.

Q. And do you agree then that the most common and venerable method of detecting malingering is the clinical interview?

A. Yes.

Q. If you turn to the next page, this is Vermillion 5140, and it says -- middle of -- let's see, so the second paragraph on the left hand column, the last sentence, and I believe this is what you're referencing

in your report, quote, "Increasingly, mental health professionals have concluded that because interview-based approaches to detecting malingering are of such limited utility, employment of instruments specifically designed for this purpose should be considered the standard of practice whenever there is a basis for suspecting over-reporting of symptoms," end quote. Did I read that correctly?

A. Yes.

Q. And so you agree then that the psychological testing is necessary when there's a basis for suspecting over-reporting?

A. Yes.

Q. Is psychological testing an infallible measure of malingering?

MR. DICKMEYER: Objection. Form.

THE WITNESS: No.

Q. (BY MS. FILLER:) In fact, psychological tests might indicate that a person is malingering when they aren't, right?

A. That can happen.

Q. And a person could also game a psychological test and it not come up that they were in fact malingering, right?

MR. DICKMEYER: Objection. Form.

THE WITNESS: That can happen, yes.

Q. (BY MS. FILLER:) And Dr. Kupers has reported that in his clinical interview, in his experience, Mr. Vermillion was honestly reporting his symptoms, right?

A. Yes.

Q. And, for example, Dr. Kupers found that Mr. Vermillion didn't provide exaggerated descriptions of the symptoms that he suffered, right?

A. I don't recall him being that specific, but he concluded that Mr. Vermillion was honestly responding.

Q. Did Mr. Vermillion -- strike that. When a interview subject is providing very exaggerated descriptions of psychiatric distress, that might be a cue that they're malingering, right?

A. That might be.

Q. But Mr. Vermillion didn't, for example, report that he was hearing voices indicating him -- indicating that he should hurt himself, right?

MR. DICKMEYER: Objection. Calls for speculation. You can answer.

THE WITNESS: Not -- not based on what was presented in Dr. Kupers' report.

Q. (BY MS. FILLER:) He didn't tell Dr. Kupers that he was seeing things like little green aliens, right?

MR. DICKMEYER: Same objection.

THE WITNESS: Dr. Kupers didn't report that, correct.

Q. (BY MS. FILLER:) That kind of really stark description of psychiatric illness might have been a cue that Mr. Vermillion was over-reporting, right?

A. It could be, yes.

Q. And in fact, the constellation of symptoms that Mr. Vermillion described is quite consistent with the literatures, reports of the negative mental health consequences of solitary confinement?

MR. DICKMEYER: Objection. Form.

THE WITNESS: Yeah, as described by Dr. Kupers. It's not inconsistent. I would agree.

Q. (BY MS. FILLER:) And that would also indicate that Mr. Vermillion was being truthful?

MR. DICKMEYER: Objection. Form.

Q. (BY MS. FILLER:) In other words, he described symptoms that make sense given the segregation context and what we know about segregation?

A. That could be an indication of honest responding, yes.

Q. And you have no reason to believe that Mr. Vermillion was malingering, other than the fact that everyone who's -- has a lawsuit has some incentive to win their case, correct?

A. Yeah, generally speaking, I would agree with that.

Q. I just want to make sure there's no extra reason that you think that you've identified why Mr. Vermillion would have been malingering?

A. Yeah. No, that's an accurate summation.

Q. There's no requirement that in order to be -- strike that. There's no requirement that in order to have their findings accepted in a court of law that psychiatrists who perform evaluations in a legal context obtain psychological testing of every person who they evaluate, is there?

MR. DICKMEYER: Objection. Calls for speculation and calls for a legal conclusion. Form. You can answer.

Q. (BY MS. FILLER:) Dr. Morgan, I understand you're the director of forensics here at -- Director of Forensic Psychology, right?

A. I'm Director of the Forensic Science Institute and I teach in the area of Forensic Psychology.

Q. And are you aware of the general legal context in which mental health opinions are admitted in court?

A. I am.

Q. Okay. I'll restate the question. There is no requirement that in order to have their opinions

admitted into a court of law psychiatrists who perform evaluations as part of a lawsuit obtain psychological testing of every person who they evaluate, is there?

A. There is no such requirement.

MR. DICKMEYER: Objection. Form.

THE WITNESS: Sorry, David.

Q. (BY MS. FILLER:) And in fact, that's not the standard practice for psychiatrists either, right?

MR. DICKMEYER: Objection. Form.

THE WITNESS: Actually, I don't know what the standard practice or best practice is for a psychiatrist being as that I'm not a psychiatrist. I can't -- I can't opine on that.

Q. (BY MS. FILLER:) Fair enough. And Dr. Morgan, your other criticism of Dr. Kupers is that his literature review is incomplete; is that right?

A. Yes.

Q. And as a result, in your view, Dr. Kupers has overstated the risk of harm from solitary confinement, right? If that's not correct, please --

A. I would just change it a little bit, overstated the potential risk of harm.

Q. And is that going back to the universality of the harm?

A. Yes.

Q. So let's break that down. Dr. Kupers does describe at length in his report a significant body of literature documenting harms from solitary confinement, right?

A. He does.

Q. And the literature that he's described shows that solitary confinement can be psychiatrically toxic?

A. I would agree.

Q. And the body of research that he's described stretches back for many decades, right?

A. Yes.

Q. And it's also been done across countries, correct?

A. Yes.

Q. It's not just limited to a particular subset of prisoners? There have been studies done around the world?

A. Correct.

Q. And there have also been studies done in different context that lend support to that research? For example, studies of people who have been subjected to extreme isolation in a context other than prison?

A. Yes. He relies on that literature as well, yes.

Q. And that literature is supported by a coherent theory, right?

MR. DICKMEYER: Objection. Form.

THE WITNESS: Yes, I would agree.

Q. (BY MS. FILLER:) And can you describe what that theory is for why isolation is harmful?

A. Yeah. Basically, depriving someone of basic human contact, as social beings, we -- we need social contact to function. And depriving somebody of that basic need results in harm.

Q. And do you agree with that basic theory that you've just outlined?

A. I do.

Q. And I take it that you would agree with me that experts testifying in court are to work off of reliable information?

A. I would agree.

Q. And that it's really important that we ensure that only reliable opinions derived from reliable sources are admitted into evidence when we have a trial, right?

MR. DICKMEYER: Objection. Calls for a legal conclusion. Form.

THE WITNESS: Yeah, I would agree.

Q. (BY MS. FILLER:) So if an expert is unable to vouch for the reliability of certain studies or data, it's not appropriate for them to rely on it, right?

MR. DICKMEYER: Objection. Form.

THE WITNESS: Say that -- can you read that back?

COURT REPORTER: "So if an expert is unable to vouch for the reliability of certain studies or data it's not appropriate for them to rely on it, right?"

THE WITNESS: Yeah, generally speaking, I would agree. I'm not sure what you mean by "vouch for it," but in general, I would agree.

Q. (BY MS. FILLER:) An expert has to rely on data and information that they believe in their expert opinion is reliable?

A. I would agree.

Q. When you write your expert reports, you're describing the evidence that you relied upon in reaching your conclusions, correct?

A. Yes.

Q. And if you don't rely on particular studies or data, you aren't obliged to put that in your report, right?

A. I would agree.

Q. And your critique of Dr. Kupers is that he doesn't cite the Colorado study or your 2016 meta-analyses, right?

A. Those are two that were omitted, yes.

Q. What are the others, please?

A. Chadick, et al and Walters in 2018.

Q. And Chadick is the study that we've described earlier in Kansas?

A. Yes.

Q. In which you were also an author?

A. Yes.

Q. And which is the Walter study, please?

A. Yes.

Q. Sorry, what is the Walter study?

A. Oh, I'm sorry. That was published in 2018 in Criminal Justice Behavior.

Q. And was that a longitudinal study?

A. Yes. It was re-analyzing data from the Colorado study.

Q. So no new data?

A. Correct.

Q. If Dr. Kupers didn't find those sources that you just listed to be reliable sources of information, it would be an unfair criticism to criticize Dr. Kupers for not including them? Do you agree?

MR. DICKMEYER: Objection. Form.

THE WITNESS: No.

Q. (BY MS. FILLER:) Why?

A. Because it's our responsibility to paint a

complete picture for the factfinder, and that includes a review of the entirety of the literature. When providing a review of the literature in a forensic report, I would report all of the literature. I would highlight problems or concerns with specific bodies of work, but I wouldn't exclude it, particularly if it was contrary to my opinion.

Q. It sounds like you're describing two different things, if I may, a literature review, in which the job is to describe all of the literature that's out there on a given subject and draw conclusions from that versus a opinion as to what the literature shows as to the harms of solitary confinement.

A. I still would stand by the position that as an objective examiner, it's our job to -- to paint the totality of that picture, that clinical picture, and that includes all of the literature review.

Q. Even if Dr. Kupers, in his opinion, believes that certain sources of data are not reliable sources of information?

MR. DICKMEYER: Objection. Form. Asked and answered. You can answer.

