
CIVIL RIGHTS — EIGHTH AMENDMENT — THIRD CIRCUIT
HOLDS PARENTS OF MENTALLY ILL YOUNG MAN HELD IN SOLI-
TARY CONFINEMENT STATED CLAIMS OF CRUEL AND UNUSUAL
PUNISHMENT. — *Palakovic v. Wetzel*, 854 F.3d 209 (3d Cir. 2017).

Today, tens of thousands of Americans with serious mental illness live in tiny concrete cells¹ — alone and largely forgotten.² They have almost no engagement with or even sight of any other human beings, sometimes with the exception of muffled mental health interviews across sealed steel doors.³ Many have lived like this not for days, but for decades on end.⁴ A practice described by the Supreme Court over a century ago as a “terror and peculiar mark of infamy,”⁵ solitary confinement, or segregation,⁶ has made a resurgence in American prisons since the 1980s, and it has disproportionately affected people with serious mental illness.⁷ Though there is virtually universal medical

¹ See THE LIMAN PROGRAM, YALE LAW SCH. & ASS’N OF STATE CORR. ADM’RS, TIME-IN-CELL: THE ASCA-LIMAN 2014 NATIONAL SURVEY OF ADMINISTRATIVE SEGREGATION IN PRISON 3 (2015), https://law.yale.edu/system/files/documents/pdf/asca-liman_administrative_seggregation_report_sep_2_2015.pdf [<https://perma.cc/YM48-LFDZ>] (estimating 80,000 to 100,000 people were in solitary confinement in fall 2014); Keramet Reiter & Thomas Blair, *Punishing Mental Illness: Trans-institutionalization and Solitary Confinement in the United States*, in EXTREME PUNISHMENT 177, 181 (Keramet Reiter & Alexa Koenig eds., 2015) (noting that up to half of all people in solitary confinement have a serious mental illness). A serious mental illness is “a major mental disorder . . . usually characterized by psychotic symptoms and/or significant functional impairments.” Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY & L. 104, 104–05 (2010).

² See, e.g., *Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring) (“Prisoners are shut away — out of sight, out of mind.”).

³ See, e.g., *Palakovic v. Wetzel*, 854 F.3d 209, 216–17, 228 (3d Cir. 2017); *Reassessing Solitary Confinement: Hearing Before the Subcomm. on the Constitution, Civil Rights & Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 75–77 (2012) [hereinafter *Senate Hearing*] (statement of Dr. Craig Haney) (describing typical conditions of solitary confinement).

⁴ See, e.g., OFFICE OF THE INSPECTOR GEN., U.S. DEP’T OF JUSTICE, REVIEW OF THE FEDERAL BUREAU OF PRISONS’ USE OF RESTRICTIVE HOUSING FOR INMATES WITH MENTAL ILLNESS, at ii (2017), <https://oig.justice.gov/reports/2017/e1705.pdf> [<https://perma.cc/RVD6-6AFS>].

⁵ *In re Medley*, 134 U.S. 160, 170 (1890) (quoting Murder Act 1751, 25 Geo. 2 c. 37, § 1 (Eng.)). For a literary account from almost fifty years before *In re Medley*, see CHARLES DICKENS, AMERICAN NOTES 111 (Patricia Ingham ed., Penguin Books 2000) (1842): “[T]here is a depth of terrible endurance in it which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow creature. I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body . . .”

⁶ While terminology varies, the practice generally involves prisoners spending an average of twenty-three hours a day alone in “windowless or nearly windowless” small cells. *Senate Hearing*, *supra* note 3, at 75.

⁷ Reiter & Blair, *supra* note 1, at 179–81 (referring to the rise in prison populations and deinstitutionalization as contributing factors).

agreement⁸ and growing judicial acknowledgment⁹ that solitary confinement's disturbing harms are exacerbated for people with serious mental illness, the practice of segregating these individuals remains constitutional in just about every jurisdiction today.¹⁰ This may be changing. Recently, in *Palakovic v. Wetzel*,¹¹ the Third Circuit held that the parents of a seriously mentally ill young man who was repeatedly placed in solitary confinement sufficiently stated multiple types of Eighth Amendment "cruel and unusual punishment" claims.¹² The panel articulated forceful, broadly applicable reasoning for why segregation was a major, if not sufficient, factor in two of these types of claims. Especially given the recent chorus of voices characterizing segregation as inconsistent with "evolving standards of decency,"¹³ *Palakovic's* reasoning lays a compelling doctrinal foundation for a future holding that segregating individuals with serious mental illness is per se unconstitutional.

