

OUR FIGHT TO HELP COURTS UNDERSTAND THAT SOLITARY CONFINEMENT CAUSES BRAIN DAMAGE

NATE A. LINDELL[∞]

In this article, Lindell discusses his experience with solitary confinement, and describes his ongoing struggle to gain legal recognition of the pain it causes.

The first day that I entered Wisconsin's prison system in 1998 with a life sentence, I asked, "Where's the law library?" I studied law for three years before I was transferred to Wisconsin's supermax prison. I was then a member of the class-action lawsuit *Jones-El v. Berge*,¹ which resulted in a preliminary injunction requiring that mentally ill prisoners be sent out of that prison...which otherwise, for the most part, left those not fortunate enough to be diagnosed as mentally ill to suffer.

I had no choice but to consider the nature of that suffering, as I spent more than ten more years in Wisconsin's supermax, in solitary confinement, with mental health issues such as PTSD ignored because acknowledging them might mean officials would need to let me out of solitary.

While I was in solitary, daily experiencing physical pain, I noted media reports about breakthroughs in understanding the effects of trauma and untreated PTSD, including David Eagleman's PBS series "The Brain"² which, among other things, explained the pain caused by social deprivation. I realized that the pain I was experiencing in solitary confinement *must* be physically affecting/modifying my brain, yet I knew that I lacked the qualifications to convince a court of that. But the issue intrigued me, and I kept studying psychology.

I'd won an important free speech case, *Lindell v. Frank*,³ and I'd won cases for other prisoners too, like *Koutnik v. Berge*.⁴ But I knew that without an expert backing me up, as reasonable as my theory was, a suit claiming that solitary confinement caused brain damage (surely subjecting prisoners to conditions that inflicted brain damage would implicate a "basic human need," constituting "cruel and unusual punishments" under the Eighth Amendment),⁵ would likely be dismissed, particularly given the courts' repeated tolerance of the practice.

While I lacked an expert, beginning in 2015, I spent around two years exhausting the grievance process with the claim of how the practices in Wisconsin's main solitary-confinement prison (the Wisconsin Secure Program Facility [W.S.P.F.], the "former" supermax) constituted torture and probably caused brain damage from the unrelenting stress that they inflicted on us. The process first required me to first write

[∞] Nate A. Lindell has long written about his prison experiences on: betweenhebars.org/blogs/540/. His supporters run <[facebook.com/PrometheusWrites](https://www.facebook.com/PrometheusWrites)> for him, where you may find his exposés, art, and legal updates.

¹ 374 F.3d 541 (7th Cir. 2004).

² *The Brain with David Eagleman* (PBS television broadcast 2015).

³ 377 F.3d 655 (7th Cir. 2004).

⁴ 2004 WL 1629548 (W.D. Wis. 2018).

⁵ See *James v. Milwaukee Cty.*, 956 F.2d 696, 699 (7th Cir. 1992) (holding that deprivations of "basic human needs" trigger eighth amendment scrutiny); U.S. CONST. amend. VIII.

to the appropriate supervisors with my concerns (I was limited to filing one grievance per week), then obliged me to appeal the decisions to the Wisconsin Department of Correction's main office. One of the practices that I challenged was the requirement that prisoners deemed "high-risk" for violence, many of whom had spent years or even decades in solitary confinement, attend group recreation with each other, in a locked, small, concrete bunker...with no guards present. (Guards *were* present in the recreation areas for prisoners in W.S.P.F.'s general population). Many prisoners had been stabbed or otherwise assaulted in those solitary-confinement recreation rooms, which we called "murder rooms."

As I finished up exhausting the grievance process for the suit I'd hoped to file about conditions at W.S.P.F., I happened to receive some issues of *American Scientist* from a charity that sent free reading material to prisoners (*American Scientist* is a more scholarly magazine than the similarly named *Scientific American*). In one of the issues was an article authored by Dr. Michael J. Zigmond, whom it was noted had co-authored the ethical guidelines for the Society for Neuroscience (S.F.N.). I wrote to Dr. Zigmond to ask if he might provide an expert report on the effects of solitary confinement, letting him know of my studies of neuroscience. Dr. Zigmond was impressed, wrote me back, offered to provide such a report, and told me that he'd been studying the effects of isolation for several years in experimental animals and would like me to help him understand what solitary confinement was actually like.