Q. (BY MS. FILLER:) Let me ask a different question. Do you know if Dr. Kupers has expressed an opinion as to the reliability of the 2010 Colorado

study?

A. Yes, he has.

Q. And he's, in fact, said that the findings from that study are unintelligible, right?

A. Yes, he has.

Q. In fact, he wrote an entire article, along with Dr. Stuart Grassian, to expose what he views as grave flaws in the Colorado study that render those findings not usable or helpful in any way?

A. That's correct.

Q. And you're familiar with his critique of the Colorado study, right?

A. Yes.

(EXPERT EXHIBIT NO. 15 MARKED.)

Q. (BY MS. FILLER:) You've just been passed what's been marked as Expert Exhibit 15. Dr. Morgan, would you agree that this is the Kupers and Grassian critique of the Colorado study?

A. Yes.

Q. In formulating his opinions, it's reasonable for Dr. Kupers to choose not to rely on a study after he's reviewed that study and found it to be unintelligible, right?

A. Again, I disagree. It's not my opinion.

Q. Listen to my question, though, because I think

we're close to being on the same page, but not quite. I understand you're saying that it's important to if you're describing all of the literature to describe that literature, right?

A. Yes.

Q. If Dr. Kupers' job, though, is to review the literature and issue an opinion reliant on reliable sources, then he needs to just rely on those sources that in his expert opinion are, in fact, reliable?

MR. DICKMEYER: Objection. Asked and answered.

THE WITNESS: I'm with you, yes.

Q. (BY MS. FILLER:) Okay. You might -- I understand that you disagree with Dr. Kupers about the Colorado study, and we'll get to that, right?

A. Yes.

Q. But I just want to be fair in our criticism, okay? In his opinion, he knows about the Colorado study, right?

A. Yes.

Q. It's not like this is -- he's missed it. He knows it happened, right?

A. Correct.

Q. He just doesn't think that it's a reliable source on which he should be basing his opinions?

A. That's my understanding, yes.

Q. Okay. And do you know if Dr. Kupers has expressed an opinion as to the reliability of the meta-analyses that you published along with Paul Gendreau in 2016?

A. I believe he has, yes.

Q. And what would be that opinion?

A. That it is fatally flawed.

Q. So again, in your view, Dr. Kupers would need to describe those meta-analyses if he's giving a literature overview, right?

MR. DICKMEYER: Objection. Form. Asked and answered.

THE WITNESS: Correct.

Q. (BY MS. FILLER:) But if Dr. Kupers is describing the sources of reliable data on which he's relying to form an opinion, then he wouldn't include the meta-analyses because he doesn't find them reliable, right?

A. Again, to me, he's describing the literature in his report. I can see where, as you were saying earlier, he didn't rely on that in his ultimate opinion, but I stand by the criticism that that should have been included.

Q. I understand it's your meta-analyses, you have a

-- you have put a lot of work into those studies, I believe, right?

A. Oh, it was a lot of work.

Q. And in your opinion, they are a critical contribution to the scholarship on solitary, right?

A. All of the studies that he omitted, I would say, were important information to inform -- to inform the issues.

Q. And we've just said that the Walters is at least working off the same data as the Colorado study, right?

A. Correct.

Q. So the only one that I want to just flag as potentially new information that he omitted would be the Chadick Kansas study?

A. Correct.

Q. And I take it that you understand that Dr. Kupers is aware of those studies?

A. I know he's aware of the Colorado study and the meta-analysis. I assume he's aware of the Chadick article. I don't know if he's aware of the Walters study.

Q. So you're -- you're not concerned that Dr. Kupers might not know about all of these studies, right?

A. Correct.

Q. Your concern is more that what he's written in

his report in this case is just incomplete and missing some of that?

A. Yes.

Q. What is a controlled study?

A. A controlled study would be one where you systematically manage as best you can the situations around the experiment that you're conducting in a pre-post design, so you would assess individuals before whatever the issue at hand is. Usually in my line of work, that would be an intervention of some sort, like segregation, and you would assess post and have a control group to compare responses from the treatment group to the control group.

Q. It's a method of research that's designed to measure the effect of a variable, right?

A. Well said.

Q. Variable or, in your term, intervention?

A. Yes.

Q. And the importance of having a control group is that it's not exposed to the variable and that way you can determine the effect of that variable, right?

A. That's the idea with the controlled study, yes.

Q. Is there a particular treatise or text that you would say is the most well accepted source for how to effectively design a controlled study?

A. No, not that I'm aware of.

Q. Have you personally performed controlled studies?

A. Yes.

Q. And which studies are those?

A. I'll refer back to my curriculum vitae. It would be the studies looking at individuals with and without mental illness that are justice involved. There's a series of studies and five or six publications. It's looking at comparing inmates in prison with mental illness to individuals and inmates without mental illness and individuals in community mental health settings, both that are and are not justice involved, for purposes of comparing who's going in and what's happening in terms of mental illness with justice involvement and what we need to do on the treatment end. So I can point you to those studies. It's a series of studies.

Q. Thank you. Yeah, if you could just tick them off and give us a page number?

A. Okay. On page 4 of 29, second from the bottom, Gross and Morgan, 2013. Top of the next page Bartholomew, et al.

Q. Sorry, I don't see -- oh, you were going backwards.

A. Oh, sorry, on the page, I think I did go

backwards and I apologize.

Q. That's okay.

A. So then to page 5 the Wolff, Morgan and Shi, 2013. On page 6, Wolff, Morgan, Shi, Fisher and Huening, 2011. And then Morgan and Fisher, et al also on page 6, 2010. So those were controlled studies, but not of an intervention. If -- for controlled studies of an intervention, it would be McDonald, Morgan and Metz, 2016.

Q. Can you give me a page number?

A. On page 4. McDonald and Morgan, 2013 on page 5. And that's -- the last one would be on page 9, Morgan, Winterowd and Fuqua in 1999.

Q. And so you've given us two categories of controlled studies, right, ones involving an intervention and ones without?

A. Yes.

Q. And the difference with an intervention, that the point is to be able to distill the specific effects of that intervention, right?

A. Yes.

Q. Do you hold yourself out as an expert in the design and execution of controlled studies?

A. No.

Q. Do you agree, though, that it's important that

controlled studies are, in fact, controlled?

A. Yes.

Q. And that it's important in performing controlled studies to avoid contaminating the groups you're studying?

A. That's the ideal, yes.

Q. And by "contamination," I'm referring to exposing the control group to the intervention that you're attempting to measure?

A. Correct.

Q. And would you agree that contamination can invalidate a study's results?

A. It can.

Q. Do you agree that it's difficult to perform controlled studies in prison?

A. It certainly can be, yes.

Q. For example, you, as a researcher, cannot keep a prisoner in segregation if the prison says that prisoner doesn't need to be in segregation?

A. Correct.

Q. That would be unethical?

A. Yes, it would.

Q. And the research that's developed on solitary confinement has not, in fact, relied on control studies because of the difficulties in conducting such studies

in prison, right?
A. Yes, that's one of the primary issues.
Q. So let's talk about the Colorado study. You've described it as the gold standard, right?
A. Yes.
Q. The Colorado study studied prisoners in the Colorado State Prison System, right?
A. Yes.
Q. There was no -- as the name suggests, no examination of prisoners outside of Colorado, right?
A. Correct.
Q. And the -- it was a longitudinal study, I understand?
A. Yes.
Q. And so the study lasted for about one year; is that right?
A. Yes.
Q. And the study did not involve clinical interviews, correct?
A. Correct.
Q. And there was no part of the study that looked at the medical records of the prisoners, right?
A. I believe they looked at the medical records but did not report that in the results.
Q. So the results of the Colorado study did not

include review of medical records?
A. Correct.
Q. The results of the Colorado study were solely based on self-scoring from prisoners?
A. Self-reporting.
Q. Self-reporting on a written score card, essentially?
A. On a paper pencil test, yes.
Q. And we talked earlier about peer review, remember?
A. Yes.
Q. Feels like days ago. And a peer review is one way to ensure that studies and research is of a reasonably high quality, right?
A. Yes.
Q. The Colorado study has not been published in a peer review journal, right?
A. Well, they published a smaller version. Not the full report that they submitted to NIJ, but they published a more succinct version.
Q. This was Maureen O'Keefe's article?
A. Yes.
Q. But the actual study was published just as part of the grant that they had, right?
A. The 2010 document was part of the reporting

requirements for the grant.

Q. And I believe if you refer to -- I think it was Expert Exhibit 6, that big folder that you have there, Dr. Morgan. If you could just identify that the first tab there is the 2010 report on the Colorado study?

A. Yes.

Q. I won't ask you to look anymore at it. You can put it to the side. Just want to make sure we're talking about the same thing.

A. Yes.

Q. Since the time the Colorado study came out, it has been subjected to heavy criticism; is that fair?

A. Yes.

Q. Can you describe the criticisms of the Colorado study, please?

A. Yeah, it's been criticized in terms of relying on self-report, contamination of the groups, inappropriate data collection via the individual collecting the data. There's a few others, but those are the big ones.