The story of *Palakovic* begins with a twenty-two-year-old man with serious mental illness being convicted of burglary; it ends about a year later¹⁴ with that same young man — described by his parents as "funny, vibrant, handsome, intelligent and loving" — hanging himself with a bedsheet,¹⁵ alone in his "tiny cement cell."¹⁶ Upon entering state prison, Brandon Palakovic was diagnosed with multiple serious mental illnesses, including impulse control disorder, antisocial personality disorder, and alcohol dependence.¹⁷ During Brandon's¹⁸ incarceration, guards repeatedly sent him to thirty-day stints in solitary confinement,

⁸ See, e.g., Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130–32, 142 (2003).

⁹ See, e.g., *Madrid v. Gomez*, 889 F. Supp. 1146, 1265–66 (N.D. Cal. 1995) (stating that segregating people with serious mental illness is "the mental equivalent of putting an asthmatic in a place with little air to breathe," *id.* at 1265).

¹⁰ See Jessica Knowles, Note, "The Shameful Wall of Exclusion": How Solitary Confinement for Inmates with Mental Illness Violates the Americans with Disabilities Act, 90 WASH. L. REV. 893, 911–14 (2015). The few exceptions stem from district court cases holding that segregating people with serious mental illness, or mental illness more generally, violates the Eighth Amendment. See, e.g., *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999), *rev'd on other grounds and remanded sub nom. Ruiz v. United States*, 243 F.3d 941 (5th Cir. 2001); *Madrid*, 889 F. Supp. at 1265–66.

¹¹ 854 F.3d 209.

¹² U.S. CONST. amend. VIII; *Palakovic*, 854 F.3d at 234.

¹³ *Trop v. Dulles*, 356 U.S. 86, 99–101 (1958) (plurality opinion) (holding that punishments contravening "evolving standards of decency," *id.* at 101, violate the Eighth Amendment).

¹⁴ *Palakovic*, 854 F.3d at 215–17.

¹⁵ *Statement from the Palakovic Family*, ABOLITIONIST L. CTR. (July 6, 2014), <http://abolitionistlawcenter.org/2014/07/07/statement-from-the-palakovic-family> [<https://perma.cc/VYN4-TF6E>].

¹⁶ *Palakovic*, 854 F.3d at 217.

¹⁷ *Id.* at 216.

¹⁸ This piece adopts the panel's practice of referring to the late Brandon Palakovic by his first name and to his parents as the "Palakovics"; to wholeheartedly echo the court, this is "[f]or purposes of clarity, and intend[s] no disrespect." *Id.* at 215 n.2.

allegedly in response to behaviors caused by his illness.¹⁹ There, in a cement cell of less than 100 square feet with slits as windows, he was isolated for twenty-three to twenty-four hours a day, with only five hours of weekly exercise in an “outdoor cage.”²⁰ Despite disclosing previous suicide attempts and being nicknamed “Suicide” by fellow inmates, Brandon received no counseling or group therapy.²¹ Instead, he received mental health interviews for one to two minutes at a time through the slit in his steel cell door.²² One summer day, Brandon was sent to solitary confinement again for a “minor rules violation.”²³ Four days later, he committed suicide.²⁴ In response, his parents, Renee and Darian Palakovic, sued the prison’s officials in district court.²⁵

The Palakovics’ complaint alleged that officials violated the Eighth Amendment in two ways: by acting with “deliberate indifference” to the prison’s inhumane conditions of confinement and to its inadequate mental health care.²⁶ The U.S. District Court for the Western District of Pennsylvania dismissed both types of claims.²⁷ It held that, because “the ultimate harm alleged” was suicide, the “vulnerability to suicide” framework applied.²⁸ This framework is narrower in scope than those typically associated with the two types of claims brought by the Palakovics, as it considers only facts surrounding a person’s suicide, not the broader conditions the person endured while alive.²⁹ The court ultimately found a failure to state facts sufficient to satisfy this framework for both types of claims.³⁰ It further reasoned that the Palakovics were unable to claim inadequate mental health care because some care was provided to Brandon.³¹ The Palakovics then filed an amended complaint that set forth vulnerability-to-suicide claims, as well as a related failure-to-train claim; after dismissals,³² the Palakovics appealed to the Third Circuit.³³

¹⁹ *Id.* at 216–17, 225.

