

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Leroy Peoples

11 CIV. 2694

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

Brian Fischer, et al.; In their Individual
and Official Capacities.

COMPLAINT

under the
Civil Rights Act, 42 U.S.C. § 1983, § 1985
(Prisoner Complaint)

Jury Trial: ☒ Yes ☐ No
(check one)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff

Name Leroy Peoples

ID # 05-A-2620

Current Institution Upstate Correctional Facility

Address P.O. Box 2001, 309 Bzre Hill Road
Malone, New York 12953

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name Brian Fischer (DOCS Commissioner) Shield # _____
 Where Currently Employed N.Y.S. D.O.C.S.
 Address 1220 Washington Avenue
Albany, New York 12226

Defendant No. 2 Name Lucien J. Ledzire Jr., (Dep. DOCS COMM.) Shield # _____
 Where Currently Employed N.Y.S. D.O.C.S.
 Address 1220 Washington Avenue
Albany, New York 12226

Defendant No. 3 Name Office of Counsel (DOCS Counsel) Shield # _____
 Where Currently Employed N.Y.S. D.O.C.S.
 Address 1220 Washington Avenue
Albany, New York 12226

Defendant No. 4 Name William Lee (Supt. of Green Haven C.F.) Shield # _____
 Where Currently Employed Green Haven Correctional Facility
 Address P.O. Box 4000
Stormville, N.Y. 12582

Defendant No. 5 Name Peter A. Crusco (Exec. A.D.A.) Shield # _____
 Where Currently Employed District Attorney Office Queens County
 Address 125-01 Queens Blvd.
Kew Gardens, N.Y. 11415
 (see following Page)

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

- A. In what institution did the events giving rise to your claim(s) occur? Green Haven
Corr. Fac. P.O. Box ~~0000~~ 4000, Stormville N.Y. 12582
- B. Where in the institution did the events giving rise to your claim(s) occur? My cell-block
(F-Block 150-Cell). I was then transported to Special Housing
Unit from my Industry Work Program.
- C. What date and approximate time did the events giving rise to your claim(s) occur? _____
October 5th, 2009, approximately between 11:30/12 pm

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Defendant No. 6 Name Eric C. Rosenbaum, (A.D.A.)

Where Currently Employed Dist. Att. Off. Queens County

Address 125-01 Queens Blvd.

Kew Gardens, N.Y. 11415

Defendant No. 7 Name Richard A. Brown (Dist. Att.)

Where Currently Employed Dist. Att. Off. Queens County

Address 125-01 Queens Blvd.

Kew Gardens, N.Y. 11415

Defendant No. 8 Name Ward (Lieutenant)

Where Currently Employed Green Haven Corr. Fac.

Address P.O. Box 4000

Stormville, N.Y. 12582

Defendant No. 9 Name K. O'Connor (Sergeant)

Where Currently Employed Green Haven Corr. Fac.

Address P.O. Box 4000

Stormville, N.Y. 12582

Defendant No. 10 Name Malare (Correction Officer)

Where Currently Employed Green Haven Corr. Fac.

Address P.O. Box 4000

Stormville, N.Y. 12582

(see following page)

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Defendant No. 11 Name Drown (Commissioner Hearing Officer)

Where Currently Employed N.Y.S. D.O.C.S.

Address 1220 Washington Avenue
Albany New York 12226

Defendant No. 12 Name Norman Bezio (Director of Special Housing Unit)

Where Currently Employed N.Y.S. D.O.C.S.

Address 1220 Washington Avenue
Albany N.Y. 12226

~~Direct~~

Defendant No. 13 Name D. Rock (Supt. of Upstate Corr. Fac.)

Where Currently Employed Upstate Corr. Fac.

Address P.O. Box 2001, 309 Bare Hill Road
Malone, N.Y. 12953

Defendant No. 14 Name Karen Bellamy (Dir. of I.G.P. C.O.R.C.)

Where Currently Employed N.Y.S. D.O.C.S.

Address 1220 Washington Avenue
Albany, N.Y. 12226

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D. Facts: Pursuant to rule 8 (A) (2) of the Federal Rules of Civil Procedure, the plaintiff commence this Civil Rights complaint pursuant to 42 U.S.C. §§ 1983, 1985, based on the following:

What happened to you?

Cause of Action

Who did what?

1. Within this cause of action the plaintiff alleges that his first amendment right to communicate, sixth amendment right to access the court, and, a adequate law library; fourth amend-

Was anyone else involved?

ment to be secure in his person and papers from seizure, eighth amendment right to be free from cruel and unusual punishment; fourteenth amendment right to due process of law in his liberty interest, and, equal protection clause right to be his custodial-status as a sex offender were violated by the actions

Who else saw what happened?

of suppression of communication with public officials 'by' Public Officials Richard A. Brown (Dist. Att. of Queens County) and Eric C. Rosenbaum (Asst. Dist. Att. of Queens County) and Peter A. Crusco (Exec. Asst. Dist. Att.) acting in concert, aiding and abetting, with 'deliberate indifference', in which led defendants Brian Fischer (DOCS Comm.) & Lucien J. Leclaire Jr., (Dep. Comm. of DOCS) actions of 'gross negligence' and 'deliberate indifference' to ultimately authorized the addition of rules
(See following Page)

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received.

I was denied law books; denied the right to communicate with public officials; my legal work was confiscated and I was unlawfully confined in special Housing Unit for 3 yrs. with 3 yrs. loss of privileges. Also, while unlawfully confined in special Housing Unit I lost a tooth in a fist fight, in which I saw Dentist Dr. Miller.

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

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#107.21 and #113.30 to the 'Standards of Inmate Behavior' rule book which suppress communication with public officials, which is 'facially over-broad and vague' in scope and on its face, in violation of the first amendment, which prevents plaintiff from possessing books as per my right to 'self-help' via §§ U.C.C. 1-201 (34), U.C.C. 9-503, U.C.C. 9-504, and, pamphlets, printed, typed, copied, 'handwritten', forms, McKinney's law books from prison law libraries, and other material documents relating to special court proceedings of a commercial nature regarding actions that could be taken under the Uniform Commercial Code (U.C.C.), by defendant K. O'Connor (Sgt. of Green Haven Corr. Fac.) writing a misbehavior report for allegedly violating said rules, acting in concert, to suppress my communication along with defendant Malave (Corr. Off. of Green Haven Corr. Fac.) who 'searched and seized' the person and paper materials from plaintiff's cell-block living quarters, because defendant William Lee (Supt. of Green Haven Corr. Fac.) received a packet of documents from defendant Peter A. Crusco (Exec. Asst. Dist. Att. of Queens County) that plaintiff forwarded to public officials/defendants Eric C. Rosenbaum (Asst. Dist. Att. of Queens County) and Richard A. Brown (Dist. Att. of Queens County) (whom defendant Crusco represents as their Attorney) whom defendants Lee and Crusco acted in concert with 'deliberate indifference' to suppress my communication. Furthermore, defendant Ward (Lt. of Green Haven Corr. Fac.) acted in concert with deliberate indifference to suppress my communication by authorizing my 'seizure' of person and 'unlawful confinement' in 'Special Housing Unit' (hereinafter S.H.U.), and, defendant Drown (Comm. Hearing Off.) was appointed by defendants Fischer and Leclaire, to conduct my hearing disposition disciplinary proceedings by acting in concert with deliberate indifference to suppress my communication by 'sentencing' plaintiff to 3 yrs. in SHU, along with 3 yrs. loss of packages, phone, and commissary (See following page)

