

No. 23-1324

In the Supreme Court of the United States

THOMAS PERTTU, PETITIONER

v.

KYLE BRANDON RICHARDS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX

J. Scott Ballenger	Ann M. Sherman
Lori Alvino McGill	Michigan Solicitor General
<i>Counsel of Record</i>	<i>Counsel of Record</i>
Appellate Litigation Clinic	P.O. Box 30212
University of Virginia	Lansing, Michigan 48909
School of Law	ShermanA@michigan.gov
580 Massie Rd, Suite 251	(517) 335-7628
Charlottesville, VA 22903	
mxc6ab@virginia.edu	Joshua S. Smith
(914) 646-9410	Assistant Attorney General, Corrections Division

Attorneys for Respondent *Attorneys for Petitioner*

Petition for Writ of Certiorari Filed June 17, 2024
Certiorari Granted October 4, 2024

TABLE OF CONTENTS

United States District Court	
Western District of Michigan	
Docket No. 2:20-cv-76	
Complaint (ECF No. 1)	
Filed April 23, 2020.....	1–31
Exhibits to Complaint.....	32–38
United States District Court	
Western District of Michigan	
Docket No. 2:20-cv-76	
Jury Trial Demand (ECF No. 9)	
Filed June 18, 2020.....	39–40
United States District Court	
Western District of Michigan	
Docket No. 2:20-cv-76	
MDOC P.D. 03.02.130, “Prisoner/ Parolee Grievances” (ECF No. 35-2)	
Filed September 25, 2020.....	41–61
United States District Court	
Western District of Michigan	
Docket No. 2:20-cv-76	
MDOC P.D. 03.03.140, “Prison Rape Elimination Act (PREA) and Prohibited Sexual Conduct Involving Prisoners” (ECF No. 35-3)	
Filed September 25, 2020.....	62–87
United States District Court	
Western District of Michigan	
Docket No. 2:20-cv-76	
Transcript of November 4, 2021 Evidentiary Hearing	
ECF No. 184.....	88–368

The following pleadings have been omitted in printing this Joint Appendix because they appear on the following pages in the appendix to the Petition for a Writ of Certiorari:

United States District Court
Western District of Michigan
Case No. 2:20-cv-76
Report and Recommendation to Deny Defendant's Motion for Summary Judgment
Issued July 29, 2021 84a–102a

United States District Court
Western District of Michigan
Case No. 2:20-cv-76
Order Adopting Report and Recommendation Denying Summary Judgment
Issued August 10, 2021..... 78a–83a

United States District Court
Western District of Michigan
Case No. 2:20-cv-76
Report and Recommendation Following Bench Trial to Grant Summary Judgment
Issued December 2, 2021 30a–77a

United States District Court
Western District of Michigan
Case No. 2:20-cv-76
Judgment
Issued March 22, 2022..... 29a

United States District Court
Western District of Michigan
Case No. 2:20-cv-76
Order Adopting Report and Recommendation
Granting Summary Judgment
Issued March 22, 2022..... 22a–28a

United States Court of Appeals
for the Sixth Circuit
Judgment in 22-1298
Issued March 19, 2024..... 21a

United States Court of Appeals
for the Sixth Circuit
Opinion in 22-1298
Issued March 19, 2024..... 1a–20a

Complaint (Verified)
In the United States District Court

Plaintiff's;

- 1.) Kyle Brandon Richards #641715
Baraga Maximum Correctional Facility
13924 Wadaga Rd, Baraga, MI 49908
- 2.) Kenneth D. Pruitt #708518
Baraga Maximum Correctional Facility
13924 Wadaga Rd, Baraga, MI 49908
- 3.) Robert Lee Kisse #575639
Baraga Maximum Correctional Facility
13924 Wadaga Rd, Baraga, MI 49908

vs.

Defendants;

- 1.) (First Name Unknown) Perttu
Residential Unit Manager
Baraga Maximum Correctional Facility
13924 Wadaga Rd, Baraga, MI 49908

Case #

Judge: (sued in 'Personal / Individual' capacity)

The following is a civil action brought pursuant to 42 U.S.C. 1983, and is a "verified" complaint, signed under the penalty of perjury. A "verified" complaint carries the same weight as an affidavit pursuant to 28 U.S.C. 1746.

Note: Throughout the complaint 'Perttu' is sometimes spelled 'Perta'. Same person.

STATEMENT OF JURISDICTION

The following action is a civil rights action brought against R.U.M Perta, a state agent acting under the color of state law. And engaging in a repetitious pattern of sexual harassment and sexual abuse.

The cause of action is properly stated under 42 U.S.C. 1983.

NOTE: Throughout the complaint, 'Perttu' is also sometimes spelled 'Perta' which is a variation.

All allegations are asserted against R.U.M 'Perttu' who is sued in his 'Individual / Personal' capacity.

STATEMENT OF FACTS AND CLAIMS

For the past year, since his promotion, the Residential Unit Manager (R.U.M Perta) has engaged in a pattern of prolific and repetitive sexual abuse, against at least a dozen inmates we know of.

Attempts to reason with R.U.M Perta have been frivolous, unproductive, and resulted only in retaliation. These acts range from 'Destroying inmates legal Mail,' 'Throwing out grievances,' and 'Extorting inmates to perform sexual acts.'

We, Plaintiffs, attempted to exhaust remedies to the best of our ability. We fear for our life and safety and need immediate intervention. We need the immediate aid of federal law enforcement agencies, F.B.I, U.S Marshals, and the United States Attorney.

We've contacted non profit sexual abuse centers like J.D.I (Just Detention International) and A.F.S.C, and there is little they can do to help.

Many non profit groups recommended we file this complaint with the U.S Federal Court. We file this action at risk to our lives and safety.

This is our last resort in an attempt to stop a vicious, sexual predator from continuing his preying on vulnerable helpless inmates.

Claim 1.)

For the past year all 3 Plaintiffs have endured prolific sexual harassment at the hands of R.U.M Perta. This sexual abuse has grown 'worse and worse' every day. All 3 Plaintiffs now fear for their life and safety. We are under the imminent threat of serious physical harm.

This claim is stated for actions inflicted in violation of the 8th, and 14th amendments of the United States Constitution. (P.R.E.A)

1.) On 6-20-19, R.U.M Perta stopped Plaintiff Richards on the facility walkway, at around 2 o'clock, stating directly to Plaintiff, "We need to talk."

Later that day on the stairwell of B-wing in housing unit 6, R.U.M Perta continued dialogue with Plaintiff Richards, stating; "I can make your stay alot more comfortable, but Ill need you to do me a favor." R.U.M Perta further confessed he was 'comming out' and that he wanted to explore his newfound sexuality with Plaintiff Richards. Plaintiff Richards declined

R.U.M Perta's offer and responded by saying; "Leave me the hell alone." R.U.M Perta, appeared offended and persisted; "Ill fucking kill you if you say anything."

2.) On August 19, 2019, R.U.M Perta approached Plaintiff Richards cell door, in housing unit 6. He made direct eye contact with Plaintiff, and stated; "Your either going to play ball and start fucking like everyone, or Im going to send you straight to the fucking hole." R.U.M Perta explained to Plaintiff that he could "make money" and Perta stated; "Work for me and Ill let you run." R.U.M Perta implied he would assist Plaintiff in escaping if Plaintiff engaged in "sex work" for R.U.M Perta.

3.) On August 20, 2019, R.U.M Perta, approached Plaintiff Richards door again, in 6 unit housing block, stating; "This is your last chance, boy, your going to fuck for me, boy, or Ill have your ass, boy. Nobody, tells me, no." He angrily pointed his finger directly in the window of my cell door.

4.) On January 7, 2020, durring morning rounds R.U.M Perta approached Plaintiff Richards door at housing unit 3 and stated; "Do what the fuck I tell you to do. Fuck who I tell you to fuck." Plaintiff Richards in cell 229, stated, "No, I wont." R.U.M Perta responded; "Then Im going to kill you." (This dialogue was witnessed by fellow inmate Plaintiff Pruitt #708518, who was right accross the hall.) And Plaintiff Robert Kissee #575639, who was in 230.)

5.) On January 15, 2020, durring morning rounds R.U.M Perta approached Plaintiff Richards door and stated; "Are you sick of segregation. I bet you want

out. You know what you have to do. Fuck who I tell you to and Ill let you go." Plaintiff Richards responded "No, I wont." R.U.M Perta laughed.

(This conversation was witnessed by inmate Pruitt #708518, who is also a Plaintiff, as well as Plaintiff Robert Kisse #575639, who locked next door in cell 230.)

6.) On January 22nd 2020, durring morning rounds R.U.M Perta stopped at Plaintiff Richards cell 229 in housing unit 3, and looking directly at Richards stated; "Boy, I can keep you in here forever. Just do what I ask you to." This remark was also witnessed by Plaintiff Inmate Pruitt #708518 and Plaintiff Robert Kisse #575639 who locked next door in cell 230.

7.) On January 29, 2020, durring morning rounds R.U.M Perta approached cell 229 in housing unit 3, and began to laugh saying, "You taking piss boy, let me see that dick." The Plaintiff Richards responded; "Leave me alone." R.U.M Perta stated; "No, I wont." This conversation was witnessed by Plaintiff Inmate Pruitt #708518 and Plaintiff Robert Kisse #575639, who locked next door in cell 230.

8.) On February 4th 2020, durring morning rounds R.U.M Perta approached Plaintiff Richards door and stated; "Come on bitch boy, take another piss for me. Piss for me boy, and Ill let you go home." Inmate Richards responded stating; "Please stop harassing me" and "Please leave me alone." R.U.M Perta responded stating; "Boy, Ill fucking kill you boy. Wait unit I get my hands on your pretty little mouth." This conversation was witnessed by Plaintiff Inmate Pruitt

#708518, and Plaintiff Robert Kissee #575639 who locked next door.

9.) On February 12th 2020, durring morning rounds R.U.M Perta approached cell 229, Inmate Richards cell in housing unit 3, and stated, "Tick tock boy. Your going to give me your ass, one way or another." These words were witnessed by inmate and Plaintiff Pruitt #708518, who locked in cell 238, and directly observed the whole dialogue, as well as Plaintiff Robert Kissee #575639 who locked next door in cell 230.

10.) On February 18th 2020, durring morning rounds R.U.M Perta approached cell 229, Inmate Richards cell in housing unit 3, and stated; "I have the power to keep you in segregation forever. Or you can fuck for me, boy." These words were witnessed by Inmate and Plaintiff Pruitt #708518 and; Plaintiff Robert Kissee #575639 who locked next door in cell 230.

11.) On February 26th 2020, durring morning rounds R.U.M Perta approached cell 229, Inmate Richards cell in housing unit 3, and stated; "I bet your going crazy. You know what you have to do. Jack off boy." These words were witnessed by Inmate and Plaintiff Pruitt #708518, and Plaintiff Robert Kissee #575639.

12.) On March 4th 2020, durring morning rounds R.U.M Perta approached Inmate Richards cell 229 in housing unit 3, and stated; "Have you had enough. Ready to play ball." These words were witnessed by Inmate and Plaintiff Pruitt #708518, and Plaintiff Robert Kissee #575639.

13.) On March 10th 2020, durring his morning rounds R.U.M Perta approached cell 229 in housing unit 3, and stated; "Are you jacking off, boy." Plaintiff Richards responded; "No, sir, Im taking a piss. Please go away." R.U.M Perta responded, "Im not going away. I want you to piss on me." This dialogue was directly witnessed by Plaintiff and Inmate Pruitt #708518, and Plaintiff Robert Kisse #575639.

14.) On March 18th 2020, durring his morning rounds R.U.M Perta approached cell 229 in housing unit 3 and stated to Plaintiff Richards; "When you get out, I want you to piss on me boy, like you pissed in that toilet bowl." Plaintiff Richards responded, "Please leave me alone." This dialogue was directly witnessed by Plaintiff and Inmate Pruitt #708518, who locked directly across the hall from Plaintiff Richards and Plaintiff Robert Kisse #575639.

15.) On March 26th 2020, durring his morning rounds, approached cell 229, in housing unit 3, R.U.M Perta stated directly to Plaintiff Richards; "I know you got a parole hearing coming up soon. If you want to go home then you will give me what I want." When Plaintiff Richards started to protest, R.U.M Perta stated "Give me your ass if you want a parole." These statement were witnessed by Inmate Plaintiff Pruitt #708518, and Plaintiff Robert Kisse #575639.

16.) On April 1st 2020, durring his morning rounds R.U.M Perta approached Plaintiff Richard cell 3-d-229 – housing unit 3 and stated; "Im going to get your ass, boy. Its just a matter of time before you give in." This statement was witnessed by Plaintiff and Inmate Pruitt #708518, and Plaintiff Robert Lee Kisse #575639.

17.) On April 13, 2020, durring his morning rounds R.U.M Perta approached Plaintiff Richards cell 3-d-229-housing unit 3 and stated; "Its almost been a year. Im going to have to let you out soon. But if you don't give up your ass, Ill send you right back." This statement was also witnessed by Plaintiff Pruitt #708518, and Kisse #575639.

18.) On, April 14, 2020, durring shower time, around 9 o'clock, on D-wing, R.U.M Perta turned his head and looked directly into the left shower stall, looking directly at Plaintiff Richards genatile area, and stated; "Ill come in there and take that from you if I have too." R.U.M Perta then began to jingle his keys in a manner meant to intimidate Plaintiff Richards. This was witnessed by both Plaintiffs Pruitt #708518 and Kisse #575639.

Actual Injury: Plaintiff Richards has suffered "Physical Injury" as a result of stress related complications, pertaining to the trauma of dealing with sexual abuse. Psycho somatic affects include 'vommiting,' 'lethargy,' 'unhealthy weight gain' and 'high blood pressure.'

An inmate cannot make claims for psychological injury without first showing 'Physical Injury.' Plaintiff Richards has indeed met this threshold.

Plaintiff Pruitt #708518, witnessed Plaintiff Richards vommitting blood on January, 7th, March 26th, and April 14th, of 2020. Internal bleeding has caused fatigue, nausia, and lethargy.

Psychological injury includes P.T.S.D, 'clausterphobia' and 'xenophobia' and other yet to be

determined effects of psychological trauma. (Expert needed) A non-M.D.O.C neutral medical expert will be needed to determine the full extent of 'physical' and 'mental' injury.

Plaintiff #2 Pruitt

1.) On March 27-2020 and Unit 3-D wing 238, R.U.M Perta came to prisoner Pruitt cell door and said to me its Policy that me myself and prisoner's have to be half nude to come out for the shower. And I asked where does it say we have to be nude and R.U.M Perta said to me they like seeing my lovely arms and chest. R.U.M Perta told me to get comfortable and segregation Pruitt. Plaintiff Richards witnessed everything which is right across the hall way from me.

2.) On April 1-2020 and Unit 3-D wing 238, R.U.M Perta was making his morning rounds and Unit 3 I came to my cell door and asked R.U.M Perta when was he running SCC again. R.U.M Perta stated to me stop showing your dick to my female officer's and I would know when the nexts SCC was. I said to R.U.M Perta where does it say and Policy you can lie on me or talk to me like that R.U.M Perta told me again to stop showing my dick and I walked away from the door. Prisoner Richards witnessed everything being said to me across the hall way from me.

(Both Plaintiffs have signed this "verified" complaint, pursuant to; which serves as a "affidavit" for the purpose of evidence.)

3.) [unreadable] -2020 and Unit 3-D wing 238, R.U.M Perta stopped at my sell door and stated to me are you down with showing your half nude body to my female officer's and I said to R.U.M Perta stop playing with me like that cause, "I don't play like that." R.U.M Perta stated to me, "You either going to play my game or I'm going to keep you and the hole till you max's out." Plaintiff Richards witnessed everything R.U.M Perta was saying to me being right accross the hall-way from me and sell 229.

4.) On April 14-2020 and Unit 3-D wing 238, During morning shower's R.U.M Perta stated to me, why I, "was and the shower are you down being and segregation and are you sick yet." R.U.M Perta stated, "I bet you want out," and I said "yes" to him wanting to get out of the hole. R.U.M Perta said to me, "you know what I want you to do for me," and I said "whats that" he told me to beat a dick off and I well let you go. Plaintiff Richards heard everything being right nexts door to me and the shower box's door to me" and I told prisoner Richards don't try I'm going to write him up." R.U.M Perta laughed down the stair's from the shower Prisoner Richards witnessed everything.

5.) On April 16-2020 and Unit 3-D wing 238 during morning rounds R.U.M Perta approached cell 238 prisoner Pruitt cell door and stated, "You know what I want you to do for me fuck nigga." This was witnessed by Inmate Richards accross the hole way from me.

Claim 1 allegations relating to Prisoner Pruitt / Plaintiff Pruitt are sectioned in previous pages, bulletins #1-5.

Due to excess stress and trauma, Plaintiff Pruitt is enduring ongoing physical injury, including 'vomitting,' 'weight loss,' and 'high blood pressure.

Extent of physical and psychological injury needs to be determined by a medical expert.

(See last pages for 'verification')

Signature:

K Daone Pruitt Junior 708518

Claims by Plaintiff Robert Lee Kissee

1.) On Jan 23 2020, R.U.M Perttu came to Plaintiff Kissee's cell door 230 in 3 Block. Plaintiff Kissee asked him, "When will I be released," from segregation. R.U.M Perttu's response was, "You wont never get out the hold as long as you stay sucking them nigga dicks." This insinuation of homosexuality was meant to harass Plaintiff Kissee. These statements were also witnessed by Plaintiff Richards #641715, who locked next door.

2.) February 13, 2020, R.U.M Perttu did a round. And approached Plaintiff Kissee's cell door 230 and said; "Mr. Kissee, are you ready to be white again and leave black meat alone jack off boy." The was also witnessed by Plaintiff Richards #641715, who locked next door.

3.) Again on Febuary 20, 2020, R.U.M Perttu did a round and approached my door again, Plaintiff Kissee asked him; "Why do you keep harassing me.

R.U.M Perta responded; "Cause, where I come from, nigger lovers don't last. Lover boy, fuck for me." The comments were also witnessed by Plaintiff Richards.

4.) On March, 9, 2020, R.U.M Perttu came to Plaintiff Kissee's cell door and said; "You better remember, white people rule the world. I can have you killed and nobody will ever know. Unless you jack off for me boy." These words were also witnessed by Plaintiff Richards, who locks right next door.

5.) On April 9, 2020, durring morning rounds, I asked R.U.M Perttu, "Why have I been in the hole so long, I see the parole board in October, and Im trying to go home." R.U.M Perttu responded to Plaintiff Kissee, stating; "Since you suck nigger dick, you should let me make some money off you." Plaintiff Kissee responded, "What do you mean by that," and R.U.M Perttu answered, "You be my hoe and sell your body. In exchange Ill give you drugs and a cell phone." Plaintiff Kissee objected; "Im not gay." R.U.M Perttu replied; "Then you wont ever get out of the hole."

Over the past six month, the behavior of R.U.M Perttu, and his sexual abuse has grown increasingly worse. The intimidation and threats place plaintiff in immediate risk of physical harm.

R.U.M Perttu is using his authority to:

1.) Force Plaintiffs and other inmates to strip naked and expose themselves to him.

2.) Force Plaintiffs and other inmates to masturbate for him, against their will.

3.) Force Plaintiffs to perform sexual acts for him, against their will, even to the point of rape.

Refusal to comply with R.U.M Perttu's demands results in retaliation, and ongoing threats of physical violence against Plaintiffs. The Plaintiffs are in mortal danger. (Supplemental claims are brought under MCL 750.145 m/n for 'Vulnerable adult abuse.),' as under U.S. Const. Amm #8 and 14, and 1.

Claim 2.)

Plaintiffs have been duly prevented from filing grievances, complaints, or petitions, unable to pursue or exhaust administrative remedies or grievances related to the matter.

More so, Plaintiffs were threatened and retaliated against for 'attempting' to file grievances pertaining to issues of litigation present in this complaint, and are currently in physical peril.

Plaintiffs were not only obstructed from exhausting administrative remedies, but have been threatened with mortal danger for diligently trying to do so.

All Plaintiffs made a dilligent effort to resolve the said dispute, but were persistently 'obstructed' from exhausting remedies. Plaintiffs fear for their life and safety and are under the imminent threat of serious physical harm.

(Plaintiff Richards)

1.) On August 19th 2019, Plaintiff Richards has submitted 4 Prea (Prison Rape Elimination Act) grievances against R.U.M Perta for sexual advances he made toward me, as described in claim 1. Durring afternoon showers, I had submitted the grievance directly to unit 6 mail box.

At around 10 o'clock a.m., R.U.M Perta approached Plaintiff Richards cell door, holding the same grievances. R.U.M Perta stated; "Im not letting you file these grievances." He proceeded to rip them up in front of me.

2.) I was able to submitt over a dozen grievances, unrelated to sexual abuse, and they were processed. Plaintiff was able to submitt "some" grievances.

However, any grievances submitted related to 'sexual abuse,' never got processed and were destroyed. On August 20th 2019, R.U.M Perta stated; "Im not going to let you file any sexual assault grievances."

3.) On January 15, 2020, Plaintiff Richards submitted 4 additional P.R.E.A grievances, by placing them in his door. R.U.M Perta came by in the morning, and snatched the grievances of our my door, stating; "These are going in the garbage." Plaintiff Pruitt also directly witnessed these acts, as well as Plaintiff Kissee.

4.) On March 18, 2020, Plaintiff Richards called the P.R.E.A phone line, and reported R.U.M Perta for sexual abuse. A week later, on March 23rd the

M.D.O.C P.R.E.A coordinator came up to visit Plaintiff Richards who spoke at length about the sexual abuse.

5.) On April 13, 2020, R.U.M Perta approached Plaintiff Richards door at cell 229 in housing unit 3 and stated; "Go ahead and keep filing grievances. Were reading them. I choose which ones I'll let you file." These words were also witnessed by Plaintiff Pruitt, and Plaintiff Robert Kissee.

6.) On April, 14th, 2020, durring morning rounds R.U.M Perta approached Plaintiff Richards cell door 229 in unit 3 and stated to Plaintiff Richards, "Send another fucking grievance boy, and Ill fucking kill you, boy." R.U.M Perta appeared angry and annoyed. This was also witnessed by Plaintiff Pruitt.

7.) On April 15, 2020, durring morning rounds, R.U.M Petra came running by Plaintiff Richards cell and snatched 3 P.R.E.A grievances out of Plaintiff Richards door. He proceeded to rip them up and stated; "Why dont you stop it, boy" This was also witnessed by Plaintiff Pruitt, and Plaintiff Robert Kissee.

8.) On April 16, 2020, durring morning rounds R.U.M Petra came to Plaintiff Richards cell door, yelling; "Wake up mother fucker, wake up." R.U.M Perta then put his key in the door slot and acted like he as going to open the door and stated; "No more fucking grievances." This was also witnessed by Plaintiff Pruitt, and Plaintiff Robert Kissee.

(Plaintiff Pruitt)

1.) On February 11th 2020, R.U.M Perta approached Plaintiff Pruitts cell 238, in housing unit 3, and snatched 2 P.R.E.A grievances out of the door. He read them aloud and then stated; "These are going in the trash" He then walked away, crumpling up the grievances in his hand. This was also witnessed by Plaintiff Richards.

2.) On March, 19th, 2020, R.U.M Perta approached Plaintiff Pruitts cell 238, in housing unit 3 and was holding a P.R.E.A grievance in his hand. R.U.M Perta then stated; "Im not letting you file these. Their going in the garbage." He then walked away. This was also witnessed by Plaintiff Richards.

3.) On April 15, 2020, R.U.M Perta stopped at Plaintiff Pruitts cell holding a 'P.R.E.A' grievance. He stated; "I told you. No more grievances. Ill fucking kill you." He then proceeded to rip up the grievance. This was also witnessed by Plaintiff Richards.

(Plaintiff Robert L. Kisse)

1.) On January, 21, 2020, R.U.M Perttu, durring his morning rounds, stopped at Plaintiff Kisses cell 230 door and snatched two P.R.E.A grievances out of the side of the door and stated; "Im not letting you file these." RUM Perttu then proceeded to rip up the grievances. This was also witnessed by Plaintiff Richards #641715.

2.) On February, 17, 2020, during morning rounds R.U.M Perttu ran past cell 230 and snatched 3 P.R.E.A grievances out of the door. These grievances were placed in the door for submission. R.U.M Perttu then 'crumpled' the grievances in his hand and tossed them across the hallway, stating; "Quit fucking complaining." This was also witnessed by Plaintiff Richards, #641715.

3.) On April, 15, 2020, in the afternoon R.U.M Perttu approached Plaintiff Kisse's cell at cell 230, holding 2 P.R.E.A grievance forms. R.U.M Perttu stated "File another fucking grievance Kisse and Ill fucking kill you." Then ripped up both grievances. This was also witnessed by Plaintiff Richards.

All 3 Plaintiffs made diligent attempts to file multiple P.R.E.A grievances based on prolific sexual harassment and life threatening retaliation. (In violation of U.S. Constitution Am 1, 8, 14)

Month after month, Plaintiffs have submitted 'dozens' of P.R.E.A grievances, only to have R.U.M Perttu pilfer through the mail box or snatch our grievances out of our door, and rip them up in front of us.

Plaintiffs have not only been obstructed from exhausting remedies, but have been threatened with mortal danger for diligently trying to do so.

Apart from grievances, Plaintiffs have made over a dozen complaints to the AMF P.R.E.A coordinator, and several non profit advocacy groups, such as (J.D.I) Just Detention International and AFSC.

Plaintiffs are in immediate danger and fear for their safety, pleading for immediate intervention. Claims are brought for violation of U.S. Constitution Amendments 1, 8, and 14. (Supplemental claims are brought under MCL 750.145 m/n)

Claim 3.)

All 3 plaintiffs claim they are being wrongfully held in administrative segregation in retaliation for filing grievances or “attempting” to file grievances and complaints related to ongoing sexual abuse.

Plaintiffs claim that ‘R.U.M Perttu’ set up Plaintiffs with fraudulent misconducts, in order to isolate them in administrative segregation, where they would have a more difficult time reporting sexual abuse.

It is a well known fact of criminology and criminal behavior that sexual deviant predators, always seek to isolate their victims. Isolation is a form of control necessary for ongoing victimization to continue.

In administrative segregation Plaintiffs are relatively isolated, have limited access to phone, with restrictions on both mail and email. It is a perfect environment for sexual abuse.

The following details how each Plaintiff was fraudulently set up, and or ‘entrapped’ into being placed in administrative segregation.

(Plaintiff Richards)

1.) Plaintiff; Kyle B. Richards, is a well documented 'vulnerable' adult, classified as a vulnerable adult, under M.C.L 750.145(m) and (n), and reserved a special protected status due to a host of mental disabilities.

Plaintiff Richards disabilities range from the following formal diagnosis:

1.) P.T.S.D diagnosed by Dr. Mammoun Dabbaugh at Havenwyck Hospital in 2/ 1998

2.) Pervasive Developmental Disorders diagnosed by Dr. Ismail Sendi in 2004-05 at Havenwyck Hospital.

3.) Anti Social Personality Disorder diagnosed by Dr. Rickman at Center for Forensic Psychiatry in 2009.

4.) Narcissistic Personality Disorder diagnosed by Dr. Rickman at the Center for Forensic Psychiatry in 2009.

(See Exhibit A, for diagnostic proofs)

Due to Plaintiffs mental disabilities it is impossible for Plaintiff to double bunk in close proximity to other inmates in a prison environment.

Plaintiffs disabilities make him excessively vulnerable to 'violence,' 'sexual assault' and exploitation, by other inmates and even staff. For this reason Plaintiff can only safely lock in a level 5 prison and requires a 'single cell' detail.

Plaintiff has been attacked, beat, and sexually assaulted in the past, as a result of being double bunked with violent predatory inmates. Plaintiff Richards is not supposed to double bunk under any circumstances.

In retaliation for filing grievances and complaints, R.U.M Perttu refuted Plaintiffs single cell detail and deliberately placed Plaintiff on a "Transfer" list, to be sent to a 'dangerous' less secure level 4 prison. In level 4 prisons, Plaintiff would be forced to double bunk with violent inmates.

On 8-20-19 (August 20, 2019) R.U.M Perttu told Plaintiff Richards, "Since you wont do what I want, Im sending you down to level 4, where youll really have it bad."

On 8-20-19, Plaintiff Richards refused to comply with a "Retaliatory" transfer. As a result, Plaintiff was sent to 'Administrative Segregation' several misconduct reports were fabricated by the direction of R.U.M Perttu.

Month after month, R.U.M Perttu finds and conjures 'excuses' to keep Plaintiff Richards in segregation, despite persistent positive behavior.

(Plaintiff Pruitt)

In Oct. August, R.U.M Perttu arranged for several inmates to physically attack Prisoner Pruitt. After Prisoner Plaintiff 'Pruitt' took 'preemptory' action in

self defense, Plaintiff Pruitt was thrown in Administrative segregation R.U.M Perttu.

On Jan. 5th 2020, R.U.M Perttu came Prisoner Pruitts door and stated; "You like how I had you hit. Everytime you get out, Ill have you hit again and again and sent right back to segregation." These words were also witnessed by Plaintiff Richards.

Plaintiff Pruitt was forced to take preemptory measures, and attack a prisoner R.U.M Perttu sent to attack him. Although the Plaintiff was found guilty of misconduct, his actions were in self defense.

(Plaintiff Kissee)

R.U.M Perrtu, in June of 2019 (6-6-19) sent a white nationalist inmate to attack Plaintiff Robert Kissee. Plaintiff Kissee was forced under durress to fight back. As a result, Plaintiff Kissee was found guilty of fighting/assault, and has been held in segregation for 10 months.

On April 17th 2020, R.U.M Perttu came to Plaintiff Kissee's door and stated; "As soon as you get out, Im sending someone after you again." These words were also witnessed by Plaintiff Richards #641715.

P1 R.U.M Pertu is deliberately setting up scenerios to entrap Plaintiffs into incurring misconducts. Sometimes R.U.M Perttu fabricates misconducts. This "Entrapment" is a tactic of manipulation R.U.M Perttu uses to keep Plaintiffs in segregation.

All 3 Plaintiff have maintained absolute excellent behavior, even while in Adm. Segregation. There is no reason whatsoever, that after 6 months, Plaintiffs should still be held in segregation.

R.U.M Perttu's classification of Plaintiffs to Administrative Segregation, is absolutely unreasonable, vexatious, and plainly retaliatory.

Retaliation against inmates for filing grievances is a 1st Amm. Constitutional violation.

Both Plaintiff Richards, Kisse, and Pruitt have suffered physical and mental injury.