²⁰ *Id.* at 217.

²¹ *Id.* at 216.

²² *Id.* at 216, 228.

²³ *Palakovic v. Wetzel*, No. 3:14-145, 2015 WL 3937499, at *1 (W.D. Pa. June 26, 2015).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at *1, *3.

²⁷ *Id.* at *13.

²⁸ *Id.* at *4.

²⁹ See *Palakovic*, 854 F.3d at 224–25.

³⁰ *Palakovic*, 2015 WL 3937499, at *6–7, *8–9.

³¹ *Id.* at *8–9.

³² *Palakovic v. Wetzel*, No. 3:14-145, 2016 WL 707486, at *5–8 (W.D. Pa. Feb. 22, 2016).

³³ *Palakovic*, 854 F.3d at 219.

The Third Circuit vacated and remanded to the district court.³⁴ Writing for a unanimous panel, Chief Judge Smith³⁵ held that it was legal error to dismiss the first complaint's inhumane conditions of confinement and inadequate mental health care claims as deficient under the vulnerability-to-suicide framework.³⁶ The panel noted that the Palakovics were seeking to hold officials accountable for Brandon's experience over the course of his time living in prison, not for failing to prevent his death.³⁷ As such, the district court was wrong to require that the two types of claims fit the vulnerability-to-suicide framework; the Palakovics should not have been precluded from moving forward on their claims because Brandon committed suicide.³⁸ The court then evaluated the claims, applying the two-pronged "deliberate indifference" test in light of the plausibility standard for surviving a motion to dismiss.³⁹

The panel first found that the Palakovics sufficiently stated their claim of inhumane conditions of confinement.⁴⁰ It concluded that the first, objective prong of the deliberate indifference test — the existence of a substantial risk of serious harm — was met, referencing the "growing consensus" regarding segregation's potential to "cause severe and traumatic psychological damage."⁴¹ Turning to the second, subjective prong — that prison officials had knowledge of the risk but recklessly disregarded it — the panel noted that officials' diagnoses of Brandon indicated knowledge of his illness, and that past issues of other inmates' self-harm indicated knowledge of the risks of segregation.⁴² It concluded that those facts, "in light of the increasingly obvious reality" that extended segregation causes serious mental health damage, were "more than sufficient" to state a claim.⁴³

The court also found that the Palakovics sufficiently stated their claims of inadequate mental health care.⁴⁴ The panel recognized that the "substantial risk of serious harm" prong, represented by a "serious medical need" for inadequate care claims, was uncontested.⁴⁵ In considering the "reckless disregard" prong, it refuted the district court's reasoning by noting that even if a prison provides some care, that care can be so inadequate that it amounts to recklessness.⁴⁶ The panel identified

³⁴ *Id.* at 234.

³⁵ Chief Judge Smith was joined by Judges Jordan and Shwartz.

³⁶ *Palakovic*, 854 F.3d at 225.

³⁷ *Id.* at 224.

³⁸ *Id.* at 224–25.

³⁹ *Id.* at 219–20.

⁴⁰ *Id.* at 226.

⁴¹ *Id.* at 225.

⁴² *Id.* at 226.

⁴³ *Id.*

⁴⁴ *Id.* at 229.

⁴⁵ *Id.* at 227 n.23.