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privileges, with the recommended loss of 72 mths of good-time credit which is a 'substantial' deprivation of plaintiff's limited 'liberty interest' in violation of plaintiff's fourteenth amendment due process of law, and, equal protection clause rights to his custodial-status as a sex offender which is why '3 hard years' was handed down as punishment. (see Exhibit 'A - Misbehavior Report and pgs. 1 and 2 of Hearing Disposition) Furthermore, defendant's 'Office of Counsel' (DOCS Counsel) was delegated with the responsibility of enacting rules # 107.21 and # 113.30, and defendant Karen Bellamy (Director of Inmate Grievance Program - Central Office Review Committee) is responsible for the stance taken by Central Office Review Committee (C.O.R.C.) in stating and upholding that said rules are not unconstitutional, therefore aiding and abetting acting in concert with deliberate indifference to plaintiff's rights, along with defendant D. Rock (Supt. of Upstate Corr. Fac.) who is unlawfully confining plaintiff in violation of said constitutional rights and upholds the position taken by C.O.R.C. in defense of rules # 107.21 and # 113.30, therefore acting with deliberate indifference as well as acting with deliberate indifference in not providing plaintiff with protective custody for his custodial status. (see Exhibit 'A - Plaintiff's Grievance against rules # 107.21 and # 113.30; Response to Plaintiff's Grievance by Inmate Grievance Resolution Committee (I.G.R.C.) (who gave C.O.R.C.'s opinion); Defendant D. Rock's response to Plaintiff's Grievance (who also gave C.O.R.C.'s opinion)). (Note: The 'highest' appeal of grievance can be made to C.O.R.C.. Plaintiff 'did' appeal to this level as seen on defendant D. Rock's response to plaintiff's grievance. Defendant Karen Bellamy has yet to respond 'personally' as Dir. of I.G.P. C.O.R.C.. And/or she 'allowed' defendant D. Rock to respond on C.O.R.C.'s behalf as he did, as well as I.G.R.C. did as well. Therefore, plaintiff met the exhaustion requirement of 'PLRA'. Defendant Bellamy's refusal to respond 'personally' or have a delegate due so from C.O.R.C. (See following Page)

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is not plaintiff's fault.)

2.) On October 5th, 2009, at approx. 11:45am/12pm while at my Industry Work Program, defendants O'Connor and Malave acted in concert with deliberate indifference by approaching my work area in which defendant O'Connor ordered defendant Malave to pat frisk plaintiff and to search my work station, in which he complied. From there, I was 'seized in my person' and escorted by said defendants to my cell-block living quarters (F-Block 150-Cell), in which upon arrival there, my cell was 'thoroughly searched' and 'papers seized', with my personal mail, legal mail, family photos, clothing and other miscellaneous property was scattered all over my cell. I was placed in this cell for about 5 minutes in which defendants O'Connor and Malave departed and the SHU staff came to 'seize' and escort plaintiff to the SHU. The next day (10/6/09) I was served with the misbehavior report while in 12 Cell of SHU. (see, Exhibit 'A- Misbehavior Report') Defendants Lee and Ward authorized 'seizure of the person and papers' of the plaintiff, in violation of the 4th and 14th amendment.

3.) On October 13th, 2009, my misbehavior report 'hearing disposition was ~~the~~ conducted. Prior to these proceedings, 'off the record', plaintiff was verbally attacked by defendant Drown who acted in concert with deliberate indifference, who conducted the hearing. The defendant expressed that, "to have such a merit of sophistication Mr. Peoples (referring to plaintiff's 'seized papers' he was examining), I would have never guessed you to be a 'sex offender'." And, once the hearing started, plaintiff was walked through the normal formalities of a hearing, to end hearing with the disposition and punishment being 3 yrs. SHU time, and, 3 yrs. loss of packages, phone, commissary, and 72 mths. of recommended loss of (See following Page.)

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good-time credit. Mind you, plaintiff does not have 72 mths. / 6 yrs. good-time to expect as credit. At the date of this disposition (i.e., 10/13/09), plaintiff had 6 yrs. 4 mths. off of a 16 yr. sentence completed, arrest date being 6/13/03. Off of a 16 yr. sentence, plaintiff is only entitled to 6/7 of good-time credit, which means plaintiff would do approx. 13 yrs. 8 mths. 24 dys.. The disposition rendered is 'clearly perceived' as malicious, from good-time loss recommendation made by defendant Drown as "it exceeds the amount of actual good-time plaintiff would be privileged as credit." The proceedings are clearly in violation to plaintiff's 14th amendment due process liberty interest, and, equal protection clause rights to his custodial-status as sex offender. (See, Williams v. Manternach, 192 F. Supp. 2d 980,992 (N.D. Iowa 2002) (finding that plaintiff made a valid equal protection claim by stating that he was treated differently as a "lifer" with regards to jobs and classification) Similarly, plaintiff's custodial-status led defendant Drown to prejudice him into a 'substantially' harsh punishment, while yet unconstitutional! Docs can submit all information (which isn't much) about inmates sentenced to SHU for materials prohibited by rules # 107.21 and # 113.30, and the Court would see first hand the prejudice in plaintiff's punitive treatment. (See, Exhibit 'A' - pgs. 1 & 2 of Hearing Disposition)

4.) In November/December, 2009, plaintiff appealed the 'hearing disposition' rendered by defendant Drown, to defendant Norman Bezio. Defendant Bezio denied his appeal, therefore acting in concert with deliberate indifference by affirming and confirming the disposition of unlawful confinement and revoked privileges, in violation of the 1st, 4th, 6th, 8th and 14th amendments. (Note: Plaintiff does not have this denial in paper, therefore defendant Bezio can produce it.)

