No. ____

IN THE

Supreme Court of the United States

MICHAEL N. THOMAS,

Petitioner,

v.

RAYMOND ANDERSON, RICHARD W. COCHRAN, CORNEALIOUS SANDERS, SCOTT A. BAILEY, AND ROGER FITCHPATRICK,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

RÉMI J.D. JAFFRÉ
KATHERINE A. ROSOFF
JENNER & BLOCK LLP
919 Third Avenue
New York, NY 10022
(212) 891-1600

CLIFFORD W. BERLOW
Counsel of Record
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
(312) 840-7366
cberlow@jenner.com

Counsel for Petitioner

QUESTION PRESENTED

Whether the Seventh Circuit correctly held, in an acknowledged conflict with the Third Circuit, that a district court may deny a request for the issuance of a writ of habeas corpus to compel the appearance of a nonparty inmate as a witness at trial based only upon a consideration as to the inconvenience to the government of making that inmate available to testify and without regard to the importance of the potential witness's testimony to the case at bar.

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PETITION FOR A WRIT OF CERTIORARI

Michael N. Thomas petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The original opinion of the court of appeals is reported at *Thomas v. Anderson*, 908 F.3d 1086 (7th Cir. 2018) and is reproduced at Pet. App. 15a–27a. The amended opinion of the court of appeals is reported at 912 F.3d 971 (7th Cir. 2019) and is reproduced at Pet. App. 1a–14a. The relevant orders of the district court are unreported but are reproduced at Pet. App. 30a–40a.

JURISDICTION

The U.S. Court of Appeals for the Seventh Circuit entered its final judgment on November 14, 2018. Pet. App. 28a–29a. On November 28, 2018, the Seventh Circuit extended the time to file any petitions for rehearing and rehearing en banc to and including December 19, 2018. Pet. App. 41a–42a. Thomas filed a timely petition for rehearing and rehearing en banc on December 19, 2018. The Seventh Circuit denied that petition and issued its amended opinion on January 11, 2019. Pet. App. 43a–44a; Pet. App. 1a–14a. Justice Kavanaugh extended the time to file a petition for a writ of certiorari to May 13, 2019. No. 18A986 (U.S. Mar. 29, 2019). This Court therefore has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

28 U.S.C. § 2241(c) provides, in relevant part: "The writ of habeas corpus shall not extend to a prisoner unless … (5) It is necessary to bring him into court to testify or for trial."

INTRODUCTION

This case presents an acknowledged circuit conflict concerning an important issue of law with potentially dispositive significance for a significant number of federal trials each year. It asks this Court to resolve what standard a district court must apply in reviewing a request that an inmate be made available to testify as a trial witness.

The basic facts of this case are straightforward. Proceeding *pro se*, Petitioner Michael N. Thomas filed a complaint alleging that several correctional officers used excessive force and filed meritless disciplinary charges against him. The district court excluded two of Thomas's proposed witnesses—both inmates—who Thomas expected would corroborate both his account of a specific incident of excessive force and one defendant's overall pattern of abuse. The court provided a single reason for the exclusions: neither was incarcerated at a facility technologically equipped to permit testimony by videoconference.

On appeal, the Seventh Circuit affirmed the exclusion of the witnesses, holding that a district court has virtually unfettered discretion to refuse a request that an inmate be ordered to appear as a witness at trial. In doing so, the Seventh Circuit held that, despite being derived from the same federal statute, the standard applicable to requests for the appearance of inmate-witnesses differs from the standard applicable to requests for the appearance of inmate-litigants, the latter of which requires courts to weigh the importance of the inmate's testimony against the burden to the government of producing the inmate for trial.

This case warrants the Court's review. As the Seventh Circuit acknowledged, its refusal to require that trial courts account for the importance of an inmate's potential testimony when ruling on a request that the inmate be ordered to appear at trial conflicts with a decision of the Third Circuit. But that is not all. The decision below also conflicts with the decisions of at least three other federal circuits and a number of federal trial courts. What those decisions all recognize is that litigants often have a vital interest in obtaining testimony from relevant witnesses, even when those witnesses are inmates and even when those witnesses are incarcerated at facilities that lack videoconference capabilities. Those decisions therefore require district courts considering such requests to give meaningful weight to that interest and not to deny such requests without identifying specific concerns with making that witness available.

Only this Court can resolve the conflict among the courts of appeals and this case presents an excellent vehicle for it to do so. If the district court had accounted for Thomas's undeniable interest in securing testimony from eyewitnesses to the abuse he claims to have suffered against the fact that the government did not advance any cost or security concerns with transporting the two inmates to court, then it could not have reasonably excluded the two witnesses. Moreover, the question presented is of broad importance. Although parties may seek to have inmates appear as witnesses in a variety of matters, including in criminal cases brought by the government and in counseled civil cases, prisoner civil rights suits like this one alone account for over 10% of all trials in federal district courts. In many of those trials, the plaintiff's ability to convince the jury will turn on his ability to present corroborating testimony, which frequently will be available only from other inmates.

In sum, this case presents a significant question of law with potentially dispositive consequences in a large number of federal trials involving important constitutional rights, and over which there is an acknowledged conflict between the circuits. Certiorari should be granted.

STATEMENT OF THE CASE

I. Legal Background

1. "The proper procedural vehicle for securing a prisoner's presence at trial is a writ of habeas corpus *ad testificandum*." *Pollard v. White*, 738 F.2d 1124, 1125 (11th Cir. 1984). The writ is one of several varieties of the common-law writ of habeas corpus recognized by Blackstone as being used by courts "for removing prisoners from one court into another for the more easy administration of justice." 3 William Blackstone, Commentaries *129; *see id.* at *130. It was so fundamental at the Founding that the first Congress codified it in Section 14 of the First Judiciary Act, which provided that "writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless where they … are

necessary to be brought into court to testify." 1 Stat. 73, 82 (1789).

Federal law is much the same today. Section 2241(c)(5) of the Judicial Code continues to authorize district courts to issue the writ for an inmate when it "is necessary to bring him into court to testify or for trial." 28 U.S.C. § 2241(c)(5). Courts look to this provision in ruling not only on requests that an inmate be brought to appear at trial as a plaintiff in a civil lawsuit, but also on requests that an inmate be brought to appear as a witness, in civil and criminal cases alike. *See generally Barnes v. Black*, 544 F.3d 807, 809–10 (7th Cir. 2008) (observing that the government often seeks the writ to obtain witnesses in "criminal cases" and that "federal courts have an interest in being able to get hold of prisoners to testify in cases before those courts that transcends the categories of prisoner and criminal cases. A prisoner might be a crucial witness in a civil case in federal court that had nothing to do with prisons or criminal law."). Accordingly, for those who would seek to have an inmate testify as a witness at either a civil or a criminal trial, the writ serves a function analogous to trial subpoenas for non-incarcerated witnesses.

Given the importance to litigants of being able to secure testimony from relevant witnesses at trial, even when those witnesses are inmates, federal courts have prescribed tests for district courts to apply when ruling on requests for writs of habeas corpus ad testificandum under Section 2241(c)(5). A leading example is the balancing test set forth in *Stone v. Morris*, 546 F.2d 730 (7th Cir. 1976)—a case the Seventh Circuit expressly declined to follow here. There, the court held that a district court determining whether it is "necessary" under Section 2241(c)(5) to bring an inmate to appear at trial is required to balance "the interest of the plaintiff in presenting [the inmate's] testimony in person against the interest of the state in maintaining the confinement of the" inmate. *Id.* at 735.

At least eight other federal circuits have adopted standards similar to the one put forward in *Stone*. *See Latiolais v. Whitley*, 93 F.3d 205, 208 (5th Cir. 1996); *Hawkins v. Maynard*, 89 F.3d 850, 1996 WL 335234, at *1 (10th Cir. 1996) (unpublished table decision); *Michaud v. Michaud*, 932 F.2d 77, 81 (1st Cir. 1991); *Muhammad v. Warden, Baltimore City Jail*, 849 F.2d 107, 111–13 (4th Cir. 1988); *Poole v. Lambert*, 819 F.2d 1025, 1028 (11th Cir. 1987); *Wiggins v. Alameda Cty.*, 717 F.2d 466, 468 n.1 (9th Cir. 1983); *Jerry v. Francisco*, 632 F.2d 252, 255–56 (3d Cir. 1980); *Holt v. Pitts*, 619 F.2d 558, 561 (6th Cir. 1980). What they all have in common, regardless of whether they expressly embrace *Stone* or not, is that they mandate that a district court assess the importance of the proposed testimony to the fact-finding process, and also identify countervailing factors, before it may deny a request under Section 2241(c)(5).

To be sure, this Court has yet to consider how courts should evaluate requests under Section 2241(c)(5). But it has approved an analysis similar to the *Stone* balancing test in the analogous context of an inmate's request to be released to argue his own appeal. Specifically, in *Price v. Johnston*, the Court directed that a circuit court entertaining such a request must exercise its discretion "with the best interests of both the prisoner and the government in mind." 334 U.S. 266, 284 (1948). It listed a series of potentially relevant factors: whether "it is apparent that the request of the prisoner to argue personally reflects something more than a mere desire to be freed temporarily from the confines of the prison, [whether] he is capable of conducting an intelligent and responsible argument, and [whether] his presence in the courtroom may be secured without undue inconvenience or danger." *Id.* at 284–85.

2. For all witnesses who appear at trial, including inmate-witnesses, Rule 43(a) of the Federal Rules of Civil Procedure governs the manner in which their testimony will be delivered. As a general matter, Rule 43(a) provides that "[a]t trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise." Fed. R. Civ. P. 43(a). This preference for in-person testimony was "promulgated in response to abuses under the old equity practice of taking testimony entirely by deposition." *See Adair v. Sunwest Bank* (*In re Adair*), 965 F.2d 777, 780 n.4 (9th Cir. 1992) (citing Fed. R. Civ. P. 43(a) Advisory Committee's Note to 1937 Adoption).

But Rule 43(a) also recognizes an exception to its general requirement of in-person testimony. "For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." Fed. R. Civ. P. 43(a). Courts thus have authorized contemporaneous testimony from a different location, including by telephone or videoconference, under a variety of circumstances, such as where a witness would be endangered or made uncomfortable by appearing in a courtroom, *see, e.g.*, *Parkhurst v. Belt*, 567 F.3d 995, 997, 1002–03 (8th Cir. 2009) (child victim of sexual abuse), or where it was impossible for a witness to attend the trial in person, *El-Hadad v. United Arab Emirates*, 496 F.3d 658, 668–69 (D.C. Cir. 2007) (witness had pursued and been repeatedly denied a visa to the United States).

Given the inherent complexities of having inmates appear at trial, federal district courts across the Nation frequently have deployed the "good cause" standard of Rule 43(a) to require that inmate-witnesses appear via videoconference. *E.g.*, *Hankins v. Wolf*, No. 1:12-cv-00168, 2016 WL 3087677, at *3 (W.D. Pa. June 2, 2016); *Barnett v. Gamboa*, No. 1:05-cv-01022-BAM (PC), 2015 WL 13215676, at *2 (E.D. Cal. Dec. 18, 2015). Indeed, the Seventh Circuit has held that a district court did not abuse its discretion under Rule 43(a) by electing to conduct an entire federal civil rights trial via videoconference. *Thornton v. Snyder*, 428 F.3d 690, 698–99 (7th Cir. 2005).

II. Factual And Procedural Background

1. Thomas, formerly an inmate at Hill Correctional Center ("Hill") in Galesburg, Illinois, brought this civil rights action under 42 U.S.C. § 1983 in the United States District Court for the Central District of Illinois against correctional officers and other officials at Hill. Pet. App. 45a–46a, 48a. Thomas was not represented by counsel for any portion of the proceedings in the district court. Many of the allegations in Thomas's *pro se* complaint relate to the conduct of one correctional officer, Defendant Raymond Anderson. In his complaint, Thomas alleged that soon after he arrived at Hill,

Anderson harassed Thomas, threatened Thomas, and initiated meritless disciplinary proceedings against Thomas, all in retaliation for Thomas's penchant for filing grievances and for submitting letters to government officials complaining about conditions at the prison and mistreatment at the hands of correctional officers. Pet. App. 67a–69a.

The central allegation in Thomas's complaint is that on March 24, 2011, Anderson and another officer, Richard Cochran, issued Thomas a baseless disciplinary ticket for refusing to return to his cell, even though Thomas had done his best to comply with the directive. Pet. App. 50a–51a. According to Thomas, when he protested, Anderson and Cochran handcuffed and beat him while a third officer, Roger Fitchpatrick, failed to intervene. Pet. App. 51a–52a; Pet. App. 70a–71a. Thomas further alleged that the two members of the committee that adjudicated the charges against him, Cornealious Sanders and Scott Bailey, found him guilty even though they understood that the charges were unfounded. Pet. App. 56a–57a.

2. Thomas brought a variety of civil rights claims pursuant to 42 U.S.C. § 1983 against a range of prison personnel. The district court conducted a merit review of those claims pursuant to 28 U.S.C. § 1915A and found some of them to be non-frivolous. Merit Review Order, *Thomas v. Anderson, et al.*, No. 12-1343 (C.D. Ill. Jan. 4, 2013), ECF No. 6. Respondents then answered the complaint and the matter proceeded through discovery, after which Respondents moved for summary judgment.

The motion was denied in part.[1] The matter thus was set for trial on Thomas's Eighth Amendment excessive force claims against Anderson and Cochran, First Amendment retaliation claims against Anderson and Cochran for issuing baseless disciplinary charges, Eighth Amendment failure to intervene claim against Fitchpatrick, and First Amendment retaliation claims against Sanders and Bailey. *See* Pet. App. 2a–3a.

Thomas initially submitted a witness list of 42 proposed witnesses—composed of both current and ex-inmates, as well as prison staff—before, at the court's urging, submitting a reduced list of 27 individuals that included written proffers of each witness's anticipated testimony. Pet. App. 99a; Pet. App. 79a–85a. At an ensuing pretrial conference, the court directed Thomas to further reduce his list, which prompted Thomas to submit a revised list of 18 individuals (not counting himself), seven of whom were current or former inmates. Pet. App. 109a; *see also* Pet. App. 30a.

Two of the seven inmates Thomas kept on his final witness list were Kiante Simmons and Xavier Landers. *Id*. Previously, Thomas had proffered that he believed Simmons could "testify to specific incidents on different dates Anderson … harassed Plaintiff in retaliation of Plaintiff's grievances/complaints" and that "Anderson made physical threats and to issue Plaintiff bogus disciplinary reports for making complaints prior to" March 24, 2011. Pet. App. 81a. He also had proffered that

[1] The district court granted summary judgment for three other defendants on First Amendment retaliation claims related to alleged interference with Thomas's mail. The grant of summary judgment on those claims is not a subject of this Petition.

he expected Landers, who was present near Thomas's cell on March 24, 2011, to corroborate his testimony that Cochran and Anderson had used force against him. Pet. App. 100a. Notably, in making those proffers, as well as the proffers regarding his other witnesses, Thomas had explained to the court that because prison regulations barred him from contacting other current inmates or parolees and ex-offenders regarding their actual knowledge of the incidents, and because he was appearing *pro se* due to the court's denial of his requests to appoint counsel, he could not be certain as to what their exact testimony would be. Pet. App. 32a; Pet. App. 100a–101a; *see* 20 Ill. Adm. Code §§ 525.120(b), 525.150(c)(5).

At the final pretrial conference, the district court acted to further reduce Thomas's witness list. The court informed Thomas that he would have to pay witness fees to subpoena any non-incarcerated witnesses, causing Thomas to agree to strike two of the seven inmate-witnesses who were no longer in custody. Pet. App. 32a, 37a–38a. The court also excluded one additional inmate-witnesses as not having relevant testimony to offer, although the court permitted Thomas to retain him as a potential rebuttal witness. Pet. App. 36a–37a.

Finally, with respect to Simmons and Landers, the district court refused to allow Thomas to call either as a witness. The court gave one reason for doing so—although both were current inmates, neither was incarcerated at a facility with videoconferencing capabilities. The court made that clear when, after Thomas stated that he wanted to "leave [Simmons] on" his witness list, the district court responded: "On the day of trial, unless we have a video address for him, he won't be called." Pet. App. 39a–40a. Similarly, after Thomas indicated that Landers was incarcerated at Cook County Jail and the court clerk reported that the Cook County Jail did not have videoconferencing capabilities, the court responded that "Xavier Landers is off since he is at Cook and there is no video there." Pet. App. 34a.

The exclusions of Simmons and Landers left Thomas able to call only one witness who might have observed the excessive force alleged by Thomas: Arnell Mills. But because Thomas was barred by prison regulations from making direct contact with Mills, he could not ascertain beforehand what Mills would say at trial. As it turned out, Mills testified he had only a vague memory of the events. Worse, Mills also could not identify Thomas as the inmate he remembered being assaulted because he appeared by videoconference, rather than in person, and thus could not see Thomas's face.

3. At the close of the evidence, the district court partially granted Defendants' motion for judgment as a matter of law under Rule 50 of the Federal Rules of Civil Procedure. But the court submitted the Eighth Amendment excessive force claim against Anderson and Cochran and the First Amendment claim based on Anderson's retaliatory use of excessive force to the jury.

During closing argument, defense counsel stressed the absence of witnesses able to corroborate Thomas's version of events, stating:

> The interesting thing is that if plaintiff received the sort of savage beating that he alleges, where are those people [inmates in the same housing

> unit as Thomas] today? I didn't hear any testimony from any of those individuals. They could have came [*sic*] here and testified. We didn't hear anything.

Record of Proceeding Jury Trial at 647, *Thomas*, (No. 12-cv-1343 (Aug. 12-13, 2015)), ECF No. 144.

The jury returned a verdict in Defendants' favor on the remaining claims. Thomas appealed.

4. Among the arguments Thomas pursued on appeal was that the district court erred by failing to apply the Seventh Circuit's *Stone* balancing test for determining whether to issue writs of habeas corpus ad testificandum for Simmons and Landers. Thomas argued that, rather than applying the *Stone* factors and determining whether Thomas's need for testimony from Simmons and Landers was outweighed by the burden to the government of making them available at trial, the district court improperly focused its inquiry solely on the availability of videoconferencing.

The Seventh Circuit affirmed the district court's exclusion of the witnesses. Pet. App. 24a–26a, 27a. It held that *Stone*, and its explicit weighting of the importance of the proposed testimony, did not apply to requests for *nonparty* inmates to be brought to testify. Pet. App. 24a–26a. Thomas filed a petition for rehearing or rehearing en banc, urging the Seventh Circuit to reconsider its ruling on the applicability of *Stone*. In particular, Thomas emphasized that the Seventh Circuit's ruling conflicted with the Third Circuit's decision in *Jerry v. Francisco*, which expressly held that the *Stone* factors apply to requests to secure the appearance of nonparty inmate-witnesses. *Jerry*, 632 F.2d at 255–56. The Seventh Circuit denied the petition, however, and issued an amended opinion. Pet. App. 43a–44a; Pet. App. 1a–14a.

The amended opinion included a new footnote addressing the circuit split. Pet. App. 13a n.2. The Seventh Circuit acknowledged that "the Third Circuit has said that the *Stone* balancing test applies to a request by a prisoner-plaintiff for production of nonparty inmate witnesses at a civil trial." *Id.* But it stated that the Third Circuit had imported the *Stone* test to the context of a nonparty inmate "without analysis and in a single sentence" and that the Third Circuit "did not pause to consider that the concerns underlying *Stone*—namely, safeguarding a prisoner-plaintiff's access to the courts—are not implicated in precisely the same way when the inmate is a *witness* for the plaintiff rather than the *plaintiff himself*." Pet. App. 13a n.2. The Seventh Circuit further stated that "the Third Circuit was not confronted with the ready alternative of live inmate testimony by video-conferencing technology, which is now widely available and was the mode of testimony the judge settled on here." *Id.* The Seventh Circuit concluded that, "[f]or these reasons, *Jerry* is distinguishable." *Id.*

REASONS FOR GRANTING THE WRIT

This case presents an acknowledged split of authority among the federal courts of appeals. In a direct and acknowledged departure from longstanding Third Circuit precedent, as well as the precedent of at least three other federal circuits, the Seventh Circuit in this case held that district courts may deny requests for nonparty inmates to be made available to testify as witnesses without any on-the-record balancing of the need for the inmate's testimony against the burden to the government of making the witness available. The effect of this decision is that a district court may deny a request brought under Section 2241(c)(5) for a writ of habeas corpus without regard to the potential importance of the proposed testimony to the matter before the court.

Certiorari should be granted to clarify the confusion the Seventh Circuit's decision has created in this important area of the law. At a minimum, what is at stake is nothing less than the ability of many *pro se* civil rights plaintiffs to have a meaningful opportunity to prove their claims of unconstitutional conduct in federal civil rights trials.

I. There Is A Split Of Authority Over The Question Presented.

By holding that district courts have nearly unfettered discretion to deny requests under Section 2241(c)(5) for the appearance at trial of nonparty witness-inmates, the Seventh Circuit broke with the decisions of numerous federal courts. That holding is in direct conflict with Third and Fourth Circuit precedent. It is in significant tension with Fifth and Tenth Circuit precedent. And it is at odds with decisions from district courts across the nation.