⁴⁶ *Id.* at 227–28.

issues with Brandon's "minimal treatment"⁴⁷ and system-wide problems, like the substitution of punishment for treatment.⁴⁸ It emphasized the "final, key component" of the claim "which [took] it from the realm of mere negligence to a potential claim of constitutional magnitude": the officials allowed Brandon, in his "fragile" state, "to be repeatedly subjected to the harsh and unforgiving confines of solitary confinement."⁴⁹ In doing so, they allegedly "affirmatively contributed" to the deterioration of his condition.⁵⁰ Separately, the panel concluded that the Palakovics sufficiently stated their vulnerability-to-suicide and failure-to-train claims, citing evidence of officials ignoring suicide warning signs and noting the reasonable possibility that staff training could have prevented the death.⁵¹

In *Palakovic*, the Third Circuit laid out a legal blueprint for establishing that solitary confinement of individuals with serious mental illness is a per se Eighth Amendment violation. Though the panel did not go so far as to state a per se holding, its analysis paved two potential avenues to such a holding and lent credence to a third. The panel's reasoning that segregating people with serious mental illness creates a severe and "obvious" risk of harm⁵² can be used to argue that the practice always meets the deliberate indifference test for inhumane conditions of confinement claims. And its reasoning that the practice can be the "key component"⁵³ in finding reckless disregard of serious medical needs can be used to argue that the practice always meets the deliberate indifference test for inadequate mental health care claims. These two arguments are even more potent when combined with a third rationale, hinted at by the panel, that segregating those with serious mental illness defies "evolving standards of decency."⁵⁴ Overall, the reasoning in *Palakovic* has the force to dismantle the constitutionality of placing Americans with serious mental illness in solitary confinement, and to weaken the legal foundations of solitary confinement altogether.

One pathway to per se constitutional liability advanced by the Third Circuit is the concept that segregating people with serious mental illness amounts to deliberate indifference to inhumane conditions of confinement. First, the panel — notably "[b]efore . . . turn[ing] to the Palakovics' particular allegations"⁵⁵ — established that there is a severe risk of harm *inherent* in segregation. In describing this risk as independent

⁴⁷ *Id.* at 228.

⁴⁸ *Id.* at 228–29.

⁴⁹ *Id.* at 229.

⁵⁰ *Id.*

⁵¹ *Id.* at 229–34.

⁵² *Id.* at 226.

⁵³ *Id.* at 229.

⁵⁴ *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

⁵⁵ *Palakovic*, 854 F.3d at 225.

of case-specific facts, it supported the argument for per se satisfaction of the deliberate indifference test's first prong — a substantial risk of serious harm — for conditions of confinement claims. Further, courts sometimes distinguish long-term segregation in their analyses,⁵⁶ but the time Brandon spent in segregation — multiple thirty-day periods over about a year — is not considered “long-term,”⁵⁷ meaning the panel did not cabin its reasoning to this category. Second, the panel provided a rationale for per se satisfaction of the recklessness prong, which often equips officials with impermeable defenses.⁵⁸ Its key assertion was that the risk of harm is “increasingly obvious.”⁵⁹ This claim — combined with the principle, articulated by the Supreme Court in *Farmer v. Brennan*,⁶⁰ that knowledge can be inferred by establishing that a risk of harm is obvious⁶¹ — supports a way for future plaintiffs to show recklessness without having to prove facts about actual knowledge. To be sure, the panel did not fully embrace a per se rule; its recklessness analysis briefly noted facts specific to Brandon's case.⁶² Nevertheless, its conclusions about the serious, obvious nature of the risk in general advances the theory that segregating people with serious mental illness is itself sufficient to violate the Constitution.

The court also cleared a second, more inventive path to per se liability: the theory that segregating people with serious mental illness amounts to deliberate indifference to serious medical needs. Courts have widely held that adequate treatment of serious mental illness is a serious medical need, satisfying the deliberate indifference test's first prong.⁶³ *Palakovic*'s innovation is its characterization of Brandon's segregation, given his fragile state, as the “key component” that elevated officials' care to recklessness under the second prong.⁶⁴ Though courts

⁵⁶ See, e.g., *Hutto v. Finney*, 437 U.S. 678, 688 (1978) (affirming a district court order's thirty-day time limit for segregation).

⁵⁷ See ABA STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS 23-1.0(o) (3d ed. 2011) (defining “long-term” as exceeding or expected to exceed thirty days).