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5.) All of the aforesaid stimulated from a memorandum issued by defendant Leclaire on July 24th, 2009, in compliance to his superior defendant Fischer's orders. Had defendant Fischer disagreed, the memorandum would have never issued, as defendant Fischer is the 'Commissioner of DOCS', unlike defendant Leclaire being the 'Deputy Commissioner of DOCS', respectively. Therefore, both defendants Fischer and Leclaire acted in concert with deliberate indifference to suppress the communication of plaintiff by the addition of rules #107.21 and #113.30 which are clearly unconstitutional. After reading this memorandum, one will notice the ordered prohibition to even 'handwrite' a single letter of any of the language in the aforesaid rules which is a clear deprivation of 'freedom of speech/expression'. (See, Exhibit 'A - July 24th, 2009, Memorandum by defendant Leclaire to all DOCS superintendents) These additions to the 'Standard of Inmate Behavior' rulebook are 'facially overbroad and vague' in suppression of plaintiff's communication, in violation of the 1st amendment to the U.S. Constitution, as applied to the N.Y.S. Constitution. A law or regulation can be deemed unconstitutionally vague if "men of common intelligence must necessarily guess at its meaning and differ as to its application"..." See, Connally v. Gen. Constr. Co., 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926). Although the vagueness doctrine was originally used to invalidate - on due process grounds - penal statutes that failed to "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited," Kolender v. Lawson, 461 U.S. 352, 357, 103 S.Ct. 1855, 75 L.Ed. 2d 903 (1983), courts have frequently applied it in the First Amendment context. See, e.g., Kreimer v. Bureau of police for the Town of Morristown, 958 F.2d 1242, 1266 (3rd. Cir. 1992) (noting (See Following Page)

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that a vagueness challenge can nullify an ambiguous law that "chills" protected first amendment activities.) These rules further violate plaintiffs 6th amendment right to access the court to instigate a special court proceeding under the U.C.C. for commercial purposes, as these McKinney U.C.C. law books have been in New York State prison law libraries for 'years', for prisoners perusal, and now that plaintiff know how to utilize the books, defendants Fischer and Leclair have authorized their 'seizure in violation of the 4th amendment' from all New York State prison law libraries, and subordinates like defendant Lee as Superintendent of Green Haven Corr. Fac. have agreed to the discontinued use thereof, acting in concert with deliberate indifference to suppress communication by violating the due process, 4th and 6th amendment. The State may not limit access to law library books, so to limit access to courts, by taking law books. (see, Morello v. Jones, 810 F. 2d. 344, 346-47 (2d. Cir. 1987)

("The right of access to the Courts is substantive rather than procedural. Its exercise can be shaped and guided by the State but cannot be obstructed, regardless of the procedural means applied".) (citation omitted); Kivela v. U.S. Att. Gen., 523 F. Supp. 1321, 1325 (S.D.N.Y. 1981) (holding prisoner's right of access to courts satisfied where state has provided law books or legal counsel), aff'd 688 F. 2d. 815 (2d. Cir. 1982)).

6.) In 1996, the Court held in 'Lewis v. Casey', that in order for a prisoner to have a cause of action under 'Bounds', he must first show that an actual injury has occurred because he has been denied access to the courts. This actual injury requirement means you must show both that State's legal access program (i.e., law libraries) was inadequate and that you suffered an actual injury because of its inadequacies. The
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Supreme Court went on to hold that proving an actual injury requires showing that a "non-frivolous legal claim" has been frustrated. Therefore, under 'Lewis', plaintiff must show (1) his right to access the courts was denied, and (2) because of that denial plaintiff lost a non-frivolous legal claim. (see, Lewis v. Casey, 518 U.S. 343, 350-51, 116 S.Ct. 2174, 2179-89, 135 L.Ed. 2d 606, 617-18 (1996); Bounds v. Smith, 430 U.S. 817, 828, 97 S.Ct. 1491, 1498, 52 L.Ed. 2d 72, 83 (1977)). Plaintiffs non-frivolous legal claims was arguable in law and in fact. Communications to public officials/defendants Brown and Rosenbaum was to 'redress grievances' by inquiries and/or challenges to jurisdiction in regards to plaintiffs criminal conviction and sentence(s), which the 1st amendment supports plaintiffs right to 'freedom of speech to redress grievances'. (see, Louisville RR v. Motley, 211 U.S. 149 (The Supreme Court has stated that if any tribunal (court) finds absence proof of jurisdiction over person and subject matter, the case must be dismissed.); Hagens v. Lavine, 415 U.S. 533 ("The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings."); Rosemond v. Lambert, 469 F.2d 416 ("The burden shifts to the court to prove jurisdiction."); Latana v. Hopper, 102 F.2d 188; Chicago v. New York, 37 F. Supp. 150 ("Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted.")) Defendants Brown and Rosenbaum defaulted to plaintiffs jurisdictional grievances by their non-response. And as was agreed upon by these defendants whom defendant Crusco represents (and can produce plaintiffs correspondence with defendants Brown and Rosenbaum), they agreed to the terms of plaintiffs correspondence with them, in that, if they failed to respond to his grievances (as they did) by 'general acquiescence - tacit procurement,' that they would become tortfeasors in a commercial proceeding pursuant to U.C.C. (see, U.S. v. Prudden, 424 F.2d 1021 (1070) ("Silence can only

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equate with fraud where there is a legal or moral duty to respond or where an inquiry left unanswered would be intentionally misleading."); Nudd v. Burrows, 91 U.S. 426 (U.S. Ill. 1875) ("Fraud destroys the validity of everything into which it enters. It affects even the most solemn judgments and decrees.") Therefore under 'Bounds', the 'actual injury' occurred when plaintiff was denied 'Seized' McKinney U.C.C. law library prison books as per right to 'self-help' via U.C.C. §§ 1-201(34), 9-503, 9-504, and, access to the courts, as well as his 'seized' documents from cell-block living quarters. It is essential that plaintiff be allow to utilize and study the Uniform Commercial Code, as 'all crimes are commercial' in conformity to 27 C.F.R. (2.11) and plaintiffs communication with public officials/defendants Brown and Rosenbaum (whom defendant Crusco as their appointed counsel hindered said communication) ~~that~~ was in regards to his criminal conviction and sentences), jurisdiction disputes, and his inquiries and grievances in re of said. (see Morrello v. Jones, 810 F.2d. 344, 346-47 (2d. Cir. 1987) ("The right of access to the Courts is substantive rather than procedural. It's exercised can be shaped and guided by the State but cannot be obstructed, regardless of the procedural means applied."); Kivela v. U.S. Att. Gen., 523 F. Supp. 1321, 1325 (S.D.N.Y. 1981) (holding prisoners right to of access to Courts satisfied where state has provided law books or legal counsel), aff'd 688 F.2d. 815 (2d. Cir. 1982)).