Plaintiff assertt claims under U.S Constitution Amendments #1, 8, and 14, as well as A.D.A (American w/Disabilities Act.) Plaintiff Richards who is mentally ill cannott legally be held in segregation.

Claim 4;

Plaintiffs Richards, Pruitt, and Kisse assert that R.U.M Perttu have unlawfully retaliated against them for filing grievances and complaints by shutting down their 'JPAY' accounts, and refusing to allow them to have access to their JPS media player, or access the JPS media store.

On 3-20-20 R.U.M Perttu told all 3 Plaintiffs; "Since you wont give me what I want, none of you are getting your JPAY."

All three Plaintiffs for over 10 months have, been denied access to their JPS Player and access to their account and media store.

Plaintiffs assert that this retaliatory deprivation, violates their constitutional rights, under U.S Constitution Ammendments #1, 5, and 14, and is not consistent with any rational penological interest.

This retaliatory deprivation of JPAY access is also consistent with R.U.M Perttu's ongoing pattern of sexual abuse.

By depriving Plaintiffs access to their JPAY accounts, R.U.M Perttu, is objectively preventing Plaintiffs from communicating with their families via JPAY email services.

By restraining all Plaintiffs communication to 'written' pen and paper mail, R.U.M Perttu can more easily monitor and control Plaintiffs outgoing letters. Electronic communication is more difficult for R.U.M Perttu to control, and moniter.

This deprivation of JPAY access makes it more difficult for Plaintiffs to communicate sexual abuse and increases the degree of burden and hardship Plaintiffs are suffering.

Claim 5;

All 3 Plaintiffs claim R.U.M Perttu has retaliated against Plaintiffs for filing grievances and complaints

by refusing to provide and depriving Plaintiffs of access to 'lined' or 'columned' paper, of appropriate size.

R.U.M Perttu will only provide Plaintiffs 'blank' typing paper, that is almost impossible to write a legible pleading on.

Without columns / lined columns, Plaintiffs struggle to write in legible straight lines and draft acceptable pleadings. By depriving Plaintiffs of lined paper, R.U.M Perttu is essentially obstructing judicial access.

Worse is the blank paper provided is 'oversized' being 20 inches long, which is NOT standard for legal submission.

Plaintiff Richards and Pruitt are indigent and cannot afford to purchase typewriters due to both Plaintiff Pruitt and Plaintiff Richards severe mental handicaps, it is impossible for either of them to hand-write their legal pleadings.

Not only has R.U.M Perttu deprived Plaintiff of lined or columned paper, but he has also deprived both Plaintiff who are indigent of access to a typewriter, or necessary writing instrument.

R.U.M Perttu has made it difficult to impossible for Plaintiffs to draft acceptable legal pleadings. R.U.M Perttu is attempting to obstruct Plaintiffs litigation by refusing to provide adequate legal supplies.

The 1st Amendment prohibits both 'retaliation' and the wrongful obstruction of prisoners "access to the courts."

On January 1st 2020, Plaintiff Richards and Kisse asked R.U.M Perttu for 'legal supplies,' including 'columned' writing paper. R.U.M Perttu responded plaintiff; "No."

On Feb. 14th 2020, Plaintiffs Richards and Pruitt asked R.U.M Perttu for legal supplies, including 'columned' writing paper. R.U.M Perttu responded stated; "Fuck you."

On April 9th and 11th, all 3 Plaintiffs asked R.U.M Perttu for legal supplies, including access to a typewriter needed to legibly draft their legal pleadings. R.U.M Perttu responded plainly; "Im not giving you guys shit."

R.U.M Perttu also instructed 3 unit officers not to provide legal supplies or legal matterials to Plaintiffs.

Claim 6;)

R.U.M Perttu in retaliation against Plaintiffs for filing grievances and complaints, has illegally destroyed and vandalized Plaintiffs personal property.

On April 4th 2020, R.U.M Perttu entered AMF property room and slammed Plaintiffs KTV television and Plaintiffs JP Five media player against the wall. These items belonged to Plaintiff Kyle Richards. Both Plaintiff Richards and Kisse observed R.U.M Perttu destroy these items.

On April 14th, 2020, R.U.M Perttu approached Plaintiff Richards door, taunting him saying; "Too

bad, you cant watch T.V or play games now that I smashed your T.V.” This comment was also witnessed by Plaintiffs Pruitt and Kissee.

On April 15th 2020, R.U.M Perttu entered Plaintiff Pruitts cell while he was in the shower. R.U.M Perttu grabbed several folders of legal documents and threw them in Plaintiff Pruitts toilet bowl. Plaintiff Richards directly observed this act from across the hallway. Plaintiff Pruitts cell # is 238.

On April 16th, 2020, in the morning hours, R.U.M Perttu entered Plaintiff Kissee’s cell #230. He began pilfering through Plaintiff Kissee’s legal folders, and tearing up his legal documents.

Plaintiffs stake their claims under U.S Constitution Ammendments;

1st Amm. “Retaliation / Obstruction of Access to Courts

5th Amm “Deprivation of Property without Due Process”

14th Amm “Equal Protection / Due Process

Claim 7.)

On April 21st, 2020, R.U.M Perttu entered 3 unit, opened the maintenance closet and shutoff the water to cells #229, 230, and 238.

R.U.M Perttu stated aloud, "You fuckers will die of thirst before I let any of you drink my water" R.U.M Perttu appeared angry and hysterical.

R.U.M Perttu instructed unit officers to; "Not turn the water on for these motherfuckers." Many unit officers expressed they're afraid they'll lose their job if they don't obey him.

All 3 Plaintiffs are enduring rapid dehydration and after 12 hours have become lethargic and are shaking terribly. Plaintiffs fear for their life and safety and face imminent danger of serious physical harm.

RELIEF REQUESTED

The Plaintiffs request the following monetary, declaratory, and injunctive relief for each claim;

1.) For claim 1, Plaintiffs seek individually for each plaintiff; 100 thousand dollars in punitive damages, 50 thousand dollars in compensatory damages, and a strong declaratory ruling 'condemning' such horrific and flagrantly unconstitutional behavior.

2.) For claim 2, Plaintiffs seek individually for each Plaintiff; 100 thousand dollars in punitive damages, 50 thousand dollars in compensatory damages, and a strong declaratory ruling 'condemning' such flagrant unconstitutional misbehavior.

3.) For claim 3, Plaintiffs seek individually for each Plaintiff; 100 thousand dollars in punitive damages, 50 thousand dollars in compensatory damages,

and a strong declaratory ruling condemning defendants behavior.

Plaintiffs also request for claim 3, that this court issue a permanent injunction ordering M.D.O.C / Defendant to release Plaintiffs from segregation and to specifically prohibit M.D.O.C from placing Plaintiffs back in segregation.

Plaintiffs also ask this court issue a declaratory ruling condemning the confinement of mentally ill prisoners, like Plaintiff Richards in segregation.

4.) For claim 4, Plaintiffs seek individually for each Plaintiff; 50 thousand dollars in punitive damages, 20 thousand dollars in compensatory damages, and an 'injunction' ordering M.D.O.C / Defendant to provide Plaintiffs access to JPAY JPS kiosks and tablets.

5.) For claim 5, Plaintiffs seek individually for each Plaintiff; 50 thousand dollars in punitive damages, 20 thousand dollars in compensatory damages, and an 'injunction' ordering M.D.O.C Defendant to provide Plaintiffs and other prisoners access to either 'columned' lined paper or a typing machine.

6.) For claim 6, Plaintiffs seek individually for each Plaintiff; 50 thousand dollars in punitive damages and 10 thousand dollars in compensatory damages, and an 'injunction' ordering Defendant to 'replace' Plaintiff Richards KTV and JPS tablet / media player.

7.) For claim 7, Plaintiffs seek individually for each Plaintiff; 100 thousand dollars in punitive

damages and 20 thousand dollars in compensatory damages, as well as a declaratory ruling condemning such behavior.

8.) For all claims, Plaintiffs request the court grant monetary award in full as sought, or grant a sum the court feels is reasonable.

9.) Plaintiff Richards asks this court issue a injunction strictly prohibiting M.D.O.C or Defendant from placing prisoner Richards in a two man cell, and reinforcing his single cell detail.

Verification

A “verified” complaint carries the same weight as an affidavit for the purpose of evidence.

28 U.S.C § 1746 renders the following declaration a valid verification to all facts and allegations stated in this complaint.

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

Signature *Kyle Richards* Date 4-21-20

Kyle Richards #641715
Baraga Maximum Correctional Facility
13924 Wadaga Rd, Baraga, MI 49908

Verification

A “verified” complaint carries the same weight as an affidavit for the purpose of evidence.

28 U.S.C § 1746 renders the following declaration a valid verification to all facts and allegations stated in this complaint.

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

Signature *Robert Lee Kisse*

Print Name Robert Lee Kisse #575639
Baraga Maximum Correctional Facility
13924 Wadaga Rd, Baraga, MI 49908
4-21-20

Verification

A “verified” complaint carries the same weight as an affidavit for the purpose of evidence.

28 U.S.C § 1746 renders the following declaration a valid verification to all facts and allegations stated in this complaint.

“d”

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

Signature *Kenneth D Pruitt Junior*

Print Name Kenneth D Pruitt Junior 708518

Baraga Maximum Correctional Facility
13924 Wadaga Rd, Baraga, MI 49908

4-21-20

LIST OF EXHIBITS

Exhibit A: "Report of Dr. Mamoun Dabbagh"

Exhibit B: "Report of Dr. Ismail Sendi"

Proof of Plaintiff Richards mental disabilities, diagnosed by 2 separate doctors, making Plaintiff Richards a 'vulnerable adult' per MCL 750.145m

EXHIBIT A

Page 2

HAVENWYCK HOSPITAL

1525 University Drive
Auburn Hills, Michigan 48326

Richards, Kyle
Mamoun Dabbagh, M.D.
MR#: 020015
AD: 03/03/05
DD: 03/08/05

The patient is alert and oriented, affect is brighter, and doing fair overall. Zoloft is changed to Effexor 37.5 mg q.d. and then increased to 37.5 mg b.i.d. There are no side effects noted from the medications. The patient is alert and oriented. Affect is brighter. He is more within normal limits in terms of his mood. He denies suicidal or homicidal ideation. There is no aggression.

RECOMMENDATIONS: The patient is discharged with the following recommendations: The patient will follow up with his primary care physician for all medical concerns and will be seen on an outpatient basis by Dr. Sendi and Dr. Bob Baringer for home based treatment.

DISCHARGE MEDICATIONS: Medications at the time of discharge are Adderall XR 30 mg q.a.m., Effexor XR 75 mg a.m., Lamictal 25 mg a.m. and h.s., and Abilify 20 mg h.s.

PROGNOSIS: Fair.

FINAL DIAGNOSES:

AXIS I: Major Depressive Disorder, Recurrent.
Attention Deficit Disorder.
Oppositional Defiant Disorder.
AXIS II: None.
AXIS III: None.
AXIS IV: Moderate.
AXIS V: GAF on Admission 25 and on
Discharge 35.

Mamoun Dabbagh, M.D.
Mamoun Dabbagh, M.D.

Transcribed by Global MD Systems (mdsis.com)

DICTATION DATE AND TIME: 03/26/05 02:24 PM
TRANSCRIPTION DATE AND TIME: 03/27/05 06:20
AM

Page 1

HAVENWYCK HOSPITAL

1525 University Drive
Auburn Hills, Michigan 48326

Richards, Kyle
Mamoun Dabbagh, M.D.
MR#: 020015
AD: 03/03/05
DD: 03/08/05

CASE SUMMARY**DISCHARGE SUMMARY AND
AFTERCARE PLAN****RESULTS OF ASSESSMENTS AND SIGNIFI-
CANT FINDINGS:**

- a. **History, Physical and Neurological Examination:** Performed by Dr. Kingsley Thomas. His impression is laceration to the left side of face. He recommends proper skin hygiene, psychotherapy, diet for age, participation in gym, and follow up with primary care physician.
- b. **Psychological Testing:** Not indicated.
- c. **Laboratory Testing:** Urine drug screen is positive for amphetamines. Blood chemistry profile and thyroid profile are within normal limits. A VDRL is nonreactive. Urinalysis shows moderate amount of calcium oxalate crystals. A complete blood count and differential shows a low white blood cell count of 4.0.
- d. **Activities:** The patient is to attend individual and group psychotherapy, school classes, and other age-appropriate milieu activities.

CLINICAL COURSE: The patient is a 15-year-old white male brought to the hospital accompanied by his parents with anger outburst, extreme oppositionality, walk out the classroom at school and left, scratching himself until he bleeds, biting his wrist, punching his mother's truck, having difficulty sleeping at night, and refusing to go to school. He is in

outpatient treatment on Lamictal, Abilify, and Adderall. For additional information, please refer to the admission note.

The patient was initially placed on Lamictal 25 mg q.d., Abilify 15 mg h.s., and Adderall XL 30 mg a.m. There are no side effects noted from the medications. He is overactive, hyperactive, agitated and irritable with mood swings. He was given Lamictal 25 mg a.m. and h.s., Ability 20 mg h.s., and Zoloft 25 mg a.m.

EXHIBIT B

Page 2

HAVENWYCK HOSPITAL

1525 University Drive
Auburn Hills, Michigan 48326

Richards, Kyle
Ismail B. Sendi, MD
MR#: 020015
AD: 03/14/05
DD: 03/16/05

PROGNOSIS: Fair-to-guarded.

FINAL DIAGNOSES:

Axis I: Pervasive Developmental Disorder.
Psychosis NOS.
Cognitive Perceptual Sensory Motor
Deficit.
Axis II: Deferred.
Axis III: Healthy.

Axis IV: Severe.
Axis V: GAF: On admission 25-30 and on discharge 42.

Ismail B. Sendi, M.D.
Ismail B. Sendi, M.D.

Transcribed by Global MD Systems (mdsis.com)

DICTIONATION DATE AND TIME: 03/27/05 02:25 PM
TRANSCRIPTION DATE AND TIME: 03/28/05 06:30 AM

Page 1

HAVENWYCK HOSPITAL
1525 University Drive
Auburn Hills, Michigan 48326

Richards, Kyle
Ismail B. Sendi, MD
MR#: 020015
AD: 03/14/05
DD: 03/16/05

CASE SUMMARY

**DISCHARGE SUMMARY AND
AFTERCARE PLAN**

RESULTS OF ASSESSMENTS AND SIGNIFICANT FINDINGS:

- a. **History, Physical and Neurological Examination:** Done in a previous admission. Please refer to the chart for details.
- b. **Psychological Testing:** Not indicated.
- c. **Laboratory Testing:** Urine drug screen is positive for amphetamines.
- d. **Activities:** The patient is to attend individual and group psychotherapy, school classes, and other age-appropriate milieu activities.

CLINICAL COURSE: The patient is a 15-year-old male brought to the hospital after threatening to hurt himself with the knife and arguing with his father. He is very oppositional. The police had to be called. The patient is most recently on Adderall, Lamictal, and Abilify. For additional information, please refer to the admission note.

The patient was initially placed on Adderall XR 50 mg a.m. and increased dose of Lamictal to 50 mg b.i.d., and Abilify 5 mg b.i.d. On the unit the patient is very structured responsive. He is not a problem on the unit. There is no suicidal or homicidal ideation. There is no aggression. Social worker met with the patient and father. Confirmed the patient lack of participation and motivation for treatment. The patient is easily frustrated. The patient denies suicidal or homicidal ideation.

RECOMMENDATIONS: The patient is discharged with the following recommendations: The patient will follow up with primary care physician for all medical concerns. Continue with myself on an outpatient basis

and Bob Baringer. He will also be referred to behavioral care management for in-home treatment.

MEDICATIONS ON DISCHARGE: Medications at the time of discharge are Abilify 5 mg b.i.d., Lamictal 50 mg b.i.d., Adderall XR 15 mg a.m.

United States Postage
Pitney Bowes \$003.20⁰
APR 23 2020
MAILED FROM ZIP CODE 49903

Kyle Richards, Prisoner #641715
Baraga Maximum Correctional Facility
13924 Wadaga Rd.
Baraga, MI 49908

Received May 13 2020
CLERK'S OFFICE
U.S. DISTRICT COURT

Clerk
United States District Court
For the Eastern District of Michigan
U.S. Courthouse
231 W. Lafayette Blvd.
Detroit, MI 48226

Jury Demand
In the U.S Western District Court

Plaintiff: Kyle B. Richards #641715, et al...

Vs.

Defendants: Unknown Perttu

Case #2:20-cv-76

Hon. Paul L. Maloney

Jury Demand

Pursuant to FRCP Rule 38(A) and (B), the Plaintiff hereby demands a trial by jury as to all issues presented.

Due to locality, and the “culture of the jurisdiction” favoring accused, in a time of racially charged hostility, we demand the jury be selected from an alternate venue of more urban non white communities.

Or else we assert prejudice and will seek a remand for retrial in the 6th Circuit. (We demand a racially diverse jury.)

Most Respectfully

Kyle Richards June 11, 2020
6-11-20

Kyle B. Richards #641715
Baraga Maximum Correctional Facility
13924 Wadaga Rd, Baraga, MI 49908

(Certificate of Service)

I, Kyle B. Richards, #641715, hereby certify that a copy of this pleading was served on all parties of record via U.S mail on 6-11-20.

United States Postage
Pitney Bowes \$000.65⁰
JUN 16 2020
MAILED FROM ZIP CODE 49908

Prisoner Name: Kyle Richards
Prisoner Number: 641715
BARAGA CORRECTIONAL FACILITY
13924 Wadaga Road
Baraga, MI 49908-9204

Clerk
United States District Court
299 Federal Bldg.
202 W. Washington St.
P.O. Box 698
Marquette, MI, 49855

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE	
EFFECTIVE DATE 03/18/2019	NUMBER 03.02.130
SUBJECT PRISONER/PAROLEE GRIEVANCES	
SUPERSEDES 03.02.130 (07/09/2007)	
AUTHORITY MCL 791.203	
PAGE 1 OF 8	

POLICY STATEMENT:

Prisoners and parolees shall be provided with an effective method of seeking redress for alleged violations of policy and procedure or unsatisfactory conditions of confinement.

RELATED POLICIES:

- 01.01.140 Internal Affairs
- 03.02.131 Prisoner State Administrative Board
Property Claims
- 03.03.140 Prison Rape Elimination Act (PREA)
and Prohibited Sexual Conduct Involving Prisoners

DEPARTMENT-WIDE OPERATING PROCEDURE:

03.02.130 Prisoner / Parole Grievances

POLICY:DEFINITIONS

A. Business day: Monday through Friday, 8:00 to 4:30, excluding State observed holidays.

B. Respondent: The staff person who investigates and responds to a grievance.

GENERAL INFORMATION

C. Complaints filed by prisoners regarding grievable issues as defined in this policy serve to exhaust a prisoner's administrative remedies only when filed as a grievance through all three steps of the grievance process in compliance with this policy.

D. Grievances filed regarding sexual abuse, including those filed by a third party, shall not be processed as grievances under this policy but shall be reported in accordance with PD 03.03.140 "Prison Rape Elimination Act (PREA) and Prohibited Sexual Conduct Involving Prisoners." Any grievance submitted under this policy that contains an allegation of sexual abuse shall be copied by the Grievance Coordinator and forwarded to the PREA Coordinator. The original grievance shall be returned to the prisoner. If the grievance also includes a non-PREA grievable issue, it will need to be refiled by the prisoner.

E. The grievance process shall be equally available to all prisoners housed in a correctional facility, including prisoners incarcerated under the Holmes Youthful Trainee Act, and all parolees unless placed on modified access pursuant to this policy. Probationers are not covered by this policy but may resolve specific problems and complaints with supervising staff and, if not resolved, with the sentencing court. If the probationer is housed in the Special Alternative Incarceration Program, s/he shall follow the grievance process set forth in PD 05.01.142 "Special Alternative Incarceration Program." Prisoners housed in non-MDOC facilities shall follow the established grievance process for the facility in which they are confined.

F. Grievances may be submitted regarding alleged violations of policy or procedure or unsatisfactory conditions of confinement that personally affect the grievant, including alleged violations of this policy and related procedures.

G If a prisoner chooses to file a claim for reimbursement of personal property allegedly lost or damaged while in the Department's sole possession, s/he shall request a Prisoner Claim Against the State of Michigan (DTMB-1104-P) form from the Grievance Coordinator in accordance with PD 03.02.131 "Prisoner State Administrative Board Property Claims."

H. Grievances shall not be rejected or denied solely because the prisoner has not included with his/her grievance exhibits or other documents related to the grievance; funds shall not be loaned to a prisoner to pay for photocopying of such documents. If the grievance references documents that are not in the prisoner's files or otherwise available to the Grievance

Coordinator or respondent except through the prisoner, the documents shall be reviewed with the prisoner as part of the grievance investigation process if necessary to respond on the merits. If the Grievance Coordinator or respondent determines that a copy of a document is needed for the grievance investigation, the copy shall be made at Department expense.

I. A grievant whose grievance is rejected may appeal the rejection to the next step as set forth in this policy. A new grievance shall not be filed regarding the rejection.

REASONS FOR REJECTION

J. Prisoners and parolees are required to file grievances in a responsible manner. A grievance shall be rejected by the Grievance Coordinator if:

1. It is vague, illegible, or contains multiple unrelated issues.
2. It raises issues that are duplicative of those raised in another grievance filed by the grievant.
3. The grievant is on modified access pursuant to Paragraphs JJ through NN and has filed a grievance in violation of those paragraphs.
4. The grievant did not attempt to resolve the issue with the staff member involved prior to filing the grievance unless prevented by circumstances beyond his/her control or if the issue falls within the jurisdiction of Internal Affairs in the Office of Executive Affairs.

5. The grievance is filed in an untimely manner. The grievance shall not be rejected if there is a valid reason for the delay; e.g., transfer.

6. It contains profanity, threats of physical harm, or language that demeans the character, race, ethnicity, physical appearance, gender, religion, or national origin of any person, unless it is part of the description of the grieved behavior and is essential to that description.

7. Two or more prisoners and/or parolees have jointly filed a single grievance regarding an issue of mutual impact or submit identical individual grievances regarding a given issue as an organized protest.

8. The prisoner is grieving content of the policy or procedure except as it was specifically applied to the grievant. If a prisoner has a concern with the content of a policy or procedure, s/he may direct comments to the Warden's Forum as provided in PD 04.01.105 "Prisoner Housing Unit Representatives/Warden's Forum."

9. The prisoner is grieving a decision made in a Class I misconduct hearing or other hearings conducted by Administrative Law Judges (ALJ's) employed by the Michigan Department of Licensing and Regulatory Affairs (LARA), including property disposition and issues directly related to the hearing process (e.g., sufficiency of witness statements; timeliness of misconduct review; timeliness of hearing). Prisoners are provided an appeal process for Class I decisions pursuant to PD 03.03.105 "Prisoner Discipline."

10. The prisoner is grieving a decision made by the Parole Board to grant, deny, rescind, amend or revoke parole, or not to proceed with a lifer interview or a public hearing. This includes grieving the tools (scoring weights and ranges) utilized in developing guideline scores. However, a prisoner may challenge the calculation of his/her parole guideline score, including the accuracy of the information used in calculating the score by filing a grievance.

11. The prisoner is grieving a decision made in a Class II or Class III misconduct hearing, including property disposition, and issues directly related to the hearing process (e.g., sufficiency of witness statements, timeliness of misconduct review, timeliness of hearing). Prisoners are provided an appeal process for Class II and Class III decisions pursuant to PD 03.03.105 "Prisoner Discipline."

12. The prisoner is grieving issues not within the authority of the Department to resolve (e.g., disputes between a prisoner and an MDOC vendor or an outside agency (courts), etc.). The grievant shall be told who to contact in order to attempt to resolve the issue, if known.

13. The prisoner is grieving the result of a Risk Assessment Instrument (e.g., COMPAS) or Transition Accountability Plan (TAP). However, a prisoner may challenge the accuracy of the information used in assessments, including in the TAP.

14. The prisoner is seeking reimbursement for property loss or damage that must be submitted pursuant to PD 03.02.131 "Prisoner State Administrative Board Property Claims."

K. Grievances shall not be placed in Counselor files, Record Office files, or Central Office files, or placed in the prisoner health record. Grievances also shall not be referenced on any document placed in these files or the prisoner health record, except as necessary pursuant to Paragraph M. Grievance documents and files shall be accessed only to investigate or respond to a pending grievance, to respond to a request under the Freedom of Information Act, to respond to a request from the Department of Attorney General or appropriate Central Office staff, for audits, for statistical reporting, or to the Warden or his/her supervisor.

L. A grievant shall not be penalized in any way for filing a grievance except as provided in this policy for misusing the grievance process. Staff shall avoid any action that gives the appearance of reprisal for using the grievance process.

M. With the Warden's approval, a prisoner may be issued a Class II misconduct report (e.g., Interference With Administration of Rules) if the grievant intentionally files a grievance that is investigated and determined to be unfounded that, if proven true, may have caused an employee or a prisoner to be disciplined or an employee to receive corrective action. The Class II misconduct may be elevated to a Class I misconduct only if approved by the Warden. The misconduct report shall be processed as set forth in PD 03.03.105 "Prisoner Discipline." If the grievant is found guilty of the misconduct, the grievant shall be

placed on modified access consistent with Paragraphs JJ through NN.

N. Wardens and FOA Region Managers shall ensure prisoners and parolees are provided assistance in completing a grievance form, if s/he determines it is needed. In such cases, assistance shall be provided by a staff member who is not involved in the grievance.

GRIEVANCE COORDINATORS

O. Each Warden shall designate at least one staff member to serve as the Step I Grievance Coordinator and at least one staff member to serve as the Step II Grievance Coordinator. The FOA Deputy Director shall designate staff members to serve as Step I Grievance Coordinators and Step II Grievance Coordinators for each FOA field office. Step III grievances shall be processed by the Grievance Section in the Office of Legal Affairs (OLA).

P. Each Step I Grievance Coordinator shall prepare and submit monthly reports on grievances filed in his/her respective facility or office to the Grievance Section, as directed by the Manager of the Grievance Section. The monthly report shall include information on the subject matter of each grievance filed and, for rejected grievances, the basis for the rejection.

GRIEVANCE PROCESS

Q. Prior to submitting a written grievance, the grievant shall attempt to resolve the issue with the staff member involved within two business days after becoming aware of a grievable issue, unless prevented by circumstances beyond his/her control or if the issue

is believed to fall within the jurisdiction of Internal Affairs. If the issue is not resolved, the grievant may file a Step I grievance. The Step I grievance must be filed within five business days after the grievant attempted to resolve the issue with appropriate staff.

R. All grievances alleging conduct that falls under the jurisdiction of Internal Affairs shall be referred to Internal Affairs as set forth in PD 01.01.140 "Internal Affairs" even if they would otherwise be rejected. The Manager of Internal Affairs or designee shall notify the Warden or FOA Deputy Director or designee, and either the Inspector or Grievance Coordinator as appropriate, in writing if the grievance is determined to fall within the jurisdiction of Internal Affairs; in such cases, an investigation shall be conducted in accordance with PD 01.01.140 and the grievant notified that an extension of time is therefore needed to respond to the grievance. The Manager of Internal Affairs or designee also shall notify the Warden or FOA Deputy Director or designee, and the Inspector or Grievance Coordinator as appropriate, if it is determined that the grievance is not within the jurisdiction of Internal Affairs; in such cases, the grievance shall continue to be processed as a Step I grievance in accordance with this policy.

S. A grievant shall use a Prisoner/Parolee Grievance (CSJ-247A) to file a Step I grievance. A Prisoner/Parolee Grievance Appeal (CSJ-247B) shall be used to file a Step II or Step III grievance. The forms may be completed by hand or by typewriter; however, handwriting must be legible. The issues should be stated briefly but concisely. Information provided is to be limited to the facts involving the issue being grieved

(i.e., who, what, when, where, why, how). Dates, times, places, and names of all those involved in the issue being grieved are to be included. Information should be confined to the form and not written on the back, sides, or margins of the form, or in the response area. Additional pages may be attached to the grievance form if necessary to provide required information; however, grievants are encouraged to limit the information to the grievance form itself. If the grievant believes additional pages are necessary, s/he is to submit four copies of each additional page; Departmental forms are not to be used for this purpose. The grievant may use an intradepartmental mail run, if available, to send a grievance to another facility, or to send a Step III grievance, to the Grievance Section. If an intradepartmental mail run is not available and the grievant does not have sufficient funds to mail the grievance, postage shall be loaned as set forth in PD 05.03.118 "Prisoner Mail."

T. Grievances and grievance appeals at all steps shall be considered filed on the date received by the Department. All grievances and appeals shall be date stamped upon receipt. Time frames for responding to grievances are set forth in this policy directive. An extension may be granted at the discretion of the Grievance Coordinator for a Step I or II response. However, the extension shall not exceed 15 business days. The Grievance Coordinator shall immediately notify the grievant in writing whenever an extension has been approved. The extension also shall be noted in the grievance response.

U. If a grievant chooses to pursue a grievance that has not been responded to by staff within required time

frames, including any extensions granted, the grievant may forward the grievance to the next step of the grievance process within ten business days after the response deadline expired, including any extensions that have been granted.

V. Prisoners and staff who may be involved in the issue being grieved shall not participate in any capacity in the grievance investigation, review, or response, except as necessary to provide information to the respondent.

Step I

W. Within five business days after attempting to resolve a grievable issue with staff, a grievant wishing to advance a grievance must send a completed Prisoner/Parolee Grievance form (CSJ-247A) to the Step I Grievance Coordinator designated for the facility or other office being grieved. If the office being grieved does not have a designated Grievance Coordinator, the grievance shall instead be sent to the Step I Grievance Coordinator for the facility in which the grievant is housed. A grievant in a CFA facility alleging conduct under the jurisdiction of the Internal Affairs Division may send the grievance to the Inspector for investigation and processing as set forth in Paragraph R.

X. The Grievance Coordinator shall log and assign a unique identifying number to each Step I grievance received, including those that may be rejected. A computerized grievance tracking system shall be used for this purpose.

Y. After receipt of the grievance, the Grievance Coordinator shall determine if the grievance should be rejected pursuant to this policy. If the grievance is rejected, the grievance response shall state the reason for the rejection without addressing the merits of the grievance. The Grievance Coordinator's supervisor shall review the reason for the rejection to ensure it is in accordance with policy; both the Grievance Coordinator and the supervisor shall sign the grievance before returning the grievance to the grievant. If the grievance is accepted, the Grievance Coordinator shall assign an appropriate respondent and identify the date by which the response is due. The respondent shall generally be the supervisor of the person being grieved except:

1. For grievances involving Clinical Issues, the Health Unit Manager shall designate the respondent.
2. For grievances regarding Michigan State Industries (MSI), the Administrator of MSI shall designate the respondent.
3. For grievances involving administrative support functions for correctional facilities, the appropriate Administrative Manager shall designate the respondent.
4. For grievances referred to Internal Affairs, the Internal Affairs Manager or designee shall be the respondent. However, if the grievance is determined not to fall under the jurisdiction of Internal Affairs, it shall be returned to the Grievance Coordinator at the facility at which

the grievance is filed to complete grievance processing.