What those other courts have concluded is that under Section 2241(c)(5), the same standard applies whether or not the inmate-witness is a party to the proceeding at issue. For parties and proposed witnesses alike, that standard requires a district court to balance the plaintiff's need for the inmate's appearance against the state's interest in maintaining the individual's confinement.

A. A Majority Of Federal Courts Determine Whether A Nonparty Inmate Will Be Brought To Testify By Weighing The Party's Need For The Testimony Against The Government's Need To Maintain Confinement.

Section 2241(c)(5) provides that the writ of habeas corpus is available for an inmate when "[i]t is necessary to bring him into court to testify or for trial." In *Stone*, the Seventh Circuit observed that a district court's discretion under this broadly worded provision is "not unfettered or unbridled," 546 F.2d at 735, and thus set out a list of factors "the district judge should take into account" when determining whether to issue the writ. Those were:

> the costs and inconvenience of transporting a prisoner from his place of incarceration to the courtroom, any potential danger or security risk which the presence of a particular inmate would pose to the court, the substantiality of the matter at issue, the need for an early determination of the matter, the possibility of delaying trial until the prisoner is released, the probability of success on the merits, the integrity of the correctional system, and the interests of the inmate in presenting his testimony in person rather than by deposition.

Id. at 735–36. The court explained that consideration of these factors required district courts reviewing a request brought pursuant to Section 2241(c)(5) to weigh "the interest of the plaintiff in presenting [the inmate's] testimony in person against the interest of the state in maintaining the confinement of the" inmate. *Id.* at 735.

1. Section 2241(c)(5) states only that an inmate can be made available at trial when "[i]t is necessary to bring him into court to testify or for trial." It does not distinguish between inmates who are parties and inmates who would be witnesses. So while it is true that *Stone* involved a request by a plaintiff inmate to testify at his own trial, other courts—in direct conflict with the Seventh Circuit in this case—have applied *Stone* or similar tests to requests for nonparty inmates to be brought to court to testify. Most notably, the Third Circuit has held that "the same considerations [listed in *Stone*] must be weighed in determining whether a writ of habeas corpus ad testificandum should be issued to secure the appearance of an incarcerated non-party witness at the request of an incarcerated plaintiff." *Jerry*, 632 F.2d at 255–56.

In *Jerry*, a magistrate judge held an evidentiary hearing on the plaintiff's civil rights claims. Near the end of the plaintiff's testimony, the plaintiff requested to have two inmates testify at the hearing, and the magistrate judge deferred ruling on the request until after the plaintiff had finished presenting his case. *Id.* at 254. But when the plaintiff concluded his presentation, the magistrate judge merely asked the defendants to present their case and did not rule on the request. *Id.* In holding that the magistrate judge's failure to exercise her discretion constituted reversible error, the Third Circuit adopted the *Stone* factors and stated that they applied equally where, as in *Jerry*, the request was for a nonplaintiff inmate to testify. *Id.* at 255–56.

Similarly, the Fourth Circuit in *United States v. Bagguley* reviewed a district court's decision not to grant writs for two incarcerated nonparty witnesses and held that a district court considering such a request must "weigh the costs, inconvenience, and safety concerns in transporting an inmate from prison to court against the party's interest in having the inmate present." 838 F.2d 468, 1987 WL 35045, at *5 (4th Cir. 1987) (unpublished table decision). The Fourth Circuit ultimately affirmed the district court's decision not to grant the writs, but only after citing *Jerry* as identifying the proper legal standard.

The Fifth Circuit too has indicated that the same balancing analysis should be applied for party and nonparty inmates. Specifically, in *Ulmer v. Chancellor*, the Fifth Circuit cited *Jerry* in holding that the district court had erred by failing to properly evaluate requests for writs of habeas corpus ad testificandum for nonparty witnesses. 691 F.2d 209, 212 (5th Cir. 1982).

Finally, the Tenth Circuit also has signaled its approval of applying a *Stone*-type balancing test to requests for writs for nonparty witnesses. In *Hawkins v. Maynard*, it described the standard applicable to writs of habeas corpus ad testificandum generally as requiring courts to "weigh the prisoner's need to be present against concerns of expense, security, logistics and docket control." 89 F.3d 850, 1996 WL 335234, at *1 (10th Cir. 1996) (unpublished table decision). Then, citing *Jerry*, it added: "A similar standard applies where the testimony of incarcerated nonparty witnesses is sought." *Id.*

2. Federal district courts throughout the country also have applied a *Stone*-type balancing analysis to requests for writs of habeas corpus ad testificandum for nonparty witnesses. For example, in *Atkins v. City of New York*, which involved a request for the issuance of a writ for a nonparty witness, the court stated that two of the three "factors that a court should consider in exercising [its] discretion" were "whether the prisoner's presence will substantially further the resolution of the case" and "the security risks presented by the prisoner's transportation and safekeeping." 856 F. Supp. 755, 757 (E.D.N.Y. 1994). Similarly, in *Greene v. Prunty*, the court stated that the determination whether to issue writs for nonparty witnesses "depends ultimately upon whether the probative value of the testimony justifies the expense and security risk associated with transporting an inmate-witness to court from a correctional facility." 938 F. Supp. 637, 639 (S.D. Cal. 1996).[2]

Indeed, prior to the decision below, district courts throughout the Seventh Circuit appear to have uniformly applied *Stone* to such requests. *See, e.g.*, *Cooper v. Meyer*, No. 16-cv-526-jdp, 2018 WL 1400956,

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[2] *See also Hernandez v. Hernandez*, No. 1:13-cv-01625-MJS (PC), 2015 WL 3797332, at *3 (E.D. Cal. June 18, 2015); *Peyton v. Clark*, No. 7:12CV00481, 2014 WL 7011133, at *1–2 (W.D. Va. Dec. 11, 2014); *Saenz v. Reeves*, No. 1:09-cv-00557-BAM (PC), 2013 WL 1636045, at *2 (E.D. Cal. Apr. 16, 2013); *Haywood v. Hudson*, No. CV–90–3287 (CPS), 1993 WL 150317, at *1 (E.D.N.Y. Apr. 23, 1993).

at *2 (W.D. Wis. Mar. 19, 2018); *Turner v. Swiekatowski*, No. 11-cv-708–bbc, 2014 WL 6388493, at *2 (W.D. Wis. Nov. 14, 2014); *Muhammad v. Page*, No. Civ. 01-198-GPM, 2005 WL 2261042, at *1–2 (S.D. Ill. Sept. 16, 2005); *Cherry v. Belz*, No. 03-C-129-C, 2003 WL 23164516, at *1 (W.D. Wis. Dec. 22, 2003).

* * * *

In sum, a clear consensus has long existed among the federal courts—including at least four federal courts of appeals—that requests brought under Section 2241(c)(5) for writs of habeas corpus ad testificandum that would allow nonparty inmates to appear as witnesses at trial should be governed by the same standard as similar requests for the appearances of inmates who are parties. That standard requires that the government's interest in maintaining the potential witness's confinement be weighed against the importance of that potential testimony to the requesting party's case.

B. The Seventh Circuit Has Created A Split Of Authority.

The decision below breaks from the consensus that otherwise exists throughout the federal courts. In this case, the Seventh Circuit held that although the standard for determining whether an inmate's appearance at trial is "necessary" under Section 2241(c)(5) balances the importance of that inmate's testimony against the government's interest in not making that inmate available as long as that inmate is a party, that standard does not apply when an inmate is only a witness.

1. At the outset, the Seventh Circuit understood that its decision would create a split of authority over the question presented. It held that "*Stone* applies when a district judge must decide whether a plaintiff-prisoner in a civil rights suit should be brought to court for trial" and then announced that it would not "extend[] *Stone*'s particularized balancing test to nonparty inmate witnesses." Pet. App. 11a (internal quotation marks omitted). It did so despite expressly noting "that the Third Circuit has said that the *Stone* balancing test applies to a request by a prisoner-plaintiff for production of nonparty inmate witnesses at a civil trial." Pet. App. 13a n.2.

2. Rather than apply the familiar *Stone* balancing test, the Seventh Circuit adopted a rule that would all but permit district courts to deny writs of habeas corpus ad testificandum for nonparty inmates with impunity. The Seventh Circuit affirmed that if an inmate is available to testify by video, then there is a basis to find that the testimony is "necessary" under Section 2241(c)(5), but that if an inmate is *not* available by video, then the district court may find that the testimony is not "necessary" on that basis alone.

The most fundamental way in which that test parts ways with the many courts to have adopted a standard for inmate-witnesses that tracks the *Stone* balancing test is that it gives no weight to the degree of a litigant's interest in securing testimony from an inmate. This Court should not countenance that departure. Merely because such witnesses are incarcerated, the question whether it is "necessary" for purposes of Section 2241(c)(5) for that witness to appear at trial should not be reduced to whether the government would suffer *any* inconvenience by producing the witness (for example, where producing the witness would require arranging an in-person appearance because of a lack of videoconferencing capability).

3. The Seventh Circuit's creation of a separate test for nonparty inmate-witnesses finds no support in the federal statute that recognizes writs of habeas corpus ad testificandum. Section 2241(c)(5) states only that a court may issue the writ when "[i]t is necessary to bring [the prisoner] into court to testify or for trial." 28 U.S.C. § 2241(c)(5). In other words, Section 2241(c)(5) prescribes the *same* inquiry for both inmate-witnesses and inmate-litigants: whether it is "necessary" to bring them to court. This, in turn, indicates that at the very least a district court must consider the need for the requested testimony—the very issue the Seventh Circuit authorized the district court here to disregard.

Indeed, the decision below all but merges the otherwise separate inquiries into whether testimony is "necessary" under Section 2241(c)(5) and into whether there are "good cause," "compelling circumstances," and "appropriate safeguards" for allowing testimony to be provided remotely under Rule 43(a). But the two are not one and the same. The first asks whether an inmate should be made available for testimony at trial, while the second addresses the means by which that testimony should be provided. Put another way, it is not the case that testimony is important enough to be heard by a factfinder only if it can be provided via videoconference.

4. The Seventh Circuit's decision to the contrary placed great weight on that court's earlier decision in

Perotti v. Quinones, 790 F.3d 712 (7th Cir. 2015). *See* Pet. App. 11a. In *Perotti*, the Seventh Circuit addressed whether the modern availability of video testimony should alter the *Stone* test for an incarcerated plaintiff. The court declined to amend that long-established standard. Indeed, the court went so far as to emphasize that "appearing remotely by video conferencing is not a perfect substitute for a prisoner's physical presence in the courtroom." 790 F.3d at 724.

The Seventh Circuit nevertheless contended that *Perotti* supported its decision here because some of the shortcomings associated with videoconferencing highlighted in *Perotti*—"the inability of the prisoner-plaintiff to see jurors' faces, the difficulty in examining and evaluating witnesses, and the complications associated with communicating with the court and opposing counsel,"—"do not affect nonparty inmate witnesses testifying live via video-conferencing technology." Pet. App. 11a. But that analysis does nothing to bolster the distinction the Seventh Circuit drew in this case between inmate-litigants and inmate-witnesses.

The question in *Perotti* was whether videoconferencing, when it *is* available, is an adequate substitute for in-person testimony. 790 F.3d at 713, 725, 729. Here, videoconferencing was *not* available for Simmons and Landers. It is one thing to say that, if remote testimony is available, no in-person testimony is necessary; it is quite another to say that, if remote testimony is *not* available, then the witness may not testify at all. Indeed, it is for much the same reason that it was specious for the Seventh Circuit to reject the

Third Circuit's rule on the basis that "the Third Circuit [in *Jerry*] was not confronted with the ready alternative of live inmate testimony by video-conferencing technology." Pet. App. 13a n.2. Here too, the "ready alternative" of video testimony was not available for Simmons or Landers, further underscoring the direct parallels between this case and *Jerry*.[3]

5. To be sure, the Seventh Circuit purported to ground its rejection of the *Stone* balancing test in Rule 43(a) and Section 2241(c)(5). Pet. App. 11a–12a. But, as explained above, the Seventh Circuit's holding in fact conflicts with Section 2241(c)(5), while its citation of Rule 43(a) is a non sequitur, as Rule 43(a) does not answer the question presented by this case: what standard a court must apply to a request for the issuance of a writ of habeas corpus ad testificandum.

In all events, the Seventh Circuit did not even endeavor to explain how extending the *Stone* balancing test would uniquely conflict with the text either of Section 2241(c)(5), which asks courts to determine when it is "necessary" to bring an inmate to trial, or of Rule 43(a), which authorizes videoconferencing in "compelling circumstances and with appropriate safeguards," when the inmate is a witness rather than a litigant. Nor would such an argument be tenable. Even assuming *arguendo* that an inmate plaintiff's interest in calling nonparty witnesses is less significant than his interest in

[3] This case also illustrates the limitations of a videoconferencing-only standard for inmate testimony. The one witness permitted to testify, Arnell Mills, could not confirm that Thomas was the inmate he remembered being assaulted because Mills appeared by videoconference and thus could not see Thomas's face.

testifying at the trial of his own civil rights action, these differences are captured by the *Stone* test's requirement that district courts consider "the interest of the plaintiff in presenting [the inmate's] testimony in person." *Stone*, 546 F.2d at 735. Just because that interest is arguably lessened does not mean a court may forgo *any* consideration of the plaintiff's interest in presenting the inmate's testimony whatsoever. The *Stone* test thus is flexible enough to be extended to requests for nonparty inmates to be made available to testify, and indeed courts have had no difficulty applying the *Stone* test in that context. *See, e.g.*, *Jerry*, 632 F.2d at 255–56; *Turner*, 2014 WL 6388493, at *2.

C. This Case Is An Excellent Vehicle To Answer The Question Presented.

Initially, there can be no question that the district court failed to apply *Stone* or any similar balancing of Thomas's need for Simmons's and Landers's testimony against the potential difficulties of transporting those two witnesses to court. The only rationale given by the district court for excluding Simmons and Landers was that they were not available to testify by video. To be sure, the Seventh Circuit stated in passing that the district court must have "determined that Thomas's interest in [Simmons's and Landers's] testimony was outweighed by the expense and inconvenience of transporting them for trial." Pet. App. 12a. But the Seventh Circuit did not support that statement with a reference to any part of the record, including the pretrial conference colloquy in which the district court excluded Simmons and Landers. None exists. The district court never made any such determination on the record.

As a result, had the Seventh Circuit required the application of *Stone* to Thomas's requests, which it expressly refused to do, Pet. App. 11a, the district court's failure to apply the relevant standard would have constituted an abuse of discretion. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990) ("A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law."); *see Standley v. Edmonds-Leach*, 783 F.3d 1276, 1284 (D.C. Cir. 2015) (holding that the district court abused its discretion by applying the wrong test in deciding whether to admit testimony); *Aycock v. R.J. Reynolds Tobacco Co.*, 769 F.3d 1063, 1068 (11th Cir. 2014) ("A district court abuses its discretion 'if it applies an incorrect legal standard …'") (citation omitted). Furthermore, under the *Stone* test, the district court should have granted the Section 2241(c)(5) request. On the one hand, the record showed that testimony from Simmons and Landers was important to Thomas's case because it had the potential to corroborate Thomas's account of the events of March 24, 2011 and of Defendant Anderson's pattern of abusive conduct.[4] On the other hand, balanced against the undeniable importance of having testimony from Simmons and Landers was the government's failure to advance *any* cost, convenience, or security rationale for

[4] The fact that Mills was available to testify did not make their testimony less crucial. Because prison regulations prevented Thomas from consulting with other inmates regarding their potential testimony, Thomas had no way to know that Mills would ultimately testify that he did not remember the March 24, 2011 incident in any detail. Of course, that surprise left Thomas without any corroborating testimony, making it one inmate's word against that of three correctional officers.

not issuing the writs. The *Stone* factors thus tilted exclusively in one direction: in favor of issuing writs for Simmons and Landers.

Below, the Seventh Circuit asserted that the exclusion of Simmons and Landers did not prejudice Thomas because Thomas "has no evidence" as to what they would have said at trial. Pet. App. 12a–13a. But that misstates the standard. For unrepresented plaintiffs, and in particular for unrepresented inmate-plaintiffs, courts require only a general proffer as to the topics a witness could be expected to address, which Thomas more than provided, *see* Pet. App. 79a–85a; Pet. App. 100a, not concrete "evidence" of what the witness would specifically have said at trial. *See, e.g.*, *Carter v. Hutto*, 781 F.2d 1028, 1030 n.2, 1032 (4th Cir. 1986) (reversing exclusion of two witnesses, holding that plaintiff's general proffer that witnesses "will testify about what they personally viewed as having occured [sic] during the search of plaintiff's cell" was sufficient). This case illustrates why that must be the rule. As noted above, prison regulations prevented Thomas from conferring with potential witnesses about the contents of their testimony. As a result, faulting Thomas for failing to make a more detailed proffer about what a witness would say at trial punishes him for failing to engage in conduct that is forbidden by prison regulations.

Thomas thus made an adequate proffer under the circumstances and he has a concrete interest in the resolution of the question presented. Certiorari should be granted.

II. The Question Presented Is Of Great Importance.

The issue whether under Section 2241(c)(5) an inmate should be brought to trial can arise in a multitude of circumstances, spanning criminal and civil cases alike. As the Seventh Circuit has recognized in rejecting the argument that the writ may only be issued when "a prisoner is seeking relief against being confined or against the conditions in which he being confined," a writ may be sought, and indeed frequently is sought, under Section 2241(c)(5) by the government to obtain a witness in a criminal case, or can be sought where "[a] prisoner [is] a crucial witness in a civil case in federal court that had nothing to do with prisons or criminal law." *See Barnes*, 544 F.3d at 809–10.

But even assuming *arguendo* that the Seventh Circuit's restrictive view of the availability of a writ of habeas corpus for the production of inmate-witnesses could validly be cabined to the *pro se* prisoner civil rights context, resolution of the question presented still will resonate throughout the federal judiciary. In the year ending March 31, 2018 alone, 18,216 civil rights actions and 9,698 actions relating to prison conditions were filed by prisoners in the federal district courts.[5] In the same period, there were 188 trials in prisoner civil rights actions and 82 trials in prison condition actions—over 10% of the 2,513 total trials in the federal district courts. For many of those prisoner-plaintiffs, having been convicted of a crime, they will struggle to establish their

[5] *See* http://www.uscourts.gov/federal-judicial-caseload-statistics-2018-tables.

credibility, particularly if the defendants and their witnesses are correctional officers. That makes it essential for the plaintiff to present corroborating testimony, usually from fellow inmates who witnessed the relevant incident or conditions.

These trials, like Thomas's, are an essential mechanism for vindicating core constitutional interests. Abuse of inmates by staff is underreported in American prisons and jails. *See* David M. Shapiro, Charles Hogle, *The Horror Chamber: Unqualified Impunity in Prison*, 93 Notre Dame L. Rev. 2021, 2024–26 (2018). The "closed nature of the prison environment and the fact that prisons house politically powerless, unpopular people" create a "significant risk of mistreatment and abuse." David C. Fathi, *The Challenge of Prison Oversight*, 47 Am. Crim. L. Rev. 1453, 1453 (2010). These abuses are underreported, in part because "it is difficult to penetrate prison walls to produce evidence of abusive practices, and it is rare for a prison guard to defy his fellow officers and speak out against wrongful conduct." Andrea Jacobs, *Prison Power Corrupts Absolutely: Exploring the Phenomenon of Prison Guard Brutality and the Need to Develop A System of Accountability*, 41 Cal. W. L. Rev. 277, 278 (2004); *see also* Kitty Calavita & Valerie Jenness, *Appealing to Justice: Prisoner Grievances, Rights, and Carceral Logic* 68 (2015) (reporting that 61% of prisoners reported fearing retaliation for filing a grievance against a prison guard).

Inmate litigation thus frequently serves as the only means of regulating these invisible abuses. *See* Tasha Hill, *Inmates' Need for Federally Funded Lawyers: How the Prison Litigation Reform Act*, Casey, *and* Iqbal

Combine with Implicit Bias to Eviscerate Inmate Civil Rights, 62 UCLA L. Rev. 176, 193–94 (2015). Prisoner civil rights lawsuits under § 1983 therefore play an essential role in deterring and punishing constitutional violations. "Indeed, this was precisely the proposition upon which § 1983 was enacted." *Imbler v. Pachtman*, 424 U.S. 409, 442 (1976) (White, J., concurring). But as a practical matter, once in court, pro se inmates generally lack the resources to gather evidence and research law that would enable them to support their claims. Shapiro & Hogle, *supra*, at 2049–52.