7.] Moreover, in order to bring a 8th Amendment cruel and unusual punishment claim for mental and emotional injury claim pursuant to 42 U.S.C. 1997e (e), the plaintiff has to show a 'prior' physical injury, and, pass the requirements of the 'Objective test' and 'subjective test'. Firstly, in compliance to the 'objective test', the term mental or emotional injury has a well under-
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stood meaning as referring to such things as stress, fear, and depression, and other psychological impacts, which plaintiff is enduring. (see, Amaker v. Haponik, No. 98 Civ. 2663 (JGK), 1999 U.S. Dist. LEXIS 1568, at * 22-23 (S.D.N.Y. Feb. 17, 1999.)) All of these mental and emotional side-effects effect the plaintiff, and still do for his current prolonged unlawful confinement in SHU. Plaintiff was as 'secure as he could be in his person and papers' in a prison setting, and then 'seized' in violation to the 4th amendment from his industry work program and in turn subjected to the tort of false imprisonment in violation to the 14th amendment liberty interest. (see Kerman v. City of New York, 374 F. 3d 93 (2d. Cir. 2004) (holding, "that damages recoverable for loss of liberty for the period spent in a wrongful confinement are separable from damages recoverable of such injuries as physical harm, embarrassment, or emotional suffering; even absent such other injuries, an award of several thousand dollars may be appropriate simply for several hours loss of liberty.") The court treated mental and emotional injuries as a completely separate category of injury from loss of liberty, as was appropriate! This was illustrated in a pre-PLRA case as well. (see, Soto v. Lord, 693 F. Supp. 8, 22-23 (S.D.N.Y. 1988))

8.) As for the 'subjective test' to be complied with, 'deliberate indifference' had to occur which means public officials/prison officials/defendants have to be proven of having a certain state of mind. In other words, having a actual knowledge that they were subjecting plaintiff to an excessive risk of harm or other 'objectively unconstitutional conditions.'

Plaintiffs actions of communication with public officials (defendants) is constitutionally protected. Therefore, defendants Fischer and Leclair were 'deliberately indifferent' as they ordered the 'seizure of plaintiff and papers' under rules # 107.21 and # 113.30, violating the 1st, 4th, 6th, 8th and 14th amendments
(See Following Page)

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by allowing the plaintiff to be unlawfully confined by designating defendant Drown to conduct a hearing to authenticate his confinement, ~~by designating~~ as defendant Bezio affirmed by denying plaintiffs appeal. All being approved via defendant Leclaires memorandum of July 24th, 2009, sent to defendant Lee, who received said documents via mail delivery from defendant Crusco, acting in concert with defendants Brown and Rosenbaum, whom defendant Ward then ordered the seizure of plaintiff and his papers and defendant O'Connor and Malave complied. All was complied with, with all defendants who acted in concert with deliberate indifference, 'conspiratorially', through said chains of command. DOCS has Counsel to consult before implementing such rules. And, defendant Fischer 'personally delegated' the primary responsibility for processing the enactment of said rules/regulations to the 'Office of Counsel' (DOCS counsel) according to the Inmate Grievance Resolution Committee. (see, Exhibit 'A - Response of IGRC to plaintiffs grievance of 3/9/11) The Commissioner, i.e., defendant Fischer has the authority pursuant to Correction Law §§ 112 and 138 to promulgate rules # 107.21 and # 113.30, although unconstitutional, which makes the defendants 'Office of Counsel' to DOCS liable by acting in concert with deliberate indifference as well. In this same response from IGRC to plaintiffs grievance, IGRC made reference to statements made by Central Office Review Committee noting that, "these rules were enacted after due consideration of serious security and operational concerns, and are not unconstitutional, nor are they retaliatory or vindictive in nature." (see, Exhibit 'A - Response of ~~IGRC~~ IGRC to plaintiffs grievance of 3/9/11) Therefore, defendant Karen Bellamy as Director of Inmate Grievance Program - Central Office Review Committee (IGP-CORC) is liable along with the defendant Office of Counsel by acting in concert with deliberate indifference to defend the enactment of said rules that are 'overlybroad and vague' in scope
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by suppressing communication, forbidding access to the court and law books, authorizing the seizure of person and papers of plaintiff. Defendant D. Rock is acting in concert with deliberate indifference, by continuously unlawfully confining plaintiff to SHU and he upheld CORC's (i.e., defendant Bellamy's) determination that rules #107.21 and #113.30 are not unconstitutional. (see, exhibit 'A- Defendant D. Rock denial of plaintiff's grievance of 3/9/11) Moreover, plaintiff lost a tooth in a fist fight while unlawfully confined in SHU under defendant Rock's watch. [Defendant Rock can order the Nurse Administrator of his facility - Upstate Corr. Fac. - to produce the color photos and medical report of this fight from November, 2009, as plaintiff cannot afford to pay the fee required to obtain such.] [Note: Plaintiff was seen by Dentist Doctor Miller who works in Upstate Corr. Fac. Plaintiff ask the court to ^{have} ~~had~~ this medical records produce as evidence.]

9.) Likewise, all defendants have the obligation to uphold the constitution by way of their 'Oath of Office', and by shouldering such responsibilities, ignorance of the law is no excuse. (see, Brookfield Const. Co. v. Stewart, 284 F. Supp. 94 ("An officer who acts in violation of the Constitution ceases to represent the government."); Frankenhauer v. Rizzo, 59 F.R.D. (1973) ("It is the manner of enforcement which gives Title 42 U.S.C. 1983 its unique importance, for enforcement is placed in the hands of the people. Each citizen acts as a private attorney general who 'takes on the mantle of the Sovereign', guarding for all of us the individual liberties enunciated in the Constitution...") Ignorance of the law does not excuse misconduct in anyone, least of all in a sworn officer of the law. Therefore, defendants should have been cognizable that certain actions taken against plaintiff could constitute acts that amount to psychological ~~to~~ torture, such as confinement in the SHU, an 'objective test' requirement, and, the mind state of

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complying with superior orders (although unconstitutional), a 'subjective test' requirement. Moreover, the tooth that was lost in a fist fight with inmate Larry Allen while unlawfully confined in the SHU, satisfies the physical injury aspect of 42 U.S.C. § 1997e(e). (Note: As stated, plaintiff request the Court to have produce the medical records and photos of plaintiffs missing tooth, whom Dr. Miller examined plaintiff in November, 2009.)

10. Defendant Ward as Lieutenant-Watch Commander of Green Haven Corr. Fac. is also guilty of the 1st, 4th, 6th, 8th and 14th amendment violations because he authorized the seizure the person and papers of plaintiff and unlawful confinement in the SHU which deprived him of said freedoms. Therefore, defendant Ward too acted in concert with deliberate indifference with his superiors and subordinates to violate said rights. (see, Exhibit 'A-Misbehavior Report for defendant Ward's signature authorizing plaintiffs placement in SHU.)