So I mailed Dr. Zigmond my suit, which described the conditions, included realistic drawings of the cells, hallways, down to the locks on cell doors, and asked him to provide an opinion as to how those conditions would impact our brains, particularly someone such as myself who has untreated PTSD. This was a distinct question from the one that many past experts had answered—past experts in suits challenging solitary confinement only opined that the conditions deteriorated *mental* health, caused *behavioral* deterioration, not *physical* damage to brains.

However, before I could file the suit and before Dr. Zigmond could finish his expert report, I was stabbed in my head in one of those murder rooms by a prisoner who'd been kicked out of the Iowa prison system for founding a white supremacist gang, repeatedly making weapons, attacking staff and inmates, and putting hits on both staff and inmates there. Somehow the W.S.P.F. staff failed to notice the 10 ½-inch steel shank that the guy had in his waistband and let him bring it into the rec room where I was, even though he wasn't even signed up for group recreation that day. (This is being litigated in the Western District of Wisconsin U.S. District Court,⁶ which was set for trial, but the court decided that a psychiatrist must evaluate me to see if my PTSD is acute enough that counsel should be appointed to represent me at the trial.)

I almost died from that stabbing and had 32 staples put in my scalp to hold it back together. I was brought from the hospital to another prison, where I was still kept in solitary confinement and harassed by guards for helping other prisoners sue over even worse conditions than what I'd experienced at W.S.P.F.—I'm suing about

⁶ Lindell v. Boughton, 2021 WL 4893387 (W.D. Wis. 2021).

that treatment in the Eastern District of Wisconsin U.S. District Court⁷—until they transferred me out of that prison three months later.

While I was healing from the stabbing and living a shit-smear cell at the new prison, I filed my suit challenging the conditions at W.S.P.F. The case was *Lindell v. Jess*.⁸ I explained to Dr. Zigmond how to properly draft his Expert Report, gave him time to revise it, and then filed it.

The defendants moved to dismiss the case, claiming that I'd deceived the court as to my three-strikes⁹ status, even though I'd paid the entire fee a year earlier. (It took the judge *two years* to screen and approve one of my claims). Yet even with Dr. Zigmond's Expert Report, the judge concluded that my claims about W.S.P.F.'s conditions causing brain damage weren't supported. On his own, the judge ruled that I had to pay the fee in order to proceed, because I'd had three prior cases deemed meritless, something that I wasn't aware of at the time that I filed the suit. The district court granted the defendants' motion to dismiss my case as a sanction for failing to inform the court of my three strikes when I filed the case.

Dr. Zigmond paid the fee so that I could appeal the dismissal of the case. (He had also paid the fee for the case). The case sat in the Seventh Circuit U.S. Court of Appeals for a couple months, then, on January 5th, 2022, one Trump-appointed judge and two other Conservative judges who constituted the judicial panel ruled that the case was properly dismissed, making no mention of my claim that W.S.P.F.'s conditions caused physical damage to brains by subjecting occupants to intentional and unrelenting stress with no legitimate need to do so.¹⁰

The flaws in those judges' reasoning don't matter. They grabbed an excuse to dismiss my case, which happens frequently. What matters is that scientists *are* becoming aware that prisons, particularly solitary confinement, do more than cause subjective misery, ephemeral "pain." Indeed, scientists are becoming aware that prisons, particularly solitary confinement, cause physical damage to our bodies, including our brains, the scientific source of our souls.

Dr. Zigmond and his colleagues are in the process of publishing a scientific paper that expounds on how solitary confinement damages our brains. It should be useful for the next persistent litigator who's willing to push the claim that I tried to.

The author may be contacted at:

Nate A. Lindell #303724

For Personal Mail:

Columbia Correctional Institution

P.O. Box 189

⁷ *Lindell v. Pollard*, 2021 WL 4034150 (E.D. Wis. 2021).

⁸ 2021 WL 1574661 (W.D. Wis. 2021).

⁹ A "strike" in prison litigation refers to a case or appeal that was dismissed for being found to lack merit or being maliciously filed. When a prisoner has accumulated three of them, they are no longer entitled to file a new case or appeal unless they can show that they're in imminent danger of being seriously physically harmed. ACLU, KNOW YOUR RIGHTS: THE PRISON LITIGATION REFORM ACT 3, available at https://www.aclu.org/sites/default/files/images/asset_upload_file79_25805.pdf.

¹⁰ *Lindell v. Jess*, 2022 WL 42730 (7th Cir. 2022).

Phoenix, MD
21131

For Legal mail:
Columbia Correctional Institution
P.O. Box 900
Portage, WI
53901-0900

Dr. Michael Zigmond may be contacted at zigmond@pitt.edu.