5. For grievances involving court-ordered payment of victim restitution, filing fees, criminal fines/fees/costs or other assessments, child support obligations or bankruptcy actions, the responder shall be designated by the Business Administrator in the Jackson Business Office.

6. For grievances involving transportation issues, the Transportation Section Manager in the Operations Division, CFA shall designate the respondent.

7. For grievances regarding time computation, the Manager of the Time Computation Unit (TCU), Operations Division, CFA shall designate the respondent.

8. For grievances involving the Parole Board, the Parole Board Chairperson shall designate the respondent for grievances involving the Parole Board.

Z. A Step I grievance shall be responded to within 15 business days after receipt of the grievance unless an extension is granted pursuant to Paragraph T. If the issue is of an emergent nature, the Grievance Coordinator may order a Step I response within two business days. The Grievance Coordinator may respond at Step I to grievances that require only minimal investigation or are rejected for reasons authorized by this policy.

AA. The respondent shall interview the grievant to clarify issues of merit, to further an investigation, or otherwise aid in resolution of the grievance at Step I. An interview is not required when:

1. The grievance is rejected pursuant to policy.
2. The prisoner refuses to participate in the interview. The date and time the interview was attempted shall be recorded in the Step I response.
3. The respondent is not assigned to the location at which the grievant is confined.
4. The grievant is on parole in the community, and the respondent does not have ready access to the field office to which the grievant is assigned.
5. No further clarification is needed.

At any time, the Grievance Coordinator may require an interview if s/he determines it to be essential to an adequate response. At Step II, the Warden or designee may conduct an interview whether or not one was performed at Step I. If the grievant is not interviewed at Step I the reason shall be recorded in the Step I response. Prisoners do not have a due process right to an interview.

BB. Each Step I grievance response shall be reviewed by the respondent's supervisor prior to the grievance being returned to the Step I Grievance Coordinator to ensure that it appropriately addresses the issue raised in the grievance and accurately reflects

Department policy and procedure. The respondent shall identify in the response applicable policies, rules, or procedures that are directly related to the issue or conduct being grieved.

CC. The Step I Grievance Coordinator shall ensure that a thorough investigation was completed for each Step I grievance accepted, that the response was reviewed by the appropriate supervisor, and that a copy of the response is provided to the grievant by the due date, including any extension granted.

Step II

DD. A grievant may file a Step II grievance if s/he is dissatisfied with the response received at Step I or if s/he did not receive a timely response. To file a Step II grievance, the grievant must request a Prisoner/Parolee Grievance Appeal (CSJ-247B) from the Step I Grievance Coordinator and send the completed form to the Step II Grievance Coordinator designated for the facility, field office, or other office being grieved within ten business days after receiving the Step I response or, if no response was received, within ten business days after the date the response was due, including any extensions. If the office being grieved does not have a designated Grievance Coordinator, the grievant is to send the grievance to the Step II Grievance Coordinator for the facility in which s/he is housed.

EE. The Grievance Coordinator shall log each Step II grievance received, including those that may be rejected. The Grievance Coordinator shall use a computerized grievance tracking system to do so. The Grievance Coordinator shall determine if the grievance

should be rejected pursuant to this policy. If the grievance is rejected, the grievance response shall state the reason for the rejection without addressing the merits of the grievance. If accepted, the Grievance Coordinator shall assign an appropriate respondent and indicate the date by which the response is due. The due date shall be within 15 business days after receipt of the grievance, unless an extension is granted as set forth in Paragraph T.

FF. The respondents for Step II grievances shall be as follows:

1. The Warden, except that s/he may delegate this responsibility to the appropriate Deputy Warden if more than one institution is supervised.
2. For grievances regarding clinical issues, the Step II clinical authority as determined by the Bureau of Health Care Services (BHCS) Administrator or for Duane L. Waters Health Center (DWH), the Warden of the Charles E. Egeler Reception and Guidance Center (RGC).
3. For grievances regarding Michigan State Industries (MSI), the Administrator of MSI or designee.
4. For grievances involving administrative support functions for correctional facilities, the appropriate Administrative Manager.
5. The appropriate Region Manager for FOA area offices and facilities.

6. The FOA Deputy Director or designee for all other FOA grievances.
7. For grievances involving court-ordered payment of victim restitution, filing fees, criminal fines/fees/costs or other assessments, child support obligations or bankruptcy actions, the responder shall be designated by the Business Administrator in the Jackson Business Office.
8. For grievances involving transportation issues, the Transportation Section Manager in the Operations Division, CFA.
9. For grievances regarding time computation, the Manager of TCU, Operations Division, CFA.
10. For grievances involving the Parole Board, the Parole Board Chairperson.

GG. The Grievance Coordinator shall ensure that any additional investigation was completed as necessary for each Step II grievance accepted and that a copy of the response is provided to the grievant by the due date.

Step III

HH. A grievant may file a Step III grievance if s/he is dissatisfied with the Step II response or does not receive a timely response. To file a Step III grievance, the grievant must send a completed Prisoner/Parolee Grievance Appeal form (CSJ-247B) to the Grievance Section within ten business days after receiving the Step II response or, if no response was received,

within ten business days after the date the response was due, including any extensions.

II. The Grievance Section shall be the respondent for Step III grievances on behalf of the Director. Each grievance received at Step III, including those that may be rejected, shall be logged on a computerized grievance tracking system. The tracking system shall include information on the subject matter of each grievance received and, for rejected grievances, the basis for the rejection. The Grievance Section shall forward grievances regarding clinical issues to the Administrator of the BHCS. The BHCS Administrator shall ensure the referred grievance is investigated and a response is provided to the Grievance Section in a timely manner. The Manager of the Grievance Section shall ensure that any additional investigation is completed as necessary for each Step III grievance accepted, including referral to the Internal Affairs and, for disability issues, to the Equal Employment Opportunity Office, as appropriate, and that a copy of the Step III response is provided to the grievant. Generally, Step III responses will be responded to within 60 business days. The Step III response is final.

MODIFIED ACCESS

JJ. A prisoner or parolee who files an excessive number of grievances (three within a 30 calendar day span) that are rejected or the prisoner is found guilty of misconduct for filing an unfounded grievance as set forth in Paragraph M, may have access to the grievance process limited by the Warden or FOA Region Manager for an initial period of not more than 90 calendar days. If the prisoner or parolee continues to file such grievances while on modified access, the Warden

or FOA Region Manager may extend the prisoner's or parolee's modified access status for not more than an additional 30 calendar days for each violation. A recommendation to place a prisoner on modified access shall be submitted only by the Grievance Coordinator or the Grievance Section Manager and shall include a list of the grievances forming the basis for the recommendation and the reason for the recommendation.

KK. The Warden or FOA Region Manager, as appropriate, shall ensure that a prisoner or parolee placed on modified access, or who has had that status extended, is immediately notified in writing of this determination, including a list of the grievances upon which the determination was based. The Warden or FOA Region Manager also shall immediately notify the appropriate Assistant Deputy Director, and the Grievance Section Manager in writing whenever s/he places a prisoner or parolee on modified access or extends that status.

LL. The Manager of the Grievance Section also may place a prisoner or parolee on modified access, or extend that status, for the reasons set forth in Paragraph JJ. The Manager of the Grievance Section shall ensure that each prisoner or parolee placed on modified access or who has that status extended is immediately notified in writing of that determination, including a list of the grievances upon which the determination was based. The Manager of the Grievance Section also shall ensure that the appropriate Warden or FOA Region Manager is notified in writing of the determination.

MM. While on modified access, the prisoner or parolee shall be able to obtain grievance forms only through the Step I Grievance Coordinator. A grievance form shall be provided if the Step I Grievance Coordinator determines that the issue the prisoner or parolee wishes to grieve is grievable and otherwise meets the criteria outlined in this policy. The Grievance Coordinator shall maintain a record of requests received for grievance forms and whether the request was approved or denied and, if denied, the reason for the denial. If a prisoner or parolee on modified access attempts to file a grievance using a form not provided by the Grievance Coordinator, the Grievance Coordinator may reject the grievance in accordance with Paragraph J. The Warden, FOA Region Manager, or Manager of the Grievance Section may extend the prisoner's or parolee's modified access status for not more than an additional 30 days for each violation. Notification of such extensions shall be consistent with the requirements set forth in Paragraphs KK and LL.

NN. A prisoner or parolee shall remain on modified access for the approved period even if transferred to another facility. The Grievance Coordinator for the sending facility shall ensure that the Grievance Coordinator for the receiving facility is notified of this information.

OPERATING PROCEDURE

OO. If necessary, the Administrator of the Office of Legal Affairs shall ensure that procedures are developed/updated to implement requirements set forth in this policy directive.

AUDIT ELEMENTS

PP. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self-audit of this policy pursuant to PD 01.05.100 "Self-Audits and Performance Audits."

APPROVED: HEW 02/18/2019

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE	
EFFECTIVE DATE 04/24/2017	NUMBER 03.03.140
SUBJECT PRISON RAPE ELIMINATION ACT (PREA) AND PROHIBITED SEXUAL CONDUCT INVOLVING PRISONERS	
SUPERSEDES 03.03.140 (09/15/2015); DOM 2017-23	
AUTHORITY MCL 750.145m; MCL 750.520c; MCL 791.203; MCL 791.204; 42 USCA 15601 et. seq.; Prison Rape Elimination Act (PREA) of 2003	
PAGE 1 OF 10	

POLICY STATEMENT:

The Department has a zero tolerance standard for sexual abuse between or among prisoners. The Department also has a zero tolerance for staff sexual misconduct, staff sexual harassment, and staff over-familiarity with prisoners.

RELATED POLICIES:

- 01.01.140 Internal Affairs
- 02.03.100 Employee Discipline
- 03.03.105 Prisoner Discipline
- 03.03.110 Special Problem Offender Notice
- 03.03.130 Humane Treatment and Living Conditions for Prisoners
- 04.05.120 Segregation Standards

POLICY:**DEFINITIONS**

A. The definitions in Paragraphs B - H only apply to this policy.

B. Employee - For purposes of this policy only, Employee refers to Michigan Department of Corrections (MDOC) employees, contractors, and volunteers.

C. Prisoner - For purposes of this policy, "prisoner" includes probationers in the Special Alternative Incarceration Program (SAI) and parolees residing in a Reentry facility unless otherwise stated.

D. Prisoner-on-Prisoner Sexual Abuse - Sexual abuse of a prisoner by another prisoner includes any of the following acts if the victim is not a willing participant, or is coerced into such act(s) by overt or implied threats of violence.

1. Non-consensual sexual acts:

a. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

b. Contact between the mouth and the penis, vulva or anus;

c. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and

2. Abusive sexual contact:

a. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or the buttocks of another person, excluding contact incidental to a physical altercation.

E. Prisoner-on-Prisoner Sexual Harassment - Includes repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one prisoner directed toward another prisoner.

F. Staff Overfamiliarity - Conduct between an employee and a prisoner which has resulted in or is likely to result in intimacy, including but not limited to a kiss or a hug, or a close personal or non-work related association.

G. Staff-on-Prisoner Sexual Harassment - Includes repeated verbal comments, written statements, or gestures of a sexual nature to a prisoner by an employee, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing and profane or obscene language or gestures.

H. Staff-on-Prisoner Sexual Misconduct (Under Prison Rape Elimination Act [PREA] guidelines this is also referred to as staff-on-prisoner sexual abuse) - Sexual Abuse of a prisoner by an employee, including any of the following acts, willing or unwilling on the part of the prisoner:

1. An attempted, threatened, or requested sexual act or helping, advising, or encouraging another employee to engage in a sexual act. This

does not include acts related to official duties (e.g., strip searches, pat down searches, chest compressions during CPR, etc.).

2. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight.

3. Contact between the mouth and the penis, vulva or anus.

4. Contact between the mouth and any body part where the employee has the intent to abuse, arouse or gratify sexual desire.

5. Penetration of the anal or genital opening, however slight, by a hand, finger, object or other instrument, that is unrelated to official duties or where the employee has the intent to abuse, arouse or gratify sexual desire.

6. Any other intentional contact, either directly or through clothing, of or with the genitals, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties or where the employee has the intent to abuse, arouse, or gratify the sexual desire of any person.

7. Any attempt, threat or request by an employee to engage in the activities described above.

8. Any display by an employee of his or her uncovered genitalia, buttocks or breast in the presence of a prisoner.

9. Invasion of privacy for sexual gratification or voyeurism.

GENERAL INFORMATION

I. The Department has a zero tolerance standard for sexual abuse between or among prisoners. The Prison Rape Elimination Act (PREA) addresses prisoner-on-prisoner sexual abuse, staff sexual misconduct, and staff sexual harassment in correctional facilities. PREA specifically provides for the analysis of the incident and effects of such conduct and requires the issuance of national standards to address sexual abuse in a correctional setting. The PREA Manager, Budget and Operations Administration (BOA), shall be responsible for reporting statistical information and other data as required under the Act and for oversight of the Department's compliance with the national standards when issued. The PREA Manager also is responsible for monitoring compliance with this policy.

J. The PREA Manager oversees and coordinates the efforts of the MDOC to comply with Federal PREA standards including development and implementation of policy, and maintains a PREA Manual which shall be reviewed and updated as needed. The manual shall be consistent with PREA standards and outline methods consistent with maintaining PREA compliance.

K. This policy does not apply to probationers and parolees who are being supervised in the community except as set forth in Paragraph U. However, staff sexual misconduct/sexual harassment and staff overfamiliarity involving these offenders also is prohibited and shall be reported and investigated as set forth in

PD 01.01.140 “Internal Affairs” and PD 02.03.100 “Employee Discipline.”

L. Allegations of prisoner sexual assaults against staff shall be reported to the Michigan State Police (MSP) or other appropriate law enforcement agency for investigation. A prisoner in a Correctional Facilities Administration (CFA) facility also shall be subject to discipline in accordance with PD 03.03.105 “Prisoner Discipline,” and as appropriate, reclassification to a higher security level, including segregation, in accordance with PD 05.01.130 “Prisoner Security Classification” and PD 04.05.120 “Segregation Standards.”

M. Wardens shall designate a PREA Coordinator at each facility under his/her supervision. The PREA Coordinator shall have sufficient time and authority to coordinate the facility’s efforts to comply with the standards outlined in the PREA Manual. The PREA Coordinator shall be responsible for monitoring and providing assistance regarding all aspects of PREA compliance in areas such as training, education, reporting, documentation and investigation of PREA-related allegations.

N. To ensure compliance with standards developed by the National Prison Rape Elimination Commission, audits will be conducted by approved auditors in accordance with the Department of Justice (DOJ) PREA Audit Instrument.

O. For facilities housing male offenders, female staff must announce their presence each time they enter a prisoner housing unit. Staff must knock on the most interior door and announce in a loud clear voice,

“female(s) in the area” and wait 10 seconds before entering.

P. For facilities housing female offenders, male staff must announce their presence each time they enter a prisoner housing unit. Staff must knock on the most interior door and announce in a loud clear voice, “male(s) in the area” and wait 10 seconds before entering. Also, at facilities housing female offenders, staff shall follow procedures outlined in WHV OP 03.03.140 “Prohibited Sexual Conduct Involving Prisoners” and SAI OP 03.03.140 “Prohibited Sexual Conduct Involving Trainees (PREA).”

RISK ASSESSMENTS

Q. All prisoners shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other prisoners or being sexually abusive toward other prisoners. The OMNI-based risk assessment tools will be used to determine a prisoner’s risk. The results of the risk assessment shall be considered when making housing, bed, work, education, and program assignments with the goal of keeping separate those prisoners at high risk of being sexually victimized from those at high risk of being sexually abusive. Staff shall complete a PREA-Aggressor Risk Assessment-Prison and a PREA-Victim Risk Assessment-Prison in accordance with the PREA Risk Assessment Manual. Staff designated by the Warden shall complete both PREA Risk Assessments if any of the following occur:

1. Within 72 hours of a prisoner’s arrival at a correctional facility, including intake.

2. Whenever warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that may increase the prisoner's risk of being sexually abused by other prisoners or being sexually abusive toward other prisoners.

R. In addition to the PREA Risk Assessments required in Paragraph Q, staff designated by the Warden shall complete a PREA-Risk Assessment Review-Prison if any of the following occur:

1. Within 30 calendar days of a prisoner's arrival at a correctional facility, including intake.
2. It has been 12 months since the last review.

PROHIBITED CONDUCT

S. Prisoners are prohibited from having any sexual contact with another prisoner. A prisoner in a CFA facility who willingly engages in such behavior is subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline" and, as appropriate, reclassification to a higher security level, including segregation, in accordance with PD 05.01.130 "Prisoner Security Classification" and PD 04.05.120 "Segregation Standards." A Special Problem Offender Notice (SPON) shall be issued, as appropriate, as set forth in PD 03.03.110 "Special Problem Offender Notice." Parolees residing in a Reentry facility are subject to parole revocation in accordance with PD 06.06.100 "Parole Violation Process." Probationers in SAI are subject to termination from that program and may be returned to the jurisdiction of the sentencing court.

T. Staff sexual harassment/sexual misconduct and staff overfamiliarity are violations of Department work rules. Staff that engage in such conduct are subject to disciplinary action pursuant to PD 02.03.100 "Employee Discipline." It also is a felony for staff to engage in sexual contact with a prisoner, as defined in MCL 750.520c.

U. It is a felony for a contractual employee or a volunteer to engage in sexual contact with an offender, as defined in MCL 750.520c. A contractual employee or volunteer who engages in such behavior shall be prohibited from providing services within any Department correctional facility. In addition, a parolee or a probationer shall not be required to receive services from a contractual employee or volunteer in the community known to have engaged in such conduct. If such contact is reported by a parolee or probationer, the supervising agent shall ensure that the parolee or probationer is not required to have any further contact with the individual pending investigation of the matter. The supervising agent also shall immediately notify the Deputy Director of Field Operations Administration (FOA) or designee of the matter through the appropriate chain of command. The FOA Deputy Director or designee shall ensure a prompt investigation is conducted to verify whether the contractual employee or volunteer was found to have engaged in such conduct and, if verified, take appropriate action to ensure the individual no longer provides services to probationers or parolees.

V. All prisoners and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations are protected from

retaliation for reporting the incident or participating in the investigation.

CONFIDENTIALITY OF REPORTS AND INVESTIGATIONS

W. Reasonable steps shall be taken to ensure the confidentiality of information obtained during the risk assessment process and from reports of conduct prohibited by this policy and any resulting investigations. Persons interviewed as part of an investigation shall be specifically warned not to discuss the investigation with others. Staff that intentionally compromise this confidentiality shall be subject to discipline in accordance with PD 02.03.100 "Employee Discipline." Prisoners in a CFA facility who intentionally compromise this confidentiality shall be subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline." This does not preclude staff from discussing such matters with their attorneys or in accordance with this or any other policy directive, Civil Service Commission rules and regulations, or applicable collective bargaining unit agreements. This also does not preclude prisoners from discussing such matters with their attorneys, to seek treatment, or to ensure their own safety. The PREA Manager shall share with the facility head and his/her supervisors, as appropriate, allegations of conduct prohibited by this policy, which are received directly by the PREA Section.

REPORTING PROHIBITED CONDUCT

X. Employees shall immediately report any knowledge, suspicion or information regarding allegations of conduct prohibited by this policy to appropriate supervisory staff. Reports shall be taken

regardless of when the incident was alleged to have occurred. Reports may be made privately to appropriate supervisory staff, through the MDOC Sexual Abuse Hotline, by completing a Department Sexual Abuse/Sexual Harassment Complaint form on the MDOC website, by contacting the PREA Manager or by contacting the Department's Internal Affairs Division. If the allegations pertain to conduct at another facility (including county jails, another state prison, federal prison or substance abuse program facility), the Warden shall provide email notification within 72 hours as follows:

1. For allegations of sexual abuse within the MDOC - To the appropriate facility head. The Inter-Administration Investigation Protocol issued by the CFA and FOA Deputy Directors shall be followed if the allegation is regarding the conduct of an employee from another Administration. The appropriate facility head shall verify whether the allegation had been previously investigated. If not, s/he shall ensure the allegation is entered into the Department's computerized database and investigated in a timely manner. A courtesy copy shall be forwarded to the Department's PREA Manager.
2. For allegations of sexual abuse which occurred outside the MDOC - To the third party facility or local law enforcement where the incident was alleged to have occurred.

Y. Prisoners may report allegations of conduct prohibited by this policy, including threats of such conduct and retaliation for reporting such conduct, verbally or in writing to any Department employee, through the

MDOC Sexual Abuse Hotline, through the PREA grievance process as outlined in this policy, through the Legislative Corrections Ombudsman, or through a third party. If reported verbally to an employee, the employee shall document it in writing as soon as possible and report it to appropriate supervisory staff. When receiving any report of sexual abuse or sexual harassment, regardless of the source, staff shall promptly document and forward the complaint to the appropriate supervisory staff for investigation.

Z. Prisoners in a CFA facility who report that they have been the victim of a prisoner-on-prisoner sexual abuse or staff sexual misconduct shall be referred to the Bureau of Health Care Services (BHCS) for examination, evidence collection, and treatment. They also shall be referred to BHCS mental health services staff for assessment, counseling, and other necessary mental health services consistent with the requirements set forth in PD 04.06.180 "Mental Health Services." Parolees in a Reentry facility who report that they have been the victim of a prisoner-on-prisoner non-consensual sexual act or staff sexual misconduct shall be permitted to speak with a counselor available in the local community, if requested.

AA. Prisoners in a CFA facility who make accusations of misconduct against employees, including for staff sexual misconduct/sexual harassment or staff overfamiliarity, which after investigation are determined to be unfounded may be charged with the misconduct of "Interference with the Administration of Rules," with approval of the Warden or designee. The misconduct may be elevated to Class I with the approval of the CFA Deputy Director or designee. Hearings shall be

conducted in accordance with PD 03.03.105 "Prisoner Discipline."

BB. Medical and mental health staff shall obtain informed consent from prisoners before reporting information about prior sexual victimization that did **not** occur in an institutional setting. A PREA Authorization for Release of Information Form (CAJ-1028) shall be used for this purpose. A copy of the CAJ-1028 shall be retained for auditing purposes.

CC. Employees who are Health Care and Mental Health practitioners are required to report allegations of sexual abuse that occurred in an institutional setting, whether or not the institution is part of the Department. The practitioner shall inform the prisoner of the practitioner's duty to report and that confidentiality is limited.

DD. The facility shall report any allegations of alleged victims under the age of 18 or who are considered a vulnerable adult under a state or local vulnerable persons statute to the PREA Manager. After the PREA Manager receives the reported allegations, s/he will forward the allegations to the appropriate agencies, to the extent the law requires such reporting.

PREA GRIEVANCES

EE. The PREA Grievance process is a two-step process allowing prisoners to grieve regarding allegations of sexual abuse. A prisoner may file a PREA Grievance at Step I, and may appeal the Step I decision to Step II. The Step II decision shall serve as the Department's final decision on the merits of the PREA Grievance. Issues filed by prisoners regarding sexual abuse,

as defined in this policy, serve to exhaust the prisoner's administrative remedies only when filed through both steps of the PREA grievance process. PREA Grievances alleging sexual abuse shall not be denied or rejected.

FF. Prisoners shall use the PREA Prisoner Grievance Form (Step I) (CAJ-1038A) to file a PREA Grievance. The form may be completed by hand or typewritten. However, handwriting must be legible. The issues should be stated briefly but concisely. Information provided should be limited to the facts involving the issues being grieved (i.e., who, what, when, where, why and how). Dates, times, places and names of all those involved should be included. Information should be confined to the form and not written on the back, sides or margins of the form, or in the area provided for a response. Additional pages may be attached to the grievance form if necessary to provide required information. If additional pages are necessary, the prisoner must submit four copies of each additional page.

GG. A prisoner may file a PREA grievance at any time by submitting a completed CAJ-1038A to the appropriate staff, as identified by the warden, of the institution at which the prisoner is housed. Prisoners are not required to use any informal grievance process, or to otherwise attempt to resolve with staff an alleged incident of sexual abuse.

HH. Staff shall log and assign a unique identifying number (facility code – year – month - AIM number - PREA) to each Step I PREA grievance received. The unique identifying number shall consist of the AIM number assigned to the investigation resulting from the grievance. If the grievance does not result in an

investigation and subsequent AIM number, staff shall use a unique identification number (i.e., 00001,00002, etc.) in place of the AIM number. If any facility staff receives a PREA Grievance, the PREA Grievance shall be immediately forwarded to the appropriate facility staff, as identified by the Warden, to respond to the PREA grievance. Additionally, all allegations of sexual abuse not previously investigated shall be referred for investigation as set forth in PD 01.01.140 "Internal Affairs" and this policy.

II. Any PREA Grievance containing issues other than sexual abuse shall be denied and returned to the prisoner with instructions to submit the grievance in accordance with PD 03.02.130 "Prisoner/Parolee Grievances." Any PREA grievance containing multiple issues, which include sexual abuse and non-sexual abuse issues, shall be processed in accordance with this policy in order to address the allegations of sexual abuse only. The prisoner shall be notified in the PREA Grievance response that s/he must submit a new grievance in accordance with PD 03.02.130 to address any concerns not related to sexual abuse.

JJ. Prisoners shall not be required to submit a PREA grievance to a staff member who is the subject of the complaint, nor shall a PREA grievance be referred to a staff member who is the subject of the complaint.

KK. The PREA Coordinator shall ensure a written response is provided to the prisoner within 60 calendar days of receipt of the Step I PREA Grievance, absent an extension. The facility may claim an extension, not to exceed an additional 70 calendar days, if the normal time period for response is insufficient to make an appropriate decision regarding the grievance. If an

extension is taken, the facility shall notify the prisoner in writing of the extension and a date by which a decision will be made.

LL. Prisoners may appeal a Step I decision to Step II if s/he is dissatisfied with the Step I response or did not receive a Step I response in a timely manner. The Step II response shall be the Department's final decision regarding the matter. The Step II response shall be issued within 90 calendar days of receipt of the Step I PREA Grievance, absent an extension. The time consumed by the prisoner to prepare his/her appeal shall not be included in the time limits listed above.

MM. Third parties, including fellow prisoners, staff members, family members, attorneys, and outside advocates, shall be permitted to assist prisoners in filing PREA grievances related to sexual abuse, and shall be permitted to file such grievances on the prisoner's behalf.

NN. If a PREA Grievance alleging sexual abuse is filed by a third party on behalf of a prisoner, the alleged victim must sign the PREA Grievance authorizing the grievance to be filed on his/her behalf. Failure to sign the grievance will result in the grievance being immediately dismissed. All Department responses to grievances filed by a third party shall be provided to the prisoner on whose behalf the grievance was filed. Any issues other than sexual abuse addressed in third party grievances shall be denied in accordance with this policy.

OO. If a prisoner has reasonable belief s/he is subject to a substantial risk of imminent sexual abuse, s/he

may file an Emergency PREA Grievance in order to seek protection from the imminent risk. The PREA Grievance filed must clearly indicate the grievance is an Emergency PREA Grievance and state in a clear and concise manner what the prisoner believes to be an imminent risk.

PP. Upon receipt of an Emergency PREA Grievance, staff shall forward the grievance to the Warden, or designee, in order for immediate corrective action to be taken, if appropriate, to protect the prisoner from sexual abuse. The Warden, or designee, shall provide an initial response within 48 hours addressing the prisoner's claim regarding imminent risk and whether emergent action is necessary. The facility's initial response shall be immediately forwarded to the PREA Manager who will provide the Department's final decision regarding the prisoner's claim of imminent risk. The PREA Manager will provide the decision within five calendar days of the submission of the grievance. The facility's response and the agency's final decision shall document whether the prisoner is in substantial risk of imminent sexual abuse and if any emergent action was necessary.

QQ. If a prisoner makes false allegations of sexual abuse on a PREA grievance which is investigated and determined to be no evidence/unfounded, the prisoner may be disciplined in accordance with PD 03.03.105 "Prisoner Discipline" and this policy.

INVESTIGATION OF SEXUAL ABUSE/SEXUAL HARASSMENT

RR. Investigations of sexual abuse/sexual harassment shall be completed by staff who have received

specialized investigator training as outlined in the PREA Manual. All investigations shall be conducted promptly, thoroughly and objectively. All PREA investigations shall be conducted in accordance with the Sexual Abuse/Sexual Harassment Investigations portion of the PREA Manual.

SS. Facility staff shall work to avoid transferring prisoners if they are the alleged victim, perpetrator, or witness in a pending PREA related investigation. If a prisoner is transferred prior to the completion of an investigation, the facility shall document the rationale for the transfer.

TT. Staff who are accused of, witnessed, or have personal knowledge of conduct prohibited by this policy and refuse to cooperate with an investigation shall be subject to discipline, in accordance with PD 02.03.100 "Employee Discipline."

UU. The Warden or Lake County Residential Reentry Program (LCRRP) Manager, as appropriate, shall ensure the victim is notified in writing of the final disposition of an investigation involving allegations of sexual abuse. The PREA Prisoner Notification of Sexual Abuse Investigative Findings and Action Form (CAJ-1021) shall be used for this purpose. The CAJ-1021 shall be retained as part of the investigative packet.

VV. Following an allegation that a staff member committed sexual abuse against a prisoner, the facility conducting the investigation shall inform the prisoner unless the investigation determines the allegation was unfounded, whenever:

1. Any disciplinary action is taken. However, details of the discipline, including specific charges and sanctions shall not be provided;
2. The staff member is no longer assigned within the prisoner's unit;
3. The staff member is no longer employed at the facility;
4. The Department learns the staff member has been indicted on a charge related to sexual abuse within the facility, or;
5. The Department learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

WW. Following allegations that a prisoner was sexually abused by another prisoner, the Department shall subsequently inform the alleged victim whenever:

1. The Department learns the alleged abuser has been indicted on a charge related to sexual abuse within the facility, or;
2. The Department learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

XX. Wardens and the LCRRP Manager shall ensure that information on all allegations of prisoner-on-prisoner sexual abuse, staff sexual misconduct/sexual harassment, and staff overfamiliarity are entered into the MDOC computerized database at their respective

facilities and investigated. In addition, information on the outcome of each investigation shall be entered. Information on allegations that do not result in sustained rule violations shall not be retained in an employee's Personnel file or used for any purpose not authorized by this or any other policy directive. Only the Deputy Director and his/her staff involved in employee disciplinary proceedings, including the Internal Affairs Division, the PREA Manager and his/her staff, and other staff specifically authorized by the Director or designee, shall have access to information in AIM.