Q. Are you familiar with Dr. Craig Haney?

A. I am.

Q. I think we discussed earlier that you two have been on -- found yourselves on opposite sides before?

A. Yes.

Q. Would you agree, though, that Dr. Haney is one of

the prominent researchers on the effects of solitary confinement?

A. Yes, he's recognized as such.

Q. And he is a vocal critic of the Colorado study, correct?

A. Yes, he is.

Q. Are you familiar with Dr. Haney's 2018 article entitled "The Psychological Effects of Solitary Confinement"?

A. I am.

(EXPERT EXHIBIT NO. 16 MARKED.)

Q. (BY MS. FILLER:) And I've just passed you what's been marked as Expert Exhibit 16. Is this Dr. Haney's 2018 article that we were just referencing?

A. Yes.

MS. FILLER: And let's take a break so they can change the tape.

THE WITNESS: All right.

VIDEOGRAPHER: We're now off the record at 2:15.

(Break.)

VIDEOGRAPHER: We're now back on the record at 2:17.

Q. (BY MS. FILLER:) Dr. Morgan, are you familiar with the critiques that Dr. Haney raises about the

Colorado study in this 2018 piece?

A. Yes.

Q. And you've listed a few of them. You mentioned the concerns about the research assistant, correct?

A. Yes.

Q. And according to Dr. Haney's understanding of the Colorado study, they had an inexperienced research assistant who conducted all of the testing, correct?

A. That's the criticism, yes.

Q. And that this research assistant did so with very little to no direct supervision?

A. That's the criticism, yes.

Q. Is that a fair criticism, the criticism surrounding the inexperienced research assistant?

A. It's my understanding that the research assistant was a trained research assistant, so trained in the methodologies of the study.

Q. So you don't have any concerns about the research assistant being inexperienced and the effects that that might have had on the integrity of the results?

A. No.

Q. Another criticism is that the study was commissioned by a pro segregation prison warden. Are you familiar with that critique?

A. I'm sorry, say that again.

Q. Another criticism is that the Colorado study was commissioned by a prison warden who had an interest in continuing use of segregation?

A. Yes.

Q. Have you heard that critique?

A. Yes.

Q. Is that a fair criticism?

A. Certainly I think that's a fair criticism to weigh when considering the potential impacts on a study.

Q. And regarding the research assistant, I take it that you believe that the research assistant was, in fact, adequately trained in conducting the study; is that fair?

MR. DICKMEYER: Objection. Form.

THE WITNESS: There was nothing in the 2010 or subsequent 2000 -- I think it was '12 article that suggests the research assistant wasn't properly trained.

Q. (BY MS. FILLER:) So you're relying on the expressed descriptions of the Colorado study from the authors of that study?

A. Yes.

Q. As contained in the 2010 report that we just looked at, right?

A. And the 2012. But the 2012 is really a summary of the 2010.

Q. And are you aware that some of the people who were involved in performing that study have since said that it's been taken out of context?

A. Yes.

Q. Can you describe that -- their views on that subject?

A. Yeah, that some of the authors are concerned that their study is being viewed as a validation of the use of segregation, and that was not the intent, nor their conclusions.

Q. The most serious critique of the Colorado study is that there was fatal contamination of the control group, right?

A. I would agree.

Q. Because if that were true, there would be real questions as to whether the data had any value, right?

A. It certainly could, yes.

Q. And Dr. Haney in his 2018 article has said that every prisoner in the 2010 Colorado study had been exposed to a severe form of segregation right at the start immediately before the study began, right?

A. I don't remember exactly how he phrased it or what he said, but I know the contamination was a criticism.

Q. Are you familiar with how the control group and

the intervention group were identified?

A. Yeah, I mean, generally speaking.

Q. Can you describe for us the basic approach to the study?

A. They pulled participants from general population, psychiatric care unit and segregation to participate in the study.

Q. But are you aware of how they identified those groups? In other words, it wasn't random, right?

A. Right. Right. I'm -- I think I need to look at it to refresh my memory on the actual selection procedure. But yeah, I reviewed it.

Q. So as I understand it, they looked at prisoners who were in the disciplinary process, and those prisoners would be held in a form of segregation, either awaiting the disciplinary hearing or after. And then some prisoners would come out of those disciplinary hearings and go to general population, some prisoners would come out of that process and go to administrative segregation, and that's how they identified the groups. Does that sound right?

A. That -- that sounds right.

Q. So Dr. Haney's point in his 2018 article is that both of those groups would have been in segregation right before the study started then?

A. Yes.

Q. That's contaminating the samples?

A. That's -- that would be his argument, yes.

Q. And is that a fair criticism, in your view?

A. I don't believe so.

Q. Why not?

A. Because, one, we're talking about pretty short-term segregation potentially there, and the authors, they looked at the issue of contamination, they compared the groups, and there was no difference in terms of folks that were contaminated versus those folks that were not contaminated. I mean, they speak to that. They analyzed that data. I understand what Dr. Haney is saying in terms of at the front end they're already contaminated.

If -- if to look at it in that sense, every inmate coming into prison would essentially be contaminated, because at some point during the booking process they're isolated. You can't take just every instance of isolation and say they're contaminated. Oftentimes, those periods of detention for disciplinary matters, it's brief.

Q. What would you describe as brief?

A. A couple days.

Q. If we look at page 383 of Dr. Haney's 2018

article, do you see that in this section, generally he's describing this issue of the initial contamination problem?

A. Yes, I see it.

Q. And on 382 in the second to last paragraph, he says, quote, "It is impossible to know whether or how control group prisoners were damaged by the time spent in punitive segregation and whether those effects continued throughout the study," end quote. Do you agree with that?

A. I don't agree with the basic premise. Do I agree that -- that Dr. Haney could make the argument that that invalidates the study? Sure. But I don't agree that it does. I don't believe that that contaminates the samples and the groups when looking at the conditions of long-term administrative segregation. The psychiatric population, I don't know that we know they had the same level of contamination. I'll have to -- I have to look at it.

Again, they were choosing inmates from the psychiatric unit that had behavioral problems, but I don't know that they were in disciplinary segregation. I would have to review.

Q. So --

A. And if not --

Q. So you're not familiar with whether in fact they weren't in disciplinary segregation at the start of the study?

A. I don't recall that, yeah. I'd have to review the report and see.

Q. And if you look at page 384 of Dr. Haney's article, the bottom of that first paragraph.

A. 384?

Q. 384. He says, "A key table in the National Institute of Justice Report indicated that at the time of their first test interval participants had spent considerable average times in av -- other sec. GPMI prisoners, 12.4 days. GPNMI, 39.8 days. ASMI, 88.9 days. ASNMI, 90.3 days." Would you agree that those periods of time are not brief?

A. I would agree with that.

Q. And Dr. Haney's critique as to contamination was also that there was contamination during the one year period as well, right?

A. Correct.

Q. And that his criticism is that it's clear that prisoners in fact moved back and forth to segregation, general population and other types of housing?

A. Correct.

Q. In fact, he found that 52 of 76 general

population control group participants spent time in segregation or other non-general population setting during the study, roughly two-thirds of the group?

A. Correct.

Q. And he found that half of the administrative segregation of prisoners, 60 -- about half, 62 of 127, spent an unspecified period of time in general population or elsewhere during the study?

A. Yes, that was his finding.

Q. And the data that was aggregated by the Colorado researchers did not take into account the contamination?

A. They analyzed that data.

Q. How so?

A. See if I can find it. It will take me a second to find it in the document.

Q. Sure. Maybe I can restate the question, and if you'd like to look at it, that's just fine too. But my understanding is that the data from the participants was aggregated whether or not there had been contamination. In other words, they didn't exclude the people who had cross-contamination --

A. Correct.

Q. -- from the aggregate data results?

A. Correct, they did not exclude.

Q. Another problem with the Colorado data is that

the Colorado system, the administrative segregation, had at the time of the study three different quality of life levels; is that right?

A. Yes.

Q. And at each quality of life level, there were different privileges afforded prisoners, right?

A. Yes.

Q. And at level 3, prisoners in segregation could have jobs?

A. Yes, that was my understanding.

Q. And would you agree that the ability to have a job outside of your cell is a substantive difference than the conditions of confinement?

A. Relative to not having a job and being confined to your cell? Yes.

Q. And the -- we've talked this morning about some of the Canada cases regarding segregation, correct?

A. Yes.

Q. Are you aware that the case involving the Canadian Corporation of Canada Civil Liberties, CCLA Case --

A. CCLA.

Q. I'll say that back. That the CCLA Case in fact rejected the Colorado study because of the quality of life levels issue?

A. No, I hadn't read that in the -- in the judgment.

Q. And when you included the Colorado study in your meta-analyses in 2016, were you aware of these critiques or did they post-date your work?

A. Some of it post-dated, but some of it I was aware of.

Q. Were you specifically aware of the contamination concerns?

A. Yes, more so of the cross-contamination during the study than the critiques in his 2018 article regarding the pre-contamination.

Q. Are you aware that the Colorado Department of Corrections has since limited the use of segregation to 15 days?

A. Yes.

Q. And do you agree that this indicates that the Colorado Department of Corrections, at least, doesn't take the findings of this study to mean that they should continue to hold people in segregation for years at a time?