⁵⁸ See, e.g., *Wilson v. Seiter*, 501 U.S. 294, 310 (1991) (White, J., concurring in the judgment) (predicting that a subjective intent prong “likely will prove impossible to apply in many cases” because prison conditions are the result of “cumulative actions and inactions”); Holly Boyer, Comment, *Home Sweet Hell: An Analysis of the Eighth Amendment's “Cruel and Unusual Punishment” Clause as Applied to Supermax Prisons*, 32 SW. U. L. REV. 317, 332–33 (2003) (stating that it can be “next to impossible,” *id.* at 333, to satisfy the subjective prong); see also *Scarver v. Litscher*, 434 F.3d 972, 975–76 (7th Cir. 2006) (finding no recklessness even though officials possessed an article about the harms of segregating those with serious mental illness).

⁵⁹ *Palakovic*, 854 F.3d at 226.

⁶⁰ 511 U.S. 825 (1994).

⁶¹ *Id.* at 842; see *Beers-Capitol v. Whetzel*, 256 F.3d 120, 135 (3d Cir. 2001). The *Palakovic* panel cited to this concept in a footnote. 854 F.3d at 225 n.17.

⁶² See *Palakovic*, 854 F.3d at 226.

⁶³ See, e.g., *Wellman v. Faulkner*, 715 F.2d 269, 272 (7th Cir. 1983); *Inmates of Allegheny Cty. Jail v. Pierce*, 612 F.2d 754, 763 (3d Cir. 1979); *Bowring v. Godwin*, 551 F.2d 44, 47 (4th Cir. 1977).

⁶⁴ *Palakovic*, 854 F.3d at 229.

have historically been hesitant to second-guess prison care,⁶⁵ new routes have been created over time for plaintiffs to demonstrate recklessly inadequate care, including by showing a lack of individualized care.⁶⁶ *Palakovic* builds on this trend — and potentially unlocks segregation challenges as a route for future plaintiffs with serious mental illness — by suggesting that segregation is fundamentally incompatible with the treatment needs of a person suffering from serious mental illness. Moreover, a defendant’s only safe harbor — arguing lack of knowledge of a person’s serious mental illness — is increasingly impeded by the growing judicial view that adequate mental health care requires adequate screening for mental illness.⁶⁷ As such, though it noted other issues with Brandon’s care,⁶⁸ the Third Circuit’s emphasis on segregation as the linchpin of a recklessness finding forms a powerful second theory of per se liability under the inadequate mental health care claim.

A third and more direct avenue to per se liability, to which language in *Palakovic* lends support, is the theory that segregating people with serious mental illness is unconstitutional because it contravenes “evolving standards of decency that mark the progress of a maturing society.”⁶⁹ In determining these standards, the Supreme Court has emphasized state legislative action, while also looking to factors like professional consensus, history, and international norms.⁷⁰ Starting with state policy, several states have banned or severely restricted the practice of segregating people with serious mental illness.⁷¹ *Palakovic* touched on the professional consensus and history factors, as it detailed the “growing consensus — with roots going back a century” — that segregation can

⁶⁵ See *id.* at 227–28.

⁶⁶ See, e.g., *Roe v. Elyea*, 631 F.3d 843, 862–63 (7th Cir. 2011) (considering as recklessly inadequate care “a failure to exercise medical — as opposed to administrative — judgment,” *id.* at 863); *Monmouth Cty. Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 346–49 (3d Cir. 1987) (considering as recklessly inadequate care the intentional refusal to provide individualized care).

⁶⁷ See, e.g., *Woodward v. Corr. Med. Servs.*, 368 F.3d 917, 927 (7th Cir. 2004); *Gibson v. County of Washoe*, 290 F.3d 1175, 1189 (9th Cir. 2002).

⁶⁸ See *Palakovic*, 854 F.3d at 228–29. In practice, many of these issues, like poor diagnostic procedures, generally exist when any person with serious mental illness is segregated, both because segregation’s use is frequently an effect of inadequate resources and because its tight security “often preclude[s] meaningful and appropriate therapeutic contact.” Haney, *supra* note 8, at 143.