11. Moreover, defendant Crusco, a public official himself, forwarded the aforesaid materials allegedly prohibited by rules #107.21 and #113.30 to defendant Lee, that plaintiff forwarded to defendants Brown and Rosenbaum, so to exercise his 1st amendment right to communicate and redress grievances in hopes of receiving a response/rebuttal to the jurisdiction inquiries to plaintiffs criminal conviction, so as to be able to proceed proceed with special court proceedings pursuant to U.C.C.. Plaintiff also ~~too~~ told defendants Brown and Rosenbaum in this correspondence to them that he would prove his case prima facie pursuant to 42 U.S.C. 1983, 1985. Although defendants Crusco, Brown and Rosenbaum are public officials and can be 'absolutely immune' for all actions taken "within the scope of his official duties" from damage claims by plaintiff. (See Following Page)

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(see, Leclerc v. Webb, 270 F. Supp. 2d 779, 792-93 (E.D. La. 2003); Imbler v. Pachtman, 424 U.S. 409, 430, 96 S.Ct. 984, 995, 47 L.Ed. 2d 128, 143 (1976) (granting absolute immunity to a prosecutor for actions that were "intimately associated with the judicial phase of the Criminal Process," and noting that a prosecutor engaged in other activities, such as a pre-trial investigation may instead receive "a good faith defense comparable to the police-man's.") However, in this instant offense, defendants Crusco, Brown and Rosenbaum are not entitled to "absolute immunity" because their actions were "not within the scope of their duty" as prosecutor, as they attempted to get a 'gag order' so to speak on plaintiff, when he acted in concert with deliberate indifference, conspiratorially, with defendant Lee to suppress plaintiffs communication in seeking to redress grievances and ultimately initiate a special court proceeding of a commercial nature. (see, Buckley v. Fitzsimmons, 509 U.S. 259, 277-78, 113 S.Ct. 2606, 2617-18, 125 L.Ed. 2d 209, 228 (1993) (holding prosecutor's prejudicial out-of-court statements to press were not within the scope of his duties and not entitled to absolute immunity)). Similarly, defendants Crusco, Brown and Rosenbaum 'out of court' actions were clearly not within the scope of their duties, as they aided and abetted, acted in concert with one another conspiratorially, with defendant Lee with deliberate indifference in violating plaintiffs 1st, 4th, 6th, 8th and 14th amendment rights which they sworn to uphold.

12.] All of the aforesaid defendants are 'persons' as is a requirement to bring a Section 1983, 1985 Civil Rights complaint. I have shown how each defendants actions affected plaintiff and how the defendants were "~~per~~ personally involved." Each defendant acted 'under color of State law' in direct contrast of the rights afforded by the N.Y.S. Constitution. Moreover, (See Following Page)

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each defendant 'deprived plaintiff of federal rights.' (see, Turner v. Safel Safley, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed. 2d 64 (1987); Jones v. Caruso, 569 F.3d 258 (6th Cir. 2009)).

13.) These rules (i.e., #107.21 and #113.30) prohibit plaintiff from communication with public official's (i.e., District Attorney's) which is a communication that is classified as "legal mail" which enjoys the same legal protection as mail addressed to an attorney. (see, Taylor v. Sterrett, 532 F.2d 462 (5th Cir. 1976); Faulkner v. McLocklin, 727 F. Supp. 486 (N.D. Ind. 1939); Palmigiano v. Trivison, 317 F. Supp. 776 (D.R.I. 1970); (see also, N.Y.C.P.L.R. § 4503); Davis v. Goord, 320 F.3d 346, 351 (2d Cir. 2003) ("In balancing the competing interests implicated in restrictions on prison mail, courts have consistently afforded greater protection to legal mail than to non-legal mail...") In prison, the 1st amendment prohibit arbitrary acts of censorship by prison authorities, and acts of censorship that are not "reasonably related to legitimate penological interest." Penological interest are those concerned with the management of prisons (i.e., safety, security, care, custody, control) and the rehabilitation of prisoners. (see, Thornburg v. Abbot, 490 U.S. 401, 404, 109 S.Ct. 1874, 1877, 104 L.Ed. 2d 459, 467 (1989), citing Turner v. Safley.) Plaintiff concedes that DOCS has a legitimate penological interest in maintaining institutional order. However, the measures taken to secure this by DOCS enacting rules #107.21 and #113.30 are in direct violation of plaintiffs 1st, 4th, 6th, 8th and 14th amendment rights, because said rules are 'overlybroad and vague on its face' in which they leave no room for plaintiff to exercise constitutional freedoms. For plaintiffs communication with Public Officials/defendants Brown and (See Following Page)

Continuation of page 5 -

Rosenbaum were not directed to disturb institutional order and the defense can present no such evidence.

14. Know that, this case is unique in that, supervisory liability under Section 1983 should not be confused with "respondeat superior," which is the idea that 'supervisors are legally responsible' for their subordinates actions whether or not the supervisors had actual knowledge of the actions. This concept does not apply to section 1983. (see Warrell v. Henry, 219 F. 3d 1197, 1214 (10th Cir. 2000)). Thus, in section 1983 claims, superior/supervisory officials cannot be charged with responsibility for lower officials acts unless they were "personally involved." This is the case with defendant Fischer as he is DOCS Commissioner. He is responsible for all his subordinates actions as well as his own, as he is personally involved by allowing rules # 107.21 and # 113.30 to be made additions to the 'Standards of Inmate Behavior' rulebook, for his subordinates to enforce. As state earlier, the Commissioner of DOCS, i.e., defendant Fischer has the authority pursuant to Correction Law §§ 112 and 138 to promulgate rules and as such, Mr. Fischer delegated the primary responsibility for processing the enactment of these regulations to the Department's 'Office of Counsel' (as defendant herein). (see, exhibit 'A- Response of IGRC to plaintiffs grievance of 3/9/11) Defendant Fischer, after learning of a violation of plaintiffs rights failed to remedy the wrong; created the policy, procedure, protocol, or custom which violated constitutional rights and allowed such to continue; was 'grossly negligent' in that he did not adequately supervise his subordinates, as did not lower supervisory staff of subordinates in Green Haven Corr. Fac.. (see, William v. Smith, 781 F. 2d 319, 323-24 (2d. Cir. 1986)) ("[A] supervisory official may be personally liable if he or she was
(See Following Page)

Continuation of page 5-

grossly negligent in managing subordinates who caused the unlawful condition or event."); ~~but~~ Wright v. Smith, 21 F.3d 496, 501 (2d Cir. 1994) ("Supervisory liability may be imposed where an official demonstrates gross negligence or deliberate indifference to the constitutional rights of inmates by failing to act on information indicating that unconstitutional practices are taking place.")

15. Therefore, defendant Fischer is personally responsible because he acted with gross negligence and deliberate indifference. How so? If the Court further seeks to have Docs produce Directive No. 4002, Inmate Liaison Committee II (A) (1997), in which the Superintendent of every facility has to establish such a committee whose goal is to provide effective communication between prisoners and the administration, and to promote the accurate distribution and exchange of information. The ILC (Inmate Liaison Committee) may not discuss specific problems of 'individual prisoners', but must discuss the prisoner's 'general welfare' with prison officials. And so, these once monthly meetings of the ILC with the Superintendent (such as defendant Lee attends) and the Facility Exec. Team, would it be fair to say no discussion of rules #107.21 and #113.30 were brought up? Certainly not! The superintendent has the obligation to report to defendant Fischer and Leclaire the reaction of the general prison population to these rules additions in which in certain defendant Lee did, as the general prison population was disgruntled by such rules that impede on their constitutional rights. Therefore, plaintiff here and now ask this Court to request that Docs produce such communication by defendant Lee, ~~and~~ Fischer, and Leclaire on the Green Haven Corr. Fac. general prison populations reaction to said rules.