So even setting aside the other contexts in which a Section 2241(c)(5) request can arise, at a minimum it is important that those few prisoners whose civil rights claims survive to trial be given a full and fair opportunity to present their case. A *Stone*-type balancing test ensures this by requiring district courts to give serious consideration to prisoner requests to ensure that important corroborating witnesses are permitted to testify, absent compelling reasons why transporting them to court is unfeasible. The decision below does away with this important safeguard and thereby imperils a large pool of potentially meritorious claims involving core constitutional rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

May 13, 2019

Respectfully submitted,

CLIFFORD W. BERLOW
Counsel of Record
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
(312) 840-7366
cberlow@jenner.com

RÉMI J.D. JAFFRÉ
KATHERINE A. ROSOFF
JENNER & BLOCK LLP
919 Third Avenue
New York, NY 10022
(212) 891-1600

APPENDIX

Appendix A

In the United States Court of Appeals For the Seventh Circuit

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No. 15-2830

MICHAEL N. THOMAS,

Plaintiff-Appellant,

v.

RAYMOND ANDERSON, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois.
No. 12-C-1343 — **Joe Billy McDade**, *Judge*.

ARGUED FEBRUARY 7, 2018 – DECIDED NOVEMBER 14, 2018

AS AMENDED ON PETITION FOR REHEARING JANUARY 11, 2019

Before BAUER, ROVNER, and SYKES, *Circuit Judges*.

SYKES, *Circuit Judge*. Michael Thomas, an Illinois prisoner formerly confined at Hill Correctional Center, alleged that prison guards attacked him with excessive force and that the beating and subsequent disciplinary proceedings were in retaliation for lawsuits and grievances he filed. He sued the guards and other prison officials seeking damages under 42 U.S.C. § 1983. In the course of pretrial proceedings, the district judge required the parties to stipulate to the events preceding the attack and ruled that certain inmate witnesses must appear, if at all, by video conference. The judge also declined Thomas's request for recruited counsel, determining that he was competent to litigate the suit pro se. At trial the judge entered judgment as a matter of law for the defendants on all claims except those asserting excessive force by two officers. The jury decided those claims against Thomas.

On appeal Thomas contests the judge's evidentiary rulings, the decision not to recruit counsel, and the partial judgment for the defendants as a matter of law. Because Thomas's trial testimony allowed for a permissible inference of retaliation, the judge should not have taken the retaliation claims from the jury. We reverse the judgment on those claims. In all other respects, we affirm.

I. Background

Thomas's lawsuit centers on an altercation that occurred on March 24, 2011, at Hill Correctional. Thomas alleged that two prison guards, Raymond Anderson and

Richard Cochran, attacked him and that a third guard, Roger Fitchpatrick, failed to intervene to stop the attack, all in violation of his rights under the Eighth Amendment. He also claimed that the officers violated the First Amendment by retaliating against him for his past grievances and lawsuits: Anderson, Cochran, and Fitchpatrick by assaulting him (or failing to intervene); Anderson and Cochran by issuing phony disciplinary charges after the attack; and two hearing officers, Cornealious Sanders and Scott Bailey, by finding him guilty of the charges knowing that they were baseless.

At trial Thomas testified to his version of the events on March 24 and the disciplinary proceeding that followed. He testified that on the morning of March 24, he was showering before the morning lockup when Officers Anderson, Cochran, and Fitchpatrick saw him and signaled—seven or eight minutes early—that all inmates must immediately return to their cells. Thomas hurried, still soapy and partially undressed, to return to his cell. Cochran slammed the cell door shut before Thomas could enter, but the door bounced open and he managed to slip inside. Anderson, Cochran, and Fitchpatrick followed, and Anderson told Cochran to "write that MF'er a ticket" for refusing to enter his cell after the lockup signal. When Thomas protested, Cochran cornered him, cursing and screaming. Anderson then rebuked Thomas, saying, "You should have thought about that before you made all of [your] complaints about me and filing grievances about me in the prison." Thomas had previously filed grievances complaining that Anderson had (among other things) threatened to retaliate against him for notifying prison administrators, legislators, and government officials of problems at Hill, including safety and sanitation. Cochran told him that he "didn't like inmates who tried to get staff in trouble."

Thomas testified that after the officers entered his cell, Cochran handcuffed him and Fitchpatrick ordered his cellmate to leave. Anderson then directed Cochran to teach Thomas how to keep his "mouth closed and to not make the staff upset." Cochran pushed Thomas to the ground and punched him while a second guard "yanked" him. Thomas told the jury that this second guard must have been Anderson because he could see Fitchpatrick standing back "egging them on." The three guards then pulled Thomas from his cell and threw him against the corridor walls before sending him to the segregation unit.

The defendants disputed Thomas's version of events, denying that they used excessive force against him. Anderson and Cochran testified that Thomas resisted the lockup and shouted racial epithets. Cochran acknowledged that he handcuffed Thomas but denied using excessive force in doing so. Fitchpatrick echoed that Thomas had been shouting and swearing, and he too denied that Cochran used undue force. Anderson testified that he told Fitchpatrick that he did not want anything to do with Thomas because of his previous grievances against him. Fitchpatrick admitted knowing that Thomas had filed grievances against Anderson; Cochran testified that he did not know about the grievances.

Disciplinary proceedings against Thomas followed this incident. Cochran wrote Thomas up for resisting the lockup, making threats, being insolent, and disobeying a direct order. Officers Bailey and Sanders conducted the disciplinary hearing on these charges; the parties disagree about what happened. According to Thomas, Bailey and Sanders told him that "their hands were tied" and they "couldn't" exonerate him. He testified that Sanders mentioned that he was about to retire and did not want trouble, and Bailey said that Thomas "shouldn't have been making complaints about the prison" if he did not want "to be in a situation like" this one. Sanders denied saying that he found Thomas guilty because his "hands were tied" or that Thomas should not file grievances. Likewise, Bailey denied warning Thomas against complaining about prison employees. Thomas was found guilty of the rules violations and received a month in segregation and then spent three months assigned to C grade, a more restrictive confinement.

The judge restricted the scope of the trial in several ways that are relevant to this appeal. In lieu of admitting voluminous evidence of Thomas's prior grievances, the judge required the parties to stipulate that Thomas had filed numerous grievances against Anderson and others, and that he also had sued Anderson. Over Thomas's objection, the judge also refused to permit testimony about events before March 24. The judge barred the testimony of two of Thomas's proffered inmate witnesses, Kiante Simmons and Xavier Landers, who were no longer in state prison. Thomas thought that they might be incarcerated elsewhere—perhaps the Cook County Jail and an unnamed federal facility, respectively—but this supposition was just speculation. In any event, even assuming that they *were* in custody somewhere else, the judge was only willing to permit them to testify via video conference; he would not order them produced for in-person testimony.

Early on in the case, the judge had denied Thomas's several requests for recruited pro bono counsel. Closer to trial, the judge did not rule on Thomas's requests to reconsider those earlier decisions. Finally, at the close of the evidence, the judge took several claims from the jury, granting the defendants' motion for judgment as a matter of law under Rule 50 of the Federal Rules of Civil Procedure. In the end the jury was asked to decide only if Anderson and Cochran had used excessive force and, if so, whether Anderson had been motivated to do so by a desire to retaliate for Thomas's lawsuits and grievances. On these claims the jury returned a verdict for Anderson and Cochran. This appeal followed.[1]

II. Analysis

We begin with Thomas's argument that the judge was wrong to grant the defendants' Rule 50 motion on two claims: that Anderson and Cochran retaliated against him by issuing a phony disciplinary report and that Sanders and Bailey retaliated against him by conducting a sham disciplinary hearing. Judgment as a matter of law is justified only if after a full hearing there

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[1] We sua sponte recruited pro bono counsel for Thomas on appeal. Barry Levenstam, Remi J.D. Jaffre, and Jenner & Block LLP, accepted the appointment. They have ably discharged their duties. We thank them for their service to their client and the court.

is no "legally sufficient evidentiary basis to find for the party on that issue." FED. R. CIV. P. 50(a)(1); *Lopez v. City of Chicago*, 464 F.3d 711, 718 (7th Cir. 2006). Because the judge overlooked testimony supporting Thomas's position and failed to view evidence in the light most favorable to him, we reverse the judgment on these claims.

As to Anderson, the judge explained that "the only evidence relating to any retaliation" was Anderson telling Fitchpatrick that he did not want anything to do with Thomas because of his previous grievances. But Thomas's account of the encounter provided an evidentiary basis from which a reasonable jury could infer retaliatory motive. Thomas testified that (1) Anderson called for an early lockup after seeing him in the shower; (2) Anderson told Cochran to write Thomas a ticket for refusing to lock up, even though Thomas did not refuse; and (3) when Thomas protested that the ticket was baseless, Anderson scoffed: "You should have thought about that before you made all of [your] complaints about me and filing grievances about me in the prison." It was for the jury to decide which account to believe. *Passananti v. Cook County*, 689 F.3d 655, 659 (7th Cir. 2012) (noting that in assessing a Rule 50 motion, "[t]he court does not make credibility determinations or weigh the evidence"); *Lopez*, 464 F.3d at 720 (same). A jury could reasonably conclude from Thomas's version that Anderson orchestrated Thomas's "late" return to his cell to trump up a false disciplinary charge in retaliation for Thomas's past complaints.

We reach a similar conclusion about Cochran. The judge granted the Rule 50 motion on the retaliation claim against him because he thought that there was no evidence that Cochran knew of Thomas's litigation. But Thomas testified that Cochran was in the cell when Anderson told Thomas that he should not have filed grievances and that Cochran himself said that he "didn't like inmates who tried to get staff in trouble." A jury could reasonably infer based on these statements that Cochran helped call for an early lockup before Thomas finished showering as revenge for Thomas's grievances and lawsuits. *See Gevas v. McLaughlin*, 798 F.3d 475, 477 (7th Cir. 2015) (assessing a Rule 50 motion requires the court "to assume the truth of" the testimony of the nonmoving party).

Finally, the jury should have been permitted to decide whether Bailey and Sanders held a hearing that they knew was a sham for the purpose of retaliating against Thomas. The judge entered judgment in their favor on this claim because again he thought no evidence showed that these defendants knew of Thomas's past grievances. But retaliatory motive can be inferred from Thomas's account of the hearing. *See id.* at 477, 481–82. Thomas testified that Bailey told him that he "shouldn't have been making complaints about the prison" if he didn't "want to be in [this] situation" and that his "hands were tied." And he testified further that Sanders agreed that his "hands were tied" and expressed concern that conducting a fair hearing could interfere with his retirement.

Bailey and Sanders respond that Thomas's testimony suggests only that they were motivated by personal concerns, not by Thomas's First Amendment activity. But a retaliation claim only requires evidence that the plaintiff's protected activity was "at least *a* motivating factor" for the retaliatory action. *Perez v. Fenoglio*, 792 F.3d 768, 783 (7th Cir. 2015) (emphasis added) (quoting *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009)). Thomas's testimony, if a jury finds it credible, could support an inference that retaliation for his past grievances was a motivating factor in their decision. Viewed as a whole, there was sufficient evidence to present this claim to the jury.

A. Events Before March 24, 2011

Thomas also contests the judge's decision to bar testimony about events before March 24, 2011, and instead require the parties to stipulate that Thomas had filed grievances against Anderson and other prison officials. Thomas proposed to introduce at trial more than 150 complaints and grievances he had filed. The judge ruled that admitting that number of grievances could confuse the issues, prolong the trial, and possibly prejudice the jurors. And apart from concerns about the quantity, the judge worried that jurors would be tempted to assess whether the grievances were true.

Thomas contends that this restriction disabled him from showing that his grievances actually motivated Anderson to retaliate against him. He argues that he could have used evidence from before March 24 to show that Anderson had threatened to issue "bogus disciplinary reports" and physically harm him if he did not stop filing grievances. In place of this evidence, Thomas says, the stipulation informed the jury only that he had engaged in constitutionally protected activity.

That is not an accurate characterization of the stipulation. The stipulation informed the jury in general terms of Thomas's grievance and complaints about prison conditions. It also explained that Thomas had accused Anderson of "locking prisoners up in their cells earlier than the allowable time, making racial comments to inmates and threatening inmates, including plaintiff, with punishment for making complaints about [Anderson]." That was enough to convey to the jury the basic background facts pertaining to the alleged retaliatory motive.

Moreover, the judge was understandably concerned that permitting Thomas to introduce the entire record of his prior grievances would bog down the proceedings and distract and potentially confuse the jurors. To avoid those risks, the judge reasonably concluded that the stipulation was an appropriate substitute for this evidence. *See Marcus & Millichap Inv. Servs. of Chi., Inc. v. Sekulovski*, 639 F.3d 301, 307 (7th Cir. 2011). That ruling was well within the judge's authority to manage the efficiency of the trial by streamlining Thomas's voluminous proposed evidence. *See Whitfield v. Int'l Truck & Engine Corp.*, 755 F.3d 438, 447 (7th Cir. 2014). We see no abuse of discretion.

B. Exclusion of Kiante Simmons and Xavier Landers

Thomas also challenges the judge's decision to exclude the testimony of two inmate witnesses, Kiante Simmons and Xavier Landers. In both instances the judge stated that the witnesses must testify, if at all, using video-conferencing technology. Because Thomas did not produce video-conference addresses for Simmons and Landers, they did not testify.

First, to the extent that either witness would have testified about events before March 24, 2011, their exclusion was harmless because the judge's earlier ruling foreclosed that evidence. And contrary to Thomas's argument on appeal, the judge's failure to apply the balancing test outlined in *Stone v. Morris*, 546 F.2d 730 (7th Cir. 1976), was not reversible error. By its terms, *Stone* applies when a district judge must decide whether a "plaintiff-prisoner in a civil rights suit" should be brought to court for trial. We explained that the judge should weigh the logistical difficulties and particular security risks of transporting the plaintiff-prisoner against the prisoner's interest in testifying in person and examining the witnesses face-to-face. *Id.* at 735–36.

We have not extended *Stone's* particularized balancing test to nonparty inmate witnesses. As we've explained more recently, forcing a prisoner-plaintiff to try his case remotely by video conferencing raises special challenges—e.g., the inability of the prisoner-plaintiff to see jurors' faces, the difficulty in examining and evaluating witnesses, and the complications associated with communicating with the court and opposing counsel. *See Perotti v. Quinones*, 790 F.3d 712, 725 (7th Cir. 2015). Those concerns do not affect nonparty inmate witnesses testifying live via video-conferencing technology.

Instead, Rule 43(a) of the Federal Rules of Civil Procedure and 28 U.S.C. § 2241(c)(5) bear directly on this question. The latter permits the court to issue a writ of habeas corpus when "[i]t is necessary to bring [a prisoner] to court to testify or for trial." § 2241(c)(5). And under Rule 43(a), the judge has discretion to allow live testimony by video for "good cause in compelling circumstances and with appropriate safeguards." *Thornton v. Snyder*, 428 F.3d 690, 698 (7th Cir. 2005) ("Rule 43 affirmatively allows for testimony by videoconference in certain circumstances … .").

Here, another inmate witness testified to the same information that Thomas says he wanted to cover with Simmons and Landers. The judge determined that Thomas's interest in their testimony was outweighed by the expense and inconvenience of transporting them for trial (assuming they could be located and were in fact in custody). So he allowed them to testify, if at all, only by video. That ruling was well within his discretion.

Moreover, Thomas has not come close to establishing that he was prejudiced by the absence of their testimony. *See Mason v. S. Ill. Univ. at Carbondale*, 233 F.3d 1039, 1042–43 (7th Cir. 2000) (explaining that the party challenging the exclusion of the evidence must record the grounds for admissibility, content, and significance of the excluded testimony). Thomas suggests that Simmons and Landers would have recalled the March 24 altercation better than the inmate who testified in support of his story. But he has no evidence to back up that assertion. Accordingly, the judge's failure to apply *Stone's* particularized balancing test was not reversible error.[2]

C. Recruitment of Counsel

Finally, Thomas argues that the judge abused his discretion by declining to recruit counsel to represent him. We disagree. Thomas filed two requests for counsel in February 2014 and February 2015. But neither request showed that he tried to obtain counsel on his own or that he was precluded from doing so. So the judge's denial of these requests was not an abuse of discretion. *Pruitt v. Mote*, 503 F.3d 647, 654–55 (7th Cir.

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[2] We note that the Third Circuit has said that the *Stone* balancing test applies to a request by a prisoner-plaintiff for production of nonparty inmate witnesses at a civil trial. *Jerry v. Francisco*, 632 F.2d 252, 255–56 (3d Cir. 1980). But in *Jerry* the magistrate judge and the district court *completely overlooked* the prisoner-plaintiff's motion to produce inmate witnesses to testify at his civil-rights trial. The court held that "[i]t was clearly error to fail to act on the motion and exercise the discretion." *Id.* at 256. More importantly, without analysis and in a single sentence, the Third Circuit imported the *Stone* balancing test to this situation. *Id.* ("We believe that the same considerations must be weighed in determining whether a writ of habeas corpus ad testificandum should be issued to secure the appearance of an incarcerated non-party witness at the request of an incarcerated plaintiff."). The court did not pause to consider that the concerns underlying *Stone*—namely, safeguarding a prisoner-plaintiff's access to the courts—are not implicated in precisely the same way when the inmate is a *witness* for the plaintiff rather than the *plaintiff himself*. Finally, and most significantly, the Third Circuit was not confronted with the ready alternative of live inmate testimony by video-conferencing technology, which is now widely available and was the mode of testimony the judge settled on here. For these reasons, *Jerry* is distinguishable.

2007) (en banc); *see Romanelli v. Suliene*, 615 F.3d 847, 851–52 (7th Cir. 2010) (explaining that the denial of a motion to recruit counsel was justified by the district court's finding that the plaintiff had not tried to obtain counsel). And the judge did not limit his decision to that particular defect; he also ruled that Thomas was competent to litigate his own case.

Before trial, Thomas twice more asked that the judge "reconsider appointing counsel." Although these requests cured the technical defect in the earlier ones—Thomas specifically stated that he had tried unsuccessfully to find counsel—the judge did not rule on them. But once a judge appropriately addresses and resolves a request for recruitment of pro bono counsel, he need not revisit the question. *Pruitt*, 503 F.3d at 658; *cf. Childress v. Walker*, 787 F.3d 433, 442–43 (7th Cir. 2015) (finding that it was an abuse of discretion to act on neither of the plaintiff's requests for counsel); *Dewitt v. Corizon, Inc.*, 760 F.3d 654, 657–59 (7th Cir. 2014) (finding that it was an abuse to deny the initial motions for counsel without explaining the reasoning and then to ignore subsequent requests). We find no error.

III. Conclusion

Accordingly, the judgment is REVERSED, and the case is REMANDED for further proceedings on the retaliation claims against Anderson, Cochran, Sanders, and Bailey. In all other respects, the judgment is AFFIRMED.

Appendix B

In the United States Court of Appeals For the Seventh Circuit

No. 15-2830

MICHAEL N. THOMAS,

Plaintiff-Appellant,

v.

RAYMOND ANDERSON, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois.
No. 12-C-1343 — **Joe Billy McDade**, *Judge*.

ARGUED FEBRUARY 7, 2018 – DECIDED NOVEMBER 14, 2018

Before BAUER, ROVNER, and SYKES, *Circuit Judges*.

SYKES, *Circuit Judge*. Michael Thomas, an Illinois prisoner formerly confined at Hill Correctional Center, alleged that prison guards attacked him with excessive force and that the beating and subsequent disciplinary proceedings were in retaliation for lawsuits and grievances he filed. He sued the guards and other prison officials seeking damages under 42 U.S.C. § 1983. In the course of pretrial proceedings, the district judge required the parties to stipulate to the events preceding the attack and ruled that certain inmate witnesses must appear, if at all, by video conference. The judge also declined Thomas's request for recruited counsel, determining that he was competent to litigate the suit pro se. At trial the judge entered judgment as a matter of law for the defendants on all claims except those asserting excessive force by two officers. The jury decided those claims against Thomas.

On appeal Thomas contests the judge's evidentiary rulings, the decision not to recruit counsel, and the partial judgment for the defendants as a matter of law. Because Thomas's trial testimony allowed for a permissible inference of retaliation, the judge should not have taken the retaliation claims from the jury. We reverse the judgment on those claims. In all other respects, we affirm.

I. Background

Thomas's lawsuit centers on an altercation that occurred on March 24, 2011, at Hill Correctional. Thomas alleged that two prison guards, Raymond Anderson and Richard Cochran, attacked him and that a third guard, Roger Fitchpatrick, failed to intervene to stop the attack, all in violation of his rights under the Eighth Amendment. He also claimed that the officers violated the First Amendment by retaliating against him for his past grievances and lawsuits: Anderson, Cochran, and Fitchpatrick by assaulting him (or failing to intervene); Anderson and Cochran by issuing phony disciplinary charges after the attack; and two hearing officers, Cornealious Sanders and Scott Bailey, by finding him guilty of the charges knowing that they were baseless.

At trial Thomas testified to his version of the events on March 24 and the disciplinary proceeding that followed. He testified that on the morning of March 24, he was showering before the morning lockup when Officers Anderson, Cochran, and Fitchpatrick saw him and signaled—seven or eight minutes early—that all inmates must immediately return to their cells. Thomas hurried, still soapy and partially undressed, to return to his cell. Cochran slammed the cell door shut before Thomas could enter, but the door bounced open and he managed to slip inside. Anderson, Cochran, and Fitchpatrick followed, and Anderson told Cochran to "write that MF'er a ticket" for refusing to enter his cell after the lockup signal. When Thomas protested, Cochran cornered him, cursing and screaming. Anderson then rebuked Thomas, saying, "You should have thought about that before you made all of [your] complaints about me and filing grievances about me in the prison." Thomas had previously filed grievances complaining that Anderson had (among other things) threatened to retaliate against him for notifying prison administrators, legislators, and government officials of problems at Hill, including safety and sanitation.