YY. For each investigation which sustains an allegation of prisoner-on-prisoner sexual abuse, and for each investigation which results in sustained disciplinary charges for staff sexual misconduct/sexual harassment, staff designated by the Warden shall ensure that a completed United States Department of Justice Survey on Sexual Violence Form (SSV-IA) is sent to the PREA Manager along with any other documentation as requested by the PREA Manager. If the case involves only an allegation of staff overfamiliarity, documentation shall be provided as requested by the PREA Manager or designee.

Prisoner-on-Prisoner Sexual Abuse

ZZ. All reported allegations of prisoner-on-prisoner sexual abuse or threats of such behavior, whether reported verbally or in writing, shall be referred to the Warden or designee, or in FOA, to the Administrator of the Office of Parole and Probation Services or designee, for investigation. The assigned investigator shall personally interview the alleged victim, the alleged perpetrator, and sufficient witnesses to

establish the facts, unless otherwise directed by the investigating law enforcement agency. The investigation shall be coordinated as necessary with the Hearing Investigator if misconduct charges are issued.

AAA. Any allegation(s) that appear to be criminal shall be referred to the MSP or other appropriate law enforcement agency to be criminally investigated and referred for prosecution. The Department investigation shall be coordinated as necessary with the investigating law enforcement agency to ensure the Department's efforts will not be an obstacle for prosecution. However, the Department investigation shall proceed with PD 01.01.140 "Internal Affairs" and regardless of whether the referral results in criminal prosecution.

Staff Sexual Misconduct/Harassment and Staff Overfamiliarity

BBB. All reported allegations of staff sexual misconduct/sexual harassment or staff overfamiliarity, whether reported verbally or in writing, shall be referred for investigation as set forth in PD 02.03.100 "Employee Discipline" or PD 01.01.140 "Internal Affairs," as appropriate. Any allegation(s) that appear to be criminal shall be referred to the MSP or other appropriate law enforcement agency to be criminally investigated and referred for prosecution. The Department investigation shall be coordinated as necessary with the investigating law enforcement agency to ensure the Department's efforts will not be an obstacle for prosecution. However, the Department investigation shall proceed in accordance with PD 01.01.140 "Internal Affairs" and PD 02.03.100 "Employee

Discipline” regardless of whether the referral results in criminal prosecution.

CCC. In all investigations of staff sexual misconduct/sexual harassment or staff overfamiliarity, investigators shall personally interview the complainant, the alleged victim if not the complainant, the alleged perpetrator, and sufficient witnesses to establish the facts. The investigation shall not be closed simply due to the resignation, transfer, or termination of the accused staff person.

ADDITIONAL MEASURES TO MINIMIZE PROHIBITED CONDUCT

DDD. The Administrator of the Training Division, BOA, shall ensure both new employee and in-service training is available to staff regarding conduct prohibited by this policy. In addition, the Administrator of the Training Division shall ensure that training is available on how to conduct investigations under this policy. Staff, including investigators and facility administrators, shall attend training as required.

EEE. The PREA Manager shall ensure standardized educational material to educate prisoners regarding conduct prohibited by this policy, self-protection, how to report conduct or threats of conduct prohibited by this policy, and treatment and counseling is accessible to all prisoners. Educational materials shall be available to all prisoners, including any updates, in CFA and Reentry facilities and shall be incorporated into facility orientation programs. If needed, the Department will seek the assistance of interpreters for prisoners with disabilities or limited English proficiency.

FFF. Each Warden shall take reasonable measures to eliminate prisoner access to secluded areas of the facility. This includes conducting rounds of such areas as set forth in PD 04.04.100 “Custody, Security, and Safety Systems.”

GGG. Each Warden shall ensure the facility’s physical plant layout enables prisoners to shower, perform bodily functions and change clothing without nonmedical staff of the opposite gender viewing the prisoner’s breasts, buttocks or genitalia except in exigent circumstances or when such viewing is incidental to routine cell checks. Instances of cross-gender viewing in exigent circumstances shall be documented in writing to the Warden and retained for the PREA Audit.

Identification/Counseling of Prisoners with Histories of Sexual Victimization or Sexually Aggressive Behavior

HHH. Prisoners received at a reception facility who have been convicted of or identified as having a history of a predatory or assaultive sexual offense shall be interviewed by a Qualified Mental Health Professional or other appropriate staff as set forth in PD 04.01.105 “Reception Facility Services.” Prisoners identified as having a history of physical or sexual abuse, or who pose a reasonable concern that they may be sexually victimized while incarcerated due to age, physical stature, history, or physical or mental disabilities shall be similarly referred as set forth in PD 04.01.105.

III. Prisoners with a history of sexually aggressive behavior, or who are found guilty of sexually aggressive behavior while incarcerated, shall be referred to

BHCS mental health services staff for assessment, counseling, and other necessary mental health services, as appropriate, consistent with the requirements set forth in PD 04.06.180 “Mental Health Services.” Prisoners who are reasonably believed to be at risk of sexual victimization while incarcerated, or who have been sexually assaulted while incarcerated, shall similarly be referred.

Placement of Prisoner With History of Sexually Aggressive Behavior Involving a Victim of the Same Sex

JJJ. With approval of the CFA Assistant Deputy Director (ADD) of the Operations Division or designee, a prisoner identified at a reception facility as having used force or the threat of force to engage in, or attempt to engage in, abusive sexual contact or a non-consensual sexual act with a victim of the same sex shall be placed only in single-cell housing only in a Level IV or V facility in accordance with PD 04.01.105 “Reception Facility Services” to reduce the potential assault risk to other prisoners. Similarly, if a prisoner is found guilty of misconduct for using force or the threat of force to engage in, or attempt to engage in, abusive sexual contact or a non-consensual sexual act with a victim of the same sex while incarcerated in a CFA facility, the prisoner shall be placed only in single-cell housing in a Level IV or V facility unless the Warden believes that such placement is not necessary and the CFA ADD of Operations or designee approves alternative placement.

KKK. Whenever it is determined that a prisoner may be placed only in single-cell housing in a Level IV or V facility, the prisoner’s continuing need for such

placement shall be reassessed whenever s/he is screened for security classification pursuant to PD 05.01.130 "Prisoner Security Classification," the original reason for the placement and the prisoner's conduct since the original incident that led to the placement shall be taken into consideration. If it is believed that the prisoner may no longer require such placement, the case shall be referred to the Warden for review. If the Warden agrees that the prisoner may no longer require such placement, the case shall be referred to the CFA ADD or designee for a final determination. In all circumstances, however, the case shall be referred to the CFA ADD of Operations or designee for review at least every five years after the initial placement decision was made.

LLL. The CFA Deputy Director may require that a prisoner who has used force or the threat of force to commit or attempt to commit a non-consensual sexual act involving a victim of the same sex be placed only in single-cell housing in a Level IV or V facility, or allow alternative placement, on his/her own initiative.

VICTIM ADVOCATES

MMM. The Department shall attempt to make available a victim advocate from rape crisis centers, which are not part of the criminal justice system, that provide counseling and confidentiality to prisoner victims. If a victim advocate from a rape crisis center is not available to provide victim advocate services, the facility shall make available to the prisoner a properly trained advocate from:

1. The hospital at which the prisoner will be transported for sexual abuse treatment,

2. The facility's medical and/or mental health staff,
3. On-shift facility staff who have agreed to be a victim advocate,
4. Off-shift facility staff who have agreed to be a victim advocate.

NNN. The Department shall provide prisoner victims with access to outside victim advocates for emotional support services related to sexual abuse if available.

PROCEDURES

OOO. The FOA Deputy Director and Wardens shall ensure that procedures are developed within 60 days after the effective date of this policy.

APPROVED: HEW 03/07/2017

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KYLE B. RICHARDS #641715,
ET AL.,

Plaintiffs,

No: 2:20cv76

vs.

UNKNOWN PERTTU,
Defendant.

Before:

THE HONORABLE MAARTEN VERMAAT

U.S. Magistrate Judge

Marquette, Michigan

November 4, 2021

Bench Trial Proceedings

(Via Zoom)

APPEARANCES:

MR. KYLE B. RICHARDS

MR. KENNETH PRUITT

MR. ROBERT KISSEE

Baraga Correctional Facility

13924 Wadaga Rd.

Baraga, MI 49908-9204

In Pro Per;

ASSISTANT ATTORNEY GENERAL

By: Mr. Joseph Y. Ho

Mr. Allan J. Soros

P.O. Box 30217

Lansing, MI 48909

517-335-3055

On behalf of the Defendant.

TRANSCRIBED BY: MS. KATHY J. ANDERSON,
RPR, FCRR

[Page 2]

November 4, 2021

PROCEEDINGS, 9:35 a.m.

THE COURT: All right. Good morning, everybody. This is U.S. Magistrate Judge Vermaat. We're doing three exhaustion trials today. I'm going to identify the trials: The first is Richards, Pruitt and Kissee against RUM Perttu, case number 2:20cv76; the second case we're going to do is Richards, Pruitt and Kissee against RUM Perttu, RUM Niemi and Warden Taskila, that's 2:20cv194; and the third one will be, it's the last one, it has the fewest number of people in it, it's 2:20cv122, and that's Richards against RUM Perttu. That's the plan. We are going to do those in order. We're going to hear all the witnesses in the first case and then when we get to the second case, if all the parties agree, we will just use that same testimony in the second case and also the third case. That's the game plan. And that way we won't, we won't have overlapping records. All right. That's the game plan.

Any updates or issues we need to take up before we begin, Mr. Richards?

MR. RICHARDS: No. I did want to clarify whether plaintiff Kissee had received the two copies of his complaint needed for this trial.

THE COURT: Let me ask. Mr. Kissee, do you have what you need?

MR. KISSEE: Yes, sir.

[Page 3]

THE COURT: Okay. Mr. Ho, how about you, are you all set to go?

MR. HO: Yes, sir.

THE COURT: Okay. And then for the defense counsel, whose going to be the primary speaker for the defense?

MR. SOROS: Mr. Ho is.

THE COURT: Okay. Mr. Ho. All right. So the main issue in 76 is this thwarting claim. The complaint identifies claims against RUM Perttu, the date range is about June 2019 to April 20th, 2020; there are First and Eighth Amendment claims. This has already been through summary judgment. I won't go through all the details.

But the defendants claim -- Mr. Perttu claims that the plaintiffs failed to exhaust their grievances through the normal grievance system and through the PREA grievance system. And the plaintiffs say they were thwarted in their efforts. There actually might be one grievance that's relevant. So primary focus here is on the thwarting claim, and then there is one potentially, you know, if there is a relevant grievance that's mixed in here. But obviously the way we'll go here is we'll start with Mr. Ho and, and you may proceed, Mr. Ho.

MR. HO: Okay.

THE CLERK: Judge, would you like me to call the case?

THE COURT: I already called the case. Don't worry about it.

[Page 4]

MR. HO: All right. So I would like to call the first witness.

THE COURT: Yes, go ahead.

MR. HO: Mr. Russell, Richard Russell.

THE COURT: All right. Richard Russell. You can bring Mr. Russell in. All right. Good morning, Mr. Russell. This is U.S. Magistrate Judge Vermaat. Can you hear me?

THE WITNESS: Yes, I can.

THE COURT: All right. Would you please state your full name and spell your last name.

THE WITNESS: Richard Dennis Russell. It's R-U-S-S-E-L-L.

THE COURT: All right. Will you raise your right hand?

RICHARD RUSSELL, DEFENSE WITNESS,
WAS DULY SWORN

THE COURT: All right. Mr. Ho, you may proceed.

DIRECT EXAMINATION

BY MR. HO:

Q Good morning, Mr. Russell. Can you please state your full name for the, for the record?

THE COURT: He already did. Go ahead and keep going.

BY MR. HO:

Q All right. Mr. Russell, what do you do for a living?

A I'm the hearings administrator and grievance section manager within the Office of Legal Affairs, the Michigan

[Page 5]

Department of Corrections.

Q Okay. So how long have you been the grievance manager?

A For about 12 and a half years.

Q And what do you do as a grievance manager?

A I oversee the Step III grievance process.

Q Okay. And how have you been -- how long have you been the hearings administrator?

A About 11 and a half years.

Q And what do you do in that capacity?

A That's a statutory position that oversees the prisoner hearings process secondary to the prisoner discipline policy.

Q Okay. What policies or procedures control or guide the MDOC grievance process?

A PD 03.02.130 titled PRISONER/PAROLEE GRIEVANCES and its associated operating procedure, 03.02.130 with the same title govern the process.

Q Okay. And can you please describe the MDOC grievance process?

A The process is a three-step process. It begins with the prisoners filing a grievance with the grievance coordinator at the facility level. The first two levels are handled at the facility. The grievance coordinator has the first step on responses and then the prisoners can appeal the second step, and that appeal is overseen by the warden who responds to that step.

[Page 6]

Q Okay. Can you speak up a little bit? I'm having a hard time hearing you. Okay. And so how does the grievant begin the Step I process?

A They can pick up a grievance form, it's called a 247 A form, in any of the housing units. There may be other places in the facility they can pick them up too.

Q Okay. And then what happens? What does the prisoner do after he gets the form?

A The prisoner completes the Step I form and then files that, sends it to the grievance coordinator at the

facility, and then if it happens to be at a facility which the prisoner was previously at, they are obligated to send it to that facility, in other words, the facility where the issue occurred.

Q Okay.

A The grievance coordinator receives that and logs it into a local database; that automatically generates a receipt for the grievance; that's sent to the prisoner telling them the date the response is due and basically giving them that notification of the process.

Q Okay. Then what happens after that, or what happens after the Step I process then?

A Then the prisoner can appeal that to Step II if they are dissatisfied with the answer in Step I.

Q Okay. And how does that happen?

A The prisoner has to request that Step II form from the

[Page 7]

grievance coordinator and that's because grievance number has to be put on it that is assigned at Step I has to be put on the form and also the due date is put on that form so the prisoner knows the date by which they have to return.

Q Okay. All right. And what recourse does a prisoner have if he or she disagrees with the Step II response?

A Then there's an appeal to Step III, and that comes to my office and my office we, we respond to the appeal on behalf of the director of the department.

Q Okay. All right. So what happens when a Step III grievance is received by your office?

A I'm sorry, I didn't hear that.

Q What happens when a Step III grievance is received by your office?

A Okay. The, when the mail is received in my office, it's received by a technician who opens the mail, and then that technician is responsible for recording the receipt of the Step III appeal in our central office grievance database, and then organizing the grievances in folders by day of receipt for a specialist to pick up.

Q Okay.

THE COURT: So, Mr. Pruitt, did you have an objection to that?

MR. PRUITT: Yes, I did.

THE COURT: Go ahead.

[Page 8]

MR. PRUITT: Now, he just said that -- can you hear me, Your Honor?

THE COURT: Yes.

MR. PRUITT: He just said that the grievances is seen by a technician. So how is that so when they tell us our grievance going in a box here?

THE COURT: All right. Here's what we are going to do, Mr. Pruitt. If you want to object to a question, just say I object to the question and I'll ask you why. And what you can do, the question you just brought up is really a cross-examination question. You can ask Mr. Russell that on cross-examination, okay.

MR. PRUITT: Yes, sir.

THE COURT: Okay. Go ahead, Mr. Ho.

MR. HO: Okay.

BY MR. HO:

Q And so I believe we were talking about the Step III grievances being received by your office. And so are these Step III grievances logged when they're received?

A Yes, that's the job of the technician; as soon as they open the mail, they log in the date it was received, the number assigned on the grievance, organize it for the specialists.

MR. HO: There is a lot of background noise. Can we have, is it possible for the –

THE COURT: Well, I don't actually hear the background

[Page 9]

noise, Mr. Ho. And I don't want, I don't want to mute the three plaintiffs because --

MR. HO: Right. Right.

THE COURT: -- if they want to object it's too hard to unmute and do that. So I think you're just going to have to deal with that. Mr. Russell, I assume you're just using the microphone on your computer. If you can pull that a little closer maybe that will work. I hear you just fine. I don't know, Mr. Ho's computer is not working the same way. But I'm hearing you just fine.

MR. RICHARDS: I'm on screen saver. I don't know if it's still --

THE COURT: You're on screen saver, Mr. Richards?

MR. RICHARDS: Yeah, they're fixing it right now.

THE COURT: Okay. But you can hear everything okay, can't you?

MR. RICHARDS: I can hear all of you okay perfectly fine.

THE COURT: Okay. Sounds good.

THE WITNESS: I just adjusted my microphone. Can you hear me better now?

MR. HO: Yes, you're more clear.

THE COURT: Let me just say this to the plaintiffs. If you do want to object, you can, you know, just like Mr. Pruitt did, raise your hand and then I will stop the

[Page 10]

response and we will see what the objection is. But you can just say I have an objection and we can go from there. Go ahead, Mr. Ho.

MR. HO: Okay.

BY MR. HO:

Q So what else happens after the grievance is received and logged?

A Then I supervise three grievance specialists who select files for review from what the technicians prepared and then they look into the grievance and they render a decision which then is returned (unintelligible) and the date mailed is put on the grievance. The grievance is sent out to, a copy to the warden and a copy to the prisoner.

Q Okay. And all of this information is logged in the database?

A Not all the information. Just the tracking information, in other words, the dates, the decision, and that kind of information.

MR. PRUITT: He broke up, Your Honor.

THE COURT: Okay. Just try to be as loud as you can, Mr. Russell.

BY MR. HO:

Q I'll repeat my last question. And all of this information is logged in the database?

A No. Just the, just the tracking information. In other

[Page 11]

words, the date received, the decision, what the decision was, whether it was rejected, whether it was denied, whether it was accepted and resolved is logged into the database, and then that grievance then is, is and the date that it was completed and mailed is entered. And then, you know, grievance is, response is sent back to both the warden and to the prisoner.

THE COURT: Mr. Pruitt, are you able to hear that?

MR. PRUITT: Yes, yes.

THE COURT: Okay. I see you leaning forward. You're probably going to have to keep doing that, okay?

BY MR. HO:

Q Now, do you have any discretion in whether to process a Step III grievance received at your office?

A No. If it's a properly filed grievance, then, then we need to respond to every grievance that's filed.

Q Okay. So when is the grievance process completed?

A It's, it's technically completed when we mail the response back to the prisoner.

THE COURT: Go ahead, Mr. Richards, what's your objection?

MR. RICHARDS: Grievance policy specifically states that grievance are exhausted upon filing the Step III grievance, not upon waiting for the receipt. That's PD 03, that's the grievance policy for the general grievance section C. You can look at the exhibit for the grievance.

[Page 12]

THE COURT: So, Mr. Richards, that's not actually an objection. That's something you can cross-examine Mr. Russell on. So you objected. You think the question is improper -- if the question is improper. It sounds like you're disputing the response. That's fine. You can do that when you cross-examine him. Okay?

MR. RICHARDS: Yes, sir. I didn't understand that.

THE COURT: No problem. No problem at all. Go ahead, Mr. Ho.

MR. HO: Okay.

BY MR. HO:

Q And to be clear, you're saying when the Step III decision has been completed and mailed to the prisoner?

A My, your question was when was the process completed. The process is completed when, when you mail

their decision to the prisoner and the warden. And I believe the question was regarding the exhaustion and policy. Exhaustion by the prisoner is when the, when it's filed with us and that's upon receipt of the document by us.

MR. HO: I understand what Mr. Richards has objected to, but I'm just saying is when is the MDOC process completed, and your response is when the Step III decision has been completed and mailed. Is that correct?

THE WITNESS: That's correct.

[Page 13]

BY MR. HO:

Q Okay. And what do you consider to be proper exhaustion through the MDOC grievance process?

A When we have rendered a decision on the grievance that was filed through all three steps properly, in other words, all time frames were met (unintelligible) policy by the prisoner in the process.

Q Okay. So what are some reasons that a grievance would be, you know, wouldn't have met some of the policy requirements?

A If it was untimely; there are specific time frames for filing the grievance in policy. If the prisoner included multiple issues in one grievance, if the prisoner, if it was vague, in other words, the policy requires that the specific issue be identified as to time, place, that was

involved and a description of the issue. Those are examples. There are others.

Q And so when that happens, how is that, how is that particular grievance processed, how would that grievance be processed?

A That issue if it happens at Step I we would expect that a rejection would be made at Step I and then, then it's reviewed by the warden. The warden agrees that it's upheld at Step II, and then if it's appealed to Step III and we agree with that rejection we uphold the rejection in Step III.

Q Is it possible that a grievance be rejected at Step II or

[Page 14]

Step III?

A Yes.

Q All right. We're going to, to look at some documents that's been, that's been prepared for this case. Okay. So what I'm going to do is I am going to --

THE COURT: Hold on a second. Mr. Pruitt, go ahead.

MR. PRUITT: You asked the one that's speaking now that turned on his mic because it's too deep and I can barely hear what he asking him because it's too deep. It's like vibrating where I can't hear some of his words.

THE COURT: All right. So you want Mr. Ho to turn down the volume on his?

MR. PRUITT: Yeah, yeah, turn it down some so I can hear him clearly. I can barely hear him.

THE COURT: Are you able to hear me all right?

MR. PRUITT: Yes, yes.

THE COURT: I can't explain why you're hearing me fine and then you're having trouble hearing Mr. Ho. I'm hearing everybody perfectly well.

MR. PRUITT: Deep in here. It's too deep. I can barely make out some of his words.

THE COURT: All right. Mr. Ho, I mean -- it's his gain on his microphone. I'm not sure he has the ability to control that. But go ahead and see what you can do, Mr. Ho.

MR. HO: What about now? Is this better?

[Page 15]

MR. PRUITT: Yeah.

MR. HO: Okay. All right.

BY MR. HO:

Q So I'm going to, so, Mr. Russell, I'm going to show you some documents, okay, and I want you to take sometime to review them and I'll have a series of questions from them.

So the first document I'm going to show you is what has been marked as Defendant's Exhibit A.

THE COURT: Mr. Russell, do you have A. in front of you?

THE WITNESS: I don't see that, no.

THE COURT: Mr. Ho.

MR. HO: I sent that to you -- there it is. I think I found it. You're waiting for the share screen function. Okay.

THE WITNESS: Yes, I see it now.

BY MR. HO:

Q Okay. So do you have do -- you also have a copy -- do you also have an electronic copy in case just so you can review it more, more --

A Yes, I have.

Q Okay. So can you please identify this document?

A This is the prisoner grievance policy. It's the PD 03.02.130 Prisoner/Parolee Grievance Policy that I referred to earlier. This version that, the current version which was

[Page 16]

effective on 3/18/2019.

MR. HO: I'm going to have this document entered as an exhibit, Your Honor.

THE COURT: Any objection from any of the plaintiffs?

MR. RICHARDS: No.

MR. KISSEE: No, sir.

MR. PRUITT: No, sir.

THE COURT: Thank you. Exhibit A is admitted.

MR. HO: All right.

BY MR. HO:

Q I am going to show you another exhibit. Okay?

THE COURT: Are you going for Exhibit B, Mr. Ho?

MR. HO: I'm actually going for Exhibit C1. What is marked as C1.

THE COURT: C1. Okay.

MR. HO: Mr. Russell, if you could take sometime to review this exhibit.

THE WITNESS: Yes.

BY MR. HO:

Q What does this -- what does this document appear to be?

A The page that I'm looking at the MDOC prisoner Step III grievance report that's generated from the

database that I spoke of earlier where we record all incoming or outgoing grievances.

Q And if you could, if you could review the electronic copy

[Page 17]

of the C1, of C1, can you pull that up? What does the entire document appear to be?

A Right now your screen, this is taking my whole screen, I can't -- okay. Reduced it now. This is -- it's this is C1, correct?

Q Yes, C1.

A It's now on my screen. And it's a full report for this prisoner, for prisoner Richards, followed by six grievances.

Q Okay. And based, just reviewing the report itself, can you please tell me whether Mr. Richards submitted any Step III grievances arising out of an incident?

THE COURT: Well, hold on, Mr. Ho. That hasn't been admitted yet. Are you moving to admit C1?

MR. HO: Yes, yes.

THE COURT: Okay. Mr. Richards, this is your, appears to be your Step III grievance report with six attached grievances, do you have any objection to that coming in?

MR. RICHARDS: No, sir.

THE COURT: Okay. So Exhibit C1 is admitted. Go ahead.

BY MR. HO:

Q All right. If you could review C1 and the grievance report itself. Can you please tell me how many Step III grievances that Richards submitted involving incidents filed at Step I -- filed at Step I involving incidents between June 2019 to

[Page 18]

May 2020?

A 26.

Q Okay. All right. And I'm going to have you look at pages 14 to 17 of C1. This is, this is grievance identifier AMF-20-04-660-27 C. Okay?

A Yes.

Q Okay. All right. So was, was this, was this grievance completed through Step III with the response, was the response completed through Step III by July 15th, 2020?

A Yes, the Step III appeal that we received was date-stamped as received on July 6, 2020 and all necessary forms were included.

Q Okay. So was it, was the Step III decision rendered by July 15, 2020?

A I'm sorry, I have to increase the size of the document.

THE COURT: Mr. Ho, you're talking about AMF-20-04-0660-27 C, is that right?

MR. HO: That is correct, yes.

THE COURT: What's the question about this grievance?

MR. HO: Was it completed through Step III by July 15th, 2020.

THE WITNESS: I'm sorry, what was the grievance number we are speaking about again?

MR. HO: It is AMF-20-04-0660-27 C. Page Exhibit C1.

THE WITNESS: 660. 660 was completed and mailed out

[Page 19]

on September 1st of 2020.

BY MR. HO:

Q Okay. Thank you. I'm going to have you review C1 pages 18 to 22. Okay. That is the next grievance, AMF-20-01-0139-28 I.

A Okay.

Q Okay. Now, did this grievance exhaust any of the claims raised at Step I?

A Administrative remedies were not exhausted on this because the Step I response indicated that there

was no eminence that the prisoner attempted to resolve the issue before filing the grievance which is part of the policy, therefore, it was rejected.

Q Okay. All right. I'm going to move on to the next grievance. This is at pages 23 to 26 of Exhibit C1, and that is AMF-19-08-1760-28 B. Okay. Now, did this grievance exhaust any of the claims raised at Step I?

A Again, administrative remedies were not exhausted because it was rejected at Step I because it lacks specific information required in policy. It was also ultimately submitted untimely at Step II so it was defective on that account as well. Those objections were upheld at Step III.

Q Okay. All right. So moving on to the next, the next grievance which is on page 27, pages 27 to 30 of Exhibit C1. Looking at AMF-19-09-1840-27 A. Now, did this grievance exhaust any claims raised at Step I?

[Page 20]

A Again, it did not exhaust because it was rejected at Step I and the Step II appeal was untimely and again rejected. Those rejections were upheld at Step III.

Q Okay. All right. So now, let's see. Move on to the next, the next grievance. This is AMF-20-01-006-22 B. Okay. This starts on page 31. Now, did this grievance exhaust any claims of sexual misconduct, incitement for other prisoners to attack Mr. Richards, excessive force or failure to protect by staff, did this grievance exhaust any of these, any of those claims that I just mentioned?

A No. They didn't exhaust because they were not the subject of the grievance.

Q Okay. All right. And then I'm going to go to the, the last I believe, yeah, this is the last of these grievances, of the six grievances. AMF-19-12-25546-28 B. Now, did this grievance exhaust any claims raised at Step I?

A Again, administrative remedies were not exhausted because the grievance again was properly rejected pursuant to policy.

Q Okay. Now, okay. Now, did any of the grievances you reviewed exhaust any claims of sexual misconduct, incitement of other prisoners to attack Richards, excessive force or failure to protect by prison staff?

A No. None of those claims were exhausted because none of those grievances had that as the subject.

Q Okay. And moreover, you have stated that five of these

[Page 21]

grievances were rejected as well for another reason.

A Yes.

Q Yeah, for various reasons. Okay. So your testimony is that none of those, none of these claims that I listed were the subject matter of the grievances either?

A That's correct.

THE COURT: Mr. Ho, which one was it, Mr. Ho, that was not rejected but was actually denied?

MR. HO: That is AMF-20-01-0006-22 B.

THE COURT: Okay. Got you.

BY MR. HO:

Q Now, I am going to ask you to look at another document. This is Exhibit D, as in David, 1.

A Okay. I'm looking at it. Do you want me to identify it?

Q Yes. What does this document appear to be?

A This is the MDOC prisoner Step III grievance report for prisoner Pruitt.

Q And is there anything attached to, you know, besides the report, is there anything --

A There's a report showing we received one grievance and the documents associated with that grievance are attached.

Q Okay. All right. So can you please tell me how many Step III grievances Mr. Pruitt submitted which were originally filed at Step I between June 2019 and May 2020?

THE COURT: Mr. Ho, are you moving for admission of

[Page 22]

D1?

MR. HO: I'm, I'm sorry, yes.

THE COURT: Mr. Pruitt, any objections to that?

MR. PRUITT: No, I just on the screen, on the screen I can barely see me thing.

THE COURT: Yeah, so D1 it looks like D1 is the Step III grievance report for you and then an associated grievance. There is also a D2 exhibit in my tab here, Mr. Ho.

MR. HO: Yeah, and I'll address that later.

THE COURT: Just so Mr. Pruitt is here, this is his Step III grievance report. It lists one grievance and then that actual grievance is the one that follows, is that correct?

MR. PRUITT: Excuse me, Your Honor.

THE COURT: Go ahead, Mr. Pruitt.

MR. PRUITT: That page up facing like forward, it's facing sideways.

THE COURT: Yeah, I know that's what it's doing for everybody. Maybe you can rotate it, Mr. Ho.

MR. HO: Yeah, and you should -- and you should have a copy of it. Copies were sent to you. You should have a hard copy.

THE COURT: Mr. Pruitt, you don't object to D1?

MR. PRUITT: No, sir, no, sir.

THE COURT: Okay. D1 is admitted. Go ahead, Mr. Ho.

MR. HO: Okay. The question is can you please review

[Page 23]

this report and tell me whether Mr. Pruitt submitted any Step II grievances arising out of a Step I filed between June 2019 to May 2020?

THE WITNESS: We only have one grievance that was filed to Step III from January 1st of 2015 to the present, to the time of this report.

BY MR. HO:

Q Okay. And that one grievance was filed in, was filed when?

A That grievance was filed originally -- filed to Step III or filed to Step I?

Q Filed to Step I.

A It was filed at Step I on? 1/14/2021, that's the receipt date and that's the date of filing, 1/14/2021.