(See Following Page)

Continuation of page 5 -

16. Plaintiff has satisfied the requirements of 'PLRA' of 1995, 42 U.S.C. § 1997e(e)(2)). (see Exhibit 'A - Plaintiffs 'Inmate Grievance', Denial & Response by IGEC and Plaintiffs Appeal thereto Superintendent D. Rock (defendant herein) and his Denial and Plaintiffs request to Appeal to C.O.R.C.)).

17. Pursuant to rule 8(A)(2) of the Federal Rules of Civil Procedure and 42 U.S.C. §§ 1997e(e), 1983, 1985, based upon the foregoing tortious actions of the named defendants, plaintiff herein seek the relief of:

(a) compensatory damages for violation of plaintiffs constitutional rights in the amount of \$1,000 from each individual defendant, for each constitutional violation: Fischer, Leclaire, Bezio, Drown, Lee, Ward, K. O'Connor, Malave, Bellamy, Rock, Office of Counsel;

(B) compensatory damages for physical injuries, mental and emotional injuries, pain and suffering, in the amount of \$500 from each individual defendant: Fischer, Leclaire, Bezio, Drown, Lee, Ward, K. O'Connor, Malave, Bellamy, Rock, Office of Counsel;

(C) compensatory damages ~~for~~ for unlawful confinement in the amount of \$100 a day. (see, Soto v. Lord, 693 F. Supp. 8, 22-23 (S.D.N.Y. 1988) (The court awarded \$50 a day. This case was 'pre-PLRA'.));

(d) punitive damages for intent and motive, and, conduct that was reckless and callously indifferent to my federal rights, in the amount of \$150,000 from each individual defendant: Fischer, Leclaire, Bezio, Drown, Lee, Ward, K. O'Connor, Malave, Bellamy, Rock, Office of Counsel;
(See Following Page)

Continuation of page 5-

(e) Nominal damages in the amount of \$1;

(f) declaratory relief about the nature and limits of plaintiffs rights, and that rules # 107.21 and # 113.30 are 'overly-broad and vague', and that plaintiff has a constitutional right to have jurisdictional inquiries answered;

(g) injunctive relief in that the injury is 'substantial' 'irreparable harm' to plaintiffs well-being in that the harm cannot be fixed in the future without this relief for the harm stated herein is the ongoing violation of constitutional rights. The enacted rules # 107.21 and # 113.30 is a harm that is ongoing because this is written prison policy and is a pattern and custom of 'officially sanctioned behavior'. (Armstrong v. Davis, 275 F.3d 849, 861 (9th Cir. 2001)) (stating that a realistic threat of a repeating injury may arise from a written policy or a pattern of officially sanctioned behavior). Plaintiffs prolonged unlawful confinement to the SHU is a 'substantial irreparable harm' that is ongoing. There is no other available remedy. Plaintiff went to court back in April 2010 (defendants Crusco, Brown, Rosenbaum and Rock can provide 'Order to produce') in which plaintiffs Article 78 motion in regards to the matters herein was 'wrongfully confiscated' by the orders of defendant Rock, because said motion was addressing issues herein. Therefore, the 4 month statute of limitations long expired to bring a Article 78 motion pursuant to N.Y.C.P.L.R..

An injunction is the only way to prevent further injuries and correct the source of plaintiffs injury. (Jelly v. Coughlin, 76 F.3d 468, 482 (2d Cir. 1996)) (stating that there is a "presumption of irreparable injury that flows from a violation of constitutional rights.") Said Article 78 Motion was confiscated by officers under defendant Rock's watch upon plaintiffs return trip from court in April, 2009. This ~~is~~ injunction would
(See Following Page)

Continuation of page 5 -

be consistent with the 'public interest', because it's a given that rules # 107.21 and # 113.30 infringes on plaintiffs 1st amendment rights, defendant(s) can always narrow the scope and modify said rules, to further 'penological interest'. - Further without belabouring injunctive relief is requested in that, defendant Crusco be informed to 'cease and desist' in his efforts to suppress plaintiffs communication with defendants Brown and Rosenbaum; that defendants Brown and Rosenbaum be required to answer plaintiffs contentions in regards to 'jurisdictional disputes and challenges' as to his criminal conviction under Indictment No. 2103-2003 and report the findings thereof for 'lack of personal and subject matter jurisdiction'; that defendants Fischer and Leclair and Office of Counsel be required to modify rules # 107.21 and # 113.30, to not censor plaintiffs legal correspondence, to expunge misbehavior report of 10/5/09 and hearing disposition of 10/13/09 from plaintiffs institutional record, parole file, so that he is not prejudiced by parole staff in prison or in the street in the future as a parolee on 'PRS' (Post Release Supervision), nor at the 'TAC' (Time Allowance Committee) for potential good-time credit to be prejudiced, and that plaintiff be afforded 'protective Custody' pursuant to N.Y.C.C.R. Tit. 7, § 330.2 - to be free from violence and threats of physical violence 'by prisoners and prison correctional staff' in regards to his custodial - status as sex offender. (see Farmer v. Brennan, 511 U.S. 825, 837, 114 S.Ct. 1970, 1979, 128 L.Ed. 2d 811, 825 (1994));

18) Plaintiff request that the Court grant him 'liberal construction' for any part of this petition that may be conclusorily vague. (see, Hainer v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972); Franklin v. Rose, 726 F.2d 82, 85 (6th Cir. 1985)).

(See Following Page)

Continuation of page 5 -

19. Pursuant to rule 8(A)(1) of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 112(B) and 1331, the U.S. District Court for the Southern District of New York has full jurisdiction to hear and adjudge this matter.

20. The plaintiffs basis of venue is that of legal doctrine of "Federal Questions Jurisdiction". As such, this action is based upon U.S. Constitutional rights violations (as also applied to the N.Y.S. Constitution) that took place in the State of New York Correctional Facilities of Green Haven Correctional Facility, located in Stormville, New York (Dutchess County).

(Return To Page - 5)

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ☒ No ☐

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Green Haven Correctional Facility, P.O. Box 4000,
Stormville, New York 12582

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ☒ No ☐ Do Not Know ☐

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ☐ No ☒ Do Not Know ☐

If YES, which claim(s)? _____

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ☐ No ☒

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ☒ No ☐

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

Upstate Corr. Fac. P.O. Box 2001, 309 Bare Hill Rd., Malone NY 12953

1. Which claim(s) in this complaint did you grieve? That rules #107.21 and #
113.30 are unconstitutional vague and overly broad in scope.

