

FILED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA

2012 MAR -7 PM 12: 07

ROBERT H. TOLSON  
U.S. DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF INDIANA

Jay F. Vermillion )  
PLAINTIFF )

[Type or print your name on the line above] )

v. )

Willard Plank, etal. )  
DEFENDANT )

[Type or print only the name of the first )  
person you are suing. List everyone you )  
are suing on page 2.] )

Cause No. 3:11-CV-280

[Leave this blank, the clerk will  
supply the cause number when  
your case is received.]

SECOND AMENDED  
PRISONER COMPLAINT  
42 U.S.C. § 1983

I. PARTIES

A. PLAINTIFF [You are the plaintiff in this lawsuit. Neatly print or type your information below.]

1. Jay F. Vermillion 973683  
Name: First Middle Last Offender Number

2. Where are you being held: Westville Control Unit  
[name the prison or jail where you are incarcerated]

3. What is the address: 5501 South 1100 West  
Westville, IN 46391

3a. What is the telephone number: \_\_\_\_\_

4. Did the things that you are suing about happen in the place listed above:

YES, it happened here in the same facility I am being held at today.

And, it happened at the Indiana State Prison, Michigan City, IN

5. Did the things that you are now suing about, happen:

before you were confined, or

when you were confined awaiting trial, or

after conviction while confined serving a sentence.

B. Defendants: 23 total

Name:	Title - Govt. Agency:	Work Address:
* 1. Willard Plank	Internal Affairs - I.S.P.	One Park Row, Michigan City, IN 46360
* 2. Dawn Buss	Internal Affairs - I.D.O.C.	302 W. Washington, Indianapolis, IN 46204
* 3. Charles Whelan	Internal Affairs - I.S.P.	One Park Row, Michigan City, IN 46360
* 4. Ralph Carrasco	Internal Affairs - I.S.P.	One Park Row, Michigan City, IN 46360
* 5. Dawn Walker	Screening Officer - I.S.P.	One Park Row, Michigan City, IN 46360
* 6. Bessie Leonard	D.H.B. Chairman - I.S.P.	One Park Row, Michigan City, IN 46360
** 7. Mark Levenhagen	Superintendent - I.S.P. & W.A.U.	5501 S. 1100 W., Westville, IN 46391
* 8. Gary Brennan	Director of Op. - W.C.U.	5501 S. 1100 W., Westville, IN 46391
* 9. Sally Nowatzke	Case Counselor - W.C.U.	5501 S. 1100 W., Westville, IN 46391
* 10. Larry Waga	Classification Dir. - W.C.U.	5501 S. 1100 W., Westville, IN 46391
* 11. Charles Penfold	Review Authority - I.D.O.C.	302 W. Washington, Indianapolis, IN 46204
* 12. Brett Mize	Director of Op. - I.D.O.C.	302 W. Washington, Indianapolis, IN 46204
* 13. Howard Morton	Admin. Asst. - I.S.P.	One Park Row, Michigan City, IN 46360
* 14. Craig Travis	Property Officer - W.C.U.	5501 S. 1100 W., Westville, IN 46391
* 15. Ernestine Cole	Property Officer - W.C.F.	5501 S. 1100 W., Westville, IN 46391
* 16. Colia Bobson	Property Officer - W.C.F.	5501 S. 1100 W., Westville, IN 46391
* 17. Linda Leonard	Attorney - I.A.G.	302 W. Washington, Indianapolis, IN 46204
* 18. David Dombrowsky	Screening Officer - W.C.U.	5501 S. 1100 W., Westville, IN 46391
* 19. Doug Barnes	Case Manager - W.C.U.	5501 S. 1100 W., Westville, IN 46391
* 20. Robert Johnson	D.H.B. Chairman - W.C.U.	5501 S. 1100 W., Westville, IN 46391
* 21. David Leonard	Asst. Dir. of Op. - W.C.U.	5501 S. 1100 W., Westville, IN 46391
* 22. Stephanie Rothenberg	Attorney - I.A.G.	302 W. Washington, Indianapolis, IN 46204
23. Indiana Dept. of Corr.	State of Indiana	302 W. Washington, Indianapolis, IN 46204

\* Individual Capacity    \*\* Individual and official capacity

C. Jurisdiction:

1. The court has jurisdiction over Plaintiff's claims of violations of his federal constitutional rights under 42 U.S.C. Sections 1331 (1) and 1343.
2. The court has supplemental jurisdiction over Plaintiff's state law tort claims under 28 U.S.C. 1367.