MR. DICKMEYER: Objection. Calls for speculation.

THE WITNESS: Yeah, I would agree with that.

Q. (BY MS. FILLER:) In fact, are you familiar with the name Rick Ramish (phon.)?

A. I am. I don't think I've read anything, but I'm familiar with the name.

Q. He's the long time Director of the Colorado Department of Corrections, right?

A. Okay.

Q. Are you aware that he's one of the foremost critiques of solitary confinement now?

A. No.

MS. FILLER: Now would be a good time to look at the response to the subpoena. We can take a quick break and go off the record.

VIDEOGRAPHER: We're off the record at 2:34.

(Break.)

VIDEOGRAPHER: We're now back on the record at 2:42.

Q. (BY MS. FILLER:) Dr. Morgan, I want to just take a minute and talk about the subpoena that you responded to. I understand you brought some documents here today?

A. Yes.

Q. Can you tell me what you have there (indicating)?

A. In my paper file?

Q. Yeah.

A. I have a copy of my report, the stipulated protective order, Plaintiff's Third Amended Prisoner's Civil Rights Complaint under Title 42 U.S.C 1983, expert

report of Dan Pacholke, expert report of Terry Kupers, State of Indiana Presentence Investigation Face Sheet, Professional Services Contract and deposition of Jay Vermillion.

Q. And Dr. Morgan, I took a look at one of the breaks and flagged those pieces of your paper report that I found had handwriting on them. Do you see that there?

A. Yes, three documents.

Q. Okay. Can you -- do you mind identifying the three documents that I flagged?

A. Dr. Kupers' expert report, State of Indiana Presentence Investigative Report and the Professional Service Contract.

Q. And will you undertake to provide a scanned copy of those handwritten -- the versions of those documents with your handwritten notes to Counsel for the Defendants so that they can provide them to me?

A. Yes, I'll have that done by Friday.

Q. Friday's just fine. Please don't rush. Thank you. And you also have a thumbdrive, I understand?

A. Yes. And on the thumbdrive is a copy of all the documents that I received, which were referenced in the report, a copy of my report, and my billing statement.

Q. And --

A. So the only thing on here that's not in here (indicating), I think, is the billing statement.

Q. And is it possible for me to have that thumbdrive? Is that --

A. Yes, but I realized I took this from the department today as I was running out, so it's actually Texas Tech property. Can you download it?

Q. Yes, we'll work that out.

A. Only because it's state property.

Q. I understand. Those aren't cheap.

A. I know how it sounds, but I would have to figure out how to reimburse the department --

Q. Okay.

A. -- or the university.

Q. Well, we'll work that out, but I appreciate that. Thank you. And then I have here what I understand are your communications with Defense Counsel in this case; is that right?

A. Yes.

Q. Is this the total of your written communications with Defense Counsel, understanding that there were a few text messages just setting up logistical things?

A. Yes, that's the totality.

MS. FILLER: Okay. And let's mark this as Expert Exhibit 17.

(EXPERT EXHIBIT NO. 17 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan, as I understand it, your opinions in this case rely significantly on the 2016 meta-analyses that you conducted and described today, right?

A. That's certainly included in my opinion regarding the criticisms of the literature review provided by Dr. Kupers and Mr. Pacholke. Less so to the two opinions with regard to their expert reports of Mr. Pacholke and the nature of the evaluation by Dr. Kupers.

Q. Are you offering an opinion in this case as to the effects of segregation?

A. As a global matter beyond Mr. Vermillion? It would be my opinion that the effects of segregation on inmate mental -- mental health functioning -- let me say that differently. Inmates placed in segregation are at risk for mental health decompensation. Some will experience that decompensation, some won't, some will get better. And as a universal measure or a universal issue, on average inmates in segregation will experience some decompensation relative to pre-segregation status.

Q. Thank you for that clarification. And your opinions that you've just described, do those rely on conclusions reached in your meta-analyses?

A. It was informed by the meta-analyses, for sure.

Q. Are you planning to testify as to the results of your meta-analyses?

A. Only if asked. It informed my opinion, so certainly it potentially could be relevant. But no, I don't have a plan to testify specifically about the meta-analyses, because that's not the only basis or source of information that informs that opinion regarding the effects of segregation on mental health functioning.

Q. And those other sources are?

A. The additional research and my clinical experience.

Q. Your clinical experience, we've talked about. The additional research would be the Colorado study?

A. That would be one.

Q. The Chadick study, the Walter study?

A. Yes, as well as others like the Zinger, et al study.

Q. The Zinger 2001?

A. Yes.

Q. That's in your meta-analyses?

A. Yes, it is. I would say the body of work that informed the meta-analyses.

Q. Okay. Fair enough. And if you look at tab 4 of Expert Exhibit 6, this is the compendium of the studies

and exhibits that you were asked about in your CCLA deposition. Is that your meta-analyses?

MR. DICKMEYER: What is the Bates number of that?

MS. FILLER: It's Vermillion 3585. And I have a paper copy, if that would be better.

MR. DICKMEYER: That's okay.

THE WITNESS: Yes, that's my --

Q. (BY MS. FILLER:) Have you located it?

A. Yes, that's my meta-analyses

Q. As I understand it, a meta-analyses is an analysis of the research that is out there on a given topic. Is that broadly correct?

A. Yes, an empirical analysis of that body of research.

Q. Using statistical analysis techniques?

A. Yes.

Q. And using these statistical analysis techniques, a large body of research can be analyzed to determine the effect of a particular variable?

A. Correct.

Q. And your meta-analyses purport to do this for the effects of segregation?

A. Yes.

Q. And the goal of the meta-analyses was to

determine the effect of segregation on prisoners' health?

A. Yes, and with a particular interest in the magnitude of that effect.

Q. Would you agree that the accuracy of your meta-analysis is only as good as the studies analyzed?

A. I would agree.

Q. As I understand it, there were two meta-analyses included in this 2016 piece, correct?

A. That is correct.

Q. There was Research Synthesis 1 and Research Synthesis 2?

A. Correct.

Q. And is yours RS-2?

A. That's right.

Q. And Paul Gendreau's is RS-1?

A. Yes.

Q. And Paul Gendreau is a Canadian researcher; is that right?

A. Yes, he is.

Q. And he's also worked for the Canadian Prison System, correct?

A. He did for a period of time, yes.

Q. And both of your meta-analyses ruled out the vast majority of the research on solitary confinement and did

not include those in your study?

A. I wouldn't agree with that.

Q. Well, RS-1 started out with 150 studies and ruled out all but 14, right?

A. I just want to get my numbers right. They started with 150 documents, not necessarily studies.

Q. Okay. And got down to 14?

A. Correct.

Q. And RS-2 started out with over 40,000 and cut that down to 19?

A. Documents, yes.

Q. And when you say "document," are we talking about a -- what would you say is the best way to describe what was contained in a document?

A. The goal was to make sure we included all relevant works. So if there was a document that we could access that discussed the issue of administrative segregation or disciplinary segregation, but the use of segregation in corrections, we pulled it and that counted in the 40,000, then we narrowed it down to the research studies, and then the research studies that actually could meet the criteria for meta-analytic review.

Q. And the criteria were what?

A. It had to be -- we had to be able to develop an

effect size. We had to be able to read the article, so it had to be in English. It had to actually study the issue of segregation and the mental health -- mental health effects. We were looking at adult institutions. Let me see if I covered them all. Those were the basics. I can look and see if I --

Q. And so RS-1 looked at 14 studies and RS-2 looked at 19 studies. How much overlap was there between the two?

A. If I remember right, and I can doublecheck for sure, but I believe -- obviously we had five that they didn't, and I believe there was two other articles that were different. I'd have to doublecheck, but it's something like that?

Q. So out of all of the research that's been done in solitary, would you agree that the meta-analyses is looking at a relatively small subset of what's out there?

THE WITNESS: Can you repeat that?

COURT REPORTER: "So out of all of the research that's been done in solitary, would you agree that the meta-analyses is looking at a relatively small subset of what's out there?"

THE WITNESS: I would say it's looking at a majority of the empirical studies that are out there,

but it is a small subset of all that's been produced on the issue of segregation.

Q. (BY MS. FILLER:) And you and your team had to go about determining effect sizes for each study, correct?

A. Correct.

Q. And how did you determine the weight to give certain effects?

A. Based on the data that was provided, we computed effect sizes based on either if the information was provided, in which case we would just extract the effect size, or if it wasn't provided, then we would compute it based on available data.

Q. Did certain studies receive greater weight due to the sample size?

A. We took into account weightings. For example, what's oftentimes done is -- I'll use the Colorado study because that's a good example, where they looked at depression and maybe had three measures on depression, and they looked at anxiety, and so they had three measures on anxiety. That could be six different effect sizes going in.

What a lot of studies will do is simply average those effect sizes for depression and average the effect sizes for anxiety and put that in, and that's not accounting for variance and interdependence of

measures and things like that. So what we did was we went one step further and used a multi-variate procedure to be able to account for the variance in things so that it would provide a more precise effect size estimate going into the total analysis so that we weren't simply overweighting a study, such like -- such as the Colorado study. Because we took their effect size and put it in. Then it's really just a summary of the Colorado study. We didn't want to do that, so we used the multi-variate meta-analytic approach such that effect sizes got weighted appropriately to allow for a more precise measure of the variable of interest. So depression, when we're looking at depression, anxiety when we're looking at anxiety.