Q Okay. All right. I'll have you take a look at this grievance. This will be on the following pages, pages 4 to 8 of D1. This is grievance AMF 21-01-0084-28 A. Now, did this grievance exhaust claims of sexual

misconduct, indictment by other prisoners to attack Richards, excessive force or failure to protect by staff?

A No. None of these issues were, that you just mentioned were the subject of the grievance, therefore, administrative remedies with respect to that were not exhausted.

Q Okay. And it looks like this grievance was also rejected, is that correct?

A Yes. And that's another reason why (unintelligible)

[Page 24]

exhausted because it was rejected.

Q Okay. All right. Now, I'm going to have you review one more document.

THE COURT: What document are you going to, Mr. Ho?

MR. HO: I'm sorry, I did not, I did not hear that question.

THE COURT: What document are you going to?

MR. HO: We completely broke up.

THE COURT: What document –

MR. HO: I'm going to pull up E, E as in Edward and number 1, E1.

THE COURT: E1.

MR. HO: The screen disappeared on me. Give me one second.

THE COURT: Mr. Kissee, you doing all right?

MR. KISSEE: Yes, sir.

THE COURT: All right. Good. Just checking on you.

MR. HO: Okay. E1. I apologize my computer just, I can't see the document. I'm trying to share.

THE COURT: Well, I've got a hard copy. If everybody has a hard copy you can ask about that.

MR. HO: Okay.

THE WITNESS: I'm looking at it now.

MR. HO: At E1. Okay. See if this works. Okay. So this is, this is a document labeled as E1, can you please

[Page 25]

identify this document?

THE WITNESS: This is the first page that I'm looking at is the MDOC prisoner Step III grievance report for prisoner Robert Kissee.

BY MR. HO:

Q Okay. And can you please tell me whether Mr. Kissee submitted any, any Step III grievances that

were filed originally at Step I between June 2019 to May 2020?

A Again, June -- what date?

Q June 2019 to May 2020?

A There was one grievance filed in that period. That was AMF 20-09-1549-27 B.

Q And that was, when was that filed at Step I?

A Step I was filed on 9/17/2020.

Q Okay. So, so none were filed between June 2019 to May 2020, is that correct?

A That's correct.

THE COURT: Mr. Ho, are you moving to admit D1?

MR. HO: Yes.

THE COURT: I'm sorry, E1.

MR. HO: E1, yes.

THE COURT: E1. So Mr. Kissee, that's over to you. That appears to be your Step III grievance report. Do you object to that coming in?

MR. KISSEE: No, sir.

[Page 26]

THE COURT: Okay. Mr. Ho, I would just say, it's actually, it's an affidavit, it's a Step III grievance

report and then its attached grievance, correct, and beyond that there's an E2 exhibit. Am I reading that correctly?

MR. HO: That is correct, yes.

THE COURT: As I look at the Step III grievance report the number that's listed on the Step III grievance report appears to be slightly different, maybe missing a couple of numbers from what's actually in the grievance I'm looking -- I'm looking at the actual grievance, there is some extra numbers on there, right?

MR. HO: Yeah, so what had happened was there was a, there was a, the original file we had sent in was corrupted and was missing some numbers so we filed, we filed a corrected page. And so, so that was filed a few days ago, and I can -- I can send the electronic copy to the Court.

THE COURT: I'll find it. Don't worry about it. Keep going.

MR. HO: All right. So, Rich, if I could have you review AMF-20-09-1549-27 B. Now, did this grievance exhaust any claims of sexual misconduct, indictment of other prisoners to attack Richards, excessive force or failure to protect by the staff?

THE WITNESS: None of those issues were raised as a subject in the grievance, no administrative remedies with

[Page 27]

respect to that, those issues were not exhausted.

BY MR. HO:

Q Okay. All right. And so, so based on your examination of the, the grievance reports for Mr. Richards, Pruitt and Kisse, and the Step III grievances that were included, did those three prisoners exhaust any claims of sexual misconduct, incitement of other prisoners to attack Mr. Richards, excessive force, or a failure to protect by the staff members?

A No. Again, it's because they were not a subject of any of the grievances, and because there were rejections as well.

Q Okay.

MR. HO: All right. Thank you, I have no further questions.

THE COURT: All right. Well we are going to go to cross-examination here. Let's start with Mr. Richards. I'm going to ask each one of the plaintiffs if they want to cross-examine. Go ahead, Mr. Richards.

MR. RICHARDS: Yes, sir, I would like to cross-examine and I also would like to refer to some of the exhibits that, you mean, that Attorney Joseph Ho had brought out if I can bring them up at my cross-examination.

THE COURT: You tell us what exhibit and what page number you're looking for and we will have him bring them up.

MR. RICHARDS: Yes, sir.

THE COURT: Yep, go ahead.

[Page 28]

MR. RICHARDS: Okay.

CROSS-EXAMINATION

BY MR. RICHARDS:

Q Mr. Richard, what, Russell, I do have a few questions. My first one is can a prisoner file a Step III grievance without first filing a Step I grievance?

A No.

Q If a prisoner is prevented from filing a Step I grievance or fails for whatever reason to file a Step I grievance, are they able to, do they have any remedy at Step III available to them?

A No.

Q Can you explain the context of PD 03.02.130 section C in this language as to exhaustion when a prisoner (unintelligible) their grievances in the language that it's written?

THE COURT: What's the paragraph again, Mr. Richards?

MR. RICHARDS: What's that?

THE COURT: What paragraph are you referring to specifically in that PD?

MR. RICHARDS: PD 03.02.130, that's paragraph C that's section C.

THE COURT: All right. Got you.

MR. RICHARDS: (Unintelligible) the language of prisoner exhaustion in that paragraph as it's written in policy.

[Page 29]

THE COURT: Just leave it like that, Mr. Ho.

MR. HO: Okay, all right.

THE COURT: What was the question?

MR. RICHARDS: I asked can you explain the context of PD 03.02.130 section C in its language as to exhaustion when a prisoner has exhausted in the language that the policy is written.

THE WITNESS: This states that in order to exhaust the grievance needs to be filed through all three steps of the grievance process.

BY MR. RICHARDS:

Q Anywhere in that section (unintelligible) wait for a response before the remedies are exhausted?

A I'm sorry, I didn't -- can you repeat the question?

BY MR. RICHARDS:

Q Anywhere in that section does it state that a prisoner has to wait for a response for the remedies to be considered exhausted by the prisoner?

A No.

Q So you would agree that remedies have been exhausted upon filing the Step III grievance?

A No. It depends on whether, whether they were properly filed under, under policy.

Q Assuming they were properly filed under policy, would they be exhausted upon filing a Step III grievance?

[Page 30]

A Again, it would have to go back to the subject of the grievance. If the subject of the grievance was filed through all three steps properly, then the subject of the grievance would be exhausted.

Q Okay. So assuming, assuming all three -- assuming all three steps were properly admitted, properly conducted, a subject matter was proper, assuming there were no flaws in the grievance, how it was written, how it was brought forth, you would agree a prisoner has exhausted the remedies upon filing the third step of the grievance?

MR. HO: Objection. I think -- the witness has actually testified earlier as to what he considers to be proper exhaustion. The question was asked and answered.

THE COURT: Well, asked by you but not asked by Mr. Richards. He can ask that question.

MR. HO: Okay.

THE WITNESS: Yes, it's exhausted when, when it's received, if it's all proper. Again, with the decision at Step III, it's, if it's rejected at Step III then it's not exhausted when we receive it. It's exhausted only, or excuse me, it isn't exhausted at all if it's rejected at Step III.

BY MR. RICHARDS:

Q Okay. All right. If it -- a prisoner does not receive a Step II appeal form in a timely manner, are they ordinarily faulted or can they be faulted for meeting a filing deadline at

[Page 31]

Step II?

A Excuse me. Is that -- is there more to the question?

MR. RICHARDS: I said if a prisoner does not receive a Step II appeal form in a timely manner can they be faulted for failing to meet the filing deadline?

THE WITNESS: If a prisoner doesn't receive a response in a timely manner, policy directs them to file to the next step within ten business days.

BY MR. RICHARDS:

Q No, no. I stated in the question if a prisoner does not receive a Step II appeal form, a form for the filing of a

Step II grievance in a timely manner, when they submit and request the form, you have to request the form from staff, can they be faulted for failing to meet a deadline if they were not given the forms provided for them by the grievance coordinator to file a Step II?

A If a form is not provided in a timely manner, and that's identified by the prisoner and confirmed by the grievance coordinator, then, then time limits, you know, time limits start again when the form is provided. The prisoner has to request the form.

Q All right. Hold on one second. Can you pull up AMF 20-01-006-22B, a grievance (unintelligible)?

THE COURT: Mr. Richards, I'm going to ask you to repeat your question because I heard you pull up AMF something

[Page 32]

and then I lost you.

MR. RICHARDS: If you could pull up on the grievance that would be page number ECF number 153, that would be grievance number 20-01-006-22B (unintelligible) exhibit Joseph Ho admitted.

MR. HO: Which page of the exhibit?

MR. RICHARDS: The page of the exhibit, it's page 37 and page number 76, it's ECF number 153, it's AMF-20-01-006-22B as far as the grievance ID number.

THE COURT: Okay. So, Mr. Ho, it looks like the Step I grievance for that particular one is at page 34 of 38 in your Exhibit I. Okay.

BY MR. RICHARDS:

Q Can you look at AMF, this is for the witness, can you look at AMF grievance number AMF 20-01-1002B as the, on the screen and can you explain to the Court the content of that grievance in sum?

A Okay. Hold on a minute. Prisoner is claiming stress, multiple symptoms related to that, and claims that the stress is due to long-term administrative segregation, confinement.

Q Okay. And what was, what was the response to that? Can you give me a summary of the response, the basis for the denial?

A It describes why the prisoner was confined to segregation and describes the health care screening that goes on with

[Page 33]

respect to people in administrative segregation, and it describes the factors for placement in segregation, and the determination of the security classification committee. And I believe that pretty much covers it.

Q Okay. And you would agree that grievance -- (unintelligible).

A It does conclude that in your opinion the grievant was safely and properly housed in accordance with the (unintelligible).

THE COURT: You're fading out, Mr. Russell. You were fading out a little bit at the end so probably looking down or something. I can't tell. So try to, yeah –

THE WITNESS: At the conclusion of the grievance was that, that the, in the opinion of the facility, the grievant was safely and properly housed in accordance with PD 03.03.130, humane treatment and living conditions for prisoners, and the segregation standards.

BY MR. RICHARDS:

Q Okay. Are you aware of the subject matter of claim 3 in this case?

A Claim 3?

Q In this case, in this case claim 3, plaintiff's claim that he was being held as a mentally ill prisoner in administrative segregation causing long-term psychosomatic effects?

A I, I have not been -- I have not looked at the detail of

[Page 34]

the prisoner's complaint, no.

Q Okay. Would you agree that this grievance pretty much covers the psychosomatic effects of administrative segregation regardless of whether the Respondent actually agree with the claim, you would agree that this (unintelligible) covers the fact that plaintiff was dissatisfied with administrative segregation claiming that it was causing him excess stress and

psychosomatic effects and being conducted in his opinion maliciously; would you agree with that?

MR. HO: Objection, Your Honor. I think as set forth the claims that are left in the three cases are, does not include the claim that Mr. Richards is referring to.

THE COURT: Well, here's what I'm going to suggest. I can compare what's in the complaint to what's in the body there of the grievance. I'm the factfinder at this point and I can decide if the issue in the complaint is exhausted by this grievance. And I think Mr. Russell has already testified this grievance was denied, not rejected. It looked like it went all the way through Step III and was denied. He can answer the question about the subject matter, but I can look at the actual documents, the complaint, and the history of the case and this particular grievance and decide if this is sufficiently exhausted or not.

MR. HO: Okay.

MR. RICHARDS: All right. The next question that I

[Page 35]

have for Mr. Russell is do you personally directly collect the grievances from prisoners or do you receive them from somebody else, the post office?

THE WITNESS: They are received either through the U. S. Post Office or through interdepartmental mail.

BY MR. RICHARDS:

Q So you had no control over your actual receipt of the grievance, it's up to the post office to deliver the grievances to you, or for the institutional mail system to provide them to you, you don't take them directly from an inmate?

A That's correct.

Q Okay. MDOC policy sets terms for grievable and non-grievable issues, that's issues that can be grieved within the department. And that would be PD 03.02.130, that's section J. Can you explain that section to us, section J of PD 03.02.130 regarding (unintelligible). If you could pull up the grievance policy PD 03.02.130, section J?

MR. HO: Section J, okay. Do you see it?

THE WITNESS: Yes. I think you need to scroll down to the non-grievable section.

THE COURT: Just to expedite things, I can read this whole, I can read this, this list. I mean I have a copy of the exhibit and I certainly can read it. But if you can get to it quickly, go ahead.

THE WITNESS: Would you repeat the question?

[Page 36]

BY MR. RICHARDS:

Q Can you explain under MDOC PD 03.02.130 regarding non-grievable issues? These are issues that are non-grievable within the department, that the

department has not yet -- your ability to resolve for an inmate, can you explain the context of section J, subsection (unintelligible) proceeding regarding what an issue, what constitutes a non-grievable issue, what is the result of filing a non-grievable issue?

A Is there a specific paragraph under J that you're referring to?

Q We will say subsection 2, 8, 9 and 12. Just a general, what happens if a prisoner files a non-grievable issue and what is non-grievable?

A If they file a non-grievable issue that's rejected at every step they file, first recognized, and they are still responsible as policy says to carry that, because that's a determination at that level, but the prisoner has both the right and the responsibility to file that, that grievance through all three steps of the grievance process in order to exhaust. And that's because that decision may be changed at a level. So it may be determined not to be (unintelligible).

Q Okay. So if a prisoner files a grievance containing what MDOC would construe as a non-grievable issue, is that construed as a (unintelligible) grievance process which permits the filing of a non-grievable issues, is that considered abusive to

[Page 37]

the grievance process?

A It's, it's one of the reasons rejection of any kind are, are reason for placement on modified access.

Q Can a prisoner be disciplined for filing frivolous or grievable, frivolous or grievable or non-grievable issues (unintelligible) grievance, the grievance process (unintelligible) with non-grievable issue or frivolous issues?

A No. Only, only if their grievance could have caused harm to staff, if it had been proven true; in other words, serious allegations that were in there that were untrue; basically an attack on staff, that's, that's not done very often. But it does happen. There's a section in the grievance policy that specifically deals with when that, that misconduct can be called. But in most cases the grievant is protected.

Q Would you agree that allegations made in this complaint are serious issues that would cause a staff member to incur discipline or possible discipline, potential?

MR. HO: Objection, relevance.

MR. RICHARDS: Relevance based on whether or not the grievance could be filed or whether it would be automatically rejected based on frivolity or the perception of frivolity by policy or --

THE COURT: Okay. I'm going to overrule the objection but I'm going to ask you to keep moving here, Mr. Richards.

MR. RICHARDS: Did he hear my question?

[Page 38]

THE COURT: Mr. Russell.

THE WITNESS: I don't really understand the question. I think I've answered, you know, there are times when specifically there's untruths in the grievance that rises to the level of potential damage to staff and that's the only time that the misconducts are written.

BY MR. RICHARDS:

Q Just a couple more questions. Is a prisoner's SCC, security classification to administrative segregation a grievable issue within the context of policy? It's considered (unintelligible) if you look at J, subsection 8 of J that's considered a procedure, so would that be grievable?

A Prisoner can write a grievance on anything. It would have to come down to the issues the grievant raised with respect to the issue and whether it was (unintelligible).

Q I'm asking the general consensus, would that be considered or construed as a grievable issue or (unintelligible) --

A I just answered that anything is grievable.

Q Okay. But anything can be rejected too if it violates the policy section J, would you agree on that? If the grievance is filed, anything is grievable, but if a grievance is filed in violation of subsection, of section J, any of the subsections under J you would have the authority to reject that grievance, correct?

A Depending on the specific issues raise by the prisoner, it

[Page 39]

could be rejected.

MR. RICHARDS: Okay. All right. Let me take a quick look. So, so you're stating that -- okay. That will be all for now.

THE COURT: All right. Thank you, Mr. Richards. Mr. Pruitt, cross.

MR. PRUITT: I have a question earlier going back into earlier when, when Mr. -- what's the grievance coordinator's name, Richard --

THE COURT: Russell, Mr. Richard Russell.

MR. PRUITT: Richard Russell, he made a statement saying that when the grievances, when the grievances come to him I think he said something they go through, I want to know what do they go through to get to him, prior to us sticking our agreements in our door and sending them off in an envelope and leaving to get to him. Because a lot of our grievance have not got to him. One of the grievance got to him but I believe I was AMF-20-21-1028-26A.

THE COURT: Okay. So, Mr. Pruitt, you just need to ask a single question. Right now you're just making a statement. So just ask a single question to Mr. Russell.

MR. PRUITT: How does he receive our grievances? Do our grievances be in an envelope or do they be wide open?

THE WITNESS: No, we receive mail from institutional mail or from the U.S. post office. They are sealed in

[Page 40]

envelopes, sealed from the prisoner and addressed to us.

MR. PRUITT: Another question. So if we give our grievances to the counselor or the RUM without them being sealed up, so you saying you get them wide opened if they come from the counselor or the RUM?

THE WITNESS: No, I didn't say that. I said we receive grievances through either the U.S. Postal Service or through inner agency mail, and they are sealed.

CROSS-EXAMINATION

BY MR. PRUITT:

Q Okay. Now, let me rephrase this correctly because if we give the -- counselor do a round Monday through Friday in the morning time. They come, do a round, they stop in front of our doors. If we give them a grievance without, without an envelope, so are you saying once they turned it in, once they turn our grievance in, they be in an envelope and they sealed?

A It's the prisoner's -- it's the prisoner's -- excuse me.

THE COURT: Go ahead and answer, Mr. Russell.

THE WITNESS: It's the prisoner's responsibility under policy to place the grievance in an envelope and

mail it to the central office either through inner departmental mail or through the U.S. post office.

MR. PRUITT: That's, that's it, Your Honor.

THE COURT: All right. Thank you, Mr. Pruitt. Mr. Kissee, do you have any questions for Mr. Russell?

[Page 41]

MR. KISSEE: Yes, I do, sir.

CROSS-EXAMINATION

BY MR. KISSEE:

Q My first question is, do you get direct contact when these grievances are first mailed to your office, when they first get received to your office, do you directly, do you directly deal with them as soon as they come?

THE WITNESS: No, I don't. The grievance specialist reviews them after, after logging in by the technician.

Q In your office is there any way that you have, that you monitor your technicians to stop from being maybe something being altered before it comes to your desk?

A No, there isn't any alteration. It's just a simple data entry and then the total grievance is available. We retain all of those with the, with the appeal and all the documents that you as a prisoner send in are retained. Pardon?

MR. KISSEE: All right. My question, my last question, when we, due that we was in segregation when we filed a Step III grievance, we do it through the mail. But the mail has to be given, it's considered legal work. So it has to be given to ARUS to sign it and to make it legit to send it out. We can't seal it up. So how, it -- I can't be, it's not sealed up so we giving it basically to him. So is there a possibility that once it leaves our possession and goes through the mail, that the, that it could be altered or misplaced?

[Page 42]

A I can't speak to anything that happens at the facility. All I can say is that by policy grievances are not legal mail.

BY MR. KISSEE:

Q All right. How do you determine if an allegation in a grievance is false?

A Excuse me, I'm sorry. Grievances are not legal mail.

Q All right. How do you determine if an allegation in a grievance is false, or a false claim?

A Well, it's the allegations are reviewed against policy and the decisions on the merits.

MR. KISSEE: All right. That's it, Your Honor.

THE COURT: All right, Mr. Kisse. Redirect, Mr. Ho.

MR. HO: Yes.

REDIRECT EXAMINATION

BY MR. HO:

Q So if a prisoner submits a Step I grievance and does not receive a response, does the prisoner have any recourse?

A The prisoner by policy should, should contact the grievance coordinator if they haven't received that automatic receipt that's generated on entry, and then the grievance coordinator can look into that and give them a copy of that receipt and let them know, you know, the stance there. Also, the timeline can be adjusted then also, you know, to start at the time that the copy is given rather than the original grievance. And that's normally done.

[Page 43]

THE COURT: Mr. Pruitt, did you have an objection to the question?

MR. PRUITT: Yes, sir. To Richard how, he said that agreements --

THE COURT: No. Do you object to the question Mr. Ho asked?

MR. PRUITT: Yes, sir.

THE COURT: What's the objection?

MR. PRUITT: Going back to the first question he just asked, he said that it's not legal mail.

THE COURT: Okay. You're quibbling with the response, you want to have -- your focus is the question that Mr. Ho asked. If you don't have an objection to the question you're just really trying to --

MR. PRUITT: Sorry about that, sorry about that.

THE COURT: No problem, no problem. Go ahead, Mr. Russell.

THE WITNESS: Did I completely answer the question or is there more?

BY MR. HO:

Q The question was what recourse does a prisoner have if a prisoner submits a Step I grievance and does not receive a response. And you were talking about asking the grievance coordinator for a receipt?

A Yes. They can kite the prisoner or the grievance

[Page 44]

coordinator for a, tell them that they have not received a receipt for the grievance they filed. That raises the issue to the grievance coordinator; normally what's common practice in my discussions with grievance coordinators is that they then send a copy of that receipt to them which had the original dates and they will adjust the dates, you know, if necessary so the prisoner has, you know, sufficient, the time frames are not affected.

BY MR. HO:

Q Sure. And can a, if the prisoner does not receive it, can the prisoner appeal to Step II?

A Yes. They are obligated by policy to Step II if they have not received a receipt within the time frame allotted in policy.

Q Okay. All right.

MR. HO: No further questions.

THE COURT: Okay. So, Mr. Ho, who is your next witness?

MR. HO: It will be Mr. Hamel.

THE COURT: Okay. So, Dillon, why don't you bring Mr. Hamel in. You can release Mr. Russell. While you're bringing in Mr. Hamel we are going to take about a three-minute break. Okay?

(Recess taken; Resume Proceedings)

THE COURT: All right. So Mr. Pruitt is back. We

[Page 45]

still have Mr. Kissee, we have Mr. Richards.

MR. RICHARDS: Yes, sir.

THE COURT: All right. Mr. Perttu is back. I see Mr. Hamel is on mute and video blocked but at least he's in the room there. There we go. That's Mr. Hamel.

We are just going to wait for the attorneys and we will be ready to go.

THE WITNESS: Am I audible, sir?

THE COURT: What's that?

THE WITNESS: I'm just asking if I'm audible.

THE COURT: Oh, yeah you're fine, yep. It sounds good. I have not had any audio problems at all. It's been, I think it's been Mr. Pruitt has had a little bit of difficulty hearing.

MR. PRUITT: It's just when he get to speaking, it's too deep. Like his voice is too deep.

THE COURT: Okay. Could you hear Mr. Hamel okay when he just talked?

MR. PRUITT: Yes, sir, yes, sir.

THE COURT: Okay. Good. All right. We are still on the record. We have all the lawyers back. We have all three of the plaintiffs. We have Mr. Perttu and we have the next witness, so let me go ahead and swear in the witness. Mr. Hamel, please raise your right hand.

THOMAS HAMEL, DEFENSE WITNESS, WAS DULY SWORN

THE WITNESS: I do.

[Page 46]

THE COURT: Okay. Mr. Ho, I did not put his name on the record. You can proceed.

MR. HO: Okay.

DIRECT EXAMINATION

BY MR. HO:

Q Good morning, Mr. Hamel. What do you do for a living?

THE COURT: Why don't you put his full name and spelling on the record.

BY MR. HO:

Q Mr. Hamel, can you please state your name, state and spell your name for the record?

A Tom Hamel, H-A-M-E-L.

Q Okay. And what do you do for a living, Mr. Hamel?

A Work for the Department of Corrections as a grievance coordinator at Baraga Correctional Facility.

Q And how long have you been the grievance coordinator at Baraga?

A Since 2018, December.

Q Okay. And how long have you been employed by the MDOC?

A For 26 and a half years.

Q Okay. And what was your, what was your position before you became the grievance coordinator at AMF, or Baraga?

A I was the grievance coordinator and hearings investigator at Ojibway Correctional Facility.

Q Okay. So what do you do as a grievance coordinator?

[Page 47]

A I collect grievances through the mail and process them according to policy and procedure.

Q Okay. And what policy or procedures do you follow in processing these grievances?

A The policies 03.02.130.

Q Okay. And can you --

A Operating procedure would be the same number.

Q Okay. And can you please describe the grievance process under 03.02.130?

A The grievance process, a prisoner believes that he has a grievance against staff or anything, could have been against policy or procedure, he can file a grievance. After he has tried to resolve the issue with the staff member through either the staff member or the staff member's supervisor, prisoner then has five business days to file that grievance. The grievance gets placed into the mail, I receive the grievance, I process it by going through, reading it, making sure that there's merit to the grievance. I assign a specific grievance identifier number and log it into the system. I

have a database that is used. And then I, I determine who is best to answer that grievance.

Q Okay. Okay. And, and let's see. You described the database. Can you please kind of describe that log-in process, if you will, please?

A The database basically I put the prisoner's name, lock,

[Page 48]

that database assigns it that number and it is then I can keep a tally of how many grievances were per prisoner, what type of grievances were written, you know, by a selected issue.

Q Okay. And you mentioned the grievance, you assign a grievance identifier number. Can you please explain what this number is?

A The number is on the top of the grievance identifier number always starts out with the facility, which would be AMF, the next two spots would be the year which is '21 would be this year, next two spots is going to be the month of that year, and then the next digits are going to be that number that was assigned to that grievance, and then the last three are going to be the grievance category code. A two-digit number with a letter behind it.

Q Okay. Now, now, does a prisoner receive any documentation when a grievance is received by your office?

A Yes. That database prints out a grievance receipt and it is sent in the mail to the prisoner.

Q Okay. All right. And how long does that process usually take?

A I get my mail a couple times during the day. I process the grievances, then it gets into the mail bag that day. Otherwise it could take up to two to three business days to receive it.

Q To receive a receipt you're saying?

A Correct.

[Page 49]

Q And are sometimes a Step I grievance not, not processed and returned to the grievants?

A I do receive some grievances that if there aren't information that are filled in correctly I'll send it back to the prisoner requesting that it does gets filled out correctly. Otherwise, there are some grievances I do receive that are considered to be rejected which they are still processed and given that specific identifier number but they are rejected on the merits of that grievance will not be looked into.

Q Okay. Now, what happens if a prisoner submits a Step I grievance but does not receive a response?

A That prisoner does not receive a response to the grievance or a receipt?

Q If a prisoner claims he doesn't get anything back, no receipt, no response?

A Then he can, he can send the kite to me and I can determine whether if I have received it or not. Most of

the time prisoners the grievance has five copies to it. The golden rod copy of that grievance is usually retained by the prisoner after he fills it out and places it in the mail just in case something happens where it gets lost in the mail or inadvertently, you know, something happens to it. And then he basically can then contact me and say I have my golden rod copy, I have never received a receipt to this grievance, do you have it. I'll either say yes or no and then he can refile that

[Page 50]

grievance if I did not receive it.

Q Okay. Now, if a prisoner disagrees with the Step I grievance response or a rejection, what recourse does the prisoner have?

A The prisoner can appeal that to the next step, which is a Step II grievance.

Q And how does that happen?

A After he receives his answer back or reject, then kite me. The prisoner will send me a kite requesting a Step II appeal form. Most of the prisoners they put on the identifier number because I need to know what that identifier number is in order to fill it out correctly and enter it into the database. I send him a Step II grievance appeal form and after I receive his kite.

Q Okay. And, and after the prisoner receives that, what's the next step to exhaust the claim?

A He fills out his appeal form, sends it back to me with a copy of the Step I grievance answer or rejection, and then I process it and forward it on to the warden.

Q Okay. And then what happens after that?

A The warden has 15 business days to provide a response, whether if, if the Step I grievance was answered appropriately and then sends it back to me. I enter it back into the database and distribute the copies to the prisoner, file one.

Q Okay. So what recourse does the prisoner have if the

[Page 51]

prisoner disagrees with the Step II response?

A There is an address that is listed on the Step II response. There's a portion of the Step II grievance form that's on the bottom. He fills out his appeal to that Step II, and sends it to Lansing. And that is answered by the central office.

Q Okay. Now, can a prisoner file a Step I grievance directly at Step III?

A No.

Q Okay. Now, what discretion do you have in processing the grievances for Step I grievance?

A Discretion I have is to make sure that, you know, that the grievance isn't vague, it has information that is pertaining to a policy or procedure or a certain, you know, issue is clear, everything is filled out correctly.

There are some that I get that are illegible, you can't read them and then they can be rejected and sent back to the prisoner because if I can't understand or read the grievance, I can't process it or give it specific category code.

Q Okay. Now, do you have any discretion in choosing whether or not you process a grievance or is every grievance -- or do you have to process every grievance?

A Every grievance that comes into my office will get processed.

Q Okay. Now what happens when you receive a Step I grievance form alleging sexual misconduct or sexual abuse?

[Page 52]

A I would take that and give that to the PREA coordinator.

Q And who is that?

A That would be Inspector Cummings at Ojibway, or Baraga Max.

Q And what is a grievance summary report?

A Would you repeat the question, please?

Q What is a grievance summary report?

A Grievance summary report is a report of every grievance that that specific prisoner has filed and what, it shows you the codes on that summary report of the issue that was grieved or if it was rejected, a

reason, you know, a code, a rejection code would be on there.

Q And how is this report produced or generated?

A It's generated through the database; the database keeps a record based on the prisoner's number.

Q Okay. Now, how does a Step I or Step II grievance get to you, how do you receive these grievances?

A I receive them in my mailbox in the mail room.

Q Okay. And so how do these grievances get to your mailbox, what is that process?

A Prisoner wants to file a grievance, he can receive a grievance from any staff, fills it out, he can place it in, if he's in general population, he can place it in the mailbox itself or otherwise it can be picked up by any staff member and placed in outgoing mailbox that's in the housing unit. From there it goes from the housing unit, staff member picks it up

[Page 53]

in the afternoon, brings it up in a mail bag for each specific unit and it gets placed in the mail room. And then the mail clerks go through the mail, place it into each specific mailbox pertaining to whether it's going for grievance or if it's for food service or for health service, and then I receive that mail. I have a key that opens up my mailbox in the administration building. I take my mail, I place it in my briefcase and I bring it to my office.

Q Okay. Now, do you ever physically go into each housing unit to receive the grievances from the prisoner?

A No, I do not.

Q Now your testimony was that they come to you through these mailboxes, correct?

A Correct. Through institutional mail.

Q Through institutional mail, okay. And you said there were mailboxes in the housing units and where are the other mailboxes?