D. Type of Trial:

1. Plaintiff hereby requests a JURY TRIAL.

II. Grievance Procedure

- A. All grievance procedures, tort claim notices, and administrative prerequisites have been timely filed and properly exhausted.

### III. CAUSE(S) OF ACTION WITH SUPPORTING FACTS

I. At approximately 9:30 AM on Wednesday, July 29, 2009, because of their stated belief that I was involved in the recent escape of persons with whom I had regular association, defendants Plank, Buss, and Whelan informed me that they were going to file criminal charges against me.

I then exercised my constitutionally protected right to terminate their questioning of me in their investigation of said escape so that my answers to their questions could not thereafter be used to incriminate me in the criminal action they said they were going to file.

As a result of my having engaged in the constitutionally protected activity of terminating said questioning of me, the herein-named defendants retaliated against me, and conspired with one another to retaliate against me, by implementing the continuous and ongoing chronological series of inextricably related transactions and occurrences as follows:

A. At 9:33 AM on Wednesday, July 29, 2009, immediately subsequent to my having exercised my constitutionally protected right to terminate their questioning of me, defendants Plank, Buss, Whelan, and Carrasco placed me in punitive segregation.

b. On July 31, 2009, despite there being absolutely no possibility of it being true, defendant Carrasco filed a Conduct Report against me, thereby charging that I had engaged in the offense of "leaflicking" with Administrative Assistant "Don Bates" in "I-Cell house" at "9:30 AM" on "Wednesday, July 29, 2009." And while retaliation was in fact the primary objective of this defendant's conduct,

## Cause(s) of Action with Supporting Facts (continued)

because the same was done with the defendants knowledge that it would lead to unlawful disciplinary segregation and all of the ensuing injuries as described herein, said conduct also constitutes the tort of intentional infliction of emotional distress and violates my 8th Amendment privilege against cruel and unusual punishment.

c. On or about August 4, 2009, defendant Walker sent my proposed witnesses "blank" Witness Statement forms and provided them with absolutely no indication of what I expected of them. And while retaliation continued to be the primary objective here, said conduct also constitutes a violation of my Wolff v. McDonnell due process rights.

d. On August 13, 2009, in proceedings in which I was denied sufficient written notice of the charge, denied the opportunity to call witnesses and present evidence, denied consideration of exculpatory evidence, denied the requisite indicia of reliability for the utilization of confidential sources, denied a decision properly supported by "some evidence", and despite the fact that I already was not, defendant Bessie Leonard found me guilty of trafficking with Mr. Bates. And, despite the fact that the maximum allowable sanction was only thirty (30) days, defendant Bessie Leonard sentenced me to one (1) year in disciplinary segregation. And while retaliation was in fact the defendants primary objective here, said conduct also constitutes a violation of my due process rights.

e. On the same August 13, 2009, without providing me with any notice, reason, or opportunity for rebuttal, the defendants transferred me to the W.C.U. Super Max facility. And while retaliation was in fact the defendants primary objective, said conduct also constitutes a violation of

## Cause(s) of Action with Supporting Facts (continued)

my due process rights.

f. On or about the same August 12, 2009, defendants BRENNAN AND Nowatzke falsified information and documentation to increase my security classification designation so that they could house me in said Super Max facility. And while retaliation was their primary objective, this of the defendants conduct also constitutes a violation of my due process rights.

g. On the same August 12, 2009, the defendants committed me to the housing unit wherein all of the psychotic, out-of-control, and unmanageable worst-of-the-worst are housed in "cold-storage" so as to induce docility, and where I was thereafter subjected to complete isolation in a solid concrete tomb with a solid steel door 23-24 hours a day; no direct contact or interaction with others; extreme cold; constant strobe-lighting; cell-flooding; Mace fumes; people threatening to, and in fact actually committing suicide; no actual "recreation"; no telephone use; no work, income, or educational opportunities; no religious services; no hot water; regular cell-ransacking; and humiliating strip searches. And while retaliation was in fact the defendants primary objective for subjecting me to such atypical and significant hardships, the same also constitutes a violation of my 8th Amendment and due process rights.

h. On or about September 15, 2009, despite his knowledge that said trafficking offense could not have occurred and that said disciplinary proceedings were a sham and constitutionally infirm, defendant Levenhagen,