Q. Does the weighting take into account the size of the sample in a particular study? So is a study with a larger sample size going to get more weight?

A. It would consider the sample size. It also would consider the interdependence of measures within the outcome of interest, error variance, things of that nature.

Q. And the Colorado study would have the larger sample size, right?

A. Yes.

Q. And we were looking earlier at Dr. Haney's 2018

article. Do you recall that?
A. Yes.
Q. And he had criticisms of the Colorado study, which we've discussed. One of his -- he's also criticized the 2016 meta-analyses and that piece, correct?
A. Yes.
Q. And one of his criticisms is that your meta-analyses rely heavily on the Colorado study, correct?
A. That is his criticism, yes.
Q. So that in his view, it's essentially a repackaging of the Colorado study?
A. That's his opinion, yes.
Q. And you're familiar with his critique?
A. Yes.
Q. Dr. Haney found that in RS-1, 24 of the 50 relevant effect sizes on psychological outcomes came out of the Colorado study?
A. Yes.
Q. Is that correct?
A. Yes.
Q. And that for RS-2, 140 of the 210 relevant effect sizes on psychological outcomes came from the Colorado study?

A. Correct.

Q. And was Dr. Haney right about that?

A. Yeah. I never doublechecked those numbers, but I don't doubt those numbers.

Q. Seems about right?

A. Yes.

Q. And the meta-analyses also include a study known as the Zinger study from 2001 that we were talking about earlier?

A. Correct.

Q. And that's included in both RS-1 and RS-2, right?

A. Yes.

Q. And Dr. Haney points out that RS-1 gave the Zinger 2001 study an incorrect weight?

A. I don't recall that criticism.

Q. We can look at the -- your meta-analyses directly, would perhaps be better.

A. Sure. I'm going to reach back and just grab my reading glasses.

Q. It is small print.

A. Yes.

MS. FILLER: I'm sorry, we're looking at the report of Dr. Zinger right now.

MR. DICKMEYER: I have it.

Q. (BY MS. FILLER:) Dr. Morgan, if we look at

Vermillion 3596, this is table 2 of the meta-analyses. If you see -- let's just take, for example, the psychological outcome of anger, do you see the Zinger study is listed there?

A. Yes.

Q. Okay. And do you see the sample size is reported as 136?

A. Yes.

Q. And if we look at table 4, which is -- we can look at -- hold on. Look at table 4, for example, on Vermillion 33600, and this table N is the sample size?

A. Yes.

Q. And do you see under Zinger, you have listed 60 for the sample size?

A. Yes.

Q. So 60 and 136 is different?

A. Yes. So what we did was because we were looking at pre-post, we could only look at the folks that began but also ended, and that was 60 of the 136. And what Paul and his colleagues did, I believe, were looking at the post, and so that included -- well, I'm not sure. I'd have to doublecheck our research --

Q. How could there be more in post than pre?

A. Yeah, I'm not sure on the 136. I would have to go back and see what they did on their analyses.

Q. So if there's an error in terms of the sample size, then that would effect the weight, which would effect the meta-analyses, right?

A. If there was an error, yes.

Q. And there's another criticism of the Zinger study, right?

A. Yeah, there's been in a couple.

Q. Is one of them that the Zinger study includes people who are in segregation voluntarily?

A. Yes.

Q. Do you agree that whether a prisoner is in solitary voluntarily or involuntarily could effect that prisoner's experience in their confinement?

A. It certainly could.

Q. And by the end of the Zinger study, which lasted 60 days, only ten people were involuntarily in segregation, correct?

A. That sounds right.

Q. And so approximately 80 percent of the prisoners in the segregation group had left by the end of 60 days?

A. Yes. Again, that sounds correct.

Q. Meaning that the experience of the prisoners who had left segregation were not included in the Zinger analysis?

A. I'm sorry, say that again?

Q. Meaning that the prisoners who had -- were not a part of the study at the end of 60 days, their experiences weren't captured in the results of that study?

A. Correct.

Q. And there -- prisoners who have a particularly difficult time in segregation might be required to leave segregation, right?

A. They might be.

Q. And that isn't accounted for in the Zinger data, the attrition rate?

A. Possibly not. Well, the attrition rate, no. But the reasons for the attrition, possibly not.

Q. We don't know?

A. Right.

Q. And another criticism is that many of the prisoners in the Zinger study had been in segregation before the 60 day period, right?

A. Correct.

Q. So again, we have this contamination issue?

A. Yes.

MS. FILLER: Let's take a very quick break.

VIDEOGRAPHER: We're now off the record at 3:05.

(Break.)

VIDEOGRAPHER: We're now back on the record at 3:10.

Q. (BY MS. FILLER:) Dr. Morgan, another of Dr. Haney's criticism of the meta-analyses is that some of the studies included aren't very probative one way or the other, right?

A. Right.

Q. And he noted that the Cloyes, is it, 2006 study --

A. Yes.

Q. -- are you familiar with that study?

A. Yes.

Q. That it did not actually compare segregation populations with general population prisoners?

A. Right.

Q. Is Dr. Haney correct about that?

A. Can I pull up the Cloyes?

Q. Yeah, it was -- so --

A. I believe it's right here.

Q. You've got a tab there. Yeah, it's 3651, Vermillion 3651. And if you look at the page describing the method, it's Vermillion 3655. And it says that the participants included inmates housed in three SMUs at the time of the study. And an SMU, of course, is a special or secure management unit, right?

A. Right. I'm sorry, I just have to review that. I don't remember if I quoted the article or not, so that's why I'm reviewing it. Yeah, this was a study of super maximum secure facilities, which is essentially a unit utilizing segregation practices. So these inmates were segregated. Just not necessarily -- it's just not described as administrative segregation, but they were in a restricted housing unit.

Q. I agree.

A. So what was the question, I'm sorry?

Q. My question is there's no control group of general population? That's not what the study -- what the Cloyes study is?

A. Oh, right. Right. It was just a -- it only assessed the inmates in the super max facility.

Q. Right.

A. Right.

Q. So unlike the other studies that you included based on your selection criteria, there's not a control -- it's not a controlled study of general population versus segregation?

A. Correct. This one did not have a control group. Yes, I'm sorry, I was --

Q. It was probably a poor question.

A. -- probably misunderstood the question.

Q. That's all right. We're on the same page now. And then I wanted to ask as well about the Walters 1963 study, which you've included. This is at Vermillion 3888 or tab 15. This study included all volunteers, right, the prisoners volunteered to participate in the study?

A. That does sound right, but let me just doublecheck.

Q. I can point you to -- it's Vermillion 3888, under "Method, 40 long-term prisoners volunteered for a study."

A. Yes, correct.

Q. And we've already discussed that the nature of participation as voluntary could have an effect on prisoners' experience of those conditions?

A. It could.

Q. And this study also only studied the effects of solitary confinement over a period of four days, correct?

A. Correct.

Q. Would you agree that that's very different than solitary confinement for a period of four years?

A. I would agree.

Q. And if I could direct your attention to the Ecclestone 1974 study, which is Vermillion 3955?

A. Yes.
Q. Are you familiar with this study as well?
A. Yes.
Q. And this study, as I understand it, was also all volunteers? If I could point you to --
A. Potential volunteers.
Q. Yeah.
A. Yes.
Q. "Methods." All volunteers, right?
A. Correct.
Q. And the maximum stay in segregation that was looked at in this study was ten days?
A. I don't doubt that. I don't recall that, but I don't doubt it.
Q. And again, we would expect to see different effects of ten days of solitary confinement versus four years of solitary confinement?
A. We could.
Q. In your report, you opine that -- and this is your words, "the use of restrictive housing, such as AS, will, on average, produce mild to moderate health and mental health effects comparable to the effects of incarceration as a general matter," end quote. Is that correct?
A. That's correct.

Q. And you've described that the harms that solitary confinement can cause include anxiety, depression, posttraumatic stress and somatoform complaints; is that right?

A. Yes. So that's examples of some of the symptoms that can occur.

Q. There are more?

A. Oh, yes.

Q. Is mild to moderate health effects an average?

A. Can you phrase that differently? I'm not sure I'm understanding.

Q. Sure. So you've said that in your opinion use of restrictive housing will, on average, produce mild to moderate health and mental health effects. So when you say "average," I'm just asking some people have much worse than mild to moderate and some people have less than mild to moderate health effects; is that right?

A. Yes. Yeah, that would be kind of the average that you can expect across the population.

Q. And, in fact, we assume that there are going to be more and less severe cases when we're looking at an average?

A. Statistically, that's what would happen, yes.

Q. So in your opinion, on average, prisoners in solitary suffer mild to moderate harm, but some can be

harmed less than the average and some more than the average?