A I believe there's mailboxes are only in the housing units. The general population there's a mailbox for U.S. mail and then there's a mailbox that if there's any just that go directly to counselors or the RUMs.

Q Now, do you have a key to the mailboxes in the housing units?

A No, I do not.

Q And so it's other staff who process the mail and puts them

[Page 54]

into your mail room mailbox, is that correct?

A There's -- there's one key that opens up the mailbox in the housing units, and that is picked up by the staff member on the afternoon shift that goes around. He's the only one that has a key for that mailbox to open it in the housing units.

Q Okay. Okay. And do you have access to the inside of the mail room?

A Only when the mail clerks are in there.

Q Okay. Do you have a key to the mail room?

A No, I do not.

Q Okay. And do prisoners have access to the inside of the mail room?

A The only prisoners that would have access to that would be if there was an in-house porter that was brought up from the level, the level 1 camp and was something one brought in there to clean, vacuum, take out the garbage that's being escorted by staff.

Q Okay. Now, I'm going to have you look at some documents. Okay?

A Okay.

THE COURT: Are we going to C2, Mr. Ho?

MR. HO: Yeah, I was -- I was going to go to C2. I'm going to go to C2, D2, and E2 in that order. So C2.

THE WITNESS: Okay.

BY MR. HO:

[Page 55]

Q All right.

THE COURT: Do you have a hard copy of that, Mr. Hamel, in front of you?

THE WITNESS: Yes, I do.

THE COURT: Okay. Go ahead, Mr. Ho.

MR. HO: Okay. Let me -- I'm trying to load it up on my -- I'm not seeing it for some reason. You have a copy of C2 in front of you, Mr. Hamel?

THE WITNESS: C2, yes, I do.

BY MR. HO:

Q Okay. So what does, what does C2 appear to be?

A C2 is a prisoner grievance summary report for prisoner Richards, 641715.

Q Okay. And is this, is this generated from the database as you discussed earlier?

A Yes, it is.

Q Okay.

MR. HO: Move to admit C2.

THE COURT: Mr. Richards.

MR. RICHARDS: Yes, sir.

THE COURT: Do you oppose admission of C2?

MR. RICHARDS: No, sir.

THE COURT: All right. C2 is admitted.

BY MR. HO:

Q All right. Now, can you please explain the columns in this

[Page 56]

report?

A All right. Your first, the first column is the grievance and that is going to be that specific grievance number.

Q Okay.

A You look at that top, the first line, that grievance was filed in 2018, and the number, that specific number was given 2996.

Q Okay.

A The next column is obviously his number, the next column is his name, next column is the facility, the next column is the grievance category code which is those last three digits that I explained on the identifier number.

Q Okay.

A 29 Z category code is going to be programming of other. The next column is going to be the received at Step I, that's when I received that grievance and processed it which would have been 12/19 of 2018. The next column is the Step I grievance decision which is D as denied.

Q Okay.

A The next column is going to be when I would have received the Step II if it was processed through Step II. The next column is going to be your Step II decision.

Q Okay.

A Next column is going to be when I received the decision because after Step II I don't receive anything pertaining to

[Page 57]

Step III until it is answered by central office.

Q Okay.

A When I receive that I place in the date that I received it, and the decision is that last column at Step III.

Q Okay. So the three received that is the, that is the date you receive a Step III decision?

A That's when I receive it in the mail, correct.

Q Okay. All right. And so under the, under the Step I grievance decision column, you said D means denied. What does X mean?

A X means that it was rejected.

Q Okay. And what does R mean?

A R means that it was resolved.

Q All right. And then, and then does that also mean the same thing for the Step II decision and the Step III decision codes?

A Correct.

Q And what does a capital N mean under --

A N means that it hasn't been answered yet, it's still out there.

Q Okay. So if somebody requested a Step II but did not send it in, is that what happens?

A Yes, yes. Correct.

Q Okay. All right. Let me see. Now, can you, based upon Mr. Richards's grievance summary report, can you please tell me how many Step I grievances Mr. Richards filed between June '19

[Page 58]

to May 2020?

A Yes, that would be -- can you repeat the question again, please?

Q Yes. How many, how many grievances did Mr. Richards file at Step I between June 2019 to May 2020?

A 29.

Q 29, okay. All right. And about these grievances, how many were, of these 29, how many were completed at Step III before April 23rd, 2020?

A Four of them.

Q Four of them. Okay.

A Correct.

Q And which four would those be?

A That would be 2546, 2547, 2548, and 29.

Q And 29. Right. And based upon these, based upon these Step III decision codes, what can you tell me about all these grievances, what happened to them at Step III?

A They were all rejected.

Q Okay. All right.

THE COURT: What was the fourth one that you identified that was, that went all the way through Step III in that time window?

THE WITNESS: That would have been 20200029.

THE COURT: Okay. I got you. I see it.

BY MR. HO:

[Page 59]

Q All right. Still looking at Mr. Richards's grievance report, of these 29 grievances how many was filed at Step I after May 2020?

A One.

Q Okay. And was this grievance completed at Step III before -- actually can you identify which grievance that is, the number for that?

A That was, that was 20200853.

Q Okay. And was this, was this grievance pursued through Step III?

A No.

Q Okay. And how many of these grievances were filed between, between May 1st and May 31st, or, sorry, okay, sorry between, between April 1st and May 31st? My apologies.

A April.

Q Yeah, between April and May 31st.

THE COURT: What year are we talking about?

MR. HO: Of 2020.

THE WITNESS: Ten.

BY MR. HO:

Q Okay. And are these, are these ten listed consecutive on the report?

A Can you repeat the question, please?

Q Are these ten grievances that you're talking about, are they listed consecutively on this report?

[Page 60]

A Yes.

Q Okay. Can you just tell me the numbers for them, like the first one and then the last one?

A The first one would be 20200641.

Q Okay. And so then it's the ten after that?

A Right.

Q And were any of these grievances completed through Step III, completed through Step III before July 15th, 2020?

A No.

Q Okay. All right. I am going to have you take a look at Exhibit D2. Give me a moment while I pull that up. What does this document appear to be?

A That is the prisoner grievance summary report for prisoner Pruitt, 708518.

Q Okay. And I move to admit this.

THE COURT: Mr. Pruitt, are you okay with D2 coming in?

MR. PRUITT: Yes, sir.

THE COURT: Okay. D2 is admitted.

MR. HO: All right.

BY MR. HO:

Q Can you tell me how many Step I grievances Mr. Pruitt filed between June 2019 to May 2020?

A Four.

Q Okay. And did he pursue any of these through Step III?

[Page 61]

A No.

Q Okay. All right. Give me one second. Now, I'm going to have you take a look at the document labeled as E2. Okay. What does this document appear to be?

A That is prisoner grievance summary report for prisoner Kissee, 575639.

Q Okay.

MR. HO: Move to admit this exhibit.

THE COURT: Mr. Kissee, are you all right with E2?

MR. KISSEE: Yes, sir.

THE COURT: Okay. E2 is admitted.

MR. HO: Okay.

BY MR. HO:

Q Mr. Hamel, if you could take a look at E2. Can you please tell how many Step I grievances Mr. Pruitt (sic) filed between June 2019 to May 2020?

A One.

Q Okay. And did Mr. Kissee pursue that grievance through Step III?

A No.

Q Okay. Now, did you ever fail to process any grievances from Mr. Richards?

A Never.

Q Mr. Richards, okay. Did you ever fail to process any kites for Mr. Richards?

[Page 62]

A Never.

Q Did you fail to process any requests for Step I or Step II grievance forms from Mr. Richards?

A No.

Q Did you ever prevent Mr. Richards from filing or pursuing any grievances?

A No.

Q Did you ever fail to process any grievances for Mr. Pruitt?

A No.

Q Did you ever fail to process any kites from Mr. Pruitt?

A No.

Q Did you ever fail to process any requests for Step I or Step II grievance forms for Mr. Pruitt?

A No.

Q And did you ever prevent Mr. Pruitt from filing or pursuing any grievances?

A No.

Q Okay. Now, for Mr. Kissee. Did you ever fail to process any grievances, kites, requests for Step I or Step II grievance forms from Mr. Kissee?

A No.

Q Okay. Did you ever prevent Mr. Kissee from pursuing or filing any grievances?

A No.

Q Do you have any reason to believe that RUM Perttu destroyed

[Page 63]

any grievances filed by Mr. Richards?

A No, I do not.

Q Any, do you have any reason to believe that Mr. Perttu destroyed any grievances filed by Mr. Pruitt or Mr. Kissee?

A No.

Q Do you have any reason to believe that Mr. Perttu ordered another prisoner or ordered other prisoners to destroy grievances filed by Mr. Richards, Mr. Pruitt or Mr. Kissee?

A No.

Q Do you have any reason to believe that Warden Taskila ordered Mr. Perttu to destroy grievances filed by Mr. Richards, Mr. Pruitt, or by Mr. Kissee?

A No.

Q Based upon your examination of the grievance summary reports, was the grievance process available to Mr. Richards, Mr. Pruitt and Mr. Kissee between June 2019 and May 2020?

A Yes.

MR. HO: No further questions.

THE COURT: Thank you, Mr. Ho. Mr. Richards, cross.

MR. RICHARDS: Yes, sir. Yes, I do, I have quite a few questions.

CROSS-EXAMINATION

BY MR. RICHARDS:

Q In regards to Mr. Hamel, as the grievance coordinator AMF, is it your job to manage the collection, filing of grievances

[Page 64]

at AMF Baraga Correctional Facility?

A Can you repeat your question, please?

Q As the grievance coordinator at AMF, is it your job to manage the collection and filing of grievances at AMF Baraga Correctional Facility?

A My job to collect them?

Q As the grievance coordinator at AMF is it your job to manage the collection and filing of grievances at AMF Baraga Correctional Facility?

A I, I coordinate and process the grievances at Baraga Correctional Facility, yes.

Q Do you personally directly collect grievances from prisoners, do you receive them through institutional mail?

A I receive them through the institutional mail.

THE COURT: Hold on a second. Could you -- would you please take down that --

MR. HO: Yes.

THE COURT: Okay. Keep going, Mr. Richards.

BY MR. RICHARDS:

Q Grievance AMF-20-21-006-22B was filed regarding prisoner Richards's prolonged confinement to an administrative segregation. (Unintelligible) what was your reason for denying the grievance?

A Which grievance?

Q 20-21-006-22B. Would you pull that up?

[Page 65]

MR. HO: Is this the one you were --

THE COURT: That's the one that was exhausted. Step I is at page 34, Mr. Ho.

MR. HO: Yep. I'm going to go ahead and share it.

THE WITNESS: Yeah because I don't have that grievance in front of me. So I don't know --

THE COURT: It will be on the screen in just a second, Mr. Hamel.

THE WITNESS: All right.

MR. HO: Okay. Is this the one?

MR. RICHARDS: It looks like it. I can't see the screen but --

THE COURT: Yeah, I believe that's it.

THE WITNESS: What's the question?

THE COURT: Can you see this grievance?

THE WITNESS: Yes, I see the grievance.

MR. RICHARDS: Do you want me to repeat my question?

THE WITNESS: Yes.

MR. RICHARDS: Grievance number AMF-20-21-006-22B was filed regarding prisoner Richards's prolonged confinement to administrative segregation. The grievance was mainly filed against RUM Perttu as well as other staff. What was your reason for denying the grievance?

THE WITNESS: I didn't deny the grievance. My name isn't on that as denying the grievance. I processed that

[Page 66]

grievance and I signed it to be answered.

BY MR. RICHARDS:

Q Can you state on the record who answered the grievance and who reviewed that response to that answer?

A That was, I would have to look at the bottom of the grievance. And that -- that, the respondent signature would have been PC Niemi, and the reviewer's signature would have been RUM Perttu.

Q Was that grievance AMF-20-21-006-22B exhausted by prisoner Richards through all three steps?

A See where I'm at. Yes.

Q All right. According to, if we could pull up PD 03.02.130 C?

A PD 02 --

Q Now, Mr. Hamel, according to PD 03.02.130 section C, a grievant defines sex exhaustion when a prisoner files a Step III grievance, is that correct?

A Claims filed by prisoners --

Q As a matter of fact, can you read that, I can't see, I can't see the screen. Can you read that section on the record?

A Section states complaints filed by prisoners regarding grievable issues as defined in this policy serve to exhaust a prisoners's administrative remedies only when filed as a grievance through all three steps of the grievance process in compliance with this policy.

[Page 67]

Q It states particularly on record that the grievance are exhausted upon filing, or filed through all three steps and nothing in that section indicates that a prisoner needs to wait for a response before it's considered exhausted.

MR. HO: Objection. He is misstating what the grievance policy actually says.

THE COURT: Sustained.

MR. RICHARDS: Okay.

BY MR. RICHARDS:

Q Do you have (unintelligible) not process a grievance, if so can you explain the parameters of that discretion?

A Have not processed?

Q Do you have the discretion to not process a grievance and if so can you explain the parameters of that discretion?

A The only discretion I have is if they are, the grievances -- I process all grievances. If there is a grievance that comes in that is a rejectable issue, by policy I reject it. It still gets processed.

Q Do you have authority or discretion to not process any grievances, though? I mean I know you process them but do you have the authority not to?

A No.

Q Okay. And if a grievance is made without a tracking number, there's a complaint grievance or any type of issue without a tracking number or grievance ID number, can a

[Page 68]

prisoner appeal that particular issue to Step II without having any particular tracking number at Step I?

A No. It needs to be assigned that number.

Q When a request is made by a prisoner for a Step II grievance do you directly hand the grievance form to

an inmate or do you rely upon staff to deliver it to the inmate through institutional mail?

A Through institutional mail.

Q All right. Can we pull up AMF, the grievance, grievance exhibit AMF-20-04-660-27C?

THE COURT: Do you have that, Mr. Ho?

MR. HO: Let me see. I have to figure out -- just give me the numbers before --

MR. RICHARDS: It says page ECF number 153, that's document number 720 -- I'm sorry, it's ECF number 153, the document number, the page number is 720 at page 20.

MR. HO: What is the page number at the bottom?

MR. RICHARDS: Oh, that's 17.

THE COURT: Just to be clear this is grievance AMF 20-04-660-27C, is that correct?

MR. HO: There we go.

MR. RICHARDS: That's correct. And Step I, I'm looking for the Step I of it.

THE COURT: Step I at page, your page 17 of 38, Mr. Ho.

[Page 69]

MR. HO: Yep, got it.

BY MR. RICHARDS:

Q Can you, Mr. Hamel, looking at that grievance on the screen, AMF 20-04-660-27C, can you describe why that was rejected?

A It was rejected based on the DOM 202030.

Q Can you explain that to the Court, why that particular one, DOM 202030 would not allow me to grieve the issues (unintelligible)?

A That one specifically was -- I would have to look at the DOM, pull it up.

Q Okay. Can you state --

A I believe it was the COVID issue of a staff.

Q Is anything in that grievance indicate COVID, COVID 19 or a virus or any kind of --

A No.

Q Okay. So it wasn't obviously a COVID issue?

A But it was, it was an issue of them not being able to collect them.

Q Okay. All right. Now, if you could take a look at, would you say that grievance though was exhausted through all three steps?

A Can you scroll that up, Mr. Ho, so I can see the identifying number, see if it went through all three steps.

MR. HO: This one.

[Page 70]

THE WITNESS: 66C. I received it back from a Step III at 9/16 of '20.

BY MR. RICHARDS:

Q So it was exhausted?

A Correct.

Q Okay. And you said there was trouble during the COVID pandemic of collecting grievances or in the process of collecting them; can you explain that a little more?

A We didn't have the staff available to collect them. That's the only, that's the only reason I could say.

Q So during that pandemic, can you give me a time frame when there was a staff shortage when it came to collecting grievances or being able to provide grievances through institutional mail, can you give us an overview of the time frame that pandemic was affecting institutional services?

A That was –

MR. HO: If you can. I really didn't get the question, Mr. Richards. I'm going to ask you to repeat it because I didn't hear your question.

THE COURT: I'll do it for you. So he just asked during what time period was there a staff shortage that limited the ability to collect grievances at AMF due to the pandemic.

THE WITNESS: There wasn't, there wasn't a staff shortage to collect grievances. This wasn't a grievance; this was a kite. I rejected it based on the health care kite that

[Page 71]

was placed. They weren't picking it up. So that was based off of, that's the reason why I rejected it.

BY MR. RICHARDS:

Q And that's not what it says in the grievance at the bottom. Grievance it says it was rejected due to records office memorandum which states that it's a non-grievable issue. The issue was regarding health care but it wasn't, it was directed against the warden and RUM Niemi and directed against staff, not necessarily health care but for staff for preventing the collection of kites. So this was not directed to health care or against health care, it was also stated in the grievance the kite form before you is a prisoner parolee grievance form, not (unintelligible) kite. So that's my question here. Is, where it says it's rejected due to a director's office memorandum there is no explanation as to why. You said there was a staff shortage regarding –

THE COURT: Mr. Richards, this isn't argument. Just ask a question.

MR. RICHARDS: Is this form right here a kite or a grievance?

THE WITNESS: That form is a grievance.

BY MR. RICHARDS:

Q Okay. Let me off on to the next question. If we can pull up PD 03.12.130 section J.

THE COURT: So we are going back to Exhibit A here.

[Page 72]

MR. HO: I got that.

MR. RICHARDS: Okay. Now, if a prisoner files a grievance containing a non-grievable issue, are you allowed to reject that grievance if it violates section J?

THE WITNESS: I can, I can reject a grievance, correct.

BY MR. RICHARDS:

Q Now, what happens if a prisoner files duplicate grievances of the same issue?

A If it's duplicate?

Q Uh-huh.

A I reject it.

Q If a, is a prisoner required to file multiple grievances regarding the same issue?

A Pertaining to the same issue, the same instance, it will be rejected.

Q Okay. Looking at PD, the same PD at subsection 12 of section J, if a prisoner grieving issues not within the authority of the department to resolve that they can reject it. Now, if I were to file a grievance that violated subsection 12, if it was not within your authority to resolve the issue through the grievance process, could you reject a grievance under those grounds, under subsection 12? If you were to reject -- let me rephrase. If you were to reject a grievance under section J, subsection 12 of section J, what would be your

[Page 73]

reasons for that rejection?

A It lacks jurisdiction.

Q Okay. Now, can you reject an illegible grievance?

A Yes.

Q If a prisoner is blind, disabled, illiterate or mentally impaired, how are they supposed to utilize the grievance process?

A They can ask the prisoner counselor for help to write it.

Q Okay. Can we pull up my exhibit, my mental health exhibits, I believe they are listed as Exhibit -- oh, gosh do we have that on file?

THE COURT: We do but you have to move to admit it first.

MR. RICHARDS: Can I move to admit health exhibits as cause of impairment?

THE COURT: Well, you would have to ask Mr. Hamel is the witness, you would have to ask him to identify it. You're not the witness right now, Mr. Richards, so you would have to use Mr. Hamel to try to get it in.

MR. RICHARDS: Okay. Mr. Hamel, can you take a look at, can I pull up an exhibit for Mr. Hamel regarding a question for him to stipulate to my mental health records?

THE COURT: Well, you can ask him to stipulate, but you've got an exhibit that addresses that. I mean you can try to get that into evidence if you want.

[Page 74]

MR. RICHARDS: I would like to -- yes, please.

THE COURT: So this is exhibit, what is the Exhibit Number on this?

MR. HO: I think it's 4, is that right? 4.

THE COURT: All right. So you should ask Mr. Hamel if he knows what this is.

MR. RICHARDS: Sir, do you know what that is based on just looking at it?

THE WITNESS: No.

BY MR. RICHARDS:

Q Scroll down a little bit. Are you familiar with the doctor's report, you know, diagnostic histories, anything related to medical records?

A No, I don't work in the medical field, so I don't.

Q But you can read that document, correct, and recognize it as a medical document?

THE COURT: I'm going to shorten this up here a little bit. So there is a couple things you have to do to get an exhibit in. You have to authenticate it. In other words, your witness has to be able to say what it is and how he knows that. Then you have to lay the foundation under the Rules of Evidence that would get it in. Medical records sometimes do come in.

And third, you have to show it was relevant. So the first, the first problem that I see here is you're trying to get Mr. Hamel to authenticate this medical record of yours that

[Page 75]

has dates in it from I think there was a bunch of 2005, and then there's a '98. I don't know how he's going to be able to do that, Mr. Richards.

MR. RICHARDS: He's not a professional but he does read. He could stipulate that that itself is a document that is showing that I have been diagnosed, not that he agrees or has any specialized knowledge.

THE COURT: This is not a self authenticating document. There are documents that are self authenticating on them. They have seals on them usually. This is not one of them.

MR. RICHARDS: Okay. So I would need a doctor to authenticate that.

THE COURT: Well, you would need somebody who collected those documents out of your medical records is what you would need. So --

MR. RICHARDS: Okay. Let me continue on. Mr. Hamel, is a prisoner's SCC classification administrative segregation considered a grievable issue?

THE WITNESS: Yes (unintelligible) issue. Yes.

BY MR. RICHARDS:

Q Is a prisoner's dissatisfaction with a facility transfer considered a grievable issue or non-grievable issue?

A Grievable.

Q It's grievable?

[Page 76]

MR. RICHARDS: If we can pull up real quick, if we can pull up, if we can pull up AMF 19-08-1760-28B, that would be page 26 of C1.

MR. HO: 28 -- okay.

THE COURT: Page 26 of C1.

MR. HO: Page 26, C1. Okay. Give me one second.

THE COURT: Mr. Richards, how much more do you have to go with Mr. Hamel here?

MR. RICHARDS: Just a couple more questions. I'll make it real quick.

THE COURT: Okay.

MR. HO: Is this showing up? Okay.

MR. RICHARDS: Mr. Hamel, are you there?

THE WITNESS: I'm here.

BY MR. RICHARDS:

Q Can you explain why this grievance was rejected and the reasons for the rejection?

A I did not reject that grievance.

Q Can you explain the reasons stated on the record on the grievance record for its rejection?

A The grievance is being rejected as being vague because there's no policy violation provided by the grievant.

Q So a grievance is filed that's not within the authority or the jurisdiction of the department to resolve, let's say there is no policy violation involved, many times constitutional

[Page 77]

claims don't have a policy violation. That grievance itself is subject to rejection if there is no particular policy that a prisoner can cite on record having been violated, would that be correct?

A Correct.

Q So the grievance doesn't necessarily say that there's a lack of any legal claim, it simply says that I did not state a policy violation as stated within a MDOC policy, not that I failed to state any type of legal argument or a legal authority.

THE COURT: Is that a question?

MR. RICHARDS: Yes, sir.

THE WITNESS: Repeat your question.

MR. RICHARDS: The grievance is stating that I failed to provide a policy, a grounds for policy violation in the grievance regarding the allegations but not that I failed to provide any type of legal authority outside the realm of MDOC policy, correct?

THE WITNESS: Basically the grievance was denied because it was vague.

BY MR. RICHARDS:

Q It was vague?

A Like I said, I didn't reject this grievance.

Q But it states it's vague because there's, there is no policy violation was stated by grievants, let me read -
- I

[Page 78]

stated the question first it was not answered. I said the grievance was rejected because on the grounds that there was no policy violation within the realm of MDOC policy but it did not, that did not state that

there was no potential legal violation or violation of law outside the realm of MDOC policy, correct? It never stipulated to any laws outside of MDOC policy, correct? It didn't state there was no constitutional violation or statutory violation, it simply said the grievance was rejected because it did not state --

THE COURT: Mr. Richards, this is really running into a statement and an argument as opposed to a question. I'm the finder of fact here. I can, I know what the law is and I can read this and decide whether or not it states a constitutional violation.

MR. RICHARDS: Okay.

THE COURT: The document essentially speaks for itself.

MR. RICHARDS: Okay. And that was my main concern. Will I have an opportunity to present a closing argument.

THE COURT: Yes, you will.

MR. RICHARDS: That's all.

THE COURT: Okay. Mr. Pruitt, how about you?

MR. PRUITT: Just got one question for a grievance coordinator.

THE COURT: Yep.

[Page 79]

CROSS-EXAMINATION

BY MR. PRUITT:

Q AMF-21-01-84-28A, I went to my second step of grievance filing procedure and it was rejected. It don't --

A You're going to have to speak you mean, I cannot hear you.

MR. PRUITT: AMF-21-01-84-28A, Step II filing a grievance form, it was rejected. It doesn't say a reason why it was rejected.

THE COURT: All right. So let's get to the right page here and we will ask, or you can ask Mr. Hamel why it was rejected. So Mr. Ho, this is D1 page 7 of 8.

MR. HO: Okay. Page 7 of 8. Okay. You see this.

THE WITNESS: Yes, I see it. Do you want to know the reason why it was rejected?

THE COURT: I believe that was the question.

MR. PRUITT: Yes, sir.

THE WITNESS: It states right on the grievance, your grievance is being returned to you without processing as being duplicate, the 21-01-28-26 A.

MR. PRUITT: Nothing, first grievance, my Step II grievance. (Unintelligible).

THE COURT: Mr. Pruitt, this grievance doesn't seem to list any of the defendants in this case.

MR. PRUITT: Yes, sir.

THE COURT: So why are we talking about it?

[Page 80]

MR. PRUITT: Because RUM Perttu was the RUM in the hole when this happened. That is the first grievance I went to Step II on that.

THE COURT: All right.

MR. HO: Is there a question in there?

MR. PRUITT: And this is my question. As being grievance coordinator we are reliable to (unintelligible).

THE WITNESS: You are a cell inspection, what does that have to do with anything?

MR. PRUITT: That's what it says in my grievance.

THE WITNESS: Your grievance was rejected based on it was duplicate. There was nothing was looked into the merits of your grievance. It was rejected, there was -- it didn't go any farther as being rejected.

MR. PRUITT: Okay. Moving on, Your Honor.

THE COURT: You all done, Mr. Pruitt?

MR. PRUITT: Yes, sir.

THE COURT: Thank you. Mr. Kissee, what about you?

MR. KISSEE: I just got one question for him.

BY MR. KISSEE:

Q Due to the fact that you and RUM Perttu both was transferred to AMF from Ojibway, how long have you known RUM Perttu with you both came to AMF Baraga from Ojibway?

A RUM Perttu.

Q Yes. Yes.

[Page 81]

A With him working, I don't know how long he was ever at Ojibway.

Q Do you, do you and RUM Perttu got any relationship outside of work?

A No.

MR. KISSEE: All right. No further questions.

THE COURT: All right. Redirect, Mr. Ho?

MR. HO: None, Your Honor, thank you.

THE COURT: All right. Who is your next witness?

MR. HO: The next witness will be Mr. Cummings.

THE COURT: Mr. Cummings, so let's do this. And how many more witnesses do you have, Mr. Ho?

MR. HO: Mr. Cummings will be my last witness on direct.

THE COURT: All right. What is the situation in the various prisons for lunch, and what do we want to do with that because it's noon right now?

MR. KISSEE: Lunch is here, Your Honor.

THE COURT: They're going to bring lunch to you where you're sitting, okay, good. So let's get Cummings done and then we will take a real short break and we will keep going.

MR. HO: Okay.

THE COURT: All right. So we can release Mr. Hamel. Thank you, Mr. Hamel. And we can bring in -- he's not even there any more. Okay. We can bring in Mr. Cummings.

[Page 82]

MR. HO: Okay.

THE COURT: All right. Mr. Cummings, thanks for waiting. Please raise your right hand.

CRAIG CUMMINGS, DEFENSE WITNESS,
WAS DULY SWORN

DIRECT EXAMINATION

BY MR. HO:

Q Mr. Cummings, can you please state your full name and spell it for the record?

A Craig Cummings.

THE COURT: Spell your last name, please.

THE WITNESS: Cummings. C-U-M-M-I-N-G-S.

THE COURT: All right.

BY MR. HO:

Q Mr. Cummings, how are you employed?

A What's that?

THE COURT: Can you hear Mr. Ho all right? He asked you how you were employed.

THE WITNESS: No, he's cutting out.

MR. KISSEE: He cut out again.

MR. HO: Can you hear me now?

THE WITNESS: I can hear you now.

BY MR. HO:

Q Mr. Cummings, how are you employed?

A I'm an inspector for the Michigan Department of Corrections.

[Page 83]

Q And how long have you been in that position?

A Six years.

Q Six years, okay. And what was your previous position before being the inspector at AMF?

A I was a sergeant.

Q Okay. At what facility?

A Here, AMF.

Q Okay. And how long have you been employed by the MDOC?

A 28 years.

Q Okay. So what do you do -- let's see. What do you do as an inspector?

A We are the highest security officer on shift. We conduct rounds, security inspections, monitor security threat groups, PREA coordinator, MSP contact.

Q Okay. And please describe your role as the PREA coordinator at the facility.

A Any allegations I get of PREA complaint I review, assign an investigator, send it to the warden's secretary and she enters it into AIM.

Q Okay. And so what is, what is a PREA grievance?

A A PREA grievance is a grievance that the prisoners can submit with their allegations of sexual abuse or sexual harassment.

Q Okay. And what policy or policies do you follow when you're processing PREA grievances?

[Page 84]

A Well, we have got policy 03.03.140 which is sexual abuse and sexual harassment of prisoners, Prisoner Rape Elimination Act and then there's an OP same, same numbers.

Q Okay. And what's the PREA grievance process?

A The prisoner receives a grievance, they fill it out, turn it into staff, and staff turn it into me, and then I process it.

Q Okay. And how do you process it?

A I make copies of it and assign an investigator and give it to the warden's secretary, she enters it into the AIM system.

Q Okay. And what is an AIM system?

A It's Administrative Investigation Management System, it's a way to track all investigations in the state.

Q Okay. And so how does a prisoner submit such a grievance, submit such a grievance, you mention there's a grievance form, is that correct?

A Yeah.

Q How does a grievant get such a form?

A State provides them for them. They are in the units.

Q Okay. And how does that form get to your office?

A They put it in my mailbox.

Q Okay. Where is your mailbox?

A Downstairs in the administrative office.

Q Okay. And how does the -- how does the prisoner, in a certain housing unit within segregation get their PREA

[Page 85]

grievances form to you?

A They turn it into staff, staff put it in the mailbox.

Q Okay. Is that mailbox, is that your mailbox or is it the housing unit mailbox, what, what -- can you provide some more information as to that?

A Each housing unit has a mailbox, segregation unit staff put the mail in there. General population prisoners can put the mail in their own. Then on the evenings the yard officer come around, collects all the mail, puts it in a bag and brings it to the mail room.

Q Okay. And so, so you -- after you receive the PREA grievances, you said you make copies of them and what else do you do?

A I put, I identify them by numbers and I keep a copy of who I assign as an investigator and a copy of the grievance itself.

Q Okay.