Cochran told him that he "didn't like inmates who tried to get staff in trouble."

Thomas testified that after the officers entered his cell, Cochran handcuffed him and Fitchpatrick ordered his cellmate to leave. Anderson then directed Cochran to teach Thomas how to keep his "mouth closed and to not make the staff upset." Cochran pushed Thomas to the ground and punched him while a second guard "yanked" him. Thomas told the jury that this second guard must have been Anderson because he could see Fitchpatrick standing back "egging them on." The three guards then pulled Thomas from his cell and threw him against the corridor walls before sending him to the segregation unit.

The defendants disputed Thomas's version of events, denying that they used excessive force against him. Anderson and Cochran testified that Thomas resisted the lockup and shouted racial epithets. Cochran acknowledged that he handcuffed Thomas but denied using excessive force in doing so. Fitchpatrick echoed that Thomas had been shouting and swearing, and he too denied that Cochran used undue force. Anderson testified that he told Fitchpatrick that he did not want anything to do with Thomas because of his previous grievances against him. Fitchpatrick admitted knowing that Thomas had filed grievances against Anderson; Cochran testified that he did not know about the grievances.

Disciplinary proceedings against Thomas followed this incident. Cochran wrote Thomas up for resisting the lockup, making threats, being insolent, and disobeying a direct order. Officers Bailey and Sanders conducted the disciplinary hearing on these charges; the parties disagree about what happened. According to Thomas, Bailey and Sanders told him that "their hands were tied" and they "couldn't" exonerate him. He testified that Sanders mentioned that he was about to retire and did not want trouble, and Bailey said that Thomas "shouldn't have been making complaints about the prison" if he did not want "to be in a situation like" this one. Sanders denied saying that he found Thomas guilty because his "hands were tied" or that Thomas should not file grievances. Likewise, Bailey denied warning Thomas against complaining about prison employees. Thomas was found guilty of the rules violations and received a month in segregation and then spent three months assigned to C grade, a more restrictive confinement.

The judge restricted the scope of the trial in several ways that are relevant to this appeal. In lieu of admitting voluminous evidence of Thomas's prior grievances, the judge required the parties to stipulate that Thomas had filed numerous grievances against Anderson and others, and that he also had sued Anderson. Over Thomas's objection, the judge also refused to permit testimony about events before March 24. The judge barred the testimony of two of Thomas's proffered inmate witnesses, Kiante Simmons and Xavier Landers, who were no longer in state prison. Thomas thought that they might be incarcerated elsewhere—perhaps the Cook County Jail and an unnamed federal facility, respectively—but this supposition was just speculation. In any event, even assuming that they *were* in custody somewhere else, the judge was only willing to permit them to testify via video conference; he would not order them produced for in-person testimony.

Early on in the case, the judge had denied Thomas's several requests for recruited pro bono counsel. Closer to trial, the judge did not rule on Thomas's requests to reconsider those earlier decisions. Finally, at the close of the evidence, the judge took several claims from the jury, granting the defendants' motion for judgment as a matter of law under Rule 50 of the Federal Rules of Civil Procedure. In the end the jury was asked to decide only if Anderson and Cochran had used excessive force and, if so, whether Anderson had been motivated to do so by a desire to retaliate for Thomas's lawsuits and grievances. On these claims the jury returned a verdict for Anderson and Cochran. This appeal followed.[1]

II. Analysis

We begin with Thomas's argument that the judge was wrong to grant the defendants' Rule 50 motion on two claims: that Anderson and Cochran retaliated against him by issuing a phony disciplinary report and that Sanders and Bailey retaliated against him by conducting a sham disciplinary hearing. Judgment as a matter of law is justified only if after a full hearing there is no "legally sufficient evidentiary basis to find for the party on that issue." FED. R. CIV. P. 50(a)(1); *Lopez v. City of Chicago*, 464 F.3d 711, 718 (7th Cir. 2006).

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[1] We sua sponte recruited pro bono counsel for Thomas on appeal. Barry Levenstam, Remi J.D. Jaffre, and Jenner & Block LLP, accepted the appointment. They have ably discharged their duties. We thank them for their service to their client and the court.

Because the judge overlooked testimony supporting Thomas's position and failed to view evidence in the light most favorable to him, we reverse the judgment on these claims.

As to Anderson, the judge explained that "the only evidence relating to any retaliation" was Anderson telling Fitchpatrick that he did not want anything to do with Thomas because of his previous grievances. But Thomas's account of the encounter provided an evidentiary basis from which a reasonable jury could infer retaliatory motive. Thomas testified that (1) Anderson called for an early lockup after seeing him in the shower; (2) Anderson told Cochran to write Thomas a ticket for refusing to lock up, even though Thomas did not refuse; and (3) when Thomas protested that the ticket was baseless, Anderson scoffed: "You should have thought about that before you made all of [your] complaints about me and filing grievances about me in the prison." It was for the jury to decide which account to believe. *Passananti v. Cook County*, 689 F.3d 655, 659 (7th Cir. 2012) (noting that in assessing a Rule 50 motion, "[t]he court does not make credibility determinations or weigh the evidence"); *Lopez*, 464 F.3d at 720 (same). A jury could reasonably conclude from Thomas's version that Anderson orchestrated Thomas's "late" return to his cell to trump up a false disciplinary charge in retaliation for Thomas's past complaints.

We reach a similar conclusion about Cochran. The judge granted the Rule 50 motion on the retaliation claim against him because he thought that there was no evidence that Cochran knew of Thomas's litigation. But Thomas testified that Cochran was in the cell when

Anderson told Thomas that he should not have filed grievances and that Cochran himself said that he "didn't like inmates who tried to get staff in trouble." A jury could reasonably infer based on these statements that Cochran helped call for an early lockup before Thomas finished showering as revenge for Thomas's grievances and lawsuits. *See Gevas v. McLaughlin*, 798 F.3d 475, 477 (7th Cir. 2015) (assessing a Rule 50 motion requires the court "to assume the truth of" the testimony of the nonmoving party).

Finally, the jury should have been permitted to decide whether Bailey and Sanders held a hearing that they knew was a sham for the purpose of retaliating against Thomas. The judge entered judgment in their favor on this claim because again he thought no evidence showed that these defendants knew of Thomas's past grievances. But retaliatory motive can be inferred from Thomas's account of the hearing. *See id.* at 477, 481–82. Thomas testified that Bailey told him that he "shouldn't have been making complaints about the prison" if he didn't "want to be in [this] situation" and that his "hands were tied." And he testified further that Sanders agreed that his "hands were tied" and expressed concern that conducting a fair hearing could interfere with his retirement.

Bailey and Sanders respond that Thomas's testimony suggests only that they were motivated by personal concerns, not by Thomas's First Amendment activity. But a retaliation claim only requires evidence that the plaintiff's protected activity was "at least *a* motivating factor" for the retaliatory action. *Perez v. Fenoglio*, 792 F.3d 768, 783 (7th Cir. 2015) (emphasis added) (quoting

Bridges v. Gilbert, 557 F.3d 541, 546 (7th Cir. 2009)). Thomas's testimony, if a jury finds it credible, could support an inference that retaliation for his past grievances was a motivating factor in their decision. Viewed as a whole, there was sufficient evidence to present this claim to the jury.

A. Events Before March 24, 2011

Thomas also contests the judge's decision to bar testimony about events before March 24, 2011, and instead require the parties to stipulate that Thomas had filed grievances against Anderson and other prison officials. Thomas proposed to introduce at trial more than 150 complaints and grievances he had filed. The judge ruled that admitting that number of grievances could confuse the issues, prolong the trial, and possibly prejudice the jurors. And apart from concerns about the quantity, the judge worried that jurors would be tempted to assess whether the grievances were true.

Thomas contends that this restriction disabled him from showing that his grievances actually motivated Anderson to retaliate against him. He argues that he could have used evidence from before March 24 to show that Anderson had threatened to issue "bogus disciplinary reports" and physically harm him if he did not stop filing grievances. In place of this evidence, Thomas says, the stipulation informed the jury only that he had engaged in constitutionally protected activity.

That is not an accurate characterization of the stipulation. The stipulation informed the jury in general terms of Thomas's grievance and complaints about prison conditions. It also explained that Thomas had accused Anderson of "locking prisoners up in their cells earlier than the allowable time, making racial comments to inmates and threatening inmates, including plaintiff, with punishment for making complaints about [Anderson]." That was enough to convey to the jury the basic background facts pertaining to the alleged retaliatory motive.

Moreover, the judge was understandably concerned that permitting Thomas to introduce the entire record of his prior grievances would bog down the proceedings and distract and potentially confuse the jurors. To avoid those risks, the judge reasonably concluded that the stipulation was an appropriate substitute for this evidence. *See Marcus & Millichap Inv. Servs. of Chi., Inc. v. Sekulovski*, 639 F.3d 301, 307 (7th Cir. 2011). That ruling was well within the judge's authority to manage the efficiency of the trial by streamlining Thomas's voluminous proposed evidence. *See Whitfield v. Int'l Truck & Engine Corp.*, 755 F.3d 438, 447 (7th Cir. 2014). We see no abuse of discretion.

B. Exclusion of Kiante Simmons and Xavier Landers

Thomas also challenges the judge's decision to exclude the testimony of two inmate witnesses, Kiante Simmons and Xavier Landers. In both instances the judge stated that the witnesses must testify, if at all, using video-conferencing technology. Because Thomas did not produce video-conference addresses for Simmons and Landers, they did not testify.

First, to the extent that either witness would have testified about events before March 24, 2011, their exclusion was harmless because the judge's earlier ruling foreclosed that evidence. And contrary to Thomas's argument on appeal, the judge was not required to apply the balancing test outlined in *Stone v. Morris*, 546 F.2d 730 (7th Cir. 1976). *Stone* applies when a district judge must decide whether a "plaintiff-prisoner in a civil rights suit" should be brought to court for trial. We explained that the judge should weigh the logistical difficulties of transporting the plaintiff-prisoner against the prisoner's interest in testifying in person and examining the witnesses face-to-face. *Id.* at 735–36.

Stone has not been extended to nonplaintiff inmate witnesses, and we decline to do so now. As we've explained more recently, forcing a prisoner-plaintiff to try his case remotely by video conferencing raises special challenges— e.g., the inability of the prisoner-plaintiff to see jurors' faces, the difficulty in examining and evaluating witnesses, and the complications associated with communicating with the court and opposing counsel. *See Perotti v. Quinones*, 790 F.3d 712, 725 (7th Cir. 2015). Those concerns do not affect a nonplaintiff inmate testifying as a witness.

Instead, Rule 43(a) of the Federal Rules of Civil Procedure and 28 U.S.C. § 2241(c)(5) govern this question. The latter permits the court to issue a writ of habeas corpus when "[i]t is necessary to bring [a prisoner] to court to testify or for trial." § 2241(c)(5). And under Rule 43(a), the judge has discretion to allow live testimony by video for "good cause in compelling circumstances and with appropriate safeguards." *Thornton v. Snyder*, 428 F.3d 690, 698 (7th Cir. 2005) ("Rule 43 affirmatively allows for testimony by video-conference in certain circumstances … .").

Here, another inmate witness testified to the same information that Thomas says he wanted to cover with Simmons and Landers. The judge determined that Thomas's interest in their testimony was outweighed by the expense and inconvenience of transporting them for trial (assuming they could be located and were in fact in custody). That was well within his discretion.

Moreover, Thomas has not come close to establishing that he was prejudiced by the absence of their testimony. *See Mason v. S. Ill. Univ. at Carbondale*, 233 F.3d 1039, 1042–43 (7th Cir. 2000) (explaining that the party challenging the exclusion of the evidence must record the grounds for admissibility, content, and significance of the excluded testimony). Thomas suggests that Simmons and Landers would have recalled the March 24 altercation better than the inmate who testified in support of his story. But he has no evidence to back up that assertion.

C. Recruitment of Counsel

Finally, Thomas argues that the judge abused his discretion by declining to recruit counsel to represent him. We disagree. Thomas filed two requests for counsel in February 2014 and February 2015. But neither request showed that he tried to obtain counsel on his own or that he was precluded from doing so. So the judge's denial of these requests was not an abuse of discretion. *Pruitt v. Mote*, 503 F.3d 647, 654– 55 (7th Cir. 2007) (en banc); *see Romanelli v. Suliene*, 615 F.3d 847, 851–52 (7th Cir. 2010) (explaining that the denial of a motion to recruit counsel was justified by the district court's finding that the plaintiff had not tried to obtain counsel). And the judge did not limit his decision to that particular defect; he also ruled that Thomas was competent to litigate his own case.

Before trial, Thomas twice more asked that the judge "reconsider appointing counsel." Although these requests cured the technical defect in the earlier ones—Thomas specifically stated that he had tried unsuccessfully to find counsel—the judge did not rule on them. But once a judge appropriately addresses and resolves a request for recruitment of pro bono counsel, he need not revisit the question. *Pruitt*, 503 F.3d at 658; *cf. Childress v. Walker*, 787 F.3d 433, 442–43 (7th Cir. 2015) (finding that it was an abuse of discretion to act on neither of the plaintiff's requests for counsel); *Dewitt v. Corizon, Inc.*, 760 F.3d 654, 657–59 (7th Cir. 2014) (finding that it was an abuse to deny the initial motions for counsel without explaining the reasoning and then to ignore subsequent requests). We find no error.

III. Conclusion

Accordingly, the judgment is REVERSED, and the case is REMANDED for further proceedings on the retaliation claims against Anderson, Cochran, Sanders, and Bailey. In all other respects, the judgment is AFFIRMED.

Appendix C

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley
Dirksen United States
Courthouse
Room 2722 - 219 S.
Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

November 14, 2018

Before: WILLIAM J. BAUER, Circuit Judge
ILANA DIAMOND ROVNER, Circuit Judge
DIANE S. SYKES, Circuit Judge

No. 15-2830	MICHAEL N. THOMAS, Plaintiff - Appellant v. RAYMOND ANDERSON, et. al., Defendants – Appellees

Originating Case Information:
District Court No: 1:12-cv-01343-JBM Central District of Illinois District Judge Joe Billy McDade

The judgment is **REVERSED**, and the case is **REMANDED** for further proceedings on the retaliation claims against Anderson, Cochran, Sanders, and Bailey. In all other respects, the judgment is **AFFIRMED**.

The above is in accordance with the decision of this court entered on this date. Award costs to the Plaintiff.

Appendix D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

MICHAEL THOMAS, Plaintiff,	)	Docket No. 12-cv-1343
vs.	)	Peoria, Illinois July 29, 2015
RAYMOND ANDERSON, et al., Defendant.	)	

RECORD OF PROCEEDINGS
SUPPLEMENTAL FINAL PRETRIAL CONFERENCE
BEFORE THE HONORABLE JOE BILLY MCDADE
UNITED STATES DISTRICT JUDGE

[26] ****

THE COURT: Okay.

Now, the remaining issue is the witness list, and I appreciate your effort, Mr. Thomas, in reducing your list from something like 89 people to [27] 35. And now you have gotten it down to 18 in your last submission pursuant to my request at the July 15th hearing.

And looking at the pretrial order, the people you have listed are Michael Thomas, who is at Stateville, other than you; Willis Baird, who is no longer in custody and who has an address in Waukegan Illinois, which was provided by defendants. And thank you Mr. Poe for giving us the updated information as to where these people are based on information available to you.

Arnell Mills, who is still at Western; Xavier Landers, who is no longer in custody who has a Chicago address. Again, that was provided by defendants. And then Anthony Hamilton, who is an inmate at Hill; as well as Thomas Turnage; Kiante Simmons; Ruth Brown – I'm sorry -- Kiante Simmons, they are all inmates at Hill. And then there are non-inmate witnesses who are employees at Hill: Nurse Brown, Dr. Tiller, Nurse Clark, Correctional Officer Christa Millard, Wayne Steele, Sergeant Oelberg, Counselor Gary Beams, and Steven Gans, Correctional Officer Brian Kline, Lieutenant Tammy Bennett, and Correctional Officer Kerry Mitchell, all of those are people at Hill.

[28] Now, I wanted to go over this because I think that there is a basis to further reduce the witness list, Mr. Thomas. For instance, we don't have Mr. Willis Baird, who, according to you, will testify as to the excessive force used against you on March 24th. He is no longer an inmate but he lives in Waukegan. Is it your intent to subpoena, Mr. Baird?

MR. THOMAS: It is my understanding of the law, I have to have the finances. I don't have the finances, Judge.

THE COURT: But it seems like Mr. Mills, who is still an inmate, you said will testify to the same items, use of excessive force. In addition, he can testify that it was done in retaliation. So, it seems like Mills would be a better witness than Baird anyway even if Baird was available, because he has broad information. So I would think that unless you, based on what you say, we can eliminate Willis Baird as a potential witness.

MR. THOMAS: Judge, I don't know exactly what Mills would say, because as I stated before, IDOC rules and regulations prevent me from communicating with other offenders who are incarcerated or were previously incarcerated. So I [29] don't know what Mills would say, but it appears because I don't have the money to subpoena Baird, I have no choice but to go with Mills, so....

THE COURT: I'm not so sure I understood what you were saying. Did you say you don't know what Mills would say?

MR. THOMAS: I know Mills was present.

THE COURT: Yes.

MR. THOMAS: I know he was present and he was a porter, also known as a janitor, at that time, and he was a porter on that date, March 24th, 2011. Because of Department rules, I have never been able to speak to him or communicate with him.

THE COURT: Right. I understand that problem and that's the problem all inmates have. So when you call someone as a witness, you are assuming -- an inmate witness – you're assuming that he is going to testify favorable to you. He may not.

MR. THOMAS: Yes.

THE COURT: So at this point you thought that Mr. Baird and Arnell Mills were going to testify. And I'm looking at your notice of compliance that you filed back in February 4, 2015, which I asked you to, along with the defendant, to name your witnesses and what you expect them to [30] testify to. And you said Willis Baird and Arnell Mills were both porters, janitors on R4-C wing, present and working on March 24th, 2011. They could testify to defendants using excessive force on said date. Mills could further testify that defendants were harassing plaintiff in retaliation of plaintiff's grievances and complaints on various dates prior to March 24th.

MR. THOMAS: Yes.

THE COURT: So that's what you expecting him to testify to and that's why, legitimately, you know, you put them on your witness list. But now we know that Baird is unavailable, so that leaves Mills.

I would suggest that we leave Mills on and you take your chance at trial that he is going to testify as you expect him to testify to or you can just assume that he is not going to testify that way and not call him. You know, I understand your predicament. You had not been able to talk with him and say, Hey, listen, Arnell, are you still going to testify to what -- that there was excessive force? You don't know. That's the question.

So do you want me to leave -- shall we leave Arnell Mills on and have him available?

[31] MR. THOMAS: Yes, Judge.

THE COURT: Did he say yes?

Good. We leave Mills on.

Now the next one you have on the list is Xavier Landers. Now as I recall, Xavier was also going to testify to excessive force. And he is at -- well, we don't know where he is.

MR. THOMAS: He is in the Cook County Jail.

THE COURT: Well, I doubt if you -- I doubt if you have him available. Shall we take Landers off?

MR. THOMAS: I'm not sure if they have a video conference at the Cook County Jail.

THE CLERK: They don't. Cook County does not have video conferencing.

THE COURT: I understand that he does not have video conferencing what from what my clerk tells me.

MR. THOMAS: Then I can't subpoena him.

THE COURT: Right. So that leaves -- that leaves for your witnesses, we have Michael Thomas at Stateville, Willis Baird is off. We have Arnell Mills at Western, Xavier Landers is off since he is at Cook and there is no video there.

The next witness you have is Anthony Hopkins [32] -- Hamilton, I'm sorry, Anthony Hamilton. He is at Hill. All the rest are at Hill. And you told me earlier that Hamilton, you expect him to testify that the defendants were retaliating by prohibiting you from communicating with the media and government office. And that they engaged in excessive force.

Now we no longer have Miller in the case who interfered with your mail. So I presume that Hamilton was going to testify basically that Miller was interfering with your mail and prohibiting you from communicating with the media and government office; is that true?

MR. THOMAS: Yes.

THE COURT: And apparently he also has some information about what happened to you on March 24th that he witnessed also the excessive force?

MR. THOMAS: He witnessed the conversation between the lieutenant who conducted the investigation for the excessive force claim. He was present when witness Lieutenant Steele --

THE COURT: Now the investigation comes after March 24th; is that right?

MR. THOMAS: It started on March 24th.

THE COURT: What did he say?

MR. THOMAS: It was in effect on March 24th.

[33] THE COURT: Oh, there was an investigation on March 24th?

MR. THOMAS: Yes.

THE COURT: And you think Mr. Hamilton overheard who said what to whom?

MR. THOMAS: He was present.

THE COURT: He was present.