2. What was the result, if any? There was not a resolution; grievance
was denied unanimously.

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process. Grievance was denied by I.G.R.C. by
the Superintendent, whom 'both' gave C.O.R.C.'s denial of ANY grievance
that claims that rules #107.21 and #113.30 are unconstitutional. Al-
though IGRC & Superintendent gave C.O.R.C.'s opinion, I still appealed
to C.O.R.C. for their 'personal' opinion to 'directly' get their opinion for
my Grievance file. (See exhibit 'A')

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here: _____

- _____
- _____
- _____
- _____

V. Relief:

[illegible]

VI. Previous lawsuits:On
these
claims

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ____ No ☒

- B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ____ No ____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

_____On
other
claims

- C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?

Yes ☒ No ____

- D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff Leroy PeoplesDefendants Finn, Jones, Allen

2. Court (if federal court, name the district; if state court, name the county) Southern District Court of New York

3. Docket or Index number 04 CV 06038

4. Name of Judge assigned to your case Judge Baer

5. Approximate date of filing lawsuit June 2004

6. Is the case still pending? Yes ____ No ☒

If NO, give the approximate date of disposition N/A

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) Judgment in my favor.

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

Signed this th15 day of April, 2011.

Signature of Plaintiff

Leroy Peoples

Inmate Number

05A2620

Institution Address

Upstate Corr. Fac.

P.O. Box 2001

309 Bare Hill Road

Malone, N.Y. 12953

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this th15 day of April, 2011, I am delivering this complaint to ^{MY WIFE}~~prison authorities~~ to be mailed to the Pro Se Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:

Leroy Peoples

EXHIBIT 'A

GREENHAVEN

Correctional Facility

INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre) <i>Peoples, Leroy</i>	NO. ♦ NÚM. <i>05A2620</i>	HOUSING LOCATION ♦ CELDA <i>F150</i>
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE <i>F-block 150 cell</i>	INCIDENT DATE ♦ FECHA <i>10/5/09</i>	INCIDENT TIME ♦ HORA <i>11:20 AM APPROX</i>
3. RULE VIOLATION(S) ♦ VIOLACIÓN/ES <i>107:21 AM inmate shall not file or record any document to create a lien or a security interest against any person of the dept. the state or the United States 113:30 An inmate shall not possess any U.C.C. Article 9 form 180-11 Correspondence</i>		
4. DESCRIPTION OF INCIDENT ♦ DESCRIPCIÓN DEL INCIDENTE <i>On the above date I was given a packet of papers sent to Dept. Leo from i.e. District Attorney's office of Queens County New York. A cover letter states these materials were U.C.C. & other Financial Claims that are bogus & without legal basis. A subsequent search of the inmate's cell (F-150) produced approx. 148 documents which all also appear to violate the above referenced charges. C.O. Malave who conducted the search turned over all documents to me & I in turn placed them in the contraband locker End of report.</i>		
REPORT DATE ♦ FECHA <i>10/5/09</i>		
REPORTED BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME <i>H. O'Connor</i>		SIGNATURE ♦ FIRMA <i>H. O'Connor</i>
TITLE ♦ TÍTULO <i>Sgt</i>		
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any) SIGNATURES: ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay) FIRMAS		
1. _____		
2. _____		
3. _____		

NOTE: Fold back Page 2 on dotted line before completing below.

6. WERE OTHER INMATES INVOLVED?	YES ☐	NO ☒	IF YES, GIVE NAME & #
7. AT THE TIME OF THIS INCIDENT, WAS INMATE UNDER PRIOR CONFINEMENT/RESTRICTION?	YES ☐	NO ☒	OR
AS A RESULT OF THIS INCIDENT, WAS INMATE CONFINED/RESTRICTED?	YES ☒	NO ☐	
8. WAS INMATE MOVED TO ANOTHER HOUSING UNIT?	YES ☒	NO ☐	
IF YES, (a) CURRENT HOUSING UNIT	(b) AUTHORIZED BY <i>LT Ward</i>		
9. WAS PHYSICAL FORCE USED? YES ☐ NO ☒ (IF YES, FILE FORM 2104)			
AREA SUPERVISOR ENDORSEMENT <i>Sgt. H. O'Connor</i>			

GRN HAVN GEN

TAPE NUMBER T3 09-0363

JIN: 05A2620 NAME: PEOPLES, LEROY

LOCATION: SH-UU-012

INCIDENT DATE & TIME: 10/05/09 11:30 AM TIER 3

REVIEW DATE: 10/05/09 BY: LT S. HANN

DELIVERY DATE & TIME: 10/06/09 10:05 AM BY: CO P RABIDEAU

HEARING START DATE & TIME: 10/13/9 1:27 pm BY: [Signature]HEARING END DATE & TIME: 10/13/9 2:34 pm BY: [Signature]WAS THERE NEED FOR A FORMAL MENTAL HEALTH/INTELLECTUAL CAPACITY ASSESSMENT? Y (N)

CHARGE NUMBER	DESCRIPTION OF CHARGES	REPORTED BY	DISPOSITION
13.30	POSSESS UNAUTH UCC MAT.	SGT K. O'CONNOR	<u>g</u>
07.21	UNAUTHORIZED LIEN		<u>g</u>
80.11	FACILITY CORRESPONDENCE VIOL		<u>g</u>

JOURNAL ENTRY COMPLETED

(RK) 10/14/09

J.R. ENTRY COMPLETED

ANY GUILTY DISPOSITION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF FIVE(\$5.00) DOLLARS BEING ASSESSED AUTOMATICALLY AGAINST THE INMATE.

PENALTY CODE	DESCRIPTION	PENALTY MO DAYS	START DATE	RELEASE DATE	SUSPEND MO DAYS	DEFERRED MO DAYS	RESTITUTION
1000	SHU	30	10/05/09	10/05/12			**** 11
1000	packages	↓	↓	↓			
1000	Commissary	↓	↓	↓			
1000	phone	↓	↓	↓			

rec'd loss of good time of 2 months

DEP004

SUPERINTENDENT HEARING DISPOSITION RENDERED

DIN: 05A2620 NAME: PEOPLES, LEROY

HEARING DATE: _____

A. STATEMENT OF EVIDENCE RELIED UPON:

The misbehavior report, attached documents, testimony of CO Malave, CO Engstrom & Capt. Burnett were considered. There is substantiated evidence that without authority, you possessed UOC forms and attempted to file an interest against an officer of the New York State, specifically O. A. Rosenbaum & Superintendent [redacted], among others, and that your efforts both pre & post date the implementation of §§ 107.21 & § 3.30

B. REASONS FOR DISPOSITION:

Your actions are a specific threat to all public officials who operate to effectuate the laws of the state in their official capacities. This disposition is necessary to assist you to conform your behavior & is also necessary to dissuade other inmates from such behavior, as well as to assure public officials that their private lives need not be adversely affected by their public obligations to serve the people of the State of New York.

C. SPECIAL INSTRUCTION ON VISITATION OR CORRESPONDENCE RESTRICTIONS, REFERRALS OR SPECIAL EVENT LOSS:

I HAVE RECEIVED A COPY OF THIS HEARING DISPOSITION DATED: _____

HEARING OFFICER SIGNATURE

INMATE SIGNATURE

DATE & TIME RECEIVED

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:

FOR TIER II HEARINGS-APPEAL TO SUPERINTENDENT WITHIN 72 HOURS.