A Then the warden's secretary puts the AIM number and who is investigating and then it gets returned back to the prisoner.

Q Okay. And so does the prisoner receive any documentation when a PREA grievance is received by your office?

A Yes. He gets a copy of the grievance back stating it's being investigated with the AIM number and the investigator.

Q What happens if a prisoner submits a PREA grievance but does not receive a response?

A I respond to all of them.

[Page 86]

Q Okay. So if you receive it you respond to it, is that correct?

A Correct.

Q Okay. What recourse does a prisoner have if he or she disagrees with the PREA response?

A They can appeal it to a Step II.

Q And how does that process work?

A They request a Step II grievance and then they fill it out and turn it in. That goes directly to the, the PREA coordinators downstairs.

Q Okay. Do you have any discretion in processing the PREA grievance that you receive?

A No. They all have to be processed. The only thing I do is decide whether it's sexual abuse or sexual harassment.

Q Okay. All right. Do you physically go into each housing unit to receive the PREA grievances from the mailboxes?

A No.

Q Okay. Do you have a key to the mailboxes in the housing units?

A No, I don't.

Q And is your mail room mailbox locked with a key?

A Correct.

Q Okay. All right. And do you have access to the inside of the mail room?

A Yes.

[Page 87]

Q How do you have access to the inside of the mail room?

A When the mail staff is working; they work 8:00 o'clock to 4:30.

Q Okay. All right. I'm going to have you take a look at some documents, okay?

A Okay.

Q Okay. First this is the document that has been marked as Exhibit B as in boy, and can you please take a look at this document and tell me what this is?

A That's Policy Directive 03.03.140.

Q Okay. Is this a policy that you were referring to earlier?

A Yes. It's been updated since that one.

Q Okay.

A It was updated in April 5th of '21. But it's the same, it's basically the same.

Q All right. Okay. Was this version the one in effect in 2019 and 2020?

A Yes.

Q Okay.

MR. HO: Move to admit this as evidence.

THE COURT: Mr. Richards.

MR. RICHARDS: Yes, sir. I agree with it. I concur.

THE COURT: How about you, Mr. Pruitt?

MR. PRUITT: Same here.

THE COURT: Mr. Kissee.

[Page 88]

MR. KISSEE: Yes, sir.

THE COURT: All right. B is admitted.

BY MR. HO:

Q All right. I'm going to show you Exhibit C3, okay?

A Yep.

Q Can you see that?

A Yes.

Q What does this, what does this document appear to be?

A Those are the records of AIM investigations for Mr. Richards.

Q Okay. Okay. And so can you, can you tell me what this document shows?

A Yeah.

THE COURT: Admit it, Mr. Ho?

MR. HO: Sorry. Move to admit this document.

THE COURT: Mr. Richards, any objection to that?

MR. RICHARDS: No objection.

THE COURT: Okay. C3 is admitted. Go ahead, Mr. Ho.

MR. HO: Can you tell me what this document shows.

THE WITNESS: Those are the AIM number which is the number of the investigation, the date of the accident, the date of the complaint, the status of

the, of whether it's closed, open or pending investigation, and the location, where it was submitted at.

BY MR. HO:

[Page 89]

Q Okay. And based upon this record, did Mr. Richards file any PREA grievances at your facility?

A No, he did not.

Q Okay.

MR. HO: I am going to move to Exhibit D3. Can you please take a look at this? Can you please take a look at this document?

THE WITNESS: Yep.

BY MR. HO:

Q And what is, what is this document?

A That's another review of AIM investigations.

Q Okay. And –

A That's Mr. Pruitt's.

Q Okay. And move to admit this document.

THE COURT: Mr. Pruitt, any objection to D3?

MR. PRUITT: No, sir.

THE COURT: All right. D3 is in.

BY MR. HO:

Q All right. Okay. So does this -- so -- the list of AIM grievances, PREA grievances that he has filed?

A Yes, those are the ones at Baraga.

Q Okay. At Baraga. How many did Mr. Pruitt file between, between 2019 and 2020?

A None.

Q Okay. All right. And I'm going to have you take a look at

[Page 90]

E3.

A That's a review of Mr. Kissee's AIM investigations.

Q Okay.

MR. HO: Move to admit.

THE COURT: Mr. Kissee.

MR. KISSEE: No, sir, no objection.

THE COURT: No problem with that?

MR. KISSEE: No, sir.

THE COURT: Okay. It's admitted.

BY MR. HO:

Q And based upon this did Mr. Kissee file any PREA grievances while he was at Baraga?

A No, sir.

Q Okay. Now, did you ever -- can you hear me? Did you ever fail to process any PREA grievances for Mr. Richards?

A No.

Q Did you ever fail to process any (unintelligible)?

A Can you repeat that?

Q Did you ever fail to respond to any kites from Mr. Richards?

A No.

Q Did you ever fail to process any requests for PREA grievances, PREA grievance forms from Mr. Richards?

A No.

Q Did you ever prevent Mr. Richards from filing or pursuing

[Page 91]

any PREA grievances?

A No.

Q Did you ever fail to process any, any PREA grievance forms, requests for PREA grievance forms (unintelligible)?

A Can you repeat that?

Q Did you ever fail to process any PREA grievances, any requests for PREA grievance forms, or any kites from Mr. Pruitt?

A No.

Q Did you ever prevent Mr. Pruitt from filing or pursuing any PREA grievances?

A No.

Q Did you ever fail to process any PREA grievances, any kites, or requests for PREA grievance forms from Mr. Pruitt?

A No.

Q Did you ever prevent Mr. Kissee from filing (unintelligible)?

A No.

Q Did you ever fail, did you ever prevent any of those individuals from pursuing any other grievances?

A No.

Q Do you have any reason to believe that RUM Perttu destroyed grievances filed by Mr. Richards, Mr. Pruitt, or Mr. Kissee?

A No.

Q Do you have any reason to believe that Warden Taskila

[Page 92]

ordered Mr. Perttu to destroy grievances filed by Mr. Richards, Mr. Pruitt or Mr. Kissee?

A No.

THE COURT: Is that it, Mr. Ho?

MR. HO: I have a few more questions.

BY MR. HO:

Q (Unintelligible) your examination of the AIM database (unintelligible) did Mr. Pruitt (unintelligible) within 2019 and 2020?

A I can't hear you.

THE COURT: Yeah, you're breaking up, Mr. Ho.

MR. HO: Based upon your examination of the AIM database search results, did Mr. Richards, Mr. Pruitt and Mr. Kissee file any PREA grievances between 2019 and 2020?

THE WITNESS: No, they did not.

MR. HO: Okay. No further questions.

THE COURT: All right. Mr. Richards, cross.

CROSS-EXAMINATION

MR. RICHARDS: Yes, sir.

BY MR. RICHARDS:

Q Can you pull up PD 03.03.140, the document that was just up, the PREA?

THE COURT: Yep, Exhibit B, please.

MR. RICHARDS: That's at page 4. I'm sorry, page 5. At section Y.

[Page 93]

BY MR. RICHARDS:

Q 03.03.140, that's the PREA grievance procedure?

A Yes.

Q Does PD 03.03.140 section Y allow a prisoner to make a PREA report verbally instead of in writing?

THE COURT: Did you hear him?

THE WITNESS: I said yes.

MR. RICHARDS: Oh, yes. Okay.

BY MR. RICHARDS:

Q Once a prisoner verbally reports sexual abuse, what is it that you need a staff to do?

A They are to report it to their supervisor.

Q When a report is made of a PREA violation either through a hot line or by a report to staff verbally, are you required by policy to log it in any database?

A Yes.

Q Per PD 03.03.140 Y, section Y a PREA complaint or grievance can be made either verbally or through a form, is that correct?

A Yes.

Q If a prisoner is blind, disabled or mentally impaired, how can the prisoner utilize the PREA system?

A They will have to ask for assistance.

Q In early 2020, around March or April, do you remember meeting directly with plaintiff Kyle Richards and Dr. Neurick (phonetic)?

[Page 94]

A I don't recall.

Q You don't remember. Do you log, keep a record of all of your meetings or interactions with inmates?

A No.

Q Is there a possibility a report could have been made and the meeting could have been conducted without you logging a document in the database?

A You'll have to repeat that.

Q Is there a possibility a report could have been made and a meeting could have been conducted without you logging anything into a database without documentation?

A No.

MR. RICHARDS: No further questions.

THE WITNESS: Thank you, Mr. Richards. Mr. Pruitt, over to you.

CROSS-EXAMINATION

BY MR. PRUITT:

Q If a guy sends you a kite, asks you for a PREA form, how long does it normally take for you to get it to that inmate?

A I usually just call a unit and have the staff bring you one.

Q So the counselor have to print it off the computer or they already got them in their file?

A They are already in the unit.

Q What about that, what about that hot line number?

[Page 95]

A What about it?

Q How are you able to, how is an inmate able to get it?

A It's posted in all the units.

MR. PRUITT: No further questions, Your Honor.

THE COURT: Thank you, Mr. Pruitt. Mr. Kissee, do you have any questions for Inspector Cummings?

MR. KISSEE: Yes, I got two.

CROSS-EXAMINATION

BY MR. KISSEE:

Q First one being that we was in segregation at the time of the incident, how would we go about receiving a grievance in segregation?

A You ask the staff members.

Q All right. My second, my last question is, once the mail is grabbed out the door in segregation, we no longer have visible proof. Is there any, between it going from the mailbox, from my door to the mailbox, and wherever it goes after that, is there any possibility that that said grievance could be tampered with or misplaced?

A I can't comment on that.

Q All right.

MR. KISSEE: No further questions.

THE COURT: Thank you, Mr. Kissee. All right. Mr. Ho, could you take down that exhibit? And we are going to talk a little bit about the schedule here. And while you're

[Page 96]

doing that, Mr. Ho, is that it for your witnesses at this point?

MR. HO: Yes, yes.

THE COURT: Okay. Well, I didn't ask you if you wanted to do redirect on Mr. Cummings. Do you have any redirect?

MR. HO: We may present him as a rebuttal witness perhaps down the road, but I think nothing right now.

THE COURT: Okay. So let me just start out by saying that we severely underestimated the amount of time this was going to take. I think -- and you know what, lawyers do this all the time, and I see Mr. Soros wants to say something. Go ahead, Mr. Soros.

MR. SOROS: I just want to know can Mr. Cummings be excused.

THE COURT: Yes, he can be excused. Lawyers are terrible at this and you know the plaintiffs here are not lawyers. Lawyers are bad at thinking how much time it's going to take. Mr. Perttu of course knows this as well. So people are bad at this. And we are now done with, we are done with the primary case put on by the defense here. So we are going to switch over to the plaintiffs here in a few minutes. I don't see us getting to these other cases this afternoon, and I know we have Warden Taskila waiting. He may be retired but he is still waiting. Here's what I suggest we do is let's get,

[Page 97]

let's do the rest of the case this afternoon. We will do it right. We won't rush through it, we will get it done. And then we will pick up the other two down the road. We will end up rescheduling it.

I'll just tell everybody here by that what I'm going to ask you to do, whether you object or not to taking the testimony we just heard and considering that as part of the testimony that the Court can consider in the other two cases. So that's what I expect to be doing down the road. But I think we are realistically only going to finish this first case, 76, today. So that's where I think we are. Why don't we take, why don't we reconvene at 1:00 o'clock. Is that doable from a prison administration point of view? Maybe RUM Perttu would know if the prisoners can get back to where they are at 1:00 o'clock. Is that doable.

MR. PERTTU: Yes, it should be.

THE COURT: Okay. Let's shoot for that. Mr. Ho, Mr. Soros, 1:00 o'clock, all three of the plaintiffs, let's do that, and Mr. Perttu, let's plan on being back here at 1:00 o'clock Eastern Time and we will keep going at that point. In terms of connections, let's plan on using this same VTC or Zoom line. I'm probably just going to leave mine connected. I'm not even going to disconnect. If you all want to do that, that's fine. You can also disconnect and reconnect. That depends on how the prison is doing and if they can manage that.

[Page 98]

All right. Is everybody clear with that?

MR. HO: Yes.

MR. RICHARDS: Yes, sir.

THE COURT: Any questions before we leave, before we go? Mr. Richards, did you have something?

MR. RICHARDS: Yes, yes, sir. Will our witnesses still be available?

THE COURT: Yeah, they should all still be available, yep. All right. Sounds good, I'll see you all at 1:00 o'clock. Thank you.

MR. SOROS: Thanks, Judge.

(Recess taken, Resume Proceedings)

THE COURT: All right. This is U.S. Magistrate Vermaat. We are back on the record in 2:20cv76. This is case filed by Richards, Pruitt and Kisse, against RUM Perttu. And we're now back from lunch, and Mr. Pruitt said he had something he wanted to bring up. Mr. Pruitt, go ahead, what's up?

MR. PRUITT: Prior to filing this now, I know Mr. Ho, I think he sent me some paperwork that went through the counselor. I never received.

THE COURT: So you're missing something.

MR. PRUITT: I never received it. I think it went through the counselor.

THE COURT: What do you think you're missing? Because we kind of been going through exhibits here. What do you think

[Page 99]

you're missing?

MR. PRUITT: The exhibit form where it says the policy directive, all of that.

THE COURT: There's two exhibits that are policy directives. A and B. No, C is the grievance report. So --

MR. PRUITT: I only got one case, one case, that was 194. I got that one. I didn't get the 76.

THE COURT: Okay. Well, the documents are basically the same for all three cases, the exhibits, isn't that right, Mr. Ho, everything is the same for all three cases?

MR. HO: Everything is the same. And you were mailed both hard copies and electronic. Well, you were mailed hard copies in the mail, and there were, you know, copies were also provided through (unintelligible) coordinator is my understanding. You have copies of everything. So, yeah, so if you have -- you did receive your mail copy, correct?

MR. PRUITT: I received that 194. That's the only one I received. I never received 76.

MR. HO: Did you receive it for all -- did you receive all the exhibits (unintelligible).

MR. PRUITT: Yes, I did.

MR. HO: The exhibits are the same.

THE COURT: It should all be in there, Mr. Pruitt. Okay. All right. So like I said, what I don't expect to do, I don't expect to get to the other two trials today. But what we

[Page 100]

will do is, when we get done with 76 we will get on the record in those other two cases. I will plan on asking the parties if they are going to agree that the testimony of this case can be considered in those other two cases. So we will go on the record on each of those other two cases. Mr. Richards is the only plaintiff on 122, and then all three of you are on 194. So that's what we will do. But we are going to wrap up 76 first. So, Mr. Ho, maybe I rushed you a bit there before lunch. But are you done with your primary case, your case in chief in case 76?

MR. HO: Yes, yes, Your Honor.

THE COURT: Sounds good. So now what we will do, is Mr. Richards has kind of taken the lead, but he is not a lawyer, he doesn't represent Mr. Pruitt or Mr. Kisse. So what I'll do is I'll just go one witness at a time and I'll just let all three of the plaintiffs ask questions if they want to. I want you all be careful not to duplicate each other's. I'll just jump in and cut you off if you're duplicating each other's questions. You know, there is only so much time. We have time to get this done this afternoon. I do want to move efficiently through it. So, Mr. Richards, I'll just start with you. Who do you want to call as your first witness?

MR. RICHARDS: Before I call any witnesses, is there a possibility that during the testimony I can

admit, even though I didn't file any exhibits, document number 24 and 69 which are

[Page 101]

declarations from the witnesses who will be questioned? They submitted with the list of exhibits. But if Ho would agree to them, would you have any objection to me admitting document number 24 which is Exhibit 2, that is the Cleveland Spencer declaration, and document number 29 is Larry Taylor's declaration. Just so they can look at it while it's on the record, while it's on the screen.

THE COURT: Mr. Ho.

MR. HO: They should be testifying with personal knowledge and, and, you know --

THE COURT: So, we normally allow those types of documents for summary judgment motions; declarations and affidavits are allowed for summary judgment motions. But we are using the Rules of Evidence. So those declarations are out of court statements that would be offered for the truth, so they're hearsay. That's the first thing. I don't see them qualifying under any of the hearsay exceptions. But the fact of the matter is you have these witnesses, Mr. Richards, here available to testify live. They have to testify from personal knowledge. Now I will say this. There's a rule that allows you to refresh their recollection, and you can conceivably do that. But the way that happens is they have to say they don't recall and then they would have to confirm there was a document that would refresh their recollection. You would have to be able to get it to them in time. And then they would actually

[Page 102]

have to affirm on the record that their recollection was refreshed. So they are back to testifying from personal knowledge.

MR. RICHARDS: Is that possible to do without having to do with, put it on the screen if I'm able to do that?

THE COURT: What do you think, Mr. Ho? If he lays a foundation for needing to refresh recollection, what he proposes to do is put the statement up on the screen and then, you know, the witness would get a chance to review it and it would be taken down and then Mr. Richards would have to confirm that the witness's recollection was, was restored.

MR. SOROS: If I may intercede because I am going to be doing the cross-examination of the witnesses. Mr. Ho took the lead with our proofs. No, for recollection purposes, I don't see an issue.

THE COURT: Yep. But we are not going to take that into evidence, Mr. Richards, that's not going to be an admitted exhibit. I do need to confirm Mr. Soros has copies of everything you would use to refresh recollection. Mr. Soros, do you have that stuff?

MR. SOROS: I believe I do, yes.

THE COURT: All right. Go ahead and proceed, Mr. Richards.

MR. RICHARDS: We call Deliuun Stevenson.

THE COURT: Okay. Stevenson, let's see if we have got

[Page 103]

him in the witness room. Dillon, do we have him?

THE CLERK: Give me one second.

THE COURT: I'm not sure we have got another one here.

THE CLERK: One individual that is just marked witness.

THE COURT: Yeah, that's got to be it. Let's try that. I'll find out who it is when he gets here. All right. Witness, if you could unmute, it looks like your video feed is down.

THE BAILIFF: They're bringing him up right now.

THE COURT: Oh, Stevenson is coming up. Okay. Good.

THE BAILIFF: They have got to go down and get him.

THE COURT: Mr. Richards, are you still at Baraga?

MR. RICHARDS: Yes, I am, sir.

THE COURT: I just saw somebody walk by there so hopefully we're close.

THE BAILIFF: They're getting him ready right now.

THE COURT: Okay, thanks. Mr. Stevenson, is that you?

THE WITNESS: Yes, sir.

THE COURT: All right. Good afternoon. This is Judge Vermaat. We're here for this bench trial. I wonder if there is any way you could move your chair, you know, you could ask one of the staff people there to move that table and your chair a little closer to the camera. It's pretty far back. There we go. I appreciate that.

[Page 104]

THE WITNESS: Good, Your Honor?

THE COURT: Yeah, that will work. Okay. Mr. Stevenson, please raise your right hand.

DELIUN KENNON-KEYONTE STEVENSON,
PLAINTIFF WITNESS, WAS DULY SWORN

THE WITNESS: Yes, sir.

THE COURT: All right. Good. Mr. Richards, you may proceed. Just start by asking him to state his full name and spell his last name.

DIRECT EXAMINATION

BY MR. RICHARDS:

Q Mr. Stevenson, would you state your full name on record and spell your last name, please?

A Name is Deliu Kennon-Keyonte Stevenson.

Q Can you spell your last name for us, please?

A S-T-E-V-E-N-S-O-N.

THE COURT: Mr. Stevenson, I see you looking at a piece of paper there. I don't know what that is. But you probably need to put that off to the side because I don't want you reading from it without us knowing what it is. Okay.

THE WITNESS: Okay.

THE COURT: So there you go. Perfect. Thank you. Go ahead, Mr. Richards.

BY MR. RICHARDS:

Q Mr. Stevenson, did you ever (unintelligible) plaintiff

[Page 105]

Richards regarding allegations in this case?

A I can't hear him. He's got his mask on.

MR. RICHARDS: Can you hear me now?

THE WITNESS: Yeah, I can hear.

BY MR. RICHARDS:

Q Did you (unintelligible) tender a declaration to plaintiff Richards regarding allegations in this case?

A Yes, sir.

Q Do you have a copy of that declaration?

A Yes, sir.

Q For the purpose of this testimony, can Deliu Stevenon admit that declaration for reference?

A Yes, sir.

THE COURT: We talked about this earlier -- Mr. Soros, I'll cover this. So you really can't -- he has to testify from personal knowledge. This is what he knows and remembers. And you can't refer to another document until you establish that he can't remember something. So, and only -- you can only get him to look at another document if that's going to refresh his recollection. So, yeah. Go ahead.

BY MR. RICHARDS:

Q Can you please state on record your personal knowledge of the events involved in this complaint including the events that you admitted in the declaration as regards to what you know of the events that occurred, any kind of grievances being

[Page 106]

destroyed, any type of malfeasance by staff at the facility regarding the grievance process?

A Yes, sir.

Q Can you recite --

THE COURT: Hold on just a second. There's an objection from -- go ahead, Mr. Soros.

MR. SOROS: I'm going to object because it was an extremely open question and he asked him as to his experience with the grievance process. We are not here to hear any testimony regarding Mr. Stevenson's grievance process, successes and failures. It's all about, as I understand, Mr. Richards's. And so if we could have his testimony or the question limited to as it pertains to Mr. Richards.

THE COURT: Yeah. Richards, Pruitt and Kisse for sure. I mean if he's a witness on those. Yeah, Mr. Richards, just ask him questions and when you get to the point where he doesn't remember that's when you can try to fix that. Okay?

MR. RICHARDS: Yes, sir.

THE COURT: Okay.

BY MR. RICHARDS:

Q Mr. Stevenson, you resided at Baraga January 15th, 2020, is that correct?

A Correct.

Q On 3/20/20, did you observe RUM Perttu in unit 2 (unintelligible) that were offered by plaintiff Richards into

[Page 107]

the trash can of the hallway of (unintelligible)?

A Yes.

Q How did you observe this?

A I observed it for myself.

Q All right. Any window or door or any opening in that cell that allowed you to have direct visual contact?

A Yes. Looking through my door window.

Q How many feet away were you, would you say, when he threw the grievances in the trash can?

A It was about like five feet, six feet.

Q Name Kyle Richards on any of the grievances in the hands of RUM Perttu?

A Yes.

Q And you then witnessed him throw them directly into the trash can, correct?

A Correct.

Q On March 25th of 2020, did you witness RUM Perttu conducting his morning rounds holding three grievances in his hand?

A Yes, sir.

Q Were two of them written by prisoner Richards?

A Yes.

Q Did you see prisoner Richards's name, Kyle Brandon Richards on those grievances?

A Yes, I seen his name.

[Page 108]

Q What did he do after that?

A Walked to the trash and he threw, he threw his grievances away.

Q Did he rip them up?

A I couldn't hear.

Q Did you see him rip any of them up or destroy them before he did that?

A Yes.

Q Have you ever submitted a grievance to the grievance coordinator that has not been processed, and, if so, how many times have you been submitted those grievances without processing?

MR. SOROS: Objection, relevance. He asked if Mr. Stevenson himself had submitted grievances.

THE WITNESS: Yes.

THE COURT: Okay. So the objection is sustained. So go ahead and ask the question differently there, Mr. Richards.

BY MR. RICHARDS:

Q Have you ever noticed a pattern at the facility of them not processing or not lodging grievances that are submitted?

A Yes.

THE COURT: Okay. So I'm just going to stop you here real quick. So and I know you're not a lawyer. That's okay. The problem is that you ask about a pattern that may not be relevant to you, Mr. Richards. So the thrust of this testimony

[Page 109]

is that Mr. Perttu, RUM Perttu thwarted your efforts to file grievances against him. That's the point that I think you're trying to make. If you're going to ask him about a pattern you have to establish how he knows there's a pattern. You know, how they relate to your case.

MR. RICHARDS: A pattern at the facility could then show, demonstrate a pattern of evidence that the grievances are not processed; other inmates who file grievances have not had their grievances processed either. I think that would demonstrate a pattern relevant to this case.

THE COURT: And how does he have personal knowledge of the pattern?

MR. RICHARDS: Because I'm going to prove by testimony that he submitted several grievances himself that were never processed.

THE COURT: You can ask him about his own personal experience because otherwise you're asking him to recount what other people told him what their experiences were which is all hearsay. But go ahead.

MR. RICHARDS: Okay. I'll ask him about his own personal experience.

BY MR. RICHARDS:

Q Have you ever submitted any grievances at AMF Baraga Correctional Facility?

A Yes.

[Page 110]

Q Have you ever had those grievances not processed or thrown out?

A Yes.

Q Have you ever seen your grievances destroyed by other staff members?

A Yes.

Q Have you ever received prisoner Richards's mail through your door from a staff member or CO?

A Yes.

Q Was any of the mail tampered, altered or destroyed?

A Yes.

Q Did any of the mail contain grievances or institutional kites or any kind of grievance documents related to prisoner Kyle Brandon Richards?

A Yes.

MR. RICHARDS: Nothing further.

THE WITNESS: Okay.

THE COURT: Thank you, Mr. Richards.

Cross-examination, Mr. Soros.

MR. SOROS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SOROS:

Q Mr. Stevenson, let's, I want to take you back to your testimony regarding events on March 20, 2020. Would you tell me that or you told us that you were five to six feet away from

[Page 111]

RUM Perttu when he had grievances in his hand. And it's your testimony that you were able to read Mr. Richards's name on those grievances?

A Yes, sir.

Q Okay. So what were the grievances about?

A Grievances were about -- I really couldn't see what it was about. I could see his name because I had

turned mine in when he did his rounds. He had everybody's stuff. He have it in his hand. It don't be in a folder.

Q Okay. So were they regular grievances or was there anything in particular about those grievances that you recall?

A Regular grievances. They were all prisoner's.

Q I'm sorry?

A Prisoner grievances, yeah, regular grievances.

Q Regular grievances. Okay. And did RUM Perttu like stop in front of your cell and tear this up, is that how you saw it?

A No, I saw it as, when he was walking, when he was doing his rounds and he ripping.

Q So at any time he is walking by your window does he stop in front of your cell?

A No.

Q Okay. So would it be correct to say that he was in his full walking stride when he walked by your cell?

A Yeah.

Q How long do you estimate he was in your view as he walked

[Page 112]

by your cell?

A How long?

Q Yeah. Time wise.

A Seconds.

Q Okay. You said you were locking in A. wing?

A I could barely hear him.

MR. SOROS: You said you were locking in A. wing.

THE COURT: Hold on a second, Mr. Soros. We are picking up some ambient noise there. Probably from the prison. Is that coming from your side, Mr. Richards, can you tell?

MR. RICHARDS: Yes, sir. There was an inmate banging on their door. They apparently claim to have a heart problem.

THE COURT: Okay. Well, I can hear you just fine. Every now and then we are just picking up something loud. Mr. Perttu, if you have trouble hearing just raise your hand, okay? I'll just ask everybody to speak up, just speak up when you give your answers. Go ahead.

MR. SOROS: Okay. Let me move on, Mr. Stevenson. Where was the trash can that you saw RUM Perttu put the grievances in?

THE WITNESS: Was at the end of the wing.

BY MR. SOROS:

Q And you said that there were two grievances, is that correct?

A Yes. I turned one in too.

[Page 113]

Q Okay. And how were you able to read the name on both grievances?

A Because once he come pick the grievances up from our doors you can see everybody else's at the door.

Q So it was fanned open so you could read both grievances?

A Yes.

Q Okay. Let's move on to the March 25th incident, and I believe your testimony was that Mr. Perttu destroyed two of Mr. Richards's grievances at that time. Is that correct?

A Yeah.

Q And how far away was RUM Perttu when you saw him destroy these grievances?

A Like five, six feet.

Q Same as before?

A Yeah.

Q Okay. Were these, these two grievances, was there anything special or were they just regular grievances?

A Looked like regular grievances to me.

Q Okay. And what were the grievances pertaining to?

A I can't recall.

Q Okay. Did you know at one time what they had to do with?

A No, I just know that they ripped the stuff up.

Q Okay. So you never knew what the grievances were. Could you read the grievances?

A I could read the name but I couldn't read the, the --

[Page 114]

Q Okay. Next to the name is a space for the date, is that correct?

A Yeah.

Q Okay. Do you recall what the date was on the grievance?

A No.

Q Did you read that?

A Huh?

Q Could you read the incident date on the grievance?

A No.

Q What about the grievances from March 20th, were you able to read the incident date on those grievances?

A No, all I seen was the name.

Q Okay. Did, on March 25th, did RUM Perttu stop at your door at all?

A Yes. He stopped by everybody's door.

Q Okay. To pick up -- what was he doing at your door?

A Picking up.

Q And do you recall what you were handing in at that time?

A Yeah, kites. They pick up kites and grievances. They pick up everything.

Q No. What specifically were you turning in?

A Grievance and a kite myself.

Q Okay. And what was the grievance about?

A My grievance?

Q Yes.

[Page 115]

A On that day -- it's been a year. I don't remember what the grievance was about.

Q Okay. It's been a year and you don't remember. How about the kite, do you remember what the kite was about?

A No.

Q Did you remember who you were sending the kite to?

A That time I was working, what ARUS was working?

Q I'm sorry?

A I think PC Strohman (phonetic). I really don't, I don't know, I don't know.

Q Okay. You don't know. That's fine. So how long was RUM Perttu in front of your door to pick up this kite and this grievance?

A Seconds, like seconds.

Q Okay. In that time frame, that second or so that he was there, you were able to observe -- it's your testimony you were able to observe Richards's name on two grievances?

A Yes.

Q Okay. Whose name was --

A Whose name was on it?

Q Yes.

A Kyle.

Q I'm sorry?

A Kyle.

Q No, no. You had testified on direct examination that

[Page 116]

Perttu had three grievances and two of them belonged to Mr. Richards. And I want to know who the third grievance belonged to.

A I have my own situation going on.

Q That's not my question. You've testified that Perttu had three grievances in his hand at the time and two belonged to Richards. I want to know who the third grievance belonged to.

A Me.

Q That's not the way -- okay. So when -- is it your testimony now that when Perttu came up to your cell he already had your grievance?

A When he came to my door I gave him my grievance.

Q Okay. So in your statements there's, you state that Perttu was conducting morning rounds and as he passed your door you noticed he was holding three grievances. Are you, is it your testimony that when he passed your door he had already grabbed your grievance?

A He came to my door and grabbed mine.

Q As he was passing your door he already had your grievance?

A Yes.

Q But you don't remember what that grievance was about?

A No.

Q Okay. And where did he put your -- your testimony is he tore up the other two grievances?

A Yes.

[Page 117]

Q And put them in the trash can?

A Yes.

Q Where is the trash cans?

A At the end of the hall.

Q Okay. And did you say anything to prisoner Richards at the time that you observed RUM Perttu destroy his grievances?

A No.

Q Did you think that was inappropriate for RUM Perttu to destroy his grievances?

A Yes.