MR. THOMAS: He was present when Lieutenant Steele looked at the camera surveillance and stated that he knew I never refused to lock up, but he would not have anybody that worked for IDOC to overturn that conviction, that disciplinary conviction.

THE COURT: Okay. Now, I hate to tell you this, but if all Mr. Hamilton is going to testify to is that he overheard somebody else said something, if that somebody else was not one of the defendants, that testimony is not going to be admissible.

MR. THOMAS: The rebuttal evidence?

THE COURT: It could be rebuttal and perhaps it could be also impeachment. In other words, if the person he overheard said this testifies then he could rebut anything that person would say different from what he says he heard that person say.

MR. THOMAS: Yes.

[34] THE COURT: So I suspect that he could be a possibly rebuttal witness for you if that person he heard said something, testifies differently at trial. I don't even know if he will be called.

MR. THOMAS: He will be.

THE COURT: So I will leave Mr. Hamilton on as a possible rebuttal witness. Does that make sense to you?

MR. THOMAS: Yes.

THE COURT: Okay. The next witness is Thomas Turnage and that was your roommate, so, that's fine with Turnage.

But the next one I had question about was --

MR. THOMAS: Excuse me, Judge. I have an issue with Thomas Turnage.

THE COURT: Oh.

MR. THOMAS: Defendants never disclosed his whereabouts.

THE COURT: He is at Hill from what -- I thought that we said that he was at Hill.

MR. THOMAS: It is my understanding that he was at a parole site connected to Stateville's parole system.

MR. POE: Your Honor, this is Adam Poe. I looked him up today. He is now listed on parole. I [35] can find out -- I can see what address they have for him and disclose that with the Court like I did with the other three witnesses.

THE COURT: Okay. But if he's on parole and living at someplace outside the Department of Corrections, as I understand from Mr. Thomas, he is not in a position to subpoena him so that means that --

THE CLERK: It says that he is in parole District 1 out of Stateville, Judge.

THE COURT: He is on parole out of state?

THE CLERK: It says location is parole District 1 out from Stateville. That's where his parent institution was, so he has been paroled.

THE COURT: He has been paroled.

Okay. So that means that, Mr. Thomas, that I'm going to take Mr. Turnage off the witness list since he is not available through video at a DOC facility.

And the next proposed witness is Kiante Simmons, who is still to my knowledge an inmate at Hill. You still want her [sic] on your witness list, sir?

MR. THOMAS: From what I was told [Kiante Simmons] is now in federal custody at somewhere in that building that you have your judgeship on. He is somewhere in that [36] facility to my knowledge. That's what I was told. A federal holding system or something.

THE COURT: It is your understanding that Kiante Simmons is in federal custody somewhere?

MR. THOMAS: Yes. That's what I was told, Judge.

THE COURT: Well, I have no knowledge of this. And if you don't have any knowledge of this, are you in a position to subpoena him?

MR. THOMAS: If he is in federal court, I thought maybe there was a video conference site there.

THE COURT: You know, federal custody, we have -- this is a courthouse. We don't keep people in custody in the federal courthouse here. They come in for trials. We don't keep them here. So, I will have no jurisdiction over him, Mr. Thomas. He is not in custody here in this courthouse.

MR. THOMAS: That's what I was told that he was in Lawrence but after that I heard that the federal agents came to get him. I'm not sure, Judge. I don't have a computer. I'm going on what people tell me. So I don't know where he is. But I was told that he was in federal custody.

THE COURT: Well, I can't act on that [37] information because that has nothing to do with me. You know, if he was in a case I'm involved in, even then, you know, you have to get a subpoena for him. He is not. So, I think we can leave him on but there is no -- he is not going to be called because we don't know where he is, but we can take him off. What do you want me to do?

MR. THOMAS: I would like to leave him on. I think defendants know where he is. They are not forthcoming, but I would like to leave him on.

THE COURT: On the day of trial, unless we have a video address for him, he won't be called.

* * * *

Appendix E

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley
Dirksen United States
Courthouse
Room 2722 - 219 S.
Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

November 28, 2018

Before: DIANE S. SYKES, Circuit Judge

No. 15-2830	MICHAEL N. THOMAS, Plaintiff - Appellant v. RAYMOND ANDERSON, et. al., Defendants – Appellees
Originating Case Information:	
District Court No: 1:12-cv-01343-JBM Central District of Illinois District Judge Joe Billy McDade	

Upon consideration of the PLAINTIFF-APPELLANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME FOR FILING PETITION

FOR REHEARING OR REHEARING EN BANC, filed on November 28, 2018, by counsel for the appellant,

IT IS ORDERED that the motion for extension of time is **GRANTED**. The appellant shall file the petition for rehearing, if any, by December 19, 2018. No further extensions will be granted.

Appendix F

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

January 11, 2019

Before

WILLIAM J. BAUER, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

No. 15-2830

MICHAEL N. THOMAS, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Central District of Illinois.
v.	
RAYMOND ANDERSON, et al., *Defendants-Appellees*.	No. 12-C-1343
	Joe Billy McDade, *Judge*.

O R D E R

On December 19, 2018, plaintiff-appellant filed a petition for panel rehearing and rehearing en banc. No judge in regular active service requested a vote on the petition for rehearing en banc. The judges on the original panel voted to deny the petition for panel rehearing and to issue an amended opinion.

Accordingly, IT IS HEREBY ORDERED that this court's opinion dated November 14, 2018, is amended in a separately filed opinion released today.

IT IS FURTHER ORDERED that the petition for panel rehearing and rehearing en banc is DENIED.

Appendix G

In the U.S. District Court of Illinois
Central District

Michael Thomas,	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Raymond Anderson,	)	Case no. 12-1343
Richard W. Cochran,	)	
Cornealious Sanders,	)	42 U.S.C. Sec.
Lt. Scott A. Bailey,	)	1983 Complaint
Penni L. Ruhl,	)	
Linda Miller,	)	
C/O Fitzpatrick,	)	
C/O Richardson,	)	
C/O John Doe,	)	
Defendants.	)	
	)	
(Individual Capacity)	)	

COMPLAINT

BRIEF STATEMENT

This complaint is being commenced against defendants for using unlawful & excessive force against plaintiff; &, for defendants retaliating against plaintiff for exercising his protected 1st Amendment rights to grieve & redress conditions of confinement at the Hill C.C., when plaintiff repeatedly reported prison officials to State & U.S. legislators; the FBI; Grievance Boards; Illinois State Police; White House officials; legal professionals, inter alia.

PARTIES

All of the above listed defendants work at Hill C.C., or did work there between Feb. 3, 2010--Sept. 7, 2011. Hill C.C. is located at: 600 Linwood Rd.; P.O. Box 1700; Galesburg, Il 61401.

"C/O" is an abbreviation of "Correctional Officer." The term is used within IDOC by government, & is adopted in this complaint.

C/O Fitzpatrick's first name is unknown to plaintiff at this time. His badge number is allegedly #9759. He worked in R4 building of prison on 3-24-11 on 7-3 shift.

C/O Richard's first name is not known by plaintiff at this time. Richardson is a young white male with short hair [as of 2011], & worked on 3-11 shift. He was also assigned many days to pass out legal & privileged mail where inmates were/are required to sign mail receipts in 2011. Richardson passed said legal-privileged mail out also on 8-25-11; his badge is either #9023 or #9028.

C/O John Doe's full name is unknown to plaintiff at this time. Doe is a young white male; he worked on the 3-1 1 shift & passed out legal-privileged mail in 2011.

Linda Miller worked in Mail Room of prison in 2010 & 2011.

Plaintiff is currently incarcerated at Pinckneyville C.C., but he was incarcerated at Hill C.C. from 2-3-10 to 9-7-11.

FEDERAL JURISDICTION

Jurisdiction is based on 28 U.S.C. Sec. 1 331; &, 42 U.S.C. Sec. 1983.

GRIEVANCE PROCEDURE

IDOC does have a grievance procedure. All claims noted herein were properly grieved & heard. Thus, same was exhausted per PLRA.

LITIGATION HISTORY

Plaintiff currently has a Mandamus Petition in Knox County Court (Case No. 10 MR 55) & Sangamon County. (Case No. 12 MR 000614)

Plaintiff received favorable verdict in the Court of Claims. (Case No. 09 CC 0161)

Plaintiff settled matters previously in U.S. District Court. (Case No. 08 C 4535; No. 09 C 1015; &, No. 10 CV 6950)

Plaintiff currently has pending complaints in District Court. (Case No. 10-1278; &, No. 10-902)

Plaintiff has previously had other matters in this Central District Court, but defendant Anderson & other prison officials at Hill C.C. destroyed same previously, inter alia.

Plaintiff, however, has never commenced any legal matter that was without merit whatsoever.

LAW

All defendants work for/by &/or through IDOC & are therefore acting under "COLOR OF STATE LAW," or were so employed when plaintiff was at said prison. All applicable laws pertaining to the claims in this complaint are noted in the attached Memorandum of Law In Support of Complaint. Further law will be amended, if & when necessary.

CHRONOLOGICAL STATEMENT OF EVENTS

1) On Feb. 3, 2010, plaintiff, Michael Thomas, was transferred to Hill C.C.

2) That same year (201 0), plaintiff started making complaints about Hill C.C. & the employees' conduct at said prison to officials & also to Illinois State Legislators; U.S. Congressional members; President Obama; &, various other government agenicies. (See Ex #1-30)

3) Plaintiff complained repeatedly between Aug. of 2010 -- Feb. of 2011 that defendant Anderson, along with other prison staffers, were repeatedly harassing plaintiff & threatening to use unlawful force & initiate bogus disciplinary proceedings agaist plaintiff, inter alia, because plaintiff exercised his 1st Amended rights to grieve & redress, including but not limited to, making complaints to government officials &/or agenicies noted above in preceding paragraph. (See Ex #31 & 32)

4) The matters complained above regarded various prison-related issues: a) safety concerns; b) health & sanitation violations; c) denial of access to library services or copying devices [for pending & impending litigations]; d) denial of recreational opportunities; e) blanket denial of witnesses in prison disciplinary hearings; f) staff repeatedly threatening to physically harm plaintiff for filing complaints about staff; g) officials confiscating & destroying plaintiff's legal documents, etc.

5) After plaintiff repeatedly complained throughout the year 2010 about defendant Anderson's misconduct & threats, this defendant repeatedly continued same conduct, threats & harassment on 3-2-11, 3-3-11, 3-9-11 & 3-10-11. Plaintiff then reported defendant to proper officials again. (See Ex #33 & 34)

6) Then on 3-24-11 Anderson along with defendant Cochran & Fitzpatrick, while on prison location: R4-C-19, ordered an early lock up of the prison deck [C-Wing] when all three of these defendants saw plaintiff was in the shower.

7) The shower room is located in an open area at the front of the deck on every deck of the prison, or was so in March of 2011.

8) There is also a clock & surveillance camera in plain view at the front of said deck on every wing of the prison approximately 5-10' away from shower area, or was so between Feb. 3, 2010 -- Sept. 7, 2011.

9) At the front of each deck on all wings of the prison are desks for staff & the wall like structure surrounding the front door is made of clear, see through glass, for employees to have visual of entire deck & inmates thereof.

10) Outside of the prison wing is an area referred to as the "core" or "Bubble" where staff are assigned to, in order to monitor computer system & door mechanisms or devices; this area is also made of clear, see through glass, or was in 2010 & 2011, to allow staff a visual of the prisoners & fellow co-workers.

11) At approximately 9:07 a.m. on 3-24-11, Anderson, Cochran & Fitzpatrick ordered the prison deck to lock up [early]. (Lock up time was normally at 9:15 a.m. on the 7-3 shift from 2010-2011.)

12) Plaintiff was in the shower when the early lock up was ordered by said defendants.

13) Upon hearing said order to lock up, plaintiff immediately exited the shower quickly, then retrieved his shower belongings, i.e., towels, soap, underwear, etc., & then proceeded fastly to his cell (R4-C-1 9).

14) After plaintiff gathered his belongings, plaintiff <u>JOGGED</u> down the stairs [right in front of camera] & continued to jog to his cell to comply to said order to lock up, but as plaintiff came near his cell [which his cell-mate, Thomas Turnage had left open for plaintiff], Cochran ran over to the cell & slammed the door in an attempt to lock plaintiff out of his cell, but the cell door did not shut; instead it opened up more.

15) Plaintiff then went inside of his cell & closed the cell door behind himself.

16) Anderson then told Cochran to issue plaintiff a bogus prison disciplinary ticket; Anderson also stated for Cochran to put Anderson & Fitzpatrick down as witnesses that plaintiff "refused to lock up."

17) Cochran then opened plaintiff's cell door & ordered the production of plaintiff's I.D.; plaintiff complied but asked why he was being issued a disciplinary report. Anderson then stated that he told plaintiff "to stop making complaints & grievances about [himself] & staff."

18) Plaintiff stated he had not commited any infraction then Cochran got into plaintiff's face [within an inch] while inside the cell & then Cochran started cursing at plaintiff & also put his finger in plaintiff's face because he said he didn't like inmates that tried to get staff in trouble due to inmates filing "complaints" & "grievances" about that prison. Cochran also stated inmates that did do so would have problems because same was "unacceptable."

19) Plaintiff stepped <u>BACK</u> & <u>AWAY</u> [so Cochran was not in plaintiff's face anymore], but Cochran then proceeded to <u>STEP</u> <u>FORWARD AGAIN</u> & then started cursing & screaming again. Plaintiff's cell-mate (Turnage) asked Cochran & Anderson to not do anything to plaintiff because plaintiff had locked up when staff ordered the inmates to do so.

20) Anderson then told Turnage to stay out of it because staff was "fed up with [plaintiff's] constant complaints & grievances." Plaintiff stated that he (plaintiff) had a constitutional right to grieve & redress per the 1st Amendment to the U.S. Constitution.

21) Anderson, Cochran & Fitzpatrick then stated plaintiff did not have any rights at that prison & then ordered plaintiff to be handcuffed behind his back while plaintiff was still inside the cell.

22) Plaintiff complied & was handcuffed inside the cell; once plaintiff was handcuffed, defendants ordered Turnage to "get out of the cell" while plaintiff was still inside the cell handcuffed behind his back.

23) Turnage then went to the dayroom area as ordered while Cochran physically beat plaintiff up with his hands & fists & threw plaintiff into the cell concrete wall several times when DIRECTED to do so by Anderson. (See Ex #35 which is affidavit of plaintiff.)

24) Plaintiff was then taken outside of the cell & to the front of the wing where Cochran continued to do same (noted above), causing plaintiff's face to strike the wall, & hitting plaintiff in his face with his hands. (Plaintiff was still handcuffed behind his back.)

25) Defendants then called other staff & told them that plaintiff was going to segregation for threatening to harm staff when refusing to lock up [although untrue.] These defendants then told other staff that defendants would send plaintiff's property "later" & "seperately" to the seg storage.

26) Once other officials gave defendants the okay to place plaintiff in seg, plaintiff was taken to segregation building.

27) Upon arrival at seg building, plaintiff informed medical staff & mental health doctor that he had just been assaulted by prison employees in an unlawful manner. these health care persons observed plaintiff & then told him that they "did not know how to go about this issue"; one nurse even stated, as doctor did, that they would "come back" because they were kind of "busy," but the doctor stated he would make a note of same in the files at his office.

28) Later that day, staff on the 3-11 shift discovered plaintiff was unconscious & "unresponsive" when they did their routine body count at the beginning of their shift at segregational building. These staffers allegedly called an "Emergency Team" where plaintiff was then taken to the prison hospital via stretcher. (See Ex #36)

29) Plaintiff had to be treated at said hospital due to injuries to his right face, his orbital socket & damages to his facial tissues. (See Ex #38; also see Ex #36)

30) The following day (3-25-11) X-rays had to be performed to plaintiff's eye & face; the results were negative, but indicated severe tissue damages & black eye due to trauma. (See Ex #39)

31) At approximately 8:00 p.m. on 3-25-11, defendant Ruhl delivered plaintiff a copy of the disciplinary report Cochran authored that was also witnessed by Anderson & Fitzpatrick for the 3-24-11 matter. (See Ex #40)

32) Cochran's report stated at "9:20a.m." plaintiff "refused to lock up" & for no apparent reason, accordingly to these three defendants [Cochran, Anderson & Fitzpatrick], plaintiff simply started using profanity [although plaintiff does not even use curse words] & then threatened to harm staff because he did not want to lock up. (See Ex #40)

33) When defendant Ruhl delivered this disciplinary report to plaintiff on 3-25-11, Ruhl refused to allow plaintiff to put down witnesses on the ticket, & then told plaintiff she (Ruhl) did not "allow inmates to have witnesses against staff" & then deliberately & intentionally falsified the section of the report where inmates are required to sign document for witnesses, therefore, "waiving" plaintiff's constitutional right to witnesses. (See Ex #40 where Ruhl falsified document; also note that various officials were required to also sign same.)

34) When other inmates heard Ruhl refuse to allow plaintiff to put his witnesses down on report per IDOC rule, inmates stated that they would submit grievances & affidavits about same because Ruhl had also did same to them. Ruhl replied "so what" & that she never allowed inmates "witnesses against staff" Because "nobody wanted to listen to inmates." (See Ex #41 which is redacted affidavit that IDOC altered once they received same.) Ruhl also commented that plaintiff had filed grievances on her before & that he "didn't get anywhere then."

35) Ruhl has previously denied plaintiff witnesses on other matters in the same fashion when plaintiff had a

right to same. (See Ex #42-46) (Also see Memorandum Of Law In Support Of Complaint attached hereto where Ruhl even issued inmates more disciplinary reports for <u>SIMPLY</u> requesting witnesses to be called to refute bogus infraction charges by staff per federal law.)

36) Because Ruhl refused to allow plaintiff to put his witnesses on witness section of report (per rule), plaintiff immediately reported the matter to various officials, including but not limited to, members of the Prison's Adjustment Committee [who determine if an inmate committed infractions]; the Prison's Hearing Investigative Officer (for disciplinary issues); the Counselor of the seg Unit (where plaintiff was being detained pending the finality of the disciplinary proceeding); &, the Grievance Officer, inter alia. (See Ex #42-46)

37) Plaintiff also reported the matter in its entirety to the Intelligence & Investigation Unit in Springfield, Illinois, as well as the Internal Affairs Unit at prison on 3-24-11, 3-25-11, & continously thereafter. [Note: Both Units &/or offices noted in paragraph No. 37 are donned with authority to investigate any & all matters within a prison & take appropriate action when they deem necessary.] (These same offices also work closely with the Illinois State Police.)

38) On 4-1-11 plaintiff went to the Adjustment Committee hearing for the charges that Cochran authored on 3-24-11. During said hearing plaintiff submitted a "written statement" afforded per prison rule.

39) In said written statement plaintiff AGAIN informed staff that he was not guilty of the charges & that yet again he was routinely denied witnesses to support his defense to the 3-24-11 incident.

40) At the 4-1-11 hearing, Committee members (Lt. Bailey & Sanders), made various comments about what other employees had told them, i.e., that plaintiff was "always reporting staff at that prison for one thing or another" & that it "made staff look bad."

41) Plaintiff repeatedly requested that he was allowed witnesses, including but not limited to, his next door neighbor where 3-24-11 incident occurred; his cell-mate (Turnage); &, Prison Internal Affairs Unit staff (who operated the camera surveillance system throughout prison.) Internal Affairs staff could have testified on plaintiff's behalf that the cameras showed: plaintiff never refused to lock up or curse out staff, but in fact went "inside his cell"; that lock up was early [around 9:07a.m.], not at "9:20a.m"; &, that defendants then went "inside [plaintiff's] cell" after he was handcuffed behind his back when staff further ordered Turnage out of the cell at that point.

42) In spite of all of plaintiff's requests for witnesses, Lt. Bailey & Sanders would not allow plaintiff any witnesses; the defendants then told plaintiff that their (Bailey & Sander's) hands "were tied" because it was "rumored that staff jumped [plaintiff] & [they couldn't] take an inmates side over staff on something serious like this." Sanders even commented that he planned to "retire soon" & he couldn't allow this incident to "mess up" all the years that he worked "hard in IDOC."

43) Sanders & Bailey did admit that the cameras would show who did what & who was in fact being truthful about the 3-24-11 incident.

44) Plaintiff repeatedly told Bailey & Sanders that he was not guilty & Bailey then told plaintiff before concluding the hearing to "stop pissing staff off with all of those complaints & do what you're told to do next time." Plaintiff stated all he (plaintiff) did was exercise his rights to grieve & redress. Bailey then stated that the hearing was over & that he (Bailey) "said all that [he] had to say."

45) Bailey & Sanders then found plaintiff guilty of all charges for the bogus 3-24-11 incident.

46) On the Final Summary basis for their decision from the 4-1-11 hearing, Bailey & Sanders then deliberately & intentionally falsified said document stating "NO WITNESSES [WERE] REQUESTED" by plaintiff whatsoever. (See Ex #47)

47) But the written statement [noted on Ex #47] clearly proved plaintiff did in fact request witnesses. (See also Ex #48 which is the actual written statement that officials later redacted again.)