## Cause(s) of Action with Supporting Facts (continued)

by affirming the same on appeal, effectively approved, condoned, and turned a blind eye to it. And while retaliation continued to be his primary objective here, such conduct also constitutes a violation of my due process rights.

i. On or about September 16, 2009, despite his knowledge that my retaliatory segregation was illegal, defendant Waeg turned a blind eye to it. And while retaliation was the defendant's primary objective here, said conduct also constitutes a violation of my due process rights.

j. On October 8, 2009, despite his knowledge that the disciplinary proceedings of August 12, 2009, were constitutionally infirm, defendant Pentfold affirmed the same on appeal. And while his primary objective was retaliation, such conduct also constitutes a violation of my due process rights.

k. On or about October 16, 2009, defendant Morton intercepted my "Certified Mail" containing proposed affidavits for my witnesses, and thereafter advised: "... Staff will not be signing any affidavits for you." And while retaliation was the primary objective for his conduct, the same constitutes violations of my First Amendment and due process rights.

l. On or about October 22, 2009, without any notice, reason, or opportunity for rebuttal, defendant Mize relegated me to indefinite "Department Wide Administrative Segregation". And while retaliation was the primary objective here, such conduct also constitutes violations.

Cause(s) of Action with Supporting Facts (continued)

of my 8th Amendment AND due process rights

m. On or about October 22, 2009, defendant TRAVIS confiscated all of my "Personal Property Inventory Lists", AND defendant's Cole AND Bobson "lost" approximately 99% of my personal belongings. AND while retaliation was the primary objective here, the same constitutes a violation of the Indiana Tort Claims Act AND INDIANA Code 34-13-3-1 et seq., AS well as the 8th Amendment.

n. On or about November 10, 2009, despite his knowledge of, AND participation in, my retaliatory AND constitutionally infirm classification AND segregation, defendant Levenhagen, by AGAIN affirming the same on appeal, approved, condoned, AND turned a blind eye to it. AND while retaliation was the primary objective here, the same constitutes violations of my 8th Amendment AND due process rights.

o. On four (4) different occasions between November 10, AND December 17, 2009, despite his knowledge of, AND participation in, my retaliatory segregation, defendant Mize refused to act on my repeated requests for relief. AND while retaliation was the primary objective here, said conduct also constitutes violations of my 8th Amendment AND due process rights.

p. On January 20, 2010, defendant BRENNAN ordered the confiscation AND destruction of my television. AND while retaliation was the primary objective here, the same constitutes a violation of the Indiana Tort Claims Act AND INDIANA Code 34-13-3-1 et seq., AND 8th Amendment.

## Cause(s) of Action with Supporting Facts (continued)

q. On January 30, 2010, defendant BRENNAN ordered the ransacking of my cell and the destruction of my personal property. And while retaliation continued to be the primary objective here, the destruction of my personal effects and the intentional infliction of emotional distress also constitute violations of the Indiana Tort Claims Act and Indiana Code 34-13-3-1 et seq., as well as the 8th Amendment.

r. On or about August 31, 2010, despite his having previously concluded that there were no procedural defects or due process errors in the August 13, 2009 disciplinary proceedings that would entitle me to relief, in his concerted efforts with defendant LINDA LEONARD, defendant Pentz issued an unsolicited second opinion thereby vacating the disciplinary conviction of August 13, 2009, and remanded the matter for rehearing. And while retaliation continued to be the primary objective here, because said conduct was part of a concerted effort to obstruct, impede, hinder, and defeat the due course of justice and deprive me of the equal protections of the law, the same constitutes violations of 42 U.S.C. 1985(a) and (3) and my due process rights.

s. On September 3, 2010, defendant Dombrowsky refused to document the names and proposed testimony of my witnesses, and thereafter failed to apprise them of the testimony I expected of them. And while retaliation continued to be the primary objective here, said conduct also constitutes a violation of my due process rights.

t. On September 7, 2010, despite his knowledge of the above-stated acts of defendant Dombrowsky and others, defendant BARNES turned a blind eye to it. And while



## Cause(s) of Action with Supporting Facts (continued)

Retaliation continued to be the primary objective here, said conduct also constitutes violations of my 8<sup>th</sup> Amendment and due process rights.