A. Correct.

Q. And regarding Mr. Vermillion, you have no basis to make conclusions about where he falls in that potential for harm?

A. That's correct.

Q. What do you consider mild to moderate mental health effects? And let me specify, I'm wondering if you're describing symptoms as to mild to moderate intensity or if you're referring to the effect sizes?

A. No, I'm referring to symptoms.

Q. Okay.

A. Yeah.

Q. And so how would you describe mild to moderate symptoms?

A. Mild to moderate would be if an individual was functioning well in general population and having no adverse reaction or symptoms, place them in segregation, if their mood was negatively impacted, became more lethargic, for example, and socially withdrew, that would be depending on the severity of those symptoms mild to moderate. It could be severe. So it depends on the severity and the impairment of function.

Q. And so that's what I'm trying to parse, that

severity question. So let's talk about lethargy. What is mild lethargy, moderate lethargy and severe?

A. Severe would be, "I can't get out of bed. I just stay in bed all day and spend 23, 20" -- or sorry, "20, 21 hours a day in bed because I don't have the energy to get up. Even if I want to get up, I don't have the energy." That would be severe. Mild would be, "Yeah, I'm not doing as well as I was yesterday. I went to rec, but instead of running around, I just kind of walked around. I just wasn't feeling as good." And moderate would be somewhere in between.

Q. And so then as I understand it, you agree that there are negative mental health symptoms associated with spending time in segregation? Your point is just that there's a range of severity?

A. That's one of them, yes. Yeah, on average, your average inmate is going to have some negative experiences while -- when placed in segregation. It's an issue of severity. So to that point, yes.

Q. And how would you distinguish mild, moderate or severe feelings of suicidality?

A. Clinically, I would be looking at -- there's indicators of suicide. Is there a plan? Is there an intent? Is there access to -- to whatever the plan would be? Is there a history? The more indicators, the

more severe the risk. The fewer the indicators, "I wish I were dead, but I don't have a plan to kill myself," that's lower risk. Then somebody who, "I want to die, here's how I would do it, so I have a plan," and they could actually carry the plan out in their current situation, that's higher risk.

Q. So let me -- I think we're -- I probably got us off track, because now we're talking about risk of actually committing suicide. And I think it would be maybe more probative to talk about depression or hopelessness.

A. Okay.

Q. And so how do we establish if depression is mild, moderate or severe?

A. You can assess via clinical interview, you can assess through behavioral observations, you can assess with a measure. There's different ways to get at it. Collateral information can enlighten the clinical interpretation. There's a number of ways to get at that.

Q. And so if a prisoner reported that he wanted to die, would that be mild, moderate or severe depression?

A. No one indicator, no one symptom is going to determine how we would classify a risk level or a severity. It's looking at a cluster of symptoms. So

when looking at depression, for example, I'm looking at is there suicidal ideation, but I'm also looking at that energy level, level of lethargy, lethargic sort of behaviors that we're talking about, engagement in social activities or social withdrawal, engaging in activities that they usually find pleasurable. So reading, are they still reading if they like to read, things like that. It's looking at the cluster of symptoms that go to a construct like depression. And the more that are endorsed and the more severely they're endorsed, the more severe the diagnosis.

Q. And you reviewed Dr. Kupers' report regarding Mr. Vermillion, right?

A. I did.

Q. And the description that he gives of Jay Vermillion, would those effects be mild, moderate or severe, in your opinion?

A. I didn't think of it that way, so I'll need to look at. Can you give me a minute, and I'll look at the report and see what I think?

Q. Yeah, let's do that.

A. So I'm using my report that I brought.

Q. You know what? Thank you. I hadn't entered it into evidence as an exhibit, but let's do that.

(EXPERT EXHIBIT NO. 18 MARKED.)

MS. FILLER: And I'll note for the record that this is confidential under the protective order, so we'll maintain the confidential designation.

MR. DICKMEYER: What was the exhibit number?

MS. FILLER: 18.

Q. (BY MS. FILLER:) And just as a precursor question, Dr. Morgan, I take it that from what you've just said in your work on this case, you didn't perform an assessment as to whether the symptoms that Dr. Kupers identified as Mr. Vermillion having experienced whether those were low, mild, moderate or severe effects?

A. No, I did not.

Q. Okay. And so you've just been passed Expert Exhibit 18. If you look at page 28, there's a section "Psychological and Physiological Response to Solitary Confinement" that might be helpful. I can just point out that he describes having heart palpitations, being nervous and anxious the entire time he was in solitary, that he felt very strong anxiety and depression, that he considered suicide quite a lot and tried to hang himself with a towel, but decided against it because of his Christianity. That he would get enraged and start kicking his door. That he would then collapse, feel anxious and worried.

A. Yeah. Based on what I'm reading there -- again,

to truly give an opinion as to Mr. Vermillion's mental state, I would have to do my own assessment. But based on what Dr. Kupers is reporting, I'd say moderate to maybe severe.

Q. And he also describes, "quite a lot of obsessive thinking and compulsive activity beginning only after he entered solitary in 2009. Shaving his eyebrows and plucking his eye lashes, changing his appearance. That he was compulsive about ants and bugs on the floor, and as he explains this to me, he physically gets down on the floor and looks around for signs of vermin. He became quite compulsive about everything in his environment being in its right place."

And he also goes onto describe how "he is since leaving segregation much more withdrawn, doesn't go to chow hall, would prefer to eat alone." Does that -- does that sound like the kind of functional impairment that you were mentioning earlier?

A. Yeah, it could be, yeah. That's the kind of thing I would be looking for, yes.

Q. And so understanding that I'm not asking about your own evaluation of Mr. Vermillion because you didn't do one in this case, but based on what Dr. Kupers is reporting, would you agree that these are moderate to severe effects of solitary?

MR. DICKMEYER: Objection. Form.

Q. (BY MS. FILLER:) I believe that's what you testified to a moment ago. I'm just trying to make sure I understand.

A. Yeah, with the caveat that if the data is valid that Mr. Vermillion would be suffering psychological symptoms in the moderate to severe range, I would agree with that. Whether it's attributable to segregation, I don't know.

Q. And again, these are the kinds of symptoms that have been reported as the kinds of symptoms you see from people who have been in segregation for a long time?

A. Yes.

Q. And so going back to this opinion that you've offered, "That the use of restrictive housing will on average produce mild to moderate health and mental health effects comparable to the effects of incarceration as a general matter," the point there is that you're establishing a comparison to just being in prison?

A. Correct.

Q. And what are the sources that you're relying on for that aspect of your opinion?

A. My knowledge of the research and clinical experience.

Q. And so in your report, you have a bar graph which purports to show that this is the case, correct?

A. It provides data to support that, yes.

Q. And so if you could look at page 10 of your report for a moment?

A. Yes.

Q. You have a "Figure 1, Administrative Segregation versus General Incarceration Effect Size Estimates." The lightly shaded bars are effect sizes from the meta-analyses that we were talking about earlier, correct?

A. Specifically my Research Synthesis 2.

Q. That was my next question, so thank you. And then the dark bar is from the -- a Bonta and Gendreau study from 1990; is that right?

A. Correct.

Q. And the point here, as I understand it, is that the general incarceration -- effect of general incarceration on psychological well-being is about .44?

A. Correct.

Q. And that would be a moderate effect size, right?

A. Yes.

Q. Is .5 generally considered moderate?

A. Yeah, with the type of effects as we had here, yes.

Q. And so your point is that that is not so different from the effect sizes that you've identified in your RS-2 study?

A. Correct.

Q. So for example, mood and emotion in RS-2 had an effect size of .55?

A. Right.

Q. Which is a moderate effect?

A. Right.

Q. Which would indicate that people in segregation had negative effects on their mood or emotion?

A. Correct.

Q. And then your -- and that is itself derived from comparing populations in segregation to populations in general population?

A. Correct.

Q. And then you're comparing that to a study from Bonta and Gendreau, a totally different study that wasn't included in your meta-analyses?

A. Right.

Q. The Bonta and Gendreau study, that study was a study of the effects of overcrowded prisons on prisoners' psychological well-being, right?

A. That was one aspect of it, yes. They looked at a few variables, but the effect size I pulled there was

from the overcrowding data.

Q. So what their goal was in establishing this effect size was to isolate a variable, right?

A. Yes.

Q. And the variable in that study was overcrowded prisons?

A. Correct.

Q. Which some prisons are overcrowded, but not all prisons are overcrowded?

A. Right.

Q. So we're comparing the effect sizes of the harms of segregation to the effect sizes of the harms of living in an overcrowded prison?

A. That would be fair.

Q. And I noticed when I was reviewing your report in the CCLA Case that you included a similar bar graph in that case report?

A. Yes.

Q. Do you recall submitting that report?

A. Yes.

Q. And that bar graph had another bar from a different study for physical health?

A. Right.

Q. And that bar was referencing the Heigel study, correct?

A. Correct.

Q. And that is at tab 3 of the big compendium here, Expert Exhibit 5 -- no, Expert Exhibit 6. Should be the third tab there (indicating).

A. Oh, there we go.

Q. Can you read the Bates number there for us?

A. The number at the bottom? Vermillion?

Q. Uh-huh.

A. 003571.

Q. Thank you. And do you mind also referring back to the report that you prepared for the CCLA Case? It was Expert Exhibit 4. I know I told you to not worry about the order, but -- there you go.