48) To worsen matters, officials even <u>ACTUALLY</u> conducted interviews of witnesses behind closed doors & submitted same to Bailey & Sanders (although all witnesses' accounts were not there & were written by staff.) Turnage was one of the witnesses allegedly interviewed by the "Hearing Investigator" which the Adjustment Committee staff (Bailey & Sanders) were

aware of because said report was submitted to them & was even filed by said Committee before the hearing. The Hearing Investigator even was present at said hearing & gave the document to Committee before the hearing began & defendants read same in front of plaintiff. This document even noted that plaintiff had requested witnesses to the Hearing Investigator on 3-29-11. (See Ex #49 which was also later redacted by IDOC again.)

49) In spite of what the Hearing Investigator informed Bailey & Sanders, defendants refused to allow evidence to be used against staff & then deliberately & intentionally concealed documents which were exculpatory for plaintiff that would show plaintiff was in fact being targeted by staff because he exercised his rights to grieve & redress. (See Ex #49 which Millard (Hearing Investigator) notes interview with Turnage.) Bailey & Sanders then found plaintiff guilty in the hearing & gave plaintiff: 3 months in solitary confinement; 3 months C-grade status [i.e., no telephone, TV, radio, commissary, etc.]; loss of good time (pushing plaintiff's parole date further back); &, a disciplinary transfer. (See Ex #47)

50) Due to the entire incident from 3-24-11, officials in State Capitol were contacted & an ongoing investigation begun & continued over the course of several months.

51) Plaintiff was visited by various government officials regarding said investigation while he was at Hill C.C. (See Affidavit, marked EX #35)

52) Plaintiff also written &/or communicated with various government officials including but not limited to, State & U.S. Legislators; FBI; Illinois State Police; President Obama; Office of Ethics, inter alia, regarding the 3-24-11 incident. (See Ex #50- 57)

53) The Warden of the prison later reduced the discipline that Bailey & Sanders ordered for the 3-24-11 incident. The Warden also declined to have plaintiff's disciplinary transfer approved. (See Ex #47)

54) The Director of IDOC then further declined on a later date to revoke any of plaintiff's good time (which would have postponed plaintiff's parole date.) The Director also further expunged certain offenses such as the 105 charge of "Dangerous Distrubance" that Cochran, Anderson & Fitzpatrick claim plaintiff created by "refusing to lock up." (See Ex #58)

55) After the discipline was reduced by Warden, plaintiff was then released from out of segregation around 2:20p.m. on 4-24-11 & was then placed in OR-cell #56.

56) When getting out of seg on 4-24-11, C/O Dethridge & C/O Taylor (who are not defendants) had plaintiff's property brought from out of seg storage room per prison rule. But when plaintiff's property boxes were opened, Dethridge & Taylor, as well as 4 inmate workers, all witnessed plaintiff's property had what appeared to be urine, feces, & other <u>UNKNOWN</u> substances all over said property. There was also a horrendous "foul ordor" that accompanied these unknown liquids & substances on said property. (See Ex #59)

57) Dethridge & Taylor immediately reported the matter to their ranking supervisor (a Major) per rule. This Major ordered that all of plaintiff's property was washed SEVERAL TIMES, if possible & for staff to issue plaintiff "emergency clothing" from the clothing room. (See Ex #59)

58) When shift changed at 3:00 p.m., C/O Hall & C/O Knuth took notice of the matter because Dethridge & Taylor's shift had ended. (Hall & Knuth are not defendants either; these guards actually helped plaintiff) Plaintiff's new cell-mate, Thurman #S-05891, also witnessed & helped in the incident.) (See Ex #59)

59) Hall & Knuth then ordered that plaintiff was issued new property boxes because they didn't want said boxes with "foul ordor" inside building or around their work place or other inmates because "health & safety concerns." [Note: All inmates within IDOC are issued these boxes which are hard plastic when they enter IDOC & they must return same upon being released per rule. (See Ex #60)]

60) When plaintiff was brought to seg on 3-24-11, Cochran, Anderson & Fitzpatrick had plaintiff's property in their possession & did not send same to seg building with plaintiff, but "later" sent it "seperately" (see paragraph No. 25)

61) Dethridge, Taylor, Hall & Knuth all witnessed the property damages to plaintiff's property after said property boxes were brought out of the seg storage, & these officials "concurred" to same & "foul ordor." (See

Ex #59 which is documented at counselor's section of grievance.)

62) Cochran, Anderson & Fitzpatrick damaged &/or destroyed plaintiff's property in retaliation for plaintiff filing complaints & grievances against staff & against Hill C.C.

63) Cochran physically beat plaintiff at the direction & approval of Anderson & Fitzpatrick in retaliation for plaintiff filing grievances & complaints against staff & prison related issues at Hill C.C.; this matter was also grieved by plaintiff in its entirety. (See Ex #61 & 62)

64) Due to all of the above noted facts, & after the fact that plaintiff was physically beaten on 3-24-11 when investigation period was ongoing, plaintiff also learned that defendant Ruhl, Richardson, John Doe & Mail Room staff (Linda Miller), had been <u>FORGING</u> plaintiff's legal-privileged mailing records upon receipt of same at the prison that was sent by government officials & agencies outside of prison. (See Ex #46 & 63)

65) From April--Sept. of 2011 plaintiff repeatedly was delivered legal-privileged mail that had been opened by defendants in preceding paragraph, outside of plaintiff's presence & without plaintiff' s consent; a large portion of this mail was not signed by plaintiff when his signature was required on mailing receipts. {See Affidavit stating same, marked Ex #46 & 35)

66) When plaintiff brought matter to his counselor (Gans), Gans informed plaintiff that someone had signed for <u>all</u> the mail but he wasn't sure who did all of them

because he was not a handwriting expert. (See Ex #64-66) (also see grievances marked as Ex #67 & 68)

67) Plaintiff requested IDOC to produce copies of said mailing receipts/records, but IDOC refused to provide same (See Ex #69), even though witnesses asserted to plaintiff not signing for same when officials delivered the mail opened to plaintiff repeatedly. (See Ex #46 & 63)

68) Legislators & Commander of Intelligence & Investigations (Larry J. Beck, Jr.), took notice of matter & then Lt. Steele of Hill C.C.'s Internal Affairs Unit personally delivered legal- privileged mail to plaintiff on 8-24-11 from Commander Beck. [Commander Beck's office in Springfield, Il conducts investigations against staff along with Illinois State Police for misconduct or crimes.]

69) The documents from Commander Beck instructed the Warden (Acevedo), to allow plaintiff his legal-privileged mail [because same was not all being delivered to plaintiff.] Prison officials, however, refused to allow plaintiff copies of all documents sent by Beck, including but not limited to, documents compelling Hill C.C. staff & Warden to stop denying plaintiff's rights to legal-privileged mail because it regarded misconduct of Hill C.C. staff. (See affidavit marked as Ex #46 [Note: Beck compelled Warden to allow plaintiff said legal-privileged mail because he was not receiving same after numerous attempts. (See Ex #70)])

70) During same time frame that Commander Beck instructed Hill C.C. to stop depriving plaintiff of rights to legal-privileged mail (that was not all being received by plaintiff), mail room supervisor (Linda Miller), also refused to allow plaintiff communication with media

because, accordingly to mail room supervisor, plaintiff did not have said media outlet on his "approved" mail list (See Ex #71), when no such mail list exist in IDOC to deprive communication.

71) Defendants Miller, Richardson, Ruhl & John Doe deliberately & intentionally withheld, destroyed, opened & read plaintiff's legal-privileged mail in retaliation of plaintiff's repeated complaints to legislators, legal professionals & other government officials & media outlets, to prevent &/or hinder plaintiff's communication rights that would surface prison officials' misconduct or criminal activities at Hill C.C.

72) Ruhl, Bailey & Sanders further acted in a retalitory manner when each of these defendants went out of their way to deliberately & intentionally deprive plaintiff of witnesses to show that staff were wrongfully pursuing bogus disciplinary proceeding against plaintiff in retaliation of plaintiff exercising his 1st Amendment Constitutional rights to grieve & redress. (See Memorandum Of Law In Support of Complaint, attached hereto)

73) Ruhl, Bailey & Sanders' acts & omissions were clear indications of their support for fellow defendants' misconduct & other violations, & to impede staff's unlawful activities from surfacing. (See Memorandum Of Law, attached hereto.) These acts & omissions were also taken in retaliation for plaintiff's complaints & grievances about staff.

Respectfully Submitted,

/s/ Michael Thomas

Plaintiff, pro se.

RELIEF REQUESTED

Compensatory damages in the amount of $500,000, individually, & collectively for defendants acts/omissions.

Punitive damages in the amount of $500,000, individually, & collectively for defendants acts/omissions.

Damages are in defendants "Individual Capacity."

CERTIFICATE OF SERVICE

PLEASE BE ADVISED that the undersigned provided today, 9/10/12 a complaint; Motion To Proceed In Forma Pauperis; Memorandum Of Law In Support Of Complaint; &, Exhibits noted in Complaint, to Pinckneyville C.C. staff who per policy shall E-File said documents with the Court.

To: Clerk's Office
U.S. District Court Of Illinois,
Central District Court
100 N.E. Monroe
Federal Building
Peoria, Illinois 61602

– – – – – – – – – – – –

By: /s/ Michael Thomas
Plaintiff, pro se.

Michael Thomas
Reg. No. B71744
Pinckneyville C.C.
P.O. Box 999
Pinckneyville, Il
62274

Appendix H

In the U.S. District Court of Illinois
Central District

Michael Thomas, Plaintiff,	))	
v.	)))	Case No. 12-1343
Raymond Anderson, et al., Defendants.	))	

MEMORANDUM OF LAW IN SUPPORT OF COMPLAINT

NOW COME PLAINTIFF, Michael Thomas, pro se incorporating this intrument of law in support of complaint. Plaintiff now state as follow:

<u>EXCESSIVE FORCE STANDARD</u>

As a rule of fact per benchmark decisions, government officials may not use force which is unlawful, excessive or unnecessary. Whitley v. Albers, 475 U.S. 312, 320-21 (1986)

This does not mean that officials cannot use any force; it simply means that said force must be appropriate & warranted under the circumstances that officials are confronted with. Hudson v. McMillian, 112 S. Ct. 995, 998-99 (1992)

However, an official's acts/omissions may indicate malice or sadistical conduct when force is unjustified or uncalled for. Id. Also See Thomas v. Stalter, 20 F.3d 298, 302 (7th Cir. 1994)

When reviewing excessive force claims, courts look at all of the particulars surrounding said incident(s) to determine the mind state of defendants. Hill v. Shelander, 992 F.2d 714, 717 (7th Cir. 1993)

Prison officials may not use unlawful physical force on an inmate under their authority, or custody, simply because the prisoner exercises his 1st Amendment rights to the U.S. Constitution to grieve & redress conditions of his confinement or staff misconduct. Procunier v. Martinez, 41 6 U.S. 396, 419 (1974); Owen v. Lash, 682 F.2d 648, 650-53 (7th Cir. 1982) In fact, when officials do same, courts will also entertain question whether such force was taken in retaliation for the prisoner exercising said rights.

Retaliation is shown by various matters &/or by chronological chain of events. DeTomaso v. McGinnis, 970 F.2d 211, 214 (7th Cir. 1992); also see Harris v. Flemming, 839 F.2d 1232, 1236-38 (7th Cir. 1988)

Retaliation takes many forms, i.e., it can be in a variety of things, including but not limited to, incidents that would not be considered any violation of rights or privileges on separate grounds or occassions. Id. Also see Murphy v. Lane, 833 F.2d 106, 108-09 (7th Cir. 1987)

(Transfer); Wright v. Newsome, 795 F.2d 964, 968 (11th Cir. 1986) (Seizure of property); Milhouse v. Carlson, 652 F.2d 371, 373 (3d Cir. 1981) (Conspiratorially planned disciplinary actions); Martin Ezeagu, 816 F. Supp. 20, 24 (D.D.C. 1993) ("Ongoing pattern of harassment")

In this particular case, plaintiff was targeted by defendants (all are employees at the prison) because plaintiff repeatedly made complaints & grievances within IDOC, & to government officials outside of IDOC, i.e., State & U.S. Legislators, FBI, Illinois State Police, Office of Ethics, The White House, legal professionals, inter alia, about prison related issues. (See Complaint)

In an attempt to stop plaintiff from being a "whistle blower," Anderson along with other prison staff, repeatedly harassed plaintiff; constantly had bogus disciplinary proceedings brought against plaintiff (as Anderson threatened to do); Anderson also threatened to have plaintiff physically beaten as well. Anderson had plaintiff's legal documents [for various litigations against IDOC] destroyed without recourse or due process of law. Anderson repeatedly committed various violations against plaintiff & crimes. In fact, plaintiff noted some of said crimes in another complaint that is currently pending in this District Court which Anderson is also a defendant. (See Case No. 10-1278)

Plaintiff attempted to amend said matter noted above (Case No. 10-1278) with the matters noted herein due to the nexus, but the court ordered same to be filed in seperate complaint. [Note: Anderson is a defendant for the claim regarding destruction of legal documents in Case No. 10-1278 & due to same, this complaint is not raising same again. Plaintiff only mentions said facts to give the court a complete understanding of the claims noted herein.] That is: Plaintiff is trying to show the history, connection & "chronological chain of events" for these retaliation claims. DeTomaso, supra.

Because of Anderson's ongoing harassment, unprofessional behavior & threats, plaintiff repeatedly reported Anderson to authorities. (See Complaint & Exhibits, attached hereto.) Plaintiff repeatedly cmplained about Anderson's conduct between Aug. 2010--early March of 2011. In fact, in early March <u>ALONE</u> plaintiff complained on at least 4 seperate occassions that Anderson was repeatedly harassing plaintiff &/or violating various rules, rights, or laws. (See Ex #31 -34)

Anderson was aware of the complaints & grievances himself; in fact, IDOC even contacted Anderson 3-4 times in early March of 2011 <u>ALONE</u> regarding plaintiff's complaints against him. Id.

Then on 3-24-11 while plaintiff was in the shower room at the allowable time for inmates to be in the day room of prison, Anderson told Cochran & Fitzpatrick to order inmates to lock up when all three of these defendants <u>SAW</u> plaintiff was taking a shower. The shower room is at the front of the prison deck in an open area where staff tables are situated for staff observation.

Lock up time is normally at 9:15 a.m., but on this day Anderson had the day room time ended at 9:07 a.m. because they saw plaintiff [who had all the complaints & grievances against Anderson & his co-workers] in the shower. Prison records prove that these defendants KNEW & SAW plaintiff was in the shower. (See Ex #49)

Upon hearing the early lock up order, plaintiff immediately existed the shower, gathered his shower belongings & jogged down the stairs to his cell but Anderson told Cochran to write plaintiff a disciplinary report for refusing to lock up when the entire incident was a hook up. [i.e., defendants knew that plaintiff was in shower & that plaintiff had 8-9 minutes left before day room time was to end so they ordered an early lock up to say plaintiff yet again violated prison rules to punish him (as Anderson repeatedly threatened to do to plaintiff for filing complaints & grievances against himself & other staff.)]

Plaintiff still made it to his cell early but Cochran RAN to plaintiff's cell door & slammed it, but it did not shut because he slammed it too hard; instead of actually closing, the door then opened up more so plaintiff went inside the cell & then closed the door behind himself. Anderson, Cochran & Fitzpatrick opened plaintiff's cell door & then started screaming & cursing at plaintiff when they knew that plaintiff had not committed any infractions. Cochran then got within an inch or so of plaintiff's face & then put his finger in plaintiff's face. Plaintiff stepped BACK & AWAY from Cochran [in the cell further] but Cochran pursued plaintiff more & got into plaintiff's face AGAIN & then put his finger BACK into plaintiff' s face.

Plaintiff asked if Cochran would stop disrespecting plaintiff & stop putting his finger in plaintiff's face [as if defendants were trying to provoke plaintiff.] Plaintiff stated that he did not deserve the mistreatment that defendants were doing & then defendants stated that plaintiff should have thought about that before plaintiff kept "filing complaints & grievances about staff & the prison"; they also told plaintiff that he did not have a right to grieve & redress & then stated he would be going to segregation.

Plaintiff's cell-mate (Thomas Turnage) witnessed the entire incident. Defendants then told plaintiff to turn around to be handcuffed behind his back. Plaintiff complied. Then once plaintiff was handcuffed, defendants ordered Turnage out of the cell (when plaintiff was still handcuffed behind his back inside the cell) & then Anderson told Cochran to pysically beat plaintiff. Fitzpatrick did not tell Cochran to disregard what Anderson stated, nor did he intervene on plaintiff's behalf. However, the law is clear that his acts/ omissions were a violation of federal law. Byrd v. Brishke, 466 F.2d 6, 11 (7th Cir. 1972); also See Rascon v. Hardiman, 803 F.2d 269, 276-77 (7th Cir. 1986)

The fact that Anderson directed Cochran to use unlawful force makes him just as liable as Cochran, if not more. See Caudle-El v. Peters, 727 F. Supp. 1175, 1180 (N.D. Ill. 1989) Cochran's use of force was totally uncalled for & unnecessary. Hudson v. McMillian, supra.

Plaintiff was then written yet another bogus disciplinary report. In said report authored by Cochran on 3-24-11 (which Anderson & Fitzpatrick were listed as witnesses for Cochran), stated plaintiff "refused" to lock up at "9:20a.m." [which is 5 minutes AFTER the NORMAL 9:15a.m. lock up.] (see Ex #40) These defendants then stated when ordered to lock up at "9:00 a.m.," plaintiff then stated "You know who I am. F#*k you. You mother F#*kers don't tell me what to do!" (See Ex #40) But the truth of the matter is: Plaintiff <u>NEVER</u> stated any of this; plaintiff doesn't even use profanity. Nor did plaintiff refuse to lock up; he actually went to his cell voluntarily & it was not 9:20, it was 9:07.

PLAINTIFF DOES NOT CHALLENGE THE DISCIPLINARY REPORT'S PRISON CONVICTION; that is not the claim. Plaintiff is simply showing the court the defendant's acts & omissions were taken in bad-faith, & was in retaliation for plaintiff's legal activities against prison officials & for grieving & redressing prison related issues.

Moreover, the 3-24-11 report does not state whatsoever that plaintiff attempted to attack staff. Nor was plaintiff charged with assaulting staff for them to use force. Defendants completely omitted fact that plaintiff was <u>INSIDE</u> his cell. Defendants story paints a picture that they gave inmates <u>MORE</u> extra time than allowed in the day room but that same was apparently not enough for plaintiff, so plaintiff cursed staff out & "refused" to lock up [although plaintiff has been incarcerated since 1996 & has <u>NEVER</u> refused to lock up before or after this incident.] Defendants story was/is simply untrue from start to finish.

Medical experts & witnesses support the fact that plaintiff was beaten by defendants in an unlawful manner. (See Complaint) Other records also show defendants were attempting to <u>COVER</u> <u>UP</u> their unlawful conduct by stating plaintiff was not following prison rules so defendants could pursue/apprehend him simply in retaliation of plaintiff exercising his 1st Amendment rights to grieve & redress. Defendants have even changed their stories several times when investigation was ongoing regarding their conduct. The truth should only be one story; it should not have to keep changing, & the facts should all add up oppossed to being contradicting.

RETALIATION

Although above noted defendants retaliated by issuing BOGUS disciplinary reports against plaintiff, & using unlawful force, inter alia, they were not the only staff to retaliate against plaintiff for plaintiff repeatedly reporting prison officials.