u. On September 7, 2010, in proceedings in which I was denied sufficient written notice of the charge, denied the opportunity to call witnesses and present evidence, denied consideration of exculpatory evidence, denied the requisite indicia of reliability for the utilization of confidential sources, and denied a decision properly supported by "some evidence", despite the fact that I clearly was not, defendant Johnson found me guilty of trafficking with Mr. Bates. And, despite the fact that thirty (30) days was the maximum allowable sanction, defendant Johnson sentenced me to one (1) year in disciplinary segregation and while retaliation continued to be the primary objective here, said conduct also constitutes a violation of my due process rights.

v. On or about September 29, 2010, in her concerted efforts with defendant Penfold, defendant Linda Leonard filed a motion thereby causing my habeas corpus action under cause # 3:10-CV-119-PPS to be dismissed. And while retaliation continued to be the primary objective, because said conduct was part of a concerted effort to obstruct, impede, hinder, and defeat the due course of justice and deprive me of the equal protections of the law, the same also constitutes violations of 42 U.S.C. 1985 (2) and (3) and my due process rights.

w. On or about October 11, 2010, despite his knowledge of the acts of defendant Johnson and others, defendant David Leonard approved, condoned, and turned a blind eye to it. And while retaliation continued to be the primary objective here, the same constitutes a violation of my due process rights.

## Cause(s) of Action with Supporting Facts (continued)

- x. On or about February 4, 2011, despite his knowledge that said trafficking offense could not have occurred and that the second round of disciplinary proceedings were also a sham and constitutionally infirm, defendant Levenhagen, by again affirming the same on appeal, effectively approved condoned, and turned a blind eye to it. And while retaliation continued to be the primary objective, said conduct also constitutes a violation of my due process rights.
- y. On February 23, 2011, despite his knowledge that the second round of disciplinary proceedings of September 7, 2010 were also constitutionally infirm, defendant Pentfold affirmed the same on appeal. And while retaliation continued to be the primary objective here, such conduct also constitutes a violation of my due process rights.
- z. On June 27, 2011, despite his having previously concluded that there were no procedural defects or due process errors in the September 7, 2010 disciplinary proceedings that would entitle me to relief, in his concerted efforts with defendant Rothenberg, defendant Pentfold issued another unsolicited second opinion thereby vitiating the disciplinary conviction of September 7, 2010, and remanded the matter for yet another rehearing. And while retaliation continued to be the primary objective here, because said conduct was part of a concerted effort to obstruct, impede, hinder, and defeat the due course of justice and deprive me of the equal protections of the law, said conduct also constitutes violations of 42 U.S.C. 1985(2) and (3) and my due process rights.
- AA. On or about July 12, 2011, in her concerted efforts with

## Cause(s) of Action with Supporting Facts (continued)

defendant Penfold, defendant Rothenberg filed a motion thereby causing my second habeas corpus effects under case # 3:11-cv-133-TLS to be dismissed. And while retaliation continued to be the primary objective, because said conduct was part of a concerted effort to obstruct, impede, hinder, and defeat the due course of justice and deprive me of the equal protections of the law. said conduct also constitutes violations of 42 U.S.C. 1985(a) and (c) and my due process rights.

bb. And, as of today's date, in furtherance of said continuous and ongoing retaliatory aggression, I have been maliciously confined in retaliatory segregation in a Super Max dungeon for nine-hundred and fifty-one (951) days. And while retaliation continues to be the primary objective here, said confinement also constitutes violations of my 8<sup>th</sup> Amendment and due process rights.

#### IV. Previous Lawsuits

A. Other than the Habeas Corpus actions as set forth above, there have been no previous lawsuits as it relates to the claims set forth in this Complaint.

#### V. Relief

Wherefore, plaintiff respectfully prays the court grant the following relief:

A. Issue declaratory judgment stating that:

1. The defendants conduct in retaliating against me for having exercised my constitutionally protected right to terminate their questioning of me was done in violation of my 5th Amendment AND due process rights

2. The defendants conduct in conspiring with one another to retaliate against me for having exercised my constitutionally protected right to terminate their questioning of me was done in violation of my 5th Amendment AND due process rights.

3. The conduct of defendants Levenhagen, Barnes, Warg, Mize, Penfold, AND David Leonard in approving, condoning, turning a blind eye to, AND failing to correct the conduct of the ~~the~~ defendants over which they have Authority, constitutes deliberate indifference AND thus constitutes a violation of my 8th Amendment AND due process rights.