A. There (indicating).

Q. Thank you. So the bar chart that you submitted in that case is at Vermillion 4130. Do you have it there?

A. Yes, I have it.

Q. And so here you have your RS-1 effect sizes, the Bonta and Gendreau effect size regarding overcrowding, and then you had the Heigel 2010 study, which showed .18, right?

A. Right.

Q. And the Heigel bar was representing physical health, correct?

A. Correct.

Q. And did you later learn that there was an error in the inclusion of this bar?

A. Yes, had a computational error.

Q. Okay. Can you describe that computational error?

A. I had inverted -- I forget the exact data point or what, but I had it inverted.

Q. So as I understand, and you can tell me if this sounds right, but in this case you had looked at the Heigel study, which measured physical health and given it a negative effect size of .18 -- or negative is maybe not the correct term, but negative health outcomes were associated with general incarceration at a .18 effect size?

A. Right. Right.

Q. And that actually, that was a mistake and it should have been negative .18?

A. Yes, they improved in terms of their physical health functioning.

Q. And so when we compare that study's effect size to, for example, your chart here of physical health, which is .37 effect size from your study, that would tend to show that there was a major difference in the physical health of prisoners in segregation as opposed to the physical health of prisoners in general

population?

A. Yeah, except this was prisoners in jail, inmates in jail, so it was a different setting. But yes.

Q. Well, I mean, you included it here because you thought that there --

A. Yeah, of course.

Q. -- was value in comparing them?

A. Yeah, of course.

Q. And so I'm curious as to why you didn't include this in your report in our case?

A. Because I didn't want to have to deal with the issue of a computational error for one, and it seemed less relevant at that point.

Q. Well, I assume that you would have fixed the error in this case once you realized it. And so my question is, why not show in your report that, you know, actually for physical health your study and your comparison would show that prisoners on average are effected in terms of their physical health by segregation?

A. Sure.

MR. DICKMEYER: Objection. Asked and answered. You can answer it.

THE WITNESS: So there was the issue of the computational error. In working on a manuscript, and

we've published a similar -- or we're publishing a similar graph, it was pointed out that the jail doesn't necessarily offer a good comparison. I don't know if I necessarily agree with that, but that was the feedback, so I took it out, and I've not used it since.

Q. (BY MS. FILLER:) I appreciate the explanation. But earlier, you were describing how the segregation in jail is -- can actually be comparable to that.

A. And I think it can be. But it in the review process raised an issue, so I quit using it.

Q. And this comparison that you've shown us in this bar graph and -- that's not in the 2016 meta-analyses, correct?

A. No.

Q. The meta-analyses didn't endeavor to compare the effect sizes found regarding segregation with the effect sizes of general incarceration, right?

A. I'm sorry, say that again?

MS. FILLER: Can you read it back?

COURT REPORTER: "The meta-analyses didn't endeavor to compare the effect sizes found regarding segregation with the effect sizes of general incarceration?"

THE WITNESS: No, the meta-analyses is a comparison of what happens in terms of mental health

functioning in segregation relative to where folks were at in terms of mental health functioning in general pop, not to directly compare effect sizes from ad seg to effect sizes in general pop.

Q. (BY MS. FILLER:) Right. And so this is why, to me, this bar graph seems duplicative in a way. The meta-analyses, the goal, is to compare segregation in general population to isolate the effect of segregation on those prisoners as compared to general population, right?

A. Right.

Q. So comparing that to a wholly different study that purports to show the effect sizes of general incarceration on mental health, we just did that.

A. Okay. I'll try to explain. It's my opinion that when you take somebody from general population and put them in segregation, there's going to be a negative effect on average, and that's what our meta-analyses shows in the mild to moderate range.

It's also my opinion that the effect that you experience or observe in that analysis will be the same when you take somebody from outside of prison and put them in prison. There will be a negative reaction to being incarcerated. And that negative reaction to being incarcerated in terms of magnitude of effect is

about the same is what you're going to get when you take an inmate from general population and put them in segregation.

Q. Are the populations that you're comparing, using for your comparison, the general population here at the Bonta and Gendreau, generally, are you accounting for the fact that those folks might be in segregation at some point?

A. No.

Q. Have you published in a peer review journal your work to compare the effect sizes of segregation that you found in your 2016 meta-analyses with the effect sizes of general incarceration on prisoners' well-being?

A. If I did, it would be in that Corrections Today article. And I don't remember, I think we published a figure, but I don't remember if I had the general pop figure. I'd have to look at it. I think it's in here.

Q. It's okay. That would be the only one that you can think of?

A. That would be the only one, yes.

Q. Okay. Your 2016 meta-analyses study posits that "It could be that prisoners who suffer the most in segregation do so because of a culture of harm." Do you recall that?

A. Yes.

Q. And you define the term "culture of harm" as a situation in which correctional staff, quote, "NAS denigrate, harass and treat inmates capriciously, and induce uncertainty as to how long they will remain in AS while providing little in the way of treatment and related services," end quote. Do you recall that aspect of your study?

A. Yes.

Q. Do you agree that such a culture is likely to cause mental suffering?

A. It certainly could, and it would be -- it would increase the risk, for sure.

Q. Do you agree that when prisoners have no idea when or if they'll be able to leave administrative segregation that lack of certainty is likely to cause psychological distress --

MR. DICKMEYER: Objection. Calls for speculation.

Q. (BY MS. FILLER:) -- based on your study? You're the expert.

A. Yeah, I would say that, again, it certainly increases the risk, but it's not necessarily a universal fact that indeterminate sentencing in segregation is going to cause harm. But that's one of the factors that -- that I discuss as something that we can change to

reduce risk.

Q. Certainty of the steps that a prisoner needs to take to get themselves back to general population could help?

A. Yes. I talk about that in the Corrections Today article.

Q. That's part of your thesis of the Stepping Up, Stepping Out is that prisoners should have a pathway out of segregation, right?

A. Yes. We don't have that woven into that program because it's a treatment program, but stepdown process to go from segregation to general population is good practice.

Q. And it's good for prisoners' mental well-being?

A. I believe it can enhance inmates' well-being, yes.

Q. You also state in your report, and I believe you said this in other cases as well, that, quote, "At the individual level, some inmates placed in AS will experience negative effects, some will not experience negative effects, and some will experience improved functioning," end quote. And I won't belabor the point, but I take it that you're relying on your clinical experience and your study of the sources that we talked about today?

A. Yeah, I would say the body of literature, which would include -- yeah, the studies we've talked about today, yes.

Q. What do you rely on for your opinion that some prisoners will improve their functioning due to the segregation?

A. Well, that -- and one would go to my clinical experience. I observed that. I would include in there inmates that have asked to be in segregation. But also if you look at the meta-analyses and some of the other studies, statistically it suggests that you're looking at averages. If the average is in the mild to moderate range on whatever variable and whatever study, that would suggest that some people are going to be higher but then some people are going to be lower. So statistically, it makes sense as well, and I think that's supported, at least in part, by the meta-analyses and some of the other research.

Q. Well, if I understand averages, if you're going to find a mild to moderate, as we said, some will have the larger effect, some will have a less serious effect. That doesn't necessarily mean that some are going to get so much better than they were before, does it?

A. Not nec --

MR. DICKMEYER: Objection. Form.

THE WITNESS: Sorry. Not necessarily.

Q. (BY MS. FILLER:) So that's not an inevitable conclusion from -- from that body of research?

A. No, I would say that's not an inevitable conclusion from any of the research.

Q. And you've said that in your experience some prisoners experience improved functioning while in segregation, and you've said that that is true especially for people who are there voluntarily, right -- or may not especially, but one category is people who are there voluntarily?

A. Yeah, I wasn't putting those two issues together, but it seems to reason and my experience in interviewing inmates for various reasons, if they're asking to be in segregation it's because they feel like that's a better place for them where they will do better. So that's one consideration.

Separate from that, my clinical experience in working with inmates in segregation, I observed inmates that improved in terms of functioning.

Q. I agree, and I just want to take them separately for a moment, if I could.

A. Sure.

Q. So in terms of prisoners who asked to be in segregation, that's called protective custody, right?

They're asking to be in segregation because there's a threat to them in general population, and they need to be in segregation for safety?

A. Sometimes. Not always, but sometimes.

Q. So for those prisoners, they might improve in functioning because they're not at immediate risk of being killed?

A. Or harmed. For those prisoners, that certainly could be the case.

Q. And then with regards to your clinical experience, are you describing a time in Kansas? What clinical experience have you had where you've witnessed a prisoner who has improved their mental health functioning while they were in segregation?

A. Most specifically, my time in Kansas.

Q. And that was the period we talked about in the early '90s?

A. Yes.

Q. You -- we've referred to this at various times today, but your report cites a recent Kansas study with the lead author Chadick. It was -- it came out in 2018, right?