Defendants Ruhl, Bailey & Sanders were all assigned authority of processing disciplinary proceeding against prisoners; this would include but is not limited to, procedures against inmates that staff issued; &, procedures in which witnesses may be called on inmates' behalf per federal law. Wolff v. McDonnell, 418 U.S. 539, 566 (1974) However, these defendants refused to afford plaintiff said rights because accordingly to them, same "would make staff look bad"; that it was a policy to deny "inmate witnesses against staff"; that it was rumored Staff beat plaintiff" that defendants would not "mess" up their "retirement" by taking sides with an inmate because he [plaintiff] kept "filing complaints & grievances againt staff" for "one thing or another." (See Complaint)

Defendants acts/omissions in the disciplinary process clearly was to assist Cochran, Anderson & Fitzpatrick in preventing evidence to surface that plaintiff was being retaliated against by prison officials at Hill C.C. (See Complaint & attachments, thereto.) Thus, Ruhl, Bailey & Sanders acted in further retaliation; there is no other logical reason for defendants' acts of impartiality other than to see plaintiff be disadvantaged & to wrongfully suffer in the disciplinary process of the prison. Francis v. Coughlin, 891 F.2d 43, 46-47 (2d Cir. 1989) (Suppressing evidence & distorting said evidence); Pino v. Dulsheim, 605 F. Supp. 1305, 1318 (S.D.N.Y. 1984) (Failing to consider inmate's evidence or defense); Tumminia v. Kuhlman, 527 N.Y.S. 2d 673 (1988) (Noting "comments" made at prison hearing)

Attached to complaint are numerous records clearly indicating plaintiff repeatedly complained that Ruhl continuously deprived plaintiff of witnesses to refute prison staff's bogus charges in 2010 & 2011. But not only did Ruhl do this to plaintiff, she also did same to numerous other inmates. (See Ex #41 which is affidavit of witness with same name [different number] than plaintiff.) This affidavit (Ex #41) was actually stamped filed with the Adjustment Committee on 4-1-11 & was later redacted by staff within IDOC, but in spite of same, Bailey & Sanders still refused to consider same & then FALSIFIED other reports stating plaintiff never requested witnesses. (See Ex #47)

In addition, there were other prison records that show Bailey & Sanders knew that witnesses supported plaintiff's account (Ex #49) but once again, defendants stated no witnesses were requested by plaintiff when the "Hearing Investigator" clearly stated plaintiff did request same to her & for the disciplinary matter. She (Hearing Investigator, C. Millard), stated plaintiff made said request on/about 3-29-11 which was before the hearing. (See Ex #49) However, Millard (who works for the Adjustment Committee issues), summarized her account of what persons with knowledge told her about the 3-24-11 incident when she INTERVIEWED them. However, Millard's report is a summary of what she wrote down; none of the witnesses actually signed her report. Not even all of the witnesses requested by plaintiff were interviewed. (See Ex #49)

Ruhl also filed disciplinary reports on 8-8-10 against witness Darnell Davis #K76446 simply because he put down his witnesses "against staff" at the prison. (See IDOC Incident Ticket #201002381/1 Hil.) Even when Davis did so, Ruhl then went behind him on the report & FALSIFIED same by staing in the signature section that he "refused to sign" so his witnesses would be "waived." [although it was clear that Davis was requesting witnesses against staff.] Inmates have a right to call witnesses on their behalf even if its aginst staff. Putting witnesses down on the disciplinary report is the actual procedure (per rule), but inmates can only do same if staff allow same. Ruhl repeatedly did this to plaintiff & falsified the report to prevent witnesses to be documented. (See Ex #40)

Plaintiff grieved the matter again & officials stated that all inmates are all allowed witnesses in compliance with federal law (Ex #43 & 62), but truth of the matter is: officials devise schemes to do exactly the opposite. (Compare all exhibits; clearly said papers prove defendants went <u>OUT OF THEIR WAY</u> to deny plaintiff witnesses.)

Further more Bailey & Sanders clearly indicated that they were finding plaintiff guilty because plaintiff was "pissing off staff" by repeatedly filing "complaints & grievances." Retaliation is shown not only by the circumstances or events, but also by a defendants actions or words.

<u>PROPERTY</u>

Plaintiff does not ask this court to consider the property issue as an individual claim. Plaintiff only noted same so the court could review the retaliation claims in its entirety since retaliation claims must show a chain of events. Defendants have claim to have done no wrong when government officials were investigating the 3-24-11 incident. However, the fact that plaintiff's property was severly damaged & destroyed on same date plaintiff received bogus disciplinary report & was physically beaten (on 3-24-11), clearly indicates more than a common or simple mistake or coincidence, especially when Cochran, Anderson & Fitzpatrick had the property in their possession once plaintiff was taken to seg. Defendants even told other staff that defendants would send said property "later" & "seperately." Officials then refused to sign the inventory papers per IDOC rule (See Ex #35) because defendants did not want their names on documents where plaintiff's property had been severely damaged, including but not limited to, being urinated on, & defecated on, inter alia. (See Ex #59 which other prison staff witnessed & "concurred" to.)

FORGING MAIL

The fact that defendants would not only deprive plaintiff of his legal-privileged mail, or open same outside of plaintiff's presence & read it or copy same & whatever else defendants did without plaintiff's consent, is not only against federal law, but the fact that defendants FORGED plaintiff's signature on mailing records &/or receipts is simply flagrant in itself. Defendants did this because plaintiff was communicating with various government officials & offices & other legal professionals about prison issues. Plaintiff NEVER committed any mail violations whatsoever so there was absolutely no reason for defendants to REPEATEDLY commit these mail violations simply because plaintiff was communicating with officials who had Hill C.C. staff under investigation. (See Complaint.)

All of this was done to monitor & hinder investigation against officials who were targeting plaintiff for said 1st Amendment rights to communicate with Senators; House Of Representatives; lawyers; legal aide groups; President Obama; FBI; Illinois State Police, etc. In essence, defendants Ruhl, Miller, Richardson, & Doe acted in a retalitory manner to prevent exposure of NUMEROUS unlawful acts/omissions committed by officials at the prison.

Although inmates' rights are limited in prison, not all rights are checked in at the prison gate. Bell v. Wolfish, 441 U.S. 520, 545 (1979) Nor does anything go once a citizen is convicted of a crime. Turner v. Safley, 482 U.S. at 84. The mail violations committed by defendants is &

was simply unjustified. Defendants' acts & omissions, individually & collectively, clearly indicated their lawlessness.

The 8th Amendment affords that persons convicted are not subject to cruel & unusual punishment. However, defendants have violated said rights in multiple ways on NUMEROUS occassions. (See Complaint) For all of the aforementioned reasons, this complaint has been commenced. Therefore, defendants should be ordered to answer same per Federal Rules Of Civil Procedure.

Respectfully Submitted,

/s/ Michael Thomas

Plaintiff, pro se.

Appendix I

United States District Court of Illinois
Central District Peoria Division

MICHAEL THOMAS,	)	Case No. 12-cv-1343
Plaintiff,	)	
	)	
v.	)	
	)	
RAYMOND ANDERSON,	)	
et al.,	)	
Defendants.	)	

NOTICE OF COMPLIANCE

NOW COME Plaintiff, Michael Thomas, pro se, filing the above noted instrument in compliance with the court's January 20, 2015 Order in support of same Plaintiff states as follow:

1) On 1-20-15 the court gave Plaintiff two weeks to submit a summary of what his potential witnesses' testimonies would be at the March 23, 2015 jury trial; the relevancy of his exhibits; and, to submit proposed Jury Instructions as provided by 7th circuit pattern instructions.

2) Plaintiff has shortened his witness list for non-party persons to comply with the court's request.

3) Witness Michael Thomas (Reg. No. B65390) can testify that he observed Plaintiff's facial injuries on 3-24-11 after Sgt. Jeffrey Oleburg escorted Plaintiff to segregation and placed Plaintiff in the cell next to him;

that officials wouldn't allow Plaintiff to be seen by medical staff on Defendants shift (7:00 a.m. to 3:00 p.m.) that same day; and that Plaintiff was not allowed any fluids to drink on 7-3 shift once Plaintiff was placed in segregation.

4) Willis Baird and Arnell Mills were both porters (janitors) on R4-C-wing, present and working on 3-24-11. They could testify to Defendants using excessive force on said date. Mills could further testify that Defendants were harassing Plaintiff in retaliation of Plaintiff's grievances and complaints on various dates prior to 3-24-11.

5) Anthony Hamilton could testify Defendants were after Plaintiff for Plaintiff's grievances/complaints; officials, including but not limited to Defendants were prohibiting communication to media and government offices; that Adjustment Committee used video surveillance footage for disciplinary proceedings; that Lt. Wayne Steele stated he knew Plaintiff never refused to lock up on 3-24-11 and that Defendants used unnecessary force; and, that Lt. Steele stated he would have the 3-24-11 disciplinary report taken out of Plaintiff's record but same would make Defendants and other staff look bad so he didn't

6) Thomas Turnage could testify Defendants called an early lock up (prior to 9:15 a.m. dayroom period) when Plaintiff was in the shower; that Plaintiff came out of shower once the early lock up was ordered; Plaintiff never cursed at or threatened to physically harm Defendants; that Defendants came into cell Turnage shared with Plaintiff and got into Plaintiff's face and put

their hands/fingers into Plaintiff's face several times while cursing at Plaintiff and admonishing him for filing complaints/grievances; that Plaintiff was then ordered by Defendants to be handcuffed behind his back inside cell which Plaintiff complied to then once Plaintiff was handcuffed inside cell Defendants ordered Turnage to leave out of cell while Defendants and the handcuffed Plaintiff was still inside cell.

7) Luis T. Gonzalez and Kiante Simmons could both testify to specific incidents on different dates Anderson and other officials harassed Plaintiff in retaliation of Plaintiff's grievances/complaints. Simmons was inadvertently omitted from witness list although Plaintiff brought said mistake to Defendants' attorney's attention at an earlier date. Both of these witnesses could also testify that Anderson made physical threats and to issue Plaintiff bogus disciplinary reports for making complaints prior to 3-24-11.

8) Jorge Mendez can testify that Anderson and other officials accompanied by Anderson and per Anderson's instructions seized Plaintiff's legal files, read same and confiscated said legal papers on more than one occasion due to Plaintiff's grievances/complaints.

9) Jeremiah C. Thurman can testify to Plaintiff being placed in his same cell after Plaintiff got out of segregation on 4-24-11 (after serving one month due to the 3-24-11 disciplinary sanctions); that once officials brought Plaintiff's property out of the "Staff only" <u>secured</u> storage room that all of Plaintiff's property was broken, destroyed or damaged including but not limited to having various unknown liquids and other matters on

it causing non-Defendant officials to issue new property boxes (due to "foul odor," inter alia) and try to salvage some of said property. (Note: Defendants had Plaintiff's property in their possession after Plaintiff was taken to segregation by Sgt. Jeffrey Oleburg. The ARB later awarded plaintiff $600.00 for the mysteriously damaged/broken property. [This goes to Defendants actions and malice due to all events having nexus on 3-24-11]).

10) Brenda Aldridge can testify to being present in segregation building on 7-3 shift at various times on 3-24-11 and that Plaintiff and other inmates made her aware that Plaintiff needed medical treatment when Plaintiff was taken to segregation but he was not allowed same on that shift.

11) Dolores Clark, Ruth Ann Brown and Sarah G. Fatannia can testify to reporting to Plaintiff's segregation cell on 3-24-11 on 3:00 p.m. – 11:00 p.m. shift where they carried Plaintiff to hospital for medical treatment; that they authored medical records documenting Plaintiff's injuries; and, that Plaintiff remained in hospital until neurological treatment, x-rays and other medical evaluations were performed on a subsequent date.

12) Dr. James Tiller can testify to Plaintiff informing him that Plaintiff needed medical treatment to his face and head due to incident with Defendants shortly after Sgt. Oleburg took Plaintiff to segregation on 3-24-11 on 7-3 shift; and, that Dr. Tiller told medical staff of said matter early that morning but Plaintiff was not seen on 7-3 shift nevertheless.

13) Clifford Sangster and Kyle Thierry could testify to the architectural design of the prison; the structural damages to the facility and how long same had been so damaged.

14) Christa Millard can testify to interviewing Defendants and witnesses regarding 3-24-11 incident and preparing their statements; being present at 4-1-11 disciplinary hearing; and what her investigation entailed.

15) Kerry Mitchell can testify that the Adjustment Committee does use video surveillance footage at disciplinary hearings as well as to procedures of disciplinary process.

16) Wayne C. Steele can testify to conducting investigation of 3-24-11 incident; and what Defendants and other witnesses stated in their written statements regarding said incident which he recorded.

17) Brian M. Kline, Ryan J. Knuth, Jerry M. Hull and Tammy S. Bennett were all officials present at Plaintiff's segregation cell when Plaintiff was admitted into hospital via stretcher on 3-11 shift on 3-24-11. Each of these staffers filed incident reports with IDOC stating what they witnessed and what all other inmates had been "yelling" and "screaming" for officials to get Plaintiff medical treatment that day. Bennett could further testify that prison officials stated Plaintiff was a "threat" because of his complaints/grievances. Hull can further testify that mailroom staff was not sending all of Plaintiff's mail out of prison; and Hull and Knuth could further testify that they gave Plaintiff a new [plastic

IDOC-issued] property box on 4-24-11 after witnessing all of Plaintiff's property being broken, destroyed and damaged once said property was brought out of "staff only" secured storage room once Plaintiff got out of segregation for 3-24-11 incident. (Note: once inmates are placed in segregation, the officers placing the prisoner in segregation must thereafter put the inmate's property at segregation storage room. When the inmate is released from segregation his property is brought out of storage room and given back to inmate.)

18) Robert C. Stokes could testify that Defendant Miller instructed Stokes to issue Plaintiff a disciplinary report for putting "privileged mail" on an envelope (the Plaintiff purchased at prison) to send mail to legislators about prison conditions. (Plaintiff filed a grievance against officials for retaliating against him and ARB dismissed disciplinary sanctions for said matter. (See Ex # 56, 57, and 74-76 of Plaintiff's exhibit list)).

19) Sgt. Jeffrey Oleburg can testify that he took plaintiff to segregation at the direction of Cochran, Anderson and Fitchpatrick on 3-24-11; that Oleburg saw how some of force was applied on Plaintiff; and what Plaintiff's demeanor and appearance was.

20) Gary Beams can testify to Plaintiff making complaints/grievances about staff and prison; that he was Plaintiff's counselor and therefore answered some of said grievances and complaints or tried to resolve same; that he was aware that some of the other complaints/grievances of Plaintiff went unaccounted for.

21) Gary L. Pampel can testify that Plaintiff filed numerous grievances about Defendant Anderson harassing Plaintiff; making racial comments to Plaintiff; locking up inmates early; fabricating disciplinary reports against Plaintiff; and, threatening Plaintiff on numerous occasions – the majority of which was prior to the 3-24-11 incident.

22) In regard to Plaintiff's Exhibit List: Ex #1 is a cumulative counseling summary. This document is relevant to show entries recorded by Plaintiff's counselor regarding complaints and grievances he made.

23) Ex #2A and Ex #2B are grievances filed by Plaintiff regarding structural conditions of prison and officials' response to same.

24) Ex #2C is work order log indicating how long Plaintiff's cell light (at R1-C-58 location) was not repaired although Plaintiff had been complaining about same. (Compare Ex #2B dates with this logging record which prove same wasn't repaired nearly 6 months due to "budget." This document is relevant because it goes to Anderson's statements on various dates that Plaintiff would live as uncomfortable as possible at said prison for making complaints in retaliation.)

25) Ex #3, 4 and 8 are counseling summaries from witness Beams and Gans acknowledging some of Plaintiff's grievances went missing at prison. This goes to issue of awareness of Plaintiff's complaints and same possibly being discarded.

26) Ex #6 and 7 are grievance referrals/memorandums; goes to issue that officials receive copies of complaints and/or grievances from counselors and Grievance officers including but not limited to Defendants.

27) Ex #9 and 10 are grievances regarding officials opening legal/privileged mail of Plaintiff; goes to issue whether officials, including but not limited to Defendant Miller was monitoring Plaintiff's mail with legislators and other government officials regarding prison conditions.

28) Ex #11 is affidavit of witness; goes to witness's memory about officials including but not limited to Anderson retaliating against Plaintiff and prisoners in general for complaints/grievances.

29) Ex #12 and 95 are interrogatories of witnesses that could testify prison was severely damaged/eroding dating back 3 decades which was basis of complaints and why officials retaliated against Plaintiff.

30) Ex #13 is OTS record proving witnesses Baird and Mills were housed on same location (R4-C-Wing) on 3-24-11.

31) Ex #14 is affidavit of witness Baird regarding his observation of 3-24-11 incident under question; document is relevant for Baird's memory of incident.

32) Ex #15 is Sgt. Jeffrey Oleburg's written statement to investigators about what he witnessed once Defendants called him for 3-24-11 incident. This

document will assist his memory in all events relevant to the claims, including but not limited to Defendants conduct or comments as well as Plaintiff's.

33) Ex #16 is Dr. Tiller's handwritten incident report; this document is relevant to show Plaintiff's complaints to officials that Plaintiff needed medical treatment following the 3-24-11 incident; that Dr. Tiller informed officials of Plaintiff's need for treatment due to incident with Defendants but officials on Defendant's shift did not allow Plaintiff to be evaluated on that same shift; said document also is needed to assist Dr. Tiller's memory of these events.

34) Ex. #17 is document noting all medical employees names that worked prison on 3-24-11; same is relevant to corroborate what medical staff were present per witnesses account that day.

35) Ex #18, 25, 30 and 40 are all incident reports of non-party officials who called "medical emergency" code to have Plaintiff obtain medical treatment on shift after Defendants and Defendants' co-workers went home after discovering Plaintiff's injuries. These reports are relevant to show Plaintiff's condition and injuries; need for medical treatment; fact that other prisoners had been "screaming" and "yelling" all day to get Plaintiff medical treatment; and to assist witnesses memory of said events of incident on 3-24-11.

36) Ex #19 is OTS record; is relevant to show Plaintiff did not have a cellmate after being placed in segregation cell #29 on 3-24-11.

37) Ex #20 is OTS record showing what time and dates Plaintiff was in each cell location at prison; is relevant to prove where Plaintiff was at on relevant dates to complaint.

38) Ex #21 is record which is unsigned by officials noting all of Plaintiff's property after going to segregation on 3-24-11 (all of which was later discovered to have been broken, damaged and destroyed which Plaintiff was compensated for). This document is relevant to show nexus for Defendants other acts/conduct on 3-24-11 incident. (Note: Defendants had Plaintiff's property in their possession.)

39) Ex #22 is grievance regarding property being broken, damaged and destroyed once Plaintiff went to segregation on 3-24-11. It is relevant to show more than accident but nexus to Defendants malicious and sadistic behavior on 3-24-11.

40) Ex #23 is document proving non-party officials issued new box to Plaintiff after discovering "foul odor" and severe damages to property. This document is relevant to support incident on 3-24-11 (i.e., whether Defendants acts that day was malicious or sadistic due to all occurrences collectively done).

41) Ex #24 is document from IDOC Director awarding Plaintiff $600.00 for staff breaking, damaging and destroying Plaintiff's property on 3-24-11; same is relevant to show officials destroyed and damaged Plaintiff's property on 3-24-11.

42) Ex #27 is injury report from 3-24-11. It is relevant for 3-24-11 use of force claim.

43) Ex #28 is grievance and response to same about officials opening Plaintiff's privileged mail; it goes to Defendants awareness of Plaintiff's complaints by monitoring his privileged mail.

44) Ex #29A is Plaintiff's grievance and response to same by officials. This is relevant for witness testimony: Lt. Bennett told Plaintiff that officials at prison considered Plaintiff a "threat" due to Plaintiff's complaints about prison. This goes to prison officials awareness of Plaintiff's 1st Amendment activities and how he was treated due to same.

45) Ex #29B is Hill C.C.s Library call Pass Request"; it is relevant because inmates who want/need to attend the prison's law library MUST inform prison administration of "nature of the case [the inmate is] working on." This goes to officials being aware of Plaintiff 1st Amendment activities about the prison and staff there (because there was a policy/custom of having inmates to disclose said 1st Amendment activities). This info could be, thereafter, shared with all staff or those that officials felt a need to inform.

46) Ex #31 is OTS record noting other Michael Thomas (witness) was next door to Plaintiff when Plaintiff went to segregation on 3-24-11. It corroborates the witnesses' accounts of what was observed that day.

47) Ex #32 is affidavit of what witness Thomas observed once Plaintiff was brought to segregation and

placed in cell next to him. Same is relevant to assist Thomas's memory as well as Plaintiff's injuries regarding the incident; and fact that officials denied Plaintiff medical treatment the entire 7-3 shift (that Defendants worked on).

48) Ex #33-35 are medical records following Plaintiff's admittance in hospital on 3-24-11. These records are relevant to show the injuries sustained on that date and when treatment was allowed.

49) Ex #36 and 83 are records of Adjustment Committee hearings for witness Hamilton and Plaintiff. Both documents are relevant to show video surveillance footage is used at prison to help resolve incidents; that Lt. Wayne Steele's office (Internal Affairs Office) operates said surveillance system; and that Steele and other investigators can provide favorable info in prison proceedings.

50) Ex #37 is record of official investigation conducted by Lt. Steele regarding the 3-24-11 incident. It is relevant to show what Defendants written statements indicated and to assist witnesses memory for said events.

51) Ex #38 is OTS record. It is relevant to show exactly what all inmates were present on segregation wing where Plaintiff was prior to being admitted to hospital on 3-24-11 due to injuries.

52) Ex #39 is Hill C.C. shift report. It is relevant to show prison population; that hospital and segregation placements are made topics for security staff (i.e., this

info is shared); that officials have roll-call topics that are discussed between officials; and that certain inmates are put on observation status for monitoring.

53) Ex #41 and 42 are Cochran and Anderson's signed statements to Lt. Steele on 3-25-11 and 3-29-11 regarding the 3-24-11 incident. They are relevant to impeach Defendants; to show force was unnecessary and that Defendants acts were retaliatory; and to assist memory of Defendants and witnesses.

54) Ex #43 and 44 is incident report and disciplinary report issued to Plaintiff by Defendants on 3-24-11. They are relevant to impeach Defendants; to show force was unnecessary and that Defendants acts were retaliatory; and memory of events alleged to have transpired.

55) Ex #47 is Cochran's interrogatories. It is relevant to impeach Defendants and to show what Defendants account of 3-24-11 incident was and to assist his memory.

56) Ex #48 is court document. It is relevant to show Plaintiff had filed a separate (previous) lawsuit against Hill C.C. and prison officials about conditions of prison and staff misconduct.

57) Ex #49 is Miller's interrogatories. It is relevant to impeach Defendant and to show Miller's role at prison and claims and for Defendant's memory.