4. The conduct of defendant Macton in intercepting my certified legal correspondence was done in violation of my 1st Amendment AND due process rights.

5. The conduct of defendants Penfold, Linda Leonard, AND Rothenberg in obstructing, impeding, hindering, AND defeating my efforts to seek AND obtain habeas corpus relief was done in violation of 42 U.S.C. 1985 (a) AND (3) AND my due process rights.

6. The conduct of defendants Penfold, Linda Leonard, AND Rothenberg in conspiring with one another AND others to obstruct, impede, hinder, AND defeat my effort to seek AND obtain habeas corpus relief was done in

violation of 42 U.S.C. 1985 (2) AND (3) AND my due process rights.

7. The conduct of defendant Pentold in affirming constitutionally infirm disciplinary convictions on appeal AND then vacating those same convictions ONCE it appears to him AND his co-conspirators that I would likely prevail in my habeas corpus challenge of those convictions, was done in violation of my due process rights.

8. The conduct of defendants BRENNAN AND NOWATZKE in falsifying information AND documentation to facilitate my unlawful placement in Super MAX confinement WAS done in violation of my 8<sup>th</sup> Amendment AND due process rights.

9. The conduct of defendants LEVENHAGEN, BAENES, WARR, MIZE, Pentold, BESSIE LEONARD, LINDA LEONARD, DAVID LEONARD, Dombrowsky, Johnson, AND Rothenberg in conspiring with one another to obstruct, impede, hinder, AND defeat the due course of justice in my disciplinary proceedings WAS done in violation of 42 U.S.C. 1985 (2) AND (3) AND my due process rights.

10. The conduct of all of the defendants having knowledge that a Sec. 1985 conspiracy was being committed AND did nothing about it, was done in violation of 42 U.S.C. 1986.

11. The conduct of defendants Travis, Cole, AND Bohson, by their acts AND/OR omissions resulting in the "loss" of my personal property WAS done in violation of the

INDIANA TORT CLAIMS ACT AND INDIANA CODE 34-13-3-1 et seq.

12. The conduct of defendant BRENNAN in ordering the confiscation and destruction of my television and other personal effects, constitutes intentional infliction of emotional distress and was done in violation of the INDIANA TORT CLAIMS ACT AND INDIANA CODE 34-13-3-1 et seq.

13. The conduct of the defendants in maliciously confining me to retaliatory segregation in a Super Max facility for, as of today's date, nine-hundred and fifty-one (951) days, was done, and continues to be done, in violation of my 8<sup>th</sup> Amendment and due process rights.

B. Award compensatory damages jointly and severally against all of the defendants for violating my rights

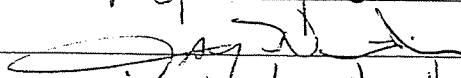
C. Assess damages against the INDIANA Department of Corrections for the acts and/or omissions of their employees resulting in tort.

D. Award punitive damages for the intentional and conspiratorial conduct of all of the defendants except Walker.

E. Grant all other just and proper relief to which the court believes I am entitled.

March 5, 2012

Respectfully submitted,



Jay F. Veavillion #973683

VI. VERIFICATION AND SIGNATURE

**Initial Each Statement and Sign at the Bottom**

X I have included two properly completed summons forms (available from the clerk) for each defendant I am suing, including full name, job title and work address.

X I have included one properly completed process receipt and return form (USM-285) (available from the U.S. Marshal) for each defendant I am suing.

X In addition to this complaint with an original signature, I have included one copy of this complaint for each defendant and one extra for the court.

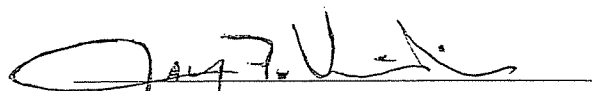
X I have included full payment of the filing fee **OR** attached a properly completed prisoner petition to proceed *in forma pauperis* (available from the clerk) with a copy of my prison trust fund account statement for the six months preceding the filing of this case.

X I agree to promptly notify the clerk of any change of address.

X I have read all of the statements in this complaint. *[Do not forget to keep a copy for your records.]*

X I declare **under penalty of perjury** that the foregoing is true and correct.

Signed this 5<sup>th</sup> day of MARCH, 2012. (03-05-12)

  
Your Signature