FOR TIER III HEARINGS-APPEAL TO COMMISSIONER WITHIN 30 DAYS.

Inmate Grievance

Inter-Departmental Communication

Upstate Correctional Facility [U.C.F.]

(31)

Rules 107.21
+ 113.30

unconstitutional!

Grievant: LeRoy Peoples Din No.: 05-A-2620

Loc.: 10-B1-7T "S.H.U. / Special Housing Unit"

Date: 3/7/11

Re: Violations of U.S. Const. Amend. 1ST, 6TH, 14TH, and,
N.Y.S. Const. Art. I, Bill of Rights.Subj.: 'Addition' of rules # 107.21, and, # 113.30 to the
'Standards of Inmate Behavior' rulebook.DESCRIPTION OF PROBLEM: On July 24TH, 2009, Lucien J.Leclaire Jr., Deputy Commissioner of the Department of
Correctional Services sent a Memorandum to 'All Super-
intendents' stating the 'addition' of the above rules are
included in the 'Standards of Inmate Behavior' rulebook.On October 5th, 2009, I was effected/effectuated by these
rules which landed me in S.H.U. for 3 yrs., along with
3 yrs. lost of phone, package and commissary privileges.Moreover, I find these rules to be unconstitutional, in
violation of my above mentioned rights. And, might I add,
these rules have me facing a recommended loss of 72 mthsgood time credit! I'm aware of my twenty one (21)
day time frame to file a grievance from the date that
these rules effected/effectuated me. (see, N.Y. Comp. Codes

Rules & Regs. tit 7, § 701.5 (2)(1); N.Y.S. D.O.C.S.

[Pg. 1 of 2 - Grievance of 3/7/11]

FORM 2131E (REVERSE) (REV. 6/06)

UST-45499-11

Response of IGRC:

3/9/11

Per prior CORC response of SPT-47402-09 which states in part:

The Commissioner has the authority pursuant to Correctional Law Sections 112 and 138 to promulgate rules that are necessary for the safe, secure, and orderly operation of all correctional facilities. As such, the Commissioner delegated the primary responsibility for processing the enactment of these regulations to the Department's Office of Counsel.

CORC also notes that these regulations were enacted after due consideration of serious security and operational concerns, and are not unconstitutional, nor are they retaliatory or vindictive in nature.

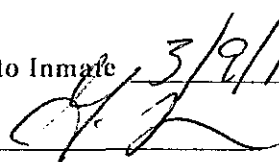
Grievant has not presented sufficient evidence to indicate a change in the Standards of Inmate Behavior handbook. The IGRC recommends no changes be made, at this time, to the Standards of Inmate Behavior rules 107.21 and/or 113.30.

Date Returned to Inmate

3/9/11

IGRC Members: 1)

Chairperson



2)

3)

4)

Return within 7 calendar days and check appropriate boxes.*

☒ I disagree with IGRC response and wish to appeal to the Superintendent. ☐ I have reviewed deadlocked responses. Pass-Thru to Superintendent.

☐ I agree with the IGRC response and wish to appeal to the Superintendent. ☒ I apply to the IGP Supervisor for review of dismissal.

Signed



Grievant

3/9/11

Date

Grievance Clerk's Receipt

Date

To be completed by Grievance Clerk:

Grievance Appealed to the Superintendent

Date

Grievance forwarded to Superintendent for action

Date

* An exception to the time limit may be requested under Directive #4040, section 701.6(g)

FORM 2133 (REV. 6/06)

 STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES INMATE GRIEVANCE PROGRAM SUPERINTENDENT	GRIEVANCE NO. UST-45499-11	DATE FILED 3/9/11	Like Grievance No
	FACILITY Upstate Correctional Facility	POLICY DESIGNATION I	
	TITLE OF GRIEVANCE rules 107.21 + 113.30 unconstitutio	CLASS CODE 31	
	SUPERINTENDENT'S SIGNATURE 	DATE 3/15/11	
GRIEVANT PEOPLES L.	JOIN # 05A2620	HOUSING UNIT 10-B-7	

Per prior CORC response of SPT-47402-09 which states in part; The Commissioner has the authority pursuant to Correctional Law Sections 112 and 138 to promulgate rules that are necessary for the safe, secure, and orderly operation of all correctional facilities. As such, the Commissioner delegated the primary responsibility for processing the enactment of these regulations to the Department's Office of Counsel.

CORC also notes that these regulations were enacted after due consideration of serious security and operational concerns, and are not unconstitutional, nor are they retaliatory or vindictive in nature. The grievant has not provided any evidence to warrant any changes in rules 107.21 or 113.30. Grievance is denied.

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal.* Please state why you are appealing this decision to C.O.R.C.

Supt. D. Rock & C.O.R.C. are in error about rules 107.21 &
113.30 being "not" unconstitutional. These rules are; they suppress communication
in violation of the 1st Amend. of U.S. Const. They should re-consider!!

Leroy Peoples

GRIEVANT'S SIGNATURE

3/17/11

DATE

GRIEVANCE CLERK'S SIGNATURE

DATE

*An exception to the time limit may be requested under Directive #4040, section 701.6(g).



TO: All Superintendents

FROM: Lucien J. Leclaire, Jr., Deputy Commissioner

DATE: July 24, 2009

RE: INMATE RULE BOOK ADDITIONS.

This memorandum is to advise you of the addition of rules #107.21 and #113.30 to the Standards of Inmate Behavior.

107.21 An inmate shall not file or record any document or instrument of any description which purports to create a lien or record a security interest of any kind against the person or property of any officer or employee of the Department, the State of New York or the United States absent prior written authorization from the superintendent or a court order authorizing such filing. II, III

New rule #107.21, "Unauthorized Lien," will subject an inmate to disciplinary action for activities related to filing or recording any document which claims to create a lien or security interest against any employee of the Department, the State, or the United States absent prior written authorization.

113.30 An inmate shall not possess any Uniform Commercial Code (UCC) Article 9 form including but not limited to any financing statement (UCC1, UCC1A, UCC1AP, UCC3, UCC3A, UCC3AP, UCC1CA), correction statement (UCC5) or information request (UCC11), whether printed, copied, typed or hand written, or any document concerning a scheme involving an inmate's "strawman," "House Joint Resolution 192 of 1933," the "Redemptive Process," "Appearance for Value," presentments or document indicating copyright or attempted copyright of an inmate's name absent prior written authorization from the superintendent. II, III.

New rule #113.30, "Possession of Unauthorized UCC Material" (Poss. Unauth. UCC Mat.), will subject an inmate to disciplinary action for possession of any UCC Financing Statement or other UCC Article 9 form, any document concerning the "redemptive process" scheme, or any document indicating a copyright of the inmate's name absent prior written authorization.

ng
ent