58) Ex #51A is mailroom memo. It is relevant to show Miller's acts and/or omissions involving mail claims.

59) Ex #51B and 97 are employee time cards for Miller and Anderson. These records are relevant to place Defendants at prison on relevant dates to the complaint.

60) Ex #52 and 55 are payment authorization records. They are relevant to show Plaintiff wrote legislators and other government offices and when; and to show officials were aware said activities.

61) Ex #53 is letter from Illinois Supreme Court. It is relevant to show Plaintiff was making complaints regarding prison conditions. It also goes to Defendants awareness of said complaints because the mail was opened by Miller.

62) Ex #56 is disciplinary report written at direction of Miller and Ex #56 is Adjustment Committee's final summary report for said disciplinary report. Both documents are relevant to show Miller and Sanders were aware that Plaintiff was communicating with legislators about prison conditions and staff and Defendants actions for Plaintiff doing same.

63) Ex #58 is grievance regarding Anderson's 9-22-10 fabricated disciplinary report against Plaintiff. Ex #59 and 90 are responses by officials regarding said grievance. These documents are relevant to support chain of events with Anderson retaliating against Plaintiff and that said complaints were made months prior to 3-24-11 incident.

64) Ex #60 and 62 are grievances filed against Anderson for harassing Plaintiff; making threats;

locking inmates up earlier than time allowed; and making racial comments to Black inmates. Ex #61 and 63 are Grievance Officer's Reports addressing both grievances. Ex #91 and 92 are ARB responses acknowledging complaints. All six exhibits are relevant to show chronology chain of events regarding Anderson's actions pre-dating 3-24-11 incident and that Anderson was aware of said complaints.

65) Ex #64-67 and 86C are records (grievances and responses to same) regarding 3-24-11 incident. These documents are relevant for impeachment; what Defendants previously stated; for Defendant's memory.

66) Ex #68 and 69 is grievance and Grievance Officer's response to same. Both documents are relevant to show Miller was aware of plaintiff's communication with legislators.

67) Ex #70 is grievance and Ex #71 is response to said grievance. Both documents are relevant to show Plaintiff made complaints about having eye complications and headaches one week after the 3-24-11 incident. It goes to Plaintiff's injuries.

68) Ex #72 is grievance and Ex #73 is response to same. Both are relevant to show mailroom staff were opening Plaintiff's mail from courts regarding complaints about prison. This goes to the issue of awareness and mailroom staff shortages (of employees).

69) Ex #74 is grievance about retaliation for writing legislators about prison. Ex #75 and 76 are responses to said grievance by Grievance Officer and ARB. All three

documents are relevant to show Defendants awareness of Plaintiff's complaints and the actions Defendants took due to same.

70) Ex #77 and 79 are records of IDOC regarding witness statements regarding 3-24-11 incident. Both documents are relevant for impeachment purposes and to assist memories of witnesses. Both documents go together: one (77) is specific questions Plaintiff requested to be asked of witnesses, and the other document (79) are the answers to said questions and statements of Defendants. Same are also for witnesses memory of prior statements of parties and witnesses.

71) Ex #80, 84, 85 and 87 are Defendants Sanders, Bailey, Fitchpatrick and Anderson's interrogatories for this case. All of these interrogatories are relevant to impeach Defendants; and they go to Defendants awareness of various matters about claims and their memory.

72) Ex #81 is Final Summary Report for Adjustment Committee hearing regarding the 3-24-11 disciplinary charges issued against Plaintiff. Ex #82 is Plaintiff's written statement given to Defendants at said disciplinary hearing. Both documents are relevant to show what infractions Plaintiff was found guilty of; the purported reason for a finding of guilt by Defendants; what evidence was relied upon for the decision or was available; and who all played a role with the disciplinary process and to assist Defendants memory.

73) Ex #86A, 86B and 88 are official records; they are relevant to show Defendants and witnesses

Post/assignments, roles in security, prison zones and cycle training matters.

74) Ex #89A and 89B are Anderson's interrogatories and supplemental interrogatories regarding previous lawsuit. These documents are relevant to show Anderson's awareness of Plaintiff's complaints; what he specifically knew about prison; his actions in confiscating Plaintiff's legal materials; to impeach Anderson and to assist his memory.

75) Ex #96 is affidavit of Witness Hamilton. It is relevant to assist witness's memory regarding officials monitoring Plaintiff's legal and privileged mail; that Lt. Steele knew Plaintiff had not refused to lock up on 3-24-11; that Lt. Steele knew Defendants used unnecessary force which Steele investigated but did not discipline Defendants; and that officials were monitoring Plaintiff's mail including but not limited to his legal and privileged mail due to his complaints about prison and investigation of 3-24-11 incident.

76) Ex #98 and 99 are property records and grievance. They are relevant to show that IDOC (which Defendants are/were employed by) destroyed Plaintiff's property, including but not limited to his legal boxes where Plaintiff's letters were from legislators and other government offices regarding prison conditions.

77) Lastly the court ordered Plaintiff to submit proposed Jury Instruction patterns followed by 7th circuit. The court stated same was noted in a book; however, when Plaintiff went back to prison (Illinois River C.C. where he was being held for the 1-20-15

hearing before the court (see Ex #1 attached hereto)), Plaintiff and law librarian there could not find the book the court directed Plaintiff to retrieve 7th Circuit Jury Instructions patterns.

78) Plaintiff was then transferred back to Lawrence C.C. on 1-28-15 (following 1-20-15 writ). On 1-30-15 Plaintiff discovered a "Federal Jury Practice and Instructions" book but same is not specifically discussing 7th circuit patterns. Because Plaintiff was instructed to have same filed within 14 days of 1-20-15 hearing Plaintiff would therefore request an additional two weeks to research said matter regarding said jury instructions.

79) It shall also be noted to court that Plaintiff has not received any mail whatsoever regarding this litigation or any other mail since going to writ at Illinois River C.C. on 1-14-15 for the 1-20-15 court hearing. Due to same Plaintiff has attempted to comply to the court's oral instructions made at 1-20-15.

80) For all the aforementioned reasons Plaintiff respectfully request this legal instrument to be considered. Plaintiff also request 14 additional days to research jury instructions as directed by court.

Respectfully,
/s/ Michael Thomas
Michael Thomas

CERTIFICATE OF SERVICE

Please be advised that I, Michael Thomas, mailed the enclosed Notice of Compliance to the below listed persons by utilizing the mailing system provided by Lawrence C.C. on today, 1-30-15.

To: U.S. District Court of Illinois
Central District, Peoria Division
Attn: Clerk's Office
100 N.E. Monroe, Rm #309
Peoria, IL 61602

To: Adam J. Poe
Assistant Attorney General
500 S. Second St.
Springfield, IL 62706

From: /s/ Michael Thomas
Plaintiff, pro se

Michael Thomas, B71744
Lawrence C.C.
10930 Lawrence Rd.
Sumner, IL 62466

ILLINOIS DEPARTMENT OF CORRECTIONS - OTS
INMATE CALL PASS ISSUED

IDOC#: B71744 THOMAS, MICHAEL 2 B L IRI-05-B -58
PRIMARY: MISSING

DESTINATION: MULTI PURPOSE (LAW LIBRAR DAY: 1/23/15 AT: 9:30 A
PASS TYPE: LAW LIBRARY
COMMENTS: RESEARCH!!!
AUTHORIZED: BROWN, M.

CELL HOUSE SIGNATURE: ____________ TIME: 930

DESTINATION SIGNATURE: ____________ TIME: 930

EXIT SIGNATURE: ____________ TIME: 11

RETURN SIGNATURE: ____________ TIME: ________

Appendix J

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

MICHAEL THOMAS,	)	
Plaintiff,	)	
	)	
vs.	)	Civil No. 12-cv-01343
	)	
RAYMOND ANDERSON,	)	
et al.,	)	
Defendants.		

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOE BILLY McDADE
FINAL PRETRIAL CONFERENCE HEARING
JULY 8, 2015; 1:11 P.M.
PEORIA, ILLINOIS

[19] ****

THE COURT: The other two matters about the pretrial order involve the witnesses and exhibits and the instructions, the instructions of law.

About the witness list: As you recall, you had something like 42 potential witnesses. You cut it down to 27. And then some of those witnesses in [20] the 27 appear to be duplications. For instance, if you have the section -- I think the section seven (sic) of the pretrial order that says, The testimony of the following inmate witnesses; is directed to issue a video writ.

You see that paper that I'm talking about?

MR. THOMAS: Section six?

THE COURT: Yes, section six.

MR. THOMAS: Yes.

THE COURT: Okay. And you mention various inmates there. Well, I went through your previous description of what each witness was going to say, and you said Michael Thomas saw your injuries and the fact that you were denied medical care. And you say Willis Baird and Arnell Mills and Xavier Landers saw the excessive force that was used against you.

Now, those three -- Baird, Mills and Landers -- apparently are going to talk about the same thing. Now, I don't think we need three people talking about the same thing. Who was in the best position to see this? Who's your strongest -- who are your strongest witnesses there of those three?

MR. THOMAS: Judge, I'm, I'm really not sure because I haven't been able to talk to these [21] witnesses because IDOC forbids us to communicate so it's, it's, it's kind of like a gamble.

THE COURT: Okay. Which one of those witnesses -- hmm? Which one of those three was in a better position to see what happened?

MR. THOMAS: Well, all of them were on the gallery. There's another guy that's not even mentioned on here, but I don't know. Baird is -- I don't know if Baird is still in custody. And Arnell Mills, I would -- I would have to say Arnell Mills. But I don't know about the other two because Landers, Lisa Madigan's office never gave an address for him. They said it's unknown. And Baird's not in custody so I can't locate him because it's, it's rules against me trying to, to reach out to other inmates that's on parole according to the Department rules.

THE COURT: You mean -- so Baird and Mills are no longer in custody?

MR. THOMAS: I think Mills is still in custody. But Landers and Baird, from my understanding, might not be in custody anymore. The prosecution's supposed to got back to me; they never said anything.

THE COURT: About -- did I tell them to do [22] that?

MR. THOMAS: They were supposed to look into it. My paper says that Landers' info is unknown, and, and they haven't said anything about Baird so I'm not sure.

Again, Judge, inmates cannot write other inmates or ex-offenders, according to Department rules, so I cannot get this information if I wanted to or I would be given another disciplinary infraction, ticket.

THE COURT: Well, that is one of the disadvantages of being in prison; your actions are limited.

But the first question here is -- who's on the phone for the government?

THE CLERK: Lisa Cook.

MS. COOK: Lisa Cook.

THE COURT: Do you know whether or not Baird, Mills and Landers are still inmates at the Department of Corrections?

MS. COOK: Your Honor, I looked them up, and Mr. Mills is incarcerated at Western Illinois Correctional Center, but Willis Baird and Xavier Landers, their sentences have been discharged which means not only are they not within the Department [23] of Corrections, but they're also not on parole or anything. They're completely done with the Department for now.

THE COURT: All right. Well, here's what I want you to do. I want you to file a paper with the Court, with a copy to Mr. Thomas stating that -- where Mr. Mills is incarcerated and that Mr. Baird and Mr. Landers are no longer incarcerated or on parole and give the last known address of those persons if that information's available.

MS. COOK: Your Honor, I do think -- I do have an issue with giving the Plaintiff the last known addresses of the witnesses, and that's just because we normally -- you know, I know Mr. -- I know Mr. Thomas wants to call them as witnesses, but we don't want to get in the business of giving addresses to other inmates. It's like Mr. Baird didn't want the Plaintiff to have his address.

So, I don't have any problems filing them under seal with the Court, but I do just -- we do have concerns with inmates getting the home addresses of other inmates from the Department website.

THE COURT: Well, I want you to file that [24] information with the Court, and then the Court will be responsible for giving it out. But file that information with me, and then I can have it given to Mr. Thomas. I think he has a right to call inmates as witnesses if he wishes to and also any citizen who -- he has a right to subpoena citizens.

And I've never ran across this objection in the past, to have the Department disclose the last known address of a former inmate. So, that's not going to cut it with me. I want you to submit the information to the Court that I just requested you to submit, and, and I'm asking you to -- and then the Court will mail -- will, will mail a copy of the information to the defendant.

MS. COOK: Okay, Your Honor. And I'm not trying to be a barrier or anything. I will double-check with the Department; and if they're okay with me filing it, I'll go ahead and file it. And if not, I'll just file it under seal if the Court approves of that method?

THE COURT: Very good.

Mr. Thomas, the two persons who are no longer in prison, Mr. Landers and Mr. Baird, if there is an address furnished for them by the Department, it's your obligation to subpoena them for the trial [25] so that will be your job and, and not the Department's job. Do you understand that?

MR. THOMAS: Yes.

THE COURT: And subpoenaing them, that means you have to have the clerk's office issue a subpoena to them at the address that you have for them, and then it has to be served. And here again, all that's at your expense, although you could have it served by certified mail I understand, too. But -- so whether or not Baird and Landers are available for trial is your problem once you find out where they are. And all I can do is have the Department give me the last known address for these two people that they know of. And then after that, it's up to you. And if you're unable to serve them, then the only one you're gonna have is gonna be Mr. Mills who is still in custody and who will appear by video writ.

So, Government Counsel, I want to have that information within seven days, please, so they can be processed in time for the trial.

MS. COOK: Yes, Your Honor.

THE COURT: Now, I don't know -- Timothy Little, Mr. Thomas, is somebody new to me. What is it that Mr. Little is -- you expect him to testify [26] to?

MR. THOMAS: Judge, you can take him off the list.

****

[59] THE COURT: Mr. Thomas, all of these non-inmate witnesses, were they at Hill at the time you told me about them?

MR. THOMAS: Yes.

THE COURT: Okay. Well, here's what I want you to do because I'm -- I got some other things to do here. You have, I think, there are one, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 13, 14, 15, 16, 17, 18 -- you have 18 non-inmate witnesses listed on section six here. I want you to notify me in writing within a week as to which of those witnesses are necessary to your [60] case, and I'll issue a writ for them. I don't think we need that many people to testify about the incident, nor the injuries, because the injuries you're going to have medical reports. So, just let me know which of those people are necessary witnesses for you.

And within a week because we have to -- the clerk here has to see about video writs and arrange that stuff. And, frankly, I don't see how we're going to get this trial done in the time we set for videoconferencing.

And certain witnesses that I can say would not have anything relevant to say was this Kyle Thierry and Jerry Hull who apparently know something about architectural design of the prison and structural damage to the prison structure. Well, that has nothing to do with this lawsuit. And you might have filed grievances about that prior to March 24th, but it has nothing to do with this lawsuit now except they were included in the category of grievances for which there was retaliation charges.

Kerry Mitchell, who was with the Adjustment Committee, apparently is going to testify that the Adjustment Committee used video surveillance [61] footage at disciplinary hearing. So what? I mean, I, I -- so, based on the information you've given me about what these witnesses will testify to, once you give me your list of the witnesses that you really feel are necessary, I will determine whether or not to issue a video writ for them so that will give you a chance to act on this in light of what you've heard from me today. You should get the drift that I am limiting the trial to the matters set out in the pretrial order and ...

The instructions. We will send you a copy of the Court's instructions which basically are the same as the instructions offered by the defendants with some exceptions. The Court has issued its own -- has drafted its own retaliation instructions relating to Count III, and the Court has refused Defendants' proposed instructions on retaliation.

So, I think we should set a status for about two weeks down the road, Rhonda. Be a telephone status.

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Appendix K

In The United States District Court of Illinois
Central District For The Peoria Division

MICHAEL THOMAS, Plaintiff, v. RAYMOND ANDERSON, et al., Defendants.	)))))))	Case No. 12-cv-1343

Notice of Compliance To Court's July 8, 2015 Order

NOW COME Plaintiff, Michael N. Thomas, pro se, filing the above noted instrument per the Court's instructions. In support of same Plaintiff states:

1) On July 8, 2015 the parties were before the Court to discuss the Final Pretrial Order. The jury trial is to begin August 10, 2015.

2) At said hearing the Court stated over Plaintiff's objection that all but a few of Plaintiff's inmate witnesses would be allowed to testify before the jury. In making such decision the court stated the only triable fact relevant to count 3 is what specifically transpired on March 24, 2011. The court further stated that the complaint charged defendants with unconstitutional conduct specifically on 3-24-11, not at other junctures. This, however, was an err because paragraphs #3 and #5 of the complaint noted defendant Anderson "repeatedly harass[ed] Plaintiff [and] threaten[ed] to use unlawful

force [and] initiate bogus disciplinary proceedings against Plaintiff, inter alia" in 2010 and various days in March of 2011 prior to the excessive force claim occurring on 3-24-11. Clearly any witnesses (such as Kiante Simmons, Anthony Hamilton, Luis Gonzalez and Jorge Mendez), who all personally witnessed defendant Anderson's repeated threats to physically harm Plaintiff and to issue bogus disciplinary proceedings against Plaintiff prior to 3-24-11 is of relevance when the claims assert that Anderson executed those exact same threats on 3-24-11. As plaintiff stated at the 7-8-15 hearing: Plaintiff's understanding of the law regarding a claim of retaliation was that a Plaintiff must demonstrate a chain-of-events to meet his burden by a preponderance of evidence. The fact that above stated witnesses could provide evidence supporting Anderson's threats of unlawful conduct, but will not be allowed to testify to same will prejudice Plaintiff's case.

3) The court also noted Plaintiff was experiencing problems with locating non-inmate witnesses and securing their presence at the Aug. 10, 2015 trial. The court also commented regarding other matters that an attorney's presence may have been necessary for presentation of evidence and to reduce offsets and/or confusion. The court has not, however, taken into account Plaintiff's various requests for appointment of counsel which would serve all parties and the court best and remedy this concern. Plaintiff has previously attempted to procure counsel on his own and has been continuously doing so. (See EX#1-3, attached hereto. The 7th circuit has devised a five-factor standard authorizing a lower court to appoint counsel. (See

McNeil v. Lowney, 831 F.2d 1368, 1371-72 (7th Cir. 1987). Plaintiff in this current litigation meets the applicable standard. (Id.) Therefore this court should revisit this concern because it is apparent that this case has merit and due to Plaintiff's prisoner status that Plaintiff's inability to locate witnesses and secure their presence at the jury trial (due to IDOC rules and regulations and due to Plaintiff's pauper status), would unfairly prejudice his case.

4) In spite of the above noted matters Plaintiff was directed to further reduce witnesses he intended to call by the court at 7-8-15 hearing. Plaintiff objected to same as well as the reduction of other evidence Plaintiff intended to be submitted for jury trial. However, to comply to the court's instructions, Plaintiff further reduces his witnesses to: a) Michael N. Thomas (Plaintiff); b) Michael Thomas (not Plaintiff); c) Willis Baird; d) Arnell Mills; e) Xavier Landers; f) Anthony Hamilton; g) Thomas Turnage; h) Kiante Simmons; i) Ruth Ann Brown; j) Dr. James Tiller; k) Dolores Clark; l) Christa Millard; m) Wayne C. Steele; n) Jeffrey Oleburg; o) Gary Beams; P) Steven Gans; q) Brian M. Kline; r) Tammy S. Bennett; and, s) Kerry Mitchell.

5) With respect to defendants as witnesses: The court held earlier this year that Plaintiff did not have to list them as his witnesses, only non-party persons. Plaintiff therefore reserves his right to call defendants as witnesses.

6) The court further stated it would not allow many of Plaintiff's grievances to be submitted to jury and therefore directed Plaintiff to draft a proposed

stipulation. In compliance with the courts instructions from 7-8-15 hearing said proposed stipulations are attached herewith.

7) The court also directed defendants to submit a stipulation regarding medical records intended to be exhibits months ago, but defendants did not do so. Plaintiff would try to remedy this matter so extra witnesses will not have to testify as to the authentication of these records so long as defendants do not offer altered medical records to the jury. A stipulation regarding same is attached hereto as well.

Respectfully submitted

/s/ Michael Thomas
Plaintiff, pro se.

Michael Thomas, B71744
Lawrence C.C.
10930 Lawrence Rd.
Sumner, IL 62466

Certificate of Service

Please be advised that on today, 7-14-15, the undersigned served the attached Notice of Compliance To Court's July 8, 2015 Order Upon the below noted persons by placing said papers in the mailing system provided by Lawrence C.C. copies of same were provided to:

U.S. District Court of Illinois
Central District, Peoria Division
Attn: Clerk
100 N.E. Monroe, Rm #309
Peoria, IL 61602

Adam J. Poe
Assistant Attorney General
500 S. Second St.
Springfield, IL 62706

By: /s/ Michael Thomas
Plaintiff, pro se

Michael Thomas
Reg. No. B71744
10930 Lawrence Rd.
Sumner, IL 62466

AFFIDAVIT

I, Michael Thomas (B71744), declare under oath and pursuant to the penalties of perjury per 735 ILCS 5/1-109, 28 U.S.C. § 1746 and 18. U.S.C. § 1621 that all facts and events noted in the attached Notice of Compliance are true to the best of my knowledge and belief.

Signed today, July 14, 2015.	/s/ Michael Thomas Plaintiff/Affiant

EX #1