⁶⁹ *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

⁷⁰ See *Atkins v. Virginia*, 536 U.S. 304, 312–17, 316 n.21, 321 (2002) (referencing state statutes supported by medical expertise, religious views, and international norms in striking down capital punishment of individuals with mental disability); *Thompson v. Oklahoma*, 487 U.S. 815, 830–31, 838 (1988) (plurality opinion) (citing the views of “respected professional organizations,” *id.* at 830, and other nations in striking down capital punishment of people younger than sixteen years old at the time of offense); *Gregg v. Georgia*, 428 U.S. 153, 176–77 (1976) (plurality opinion) (noting the historic acceptance of capital punishment for murder as “strongly support[ing],” *id.* at 176, the practice’s constitutionality).

⁷¹ *Coleman v. Brown*, 28 F. Supp. 3d 1068, 1106 n.50 (E.D. Cal. 2014) (noting seven states that had eliminated or severely restricted the practice, or had begun doing so, by 2014).

cause severe harm.⁷² And looking internationally, there is considerable agreement that segregation can be a form of torture.⁷³ Adding context is the recent momentum in chipping away at the legal underpinnings of segregation generally, especially as it relates to youth⁷⁴ and long-term isolation of the general inmate population.⁷⁵ Ultimately, language in *Palakovic* — combined with these factors and the fact that the “evolving standards of decency” concept has spurred recent expansions of Eighth Amendment rights, including for people with mental disability⁷⁶ — supports a final route to per se unconstitutionality: segregation of people with serious mental illness, and perhaps segregation in general, violates the Eighth Amendment’s central proscription of cruel and unusual punishment, independent of the deliberate indifference doctrine.

After filing their claims in 2014, Brandon’s parents wrote about their aspirations:

Brandon is finally at peace and can no longer be drugged, locked up and ignored, but we know there are others that are still enduring similar nightmares. We hope and pray that somehow, someday Brandon’s death can bring attention to these serious issues within Pennsylvania State Correctional Institutions and save other prisoners and their families from this same pain.⁷⁷

Perhaps the Palakovics’ prayer is being answered. The Third Circuit listened carefully to Brandon’s story, and its opinion may catalyze a long-elusive change to prison conditions in America. It advances legal theories which may compel a holding that solitary confinement of seriously mentally ill individuals is a per se Eighth Amendment violation. And the panel’s powerful characterization of segregation’s harmful effect on *all* people may even act as a stepping stone to a broader holding that solitary confinement is facially unconstitutional. Though the underlying failures to treat mental illness in prisons would persist, these holdings would uplift some of our society’s most neglected individuals while honoring the Eighth Amendment’s foundational value: human dignity.⁷⁸ And if it is true that the barometer of a civilization is how it treats its most vulnerable members,⁷⁹ these changes would be a heartening mark of progress in American society.

⁷² *Palakovic*, 854 F.3d at 225 (citing *Williams v. Sec’y of Pa. Dep’t of Corr.*, 848 F.3d 549, 566–67 (3d Cir. 2017)).

⁷³ See, e.g., Juan E. Méndez (Special Rapporteur of the Human Rights Council), *Interim Rep. on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 74, U.N. Doc A/66/268 (Aug. 5, 2011) (stating that segregation can violate the Convention Against Torture and the International Covenant on Civil and Political Rights).

⁷⁴ See, e.g., *V.W. ex rel. Williams v. Conway*, 236 F. Supp. 3d 554, 582–85 (N.D.N.Y. 2017).

⁷⁵ See, e.g., *Ruiz v. Texas*, 137 S. Ct. 1246, 1247 (2017) (Breyer, J., dissenting); *Davis v. Ayala*, 135 S. Ct. 2187, 2209–10 (2015) (Kennedy, J., concurring).

⁷⁶ See, e.g., *Atkins v. Virginia*, 536 U.S. 304, 321 (2002).

⁷⁷ *Statement from the Palakovic Family*, *supra* note 15.

⁷⁸ *Trop v. Dulles*, 356 U.S. 86, 100 (1958) (plurality opinion).

⁷⁹ PEARL S. BUCK, *MY SEVERAL WORLDS* 337 (1954).