A. Yes.

Q. And that study relied entirely on self-scoring, correct?

A. Yes.
Q. Did not include clinical evaluations?
A. Correct.
Q. The prisoners completed a psychological instrument called the MCMI-3?
A. Yes.
Q. And as I understand it, that's a 175 question true/false psychological instrument?
A. That's correct.
Q. And in the Chadick study, you had a relatively small sample size of 50; is that right?
A. I think it was 40. Maybe it was 50. It was 40 or 50.
Q. Fair enough.
A. It was small.
Q. And the study noted that the -- it was a small sample size because there wasn't enough funding?
A. Yeah, it was a student project.
Q. Did you or the study authors ever apply for funding for that study?
A. No.
Q. And did the study evaluate prisoners in some of the same segregation units that you yourself had worked in when you were a mental health professional in Kansas?
A. That I don't know. That's a -- I never thought

of that. That's a -- I don't know. I would have to ask the lead author.

Q. And the study did find that "AS was associated with higher scores, which would indicate more severe symptomatology, on every scale as compared to general population, including anxiety, somatoform disorder, dysnea, PTSD and major depression"?

A. Let me look. Is that --

Q. Do you have the Chadick?

A. I don't know if that's an exhibit.

(EXPERT EXHIBIT NO. 19 MARKED.)

Q. (BY MS. FILLER:) Dr. Morgan you've just been passed Exhibit 19. Is this the Chadick study that we've been discussing?

A. Yes.

Q. And if I could draw your attention to Vermillion 4533, please?

A. Yes.

Q. And under "Results," do you see where there was a significant effect on housing location on the scores for the measures that I've just indicated?

A. Yes.

Q. And this article, the Chadick piece, also recommends a series of interventions or best practices, correct?

A. Yes, we did.

Q. And one of them is the Stepping Up, Stepping Out Program that you yourself developed?

A. Yes, we included that simply as an example of something that somebody might use in intervening.

Q. I want to make sure that I understand your criticism of Mr. Pacholke's report, if I could?

A. Yes.

Q. Mr. Pacholke, you understand that he's a longtime corrections professional, right?

A. Yes.

Q. And your work in corrections has always been in the mental health sector, right?

A. That's correct.

Q. You have not worked as a prison administrator or a prison official, correct?

A. Correct.

Q. And I take it you do not hold yourself out as an expert in correctional practices?

A. Correct.

Q. And your criticism of Mr. Pacholke is that he says prison administrators should have let Mr. Vermillion participate in a stepdown program. Because you say it's an unfair criticism, stepdown programs weren't best practices at the relevant period?

A. That rehabilitation as a practice for altering inmate behavior in ways that would help them stay out of segregation wasn't commonly recognized as a -- as a practice within segregation.

Q. But you agree --

A. At that time, yeah.

Q. But you agree that prisoners in segregation should be given incentives to improve their behavior and leave segregation?

A. I do.

Q. And you agree that there should be a clear pathway for them to work their way out of segregation?

A. I do.

Q. So your problem with Mr. Pacholke's conclusions is that you don't agree it was the best practice or the common practice as of 2009 to 2013 when Mr. Vermillion was himself in segregation?

A. Correct.

MR. DICKMEYER: Objection. Form.

Q. (BY MS. FILLER:) Are you familiar with the Act Program in the Indiana Department of Corrections?

A. No.

Q. I'll represent to you that Gary Brennan, who is a Defendant in this case, testified that he developed the Act Program as a way for prisoners in segregation to

stepdown from segregation. Did you have that information when you expressed your criticism of Mr. Pacholke's conclusion?

A. No.

Q. And were you aware that Mr. Brennan developed the Act Program for Indiana after he had observed a similar program in Colorado?

A. No.

Q. And I don't know what the program was specifically that he observed in Colorado, but seems like it's possible it's that quality of life privileges model that we discussed earlier, because we know that Colorado did, in fact, have some kind of incentive-based program at the time of the Colorado study, right?

A. Yes, they did in Colorado.

Q. And the Colorado study came out in 2010, right?

A. Right.

Q. So at least if you -- if you accept for a moment my representation regarding what Mr. Brennan testified to, then you'd agree that Indiana and Colorado, at least, had stepdown incentive-based programs at the relevant period?

A. Yeah, based on what you're telling me, yes.

MS. FILLER: I think we're just about done. Let's take a couple of minutes so I can review and see

if there's anything I've missed.

THE WITNESS: Okay.

VIDEOGRAPHER: We're now off the record at 4:0 -- 4:01.

(Break.)

VIDEOGRAPHER: We're now back on the record at 4:17.

Q. (BY MS. FILLER:) Just a few more questions, Dr. Morgan.

A. Okay.

Q. Do you --

VIDEOGRAPHER: Can you put your mike on?

MS. FILLER: Nope. Thank you.

Q. (BY MS. FILLER:) You criticized Dr. Kupers for referring to SHU Post-Release Syndrome; is that right?

A. Yes.

Q. And as I understand it, your criticism is that this isn't a official diagnosis in the DSM, right?

A. Well, that it's not an official diagnosis and not a scientifically accepted syndrome.

Q. Do you agree that the symptoms that he describes are, in fact, symptoms that have been associated with people after they've been released from long-term solitary?

A. I do.

Q. And you've described in your report an anonymous prisoner. You call him, I think, Prisoner A?

A. Yes.

Q. And I've reviewed a few of your reports in other cases now, and I feel like I've seen that description also attributed to a prisoner named Jonathan?

A. Yes.

Q. And is that just the same person but a different way of anonymizing the prisoner for purposes of confidentiality?

A. That's correct.

Q. And I read in one of the depositions, I believe, that Jonathan, or Prisoner A, was a real prisoner who you evaluated in Pelican Bay?

A. Correct.

Q. And how many prisoners did you evaluate in Pelican Bay again?

A. Somewhere between 40 and 50.

Q. And was Jonathan the only prisoner who -- well, strike that. Some prisoners, I assume, from that sample described negative mental health effects from segregation?

A. Correct.

Q. And some of those negative mental health effects were severe, some were moderate, and Jonathan would have

been in the low end?

A. Yes.

Q. Was Jonathan the prisoner who had the least negative effects from segregation?

A. I don't recall specifically. He was not one of the class members named. And relative to them, yes. Relative to the others, I would need to go back and look at my -- my notes on that.

Q. One moment. I see you've already got it?

A. Yes.

Q. Expert Exhibit 5, which is the deposition, or as the Canadians call it, cross-examination transcripts, from the Canadian Civil Liberties Association, the CCLA Case?

A. Yes.

Q. And if I could draw your attention to Vermillion 4341, which is page --

A. I'm there.

Q. Okay. And you were asked at line 13, quote, "Dr. Morgan, how does Jonathan, the Jonathan example, relate to the other 150 you interviewed?" Answer, "And just to be clear, it was approximately 150. I don't recall the exact number, somewhere around 130 to 150. Jonathan reported less concerns." And then goes on to say on the next page that essentially, "He expressed no concerns

and no significant distress, whereas the majority of other inmates I interviewed expressed distress and concern resulting from their segregation placement." Does that refresh your recollection some?

A. Yes, it does. Yeah.

Q. And is this deposition testimony that you gave in the CCLA Case regarding Jonathan accurate?

A. Yes, it's accurate.

MS. FILLER: No further questions at this time. Thank you.

THE WITNESS: Thank you.

MR. DICKMEYER: I don't have any questions at this time. So we're off the record.

VIDEOGRAPHER: We're off the record at 4:23.

(End of video part of depo.)

MR. DICKMEYER: Would you like an opportunity to read and sign the transcript or waive?

THE WITNESS: Whichever. I mean, I don't know. I don't think I've ever been asked that.

MR. DICKMEYER: We'll take the signature. You can send it to our office, and I'll get it over to Dr. Morgan.

(Deposition concluded.)

(Signature of witness required.)

CHANGES AND SIGNATURE

WITNESS NAME: DR. ROBERT MORGAN

DATE OF DEPOSITION: May 21, 2019

PAGE	LINE	CHANGE	REASON

I, DR. ROBERT MORGAN, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
DR. ROBERT MORGAN

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared DR. ROBERT MORGAN known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____
COMMISSION EXPIRES: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

JAY VERMILLION,)
)
Plaintiff,)
)
VS.) Case No. 1:15-CV-0605-RLY-TAB
)
MARK LEVENHAGEN, et al,)
)
Defendants.)

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REPORTER'S CERTIFICATION
ORAL AND VIDEOTAPED DEPOSITION OF DR. ROBERT MORGAN
May 21, 2019

I, Jamie Jackson, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, DR. ROBERT MORGAN, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That pursuant to the applicable rules, the deposition was submitted on _____, 2019 to the witness or to the attorney for the witness for examination, signature and return to me by _____, 2019;

That the amount of time used by each party at the deposition is as follows:

MS. MAGGIE E. FILLER: 05 HOURS: 16 MINUTES

MR. DAVID C. DICKMEYER: 00 HOURS: 00 MINUTES

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

MS. MAGGIE E. FILLER, Attorney for Plaintiff

MR. DAVID C. DICKMEYER, Attorney for Defendants;

That $_____ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this ___ day of May, 2019.

_____

JAMIE JACKSON, CSR, Texas CSR #2583
Expiration: 04/30/21
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