Q On both occasions that was wrong, correct?

A Yes.

Q Okay. Did you say anything to any staff member that you observed RUM Perttu destroying prisoner Richards's grievances?

A No.

Q No? Why not?

A No, because if I would say anything I would, they do something to him they do it to me.

Q What have they done to you?

A Several things, several things.

Q Since you filed this statement has something been done to you?

A Since I filed this statement, yes, several things been done to me.

Q Okay.

[Page 118]

MR. SOROS: Thank you, Your Honor, I have nothing further.

THE COURT: Okay. So when Mr. Richards got done I forgot to go to Pruitt and Kissee and ask if they wanted to ask any questions of Mr. Stevenson. So what I'm going to do now is I'm going to go to Pruitt and Kissee, see if they have anything to ask him, Mr. Soros. Then I'm going to come back to you and see if you have any cross on those specific questions and then I'll circle back to Mr. Richards. I saw him taking notes; I know he's got some follow-up. Mr. Pruitt, do you have any questions for Mr. Stevenson?

MR. PRUITT: Yes, sir, I do.

DIRECT EXAMINATION

BY MR. PRUITT:

Q One question is to be you said that several things, several things as retaliation has happened to him regarding this case. I just want to know what specifically has happened because it could all relate to everybody else.

THE COURT: The question is retaliation because of this case, Mr. Stevenson.

THE WITNESS: Oh, specifically what has happened. Now I'm in the hole for, I'm in segregation now for a (unintelligible) grievance for the fact that I been, I been accused of (unintelligible) the C.O., which I'm in court now for. And I just got a drop, so I just got an extra 18 months

[Page 119]

of my time, I think. I supposed to be home, released but I can't go home because I was falsely accused of assaulting. Now they drop, I should be getting -- I should be getting charged throughout this month due to the fact that this, this incident it's been going on, I ain't been able to see my kids, I ain't been able to see my family. I been, I been in the prison.

MR. PRUITT: Excuse me, Your Honor. We got a thing that he's saying the computer is about to restart.

THE COURT: We don't want that. Is there a staff member there that?

MR. PRUITT: Yeah.

CORRECTIONS OFFICER: Yes, Your Honor. I'm trying to snooze it right now but I believe that this computer is the automatically restart it.

THE COURT: All right. Well, if we -- I'll tell you what. If we lose you we will just stop and wait for you to come back, okay? You still have the Zoom link -- I don't know which correction officer is sitting there -- but do you have the Zoom link to come back here?

CORRECTIONS OFFICER: Yes, I do, Your Honor.

THE COURT: I see everybody on this call; if you drop off we will just stop and wait for Mr. Pruitt to come back. Okay?

CORRECTIONS OFFICER: Sounds good, Your Honor.

THE COURT: All right. Sounds good. And then,

[Page 120]

Mr. Pruitt, did you have anything else for Mr. Stevenson?

MR. PRUITT: No, sir, no, sir.

THE COURT: Okay. Thank you, Mr. Kissee, how about you, do you have anything for Mr. Stevenson?

MR. KISSEE: Yeah, I got two questions.

DIRECT EXAMINATION

BY MR. KISSEE:

Q First one being, being that we're in segregation, how are we able to receive grievances? How do we -- who do we got to talk to to get grievances?

MR. SOROS: I'm going to object to that. Mr. Stevenson can testify as to how he receives grievances but he can't say how we, meaning --

THE COURT: With that narrowing, that's fine. Go ahead and talk about how you --

MR. KISSEE: If you want to file a grievance, how do you receive a grievance?

THE WITNESS: I go out and receive it to them or receive it to me.

BY MR. KISSEE:

Q How do you get a grievance, if you want to file a grievance, how do you get a grievance form?

A We have to ask, we have to ask the C.O., whoever is working for one.

Q All right. The second one is, once you turn your mail in

[Page 121]

to the C.O. or the staff member and you give it to them, do you know for a fact that that grievance that

you filed is being placed in a mailbox? Can you directly observe it being placed in a mailbox?

A No.

MR. KISSEE: All right. No further questions.

THE COURT: Thank you, Mr. Kisse. So, Mr. Soros, because we took things out of order you could do cross just restricted to those two directs, please.

MR. SOROS: Certainly.

CROSS-EXAMINATION

BY MR. SOROS:

Q Certainly. And, Mr. Stevenson, you talked about being in the hole; your most recent misconduct was for threatening behavior towards staff, isn't that correct?

A Yes.

Q And that was just a few months ago, correct?

A Yes.

Q And you had a hearing in front of a hearings officer because that was a class 1 misconduct, is that correct?

A Yes.

Q You were found guilty, correct?

A Yes.

Q All right. And you had a right to file a request for rehearing in that matter, correct?

[Page 122]

A Pardon?

Q Did you have a right by policy to file for a rehearing of that misconduct ticket?

A Yes.

Q And --

MR. KISSEE: Pruitt just dropped.

THE COURT: All right. We are going to take a break here and wait for Mr. Pruitt to come back. Thank you, Mr. Kisse.

MR. KISSEE: Yes, sir.

THE COURT: This will probably take a few minutes. If you all want to stretch your legs, that's fine, if you can. It's a longer day than we expected, isn't it?

MR. KISSEE: Man. I remember Richards saying oh, it's going to take 30 minutes each. As I said before, it's prison, nothing ever works on time.

UNKNOWN SPEAKER: We do our best. We do our best.

THE COURT: Lawyers are terrible at predicting how long a trial is going -- they are just miserable at it. Anyway that's the way it goes.

MR. SOROS: Judge, are we still on the record?

THE COURT: The recording is still going, yep.

MR. SOROS: Okay.

THE COURT: You want to go off the record for a second?

[Page 123]

MR. SOROS: I was just going to ask about the weather.

THE COURT: Dillon, can you stop the recorder real quick? Where we were when Mr. Pruitt dropped off and we stopped is, and Mr. Soros was cross-examining specifically limited to the questions asked by Pruitt and Kisse. All right, Mr. Soros.

MR. SOROS: And I finished asking my questions, Your Honor.

THE COURT: Okay. So now what we are going to do is we are going to go back through and see if there is any redirect from anybody. Mr. Richards, I'll start with you.

MR. RICHARDS: Yes, yes, there is some redirect.

REDIRECT EXAMINATION

BY MR. RICHARDS:

Q Mr. Stevenson, as a result of filing the statement that you submitted that they have been speaking about today, have any of the officers verbally threatened to harm you?

A Yes.

Q As a result of filing this statement that's here today, have any of the officers falsified misconducts against you?

A Yes.

Q As a result of filing the statement here today, has any of the officers actively destroyed your mail or tampered with your mail?

A Yes.

[Page 124]

Q Did you ever hear RUM Perttu threaten prisoner Richards not to file any grievances?

A Yes.

Q Can you give me an example of one of those threats?

A I remember one time he told him he was going to make him his bitch.

Q If prisoner Richards continued to file grievances?

A Yeah.

Q Do you feel that your submission of this statement caused you to lose parole?

A Yes.

MR. SOROS: Objection, relevance.

THE COURT: Sustained. Mr. Richards, so this is redirect so you're limited to going back over the things that Mr. Soros asked on cross. You're not really kind of doing an additional direct. It's redirect. So this is kind of a follow-up on the cross-examination. Okay.

MR. RICHARDS: Yes, sir. That's all I have.

THE COURT: Okay. Mr. Pruitt, is there anything else you want to ask Mr. Stevenson on redirect?

MR. PRUITT: No, sir.

THE COURT: Okay. Thank you, Mr. Pruitt. How about you, Mr. Kisse, anything else for Mr. Stevenson?

MR. KISSEE: No, sir.

THE COURT: All right. I think we can let

[Page 125]

Mr. Stevenson go and let's, who do you have next, Mr. Richards?

MR. RICHARDS: Michael Richard Jackson, Jr. at 605363.

THE COURT: All right. Jackson is going to be coming next. Is that the Marquette branch? Is he at Marquette branch?

MR. RICHARDS: No, he should be here.

THE COURT: So they're going to have to move Stevenson and put Jackson in that same room, is that

right? (Unintelligible) Mr. Jackson. RUM Perttu, do you know if Jackson is going in the same room that Stevenson was in or is he going to go to a different place?

MR. PERTTU: As far as I was told he should be going to the same room Stevenson was in.

THE COURT: Okay. Sounds good.

MR. PRUITT: I think Mr. Jackson in the same unit as me, Your Honor.

THE COURT: Okay. Well, he can't go in your room with you. He's going to have to go somewhere else.

MR. PERTTU: Your Honor, they had prisoner Jackson. He does lock in unit 1 but they had him waiting in unit 2 so it shouldn't be too long.

THE COURT: Okay. Sounds good. Yeah, I mean it's no big deal. I expected some transition time here. That makes sense. Here we go. All right. Mr. Jackson, this is Judge Vermaat, is that you? All right. Good. I'm going to swear

[Page 126]

you in here. Please raise your right hand.

MICHAEL RICHARD JACKSON, PLAINTIFF
WITNESS, WAS DULY SWORN

THE COURT: All right. Good. Mr. Richards, you can go ahead.

DIRECT EXAMINATION

BY MR. RICHARDS:

Q Mr. Jackson, could you state your full name for the record?

A Yes, Michael Richard Jackson, Jr., number 605363.

Q Can you spell your last name, please?

A J-A-C-K-S-O-N.

Q Did you, did you tender a formal declaration to plaintiff Richards regarding allegations in this case?

A Yes, I did.

Q Do you have a copy of that declaration?

A I do. But it's not with me. I asked why I was being brought over here, they never told me but I do have it, it's in my (unintelligible).

Q Are you able to -- I'm going to ask you a few questions regarding that, regarding your testimony, your observance of the events in this case.

A Yes.

Q To your knowledge.

THE COURT: Mr. Richards, don't -- just ask him questions. You don't need to set him up for this. Just go

[Page 127]

ahead and start asking him questions.

BY MR. RICHARDS:

Q On June 19, '20 did you directly witness RUM Perttu pass your cell throwing prisoner Richards's grievances in the trash?

A I did.

Q On March 25th of 2020, did RUM Perttu (unintelligible) your cell door and shove (unintelligible) grievances in your door asking you, I need you to do me a favor, I need you to rip up and flush these grievances for me?

A Yes, he did.

Q Did RUM Perttu come to your cell door and ask you to flush and rip up three PREA grievances authored by prisoner Richards?

A Yes, he did. I told him I wasn't going to do it.

Q Did he threaten you afterwards for refusing to comply?

A Yes. Yes. He threatened me with (unintelligible) more time (unintelligible).

Q When you saw those grievances shoved into your cell did you see prisoner Richards's name on those grievances?

THE COURT: Hold on a second, Mr. Richards. Go ahead, Mr. Pruitt.

MR. PRUITT: Mr. Jackson had broke up. I barely heard anything he said.

THE COURT: Okay. So, Mr. Jackson, we kind of moved the table a little bit closer to the computer already. But just try to speak loudly, okay. So there's some background

[Page 128]

noise. Just keep your voice loud, okay.

THE WITNESS: How is this?

THE COURT: That's better. Just go ahead and speak loudly. Restate the question, Mr. Richards.

MR. RICHARDS: On March 25th, 2020, did RUM Perttu come to your cell door and shove three PREA grievances in your cell?

THE WITNESS: Yes, he did.

BY MR. RICHARDS:

Q Did he ask you, state I need you to do me a favor, I need you to rip up and flush these grievances for me?

A Yes, he did.

Q Did you see what was on those grievances?

A Yes, I saw, I saw it was written documentation of you stating that you were saying grievances (unintelligible).

Q Did you notice whose name was on the grievances, did you notice what prisoner's name was on the grievance forms?

A Yes, it was. It was Kyle Richards.

Q Through the months of February, March and April of 2020, did you receive any mail brought to your cell that belonged to prisoner Richards?

A Yes, I did.

Q Did any of that mail include unprocessed grievances or PREA grievances?

MR. SOROS: Judge, I'm going to object to the

[Page 129]

relevance of that for, you know, the purposes of today's hearing is how Mr. Richards, Pruitt, and I'm sorry, Kissee's grievances were or ability to use the grievance process was thwarted by RUM Perttu. And I don't see the relevance in that question.

THE COURT: Mr. Richards, why is it relevant?

MR. RICHARDS: The grievance traveled through the institutional mail system, and if I don't receive a copy back of them I can't take it to the next step nor can I refile them. If they are unprocessed and they are returned to the wrong inmate I have no knowledge

that they were not processed and I have no way to vindicate that.

THE COURT: Okay. But how is the fact that mail got delivered to Jackson instead of to you, how does that reflect thwarting?

MR. RICHARDS: Because some of that mail included unprocessed grievances that if I did not receive would prohibit me or otherwise obstruct me from the grievance process. I'll narrow it down to did he receive any unprocessed grievances for through the mail system.

THE COURT: Okay. Go ahead.

BY MR. RICHARDS:

Q In the months of February, March and April did you receive in the mail any unprocessed grievances belonging to prisoner Richards?

[Page 130]

A Yes, I did.

Q Any of those grievances specifically relate to PREA claims or were those, some of those PREA grievances as well?

A Yes.

Q Were any of the PREA grievances related to sexual harassment against RUM Perttu?

A Yes.

Q Were those grievances related to sexual harassment to your knowledge around the dates of 2019 and 2020, early 2020 and late 2019?

A Yes.

Q Okay.

THE COURT: Thank you, Mr. Richards. Mr. Pruitt, do you have anything you want to ask Mr. Jackson?

MR. PRUITT: Yes.

DIRECT EXAMINATION

BY MR. PRUITT:

Q Prior to you receiving Mr. Richards's PREAs and grievances, did you, did you let the C.O.s know that you had, you had them documents?

A Yes, I did.

Q What did they do when you let them know you got the documents? Did they come and (unintelligible) that? What happened?

A No, they didn't.

[Page 131]

Q So what did you, how did you get the documents back to Mr. Richards?

MR. SOROS: Objection, leading.

THE COURT: Well, he asked him how did he get the documents back. Really assumes facts not in evidence. You can ask him what he did with the documents. Go ahead, Mr. Jackson. What did you do with the documents?

THE WITNESS: When I came over here to the hole November 4th, last year, yes, yes, on November 4th of last year I was brought over here and I had end up being next to prisoner Richards and I was talking, and then I told him I had his grievance and I gave it to him. That's how he received it.

THE COURT: Anything else, Mr. Pruitt?

MR. PRUITT: No, sir.

THE COURT: Okay. Thank you. Mr. Kissee, do you have anything to ask Mr. Jackson?

MR. KISSEE: Yeah, I have two questions.

DIRECT EXAMINATION

BY MR. KISSEE:

Q First question being, being that you're in segregation if you want to file a grievance who and what process you got to go through to get a grievance so you can file one?

A Okay. Well, first you have to ask the staff, then you receive the grievance, you have to fill it out, name, date, time of the incident within the hole, (unintelligible) within a

[Page 132]

week period. Then when you're done you have to sign the bottom, you have to grab an envelope, sign it, grievance coordinator and give it to the officer or any officer or the ARUS, or the P.C. that's working.

Q All right. That kind of leads into my second question. But when you wanted to turn your mail or grievance and to get it go in the mailbox, who do you got to give it to?

A Give it to the P.C.

MR. KISSEE: All right. No further questions.

THE COURT: All right. Thank you, Mr. Kisse. All right. So over to you, Mr. Soros, you can cross on all three sets of directs.

MR. SOROS: All right. Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SOROS:

Q Mr. Jackson, you stated that you didn't give Mr. Richards the grievances back until you were in the hole with him, is that correct?

A Yes.

Q Why did you wait so long?

A Because at that time I was, at the time I was still in general population.

Q Where was Mr. Richards?

A I believe, I believe Mr. Richards at that time, I don't know. I wasn't sure. I wasn't sure I found out where he was

[Page 133]

at when I came to the hole.

Q So he wasn't in your housing unit?

A No, he wasn't.

Q So then your testimony is that RUM Perttu brought over Mr. Richards's grievances to your housing unit?

A Yes.

Q And, and what housing unit were you in at the time of the -- I'm sorry?

A Housing unit 5.

Q And that's general population?

A Yes, it is.

Q And was RUM Perttu the RUM of that housing unit?

A He was not.

Q Who was the RUM of that housing unit?

A At the time it was Miller.

Q Okay. So wouldn't that be kind of -- forget that. Let's go back to the March 19th incident. So you're in a different housing unit than Mr. Richards. You're in this general population, and RUM Perttu is not in that facility but shows up with two of Richards's grievances, correct?

A Yes, because, because --

Q Yes or no question.

A I said yes.

Q Okay. And you're able to read prisoner Richards's name on the grievances, is that correct?

[Page 134]

A Yes, it is.

Q And what is the incident date on those grievances?

A It was, it was a time, it was a date that prisoner Richards stated.

Q And what was that?

A (Unintelligible).

Q Okay. And what was the first grievance about?

A That grievance was about Perttu PREA grievance, about him being sexually harassed.

Q Exactly how was he being sexually harassed?

A (Unintelligible) during a shake down.

Q Okay. And the other grievance, how was he being harassed in that grievance?

A Now I don't remember. As of right now that being so long ago, I don't remember.

Q Okay. When RUM Perttu passed by your door holding these grievances did he stop -- and I'm just talking about the incident on the 19th -- did he actually stop at your cell door?

A Yes, he did.

Q And why did he stop at your cell door?

A Because my name was in the grievance being one of the witnesses. (Unintelligible) I was in the same unit as prisoner Richards. I end up being moved to 5-block.

Q Okay. But I thought you guys weren't in the same housing unit.

[Page 135]

A When he gave me the grievances I just got moved to 6-block. I was in 6-block with prisoner Richards. I moved to 5-block. That's when I received (unintelligible).

Q And so how long did that discussion in front of your cell door take on the 19th?

A It didn't take that long. I told him, I told him I wasn't going to rip it up. I gave it to him. (Unintelligible) do nothing like that. He told me that he was going to send me to the hole. Turned around --

Q I'm talking about the incident on the 19th. Are you telling me that he asked you on the 19th to also rip up the grievances?

A I'm answering the questions.

Q That's what I'm talking about, the incident of the 19th, not the 25th.

A Yes, yes.

Q Okay. So on the 19th he also asked you to rip up the grievances?

A Yes.

Q Okay. Did you put that in your declaration?

A Yes, I did.

Q That on the 19th he had asked you to rip up the grievances?

A Yes, I did.

Q I'm going to show you that declaration. And I want to, I want to -- I want you to point out to me exactly where you put

[Page 136]

on the 25th RUM Perttu asked you to tear up that grievance. Just give me a second while I get this set up. Okay. Can you see that on your screen?

A Yes.

Q Okay. And there's your name on this declaration. I'm going to scroll down and I'm going to go to the, try and get that -- you see the March 19th incident here? Do you see that, yes or no?

A At the top or the bottom?

Q I'm sorry, I can't hear you.

A Yes, I do.

Q Okay. And in that paragraph that starts out on March 19th, or 3/19/20, can you tell me where in there you had indicated that RUM Perttu asked you to tear up the grievances?

A (Unintelligible) prisoner Richards. (Unintelligible).

Q Right. Where does it say that he asked you to tear up the grievances?

A Doesn't say.

Q Okay. But --

A I was mistaken.

Q Okay. I appreciate that.

THE COURT: You can take down the statement.

MR. HO: I am, Judge.

THE COURT: Let me make a record on that. This is a little unusual method here. That was impeachment with a prior

[Page 137]

inconsistent date Mr. Soros was doing. He showed Mr. Jackson the prior statement. The purpose was to confront Mr. Jackson with that. That document is not admitted into evidence at this point. It was just used for the purpose of impeachment. Go ahead, Mr. Soros.

MR. SOROS: Thank you, Your Honor.

BY MR. SOROS:

Q So then let's talk about the incident on March 25th. And that's where I understand your testimony is that RUM Perttu gave you three PREA grievances from Mr. Richards and he wanted you to rip it up and flush it into the toilet. Is that correct?

A Yes.

Q So when -- did you actually have possession of the grievances?

A Yes, I did.

Q And how did you get possession of them?

A RUM Perttu (unintelligible) I asked him, he showed me for the door, I couldn't read them. The slot he handed them to me (unintelligible).

Q You're breaking up a little bit. So how did he pass the grievances to you, the food slot?

A Yes. The slot.

Q Okay. So he actually opened up the food slot?

A Yes.

[Page 138]

Q Okay. And you took possession of the grievances?

A Yes, I did.

Q Okay. And when you told Perttu that you weren't going to do this, what did you do with the grievances?

A I held on to them and then when I got to (unintelligible) in connection with prisoner Richards I gave prisoner Richards the grievances. I explained to him the incident, how it happened.

Q And, again, you couldn't give it, correct me if I'm wrong, but based on your prior testimony, you couldn't give them to Richards because the two of you were in different housing units?

A I said I got around prisoner Richards, I got around prisoner Richards in his unit. I was his neighbor. That's when I was able to give it to him.

Q Right. But what I'm saying is at the time of this March 25th incident, you were in a completely different housing unit than Richards, correct?

A Yes. Around that time I just got moved.

Q And in fact, RUM Perttu wasn't even the RUM of that housing unit you were in, correct?

A No.

Q Okay.

MR. SOROS: Thank you, Your Honor. I don't have anything further.

[Page 139]

THE COURT: Thank you, Mr. Soros. Mr. Richards, do you want to redirect?

MR. RICHARDS: Yes, please.

REDIRECT EXAMINATION

BY MR. RICHARDS:

Q Mr. Jackson, is it unusual for you to observe a RUM from another unit conducting rounds in a unit that's not necessarily assigned to them?

A No, it's not.

Q How often do you think that happens when they pick, when a RUM who is not (unintelligible) grievances from you that they are not assigned to you, how often would you say that happens?

A Fairly often.

Q These incidents that occurred, they occurred over a year ago, correct?

A Correct.

Q And you would say that your recollection of the incidents isn't necessarily pristine?

THE COURT: Mr. Richards, he has to hit some point where he doesn't remember and you haven't hit that yet. You can't do it.

MR. RICHARDS: I understand that, sir. I have nothing further.

THE COURT: Okay. Mr. Pruitt.

MR. PRUITT: Nothing further, Your Honor.

[Page 140]

THE COURT: Okay. Thank you, Mr. Pruitt. Mr. Kissee, how about you?

MR. KISSEE: No, sir.

THE COURT: Okay. That's it for Mr. Jackson. Thank you, Mr. Jackson. Who do you want to call next, Mr. Richards?

MR. RICHARDS: I would like to call Michael Cornelius.

THE COURT: Cornelius, all right. Do you know what prison he's in? Is he there at Baraga?

MR. PRUITT: Marquette.

THE COURT: That might be the Marquette person, all right. Cornelius, all right. There we go. All right. Mr. Cornelius, can you hear me?

THE WITNESS: Yes, I can hear you, sir.

THE COURT: Good afternoon. This is Judge Vermaat. I'm over in the Marquette courthouse.

THE WITNESS: How you today, Judge?

THE COURT: Good. All right. How are you?

THE WITNESS: Hanging in there, man.

THE COURT: Let me put you under oath. Please raise your right hand.

MICHAEL D. CORNELIUS, PLAINTIFF WITNESS, WAS DULY SWORN

THE COURT: Okay. There we go. Mr. Richards, over to you.

[Page 141]

DIRECT EXAMINATION

BY MR. RICHARDS:

Q Can you please state your name on record, your full name?

A Michael Duane Cornelius.

Q Your prison number?

A 528987.

Q Can you spell your last name for us, please?

A C-O-R-N-E-L-I-U-S.

Q Did you tender a formal declaration (unintelligible) regarding allegations stated in this case?

A Yes, I did.

Q Do you have a copy of that declaration?

A Yep. I don't have it with me but it's in my cell.

Q I understand. During the year of 2019, did you witness RUM Perttu destroy any grievances belonging to plaintiff Richards, PREA grievances or regular grievance forms?

A Could you repeat that? I couldn't hear you.

Q During the year of 2019 and early 2020, did you ever witness or observe RUM Perttu destroy any PREA grievance or grievance forms belonging to prisoner Richards?

A Yes, yes, I was in 4-block. On I was in I believe D., D. wing. He stopped by Mr. Richards's door. I don't know if he was playing or serious but he said some inappropriate things to Mr. Richards. He said if you don't give me a blow job I'm going to put your ass in the hole and he walked away, he walked

[Page 142]

off and he threw his paperwork in the trash. I witnessed that.

Q When you turn in a grievance form and you're in any unit is it common for you to put it in the door, stick a grievance in the door?

A Some inmates do, some inmates wait until the ARUS make rounds and say I got legal work. But some people do. And slide it through the door. And I have done it and they take it, fill it out, give you a copy and they going to the next inmate.

Q When you're in segregation do you have access to a mailbox or do you rely on staff to submit your grievance for you?

A No, when you in segregation everything has to be slid through the door. When ARUS make a round he take it out the door and he turn it in himself in the mailbox.

Q How many situations did you witness RUM Perttu snatch grievances out of prisoner Richards's door and rip them up, how many occasions would you say, estimate?

A About three, three or four.

Q Can you give me any details based on your recollection of each incident?

A Early 2019, late '19 and early 2020, then I went to the hole, I went to the hole in 2-unit in Baraga and I seen him do it like two more times on C. wing.

Q Do you have specific dates, without looking at the declaration, can you give me specific dates, exact words said,

[Page 143]

specific details without looking at the declaration based on personal knowledge?

A I mean I witnessed it. I really can't remember the exact date. I didn't write nothing down, you know, but I heard him have altercation with him a couple times. He take stuff and rip it up and throw it away. I really can't give a specific date. I wasn't writing it down or nothing.

Q If I were to show you a declaration would that help refresh your memory?

A It probably would.

THE COURT: Mr. Richards, he just said he didn't write anything down.

MR. RICHARDS: I have the declaration signed by him on court record.

THE COURT: But he said he didn't write it down.

MR. RICHARDS: Mr. Cornelius, did you enter a formal, sign a formal declaration and submit it to plaintiff Richards?

THE WITNESS: Yes, yes, yes, I did.

BY MR. RICHARDS:

Q And you signed that declaration, correct?

A Yes, I did.

Q Is that sufficient, Your Honor?

THE COURT: Well, I mean -- all right, you can go ahead and try to refresh his recollection with that document.

BY MR. RICHARDS:

[Page 144]

Q Okay. Can we get that off court file? That would be, that would be on the motion for a witness of habeas corpus attached as an exhibit. It's the first exhibit on the right.

THE COURT: I mean defense lawyers aren't going to go get you that document. They are not your paralegals here. So, I mean I'm not going to direct the defense lawyers to go gather documents on your behalf, Mr. Richards.

MR. RICHARDS: Is it possible the Court based on its own records --

THE COURT: You're the plaintiff. We are not helping you get your documents together. That's not our job.

MR. RICHARDS: Okay. Well, I don't have any means of getting the document. I can't afford to produce it (unintelligible) I do have some other questions, though.

BY MR. RICHARDS:

Q Did any of the officers ever give you prisoner Richards -- did you ever receive through the mail from another officer prisoner Richards's grievances or PREA grievances submitted through the mail, unprocessed grievance forms?

A Did I raise that?

Q No, no. Have you ever received any, any mail that was -- did any of officers ever give you unprocessed grievance forms that belonged to prisoner Richards in the mail? Have you ever received mail that belonged to prisoner Richards containing unprocessed grievance or PREA grievance forms?

[Page 145]

A Unprocessed, no no, no officer ever gave me nothing that had anything to do with Mr. Richards.

Q Okay. How often did you hear RUM Perttu threaten prisoner Richards not to file any grievances, how often would you say you heard that?

A Only about, about two or three, that's it, about two or three.

Q Okay. And you would confirm that the statement you made in your declaration that you (unintelligible) correct?

A Yes, I seen, I seen when we was in general population in unit 4 on D. wing, I seen him take it outside the door, said if you don't give me a blow job I'm going to throw this in the trash and put your ass in the hole. And he threw it in the trash and he walked off. I seen that. I was in cell 231, I was in cell 231, I remember that.

Q As a result of tendering this statement have any officers threatened to harm you or (unintelligible) against you?

A Yes. C.O. Larsen.

Q Have any of them falsified any misconducts against you?

A Yes, C.O. Larsen has but nobody else but C.O. Larsen.

MR. RICHARDS: Nothing further.

THE COURT: All right. Thank you, Mr. Richards. Mr. Pruitt, do you want to ask Mr. Cornelius anything?

MR. PRUITT: No, Your Honor.

THE COURT: All right. Thank you, Mr. Pruitt.

[Page 146]

Mr. Kissee.

MR. KISSEE: Yeah, I got one question.

DIRECT EXAMINATION

BY MR. KISSEE:

Q When you, okay, when you in the hole, who do you got to, who do you got to ask for grievance if you want to file one?

A You have to ask the counselor, the P.C., or the RUM, Mr. Perttu.

MR. KISSEE: All right. No further questions.

THE COURT: All right. Thank you, Mr. Kissee. Mr. Soros, you may cross.

CROSS-EXAMINATION

BY MR. SOROS:

Q Thank you, Your Honor. Mr. Cornelius, I understand your testimony you don't recall any of the dates, anything that happened in this matter?

A No, I don't.

Q And regarding these two or three threats, I understand you don't remember when they happened but do you remember what housing unit you were in?

A Yes, sir.

Q And what unit was that?

A General population, unit 4.

Q And was RUM Perttu the RUM of the unit at that time?

A Yes, sir. He was making his rounds.

[Page 147]

Q Was he the assigned RUM?

A Yeah, I think, for unit 4, yes, he is.

Q Okay. But you can't recall which day those happened? You didn't write anything down?

A No, I didn't write anything down. I wasn't trying to take notes or nothing.

Q Well, how is it that you were able to submit a declaration in this case if you didn't write anything down?

A I mean I remember what I seen and saw and heard, you know. That's the truth.

Q But --

A I didn't, I didn't write the date down, you know, the day.

Q Well, the declaration has dates in it. You didn't provide those dates?

A No, sir.

Q Then -- and do you know whether those dates are accurate or not?

A I believe them to be accurate because it really happened.

Q So what makes you believe those dates are accurate?

A Because I did hear the RUM Perttu say those things to him.

Q I'm asking you specifically about the date. You have specific dates listed and I want to know what makes you -- your testimony today is that you believe those are accurate. But you also admit you don't know the dates and you didn't write anything down. I want to know why you say those are accurate.

[Page 148]

A Because I witnessed the RUM do those things in unit 4 in G.P., general population.

Q But you don't recall the dates and that's what my question to you is about.

A Yes, I don't remember the date, sir. I'm not going to lie.

Q Okay. So you don't know if the dates that are listed in your declaration are accurate or not?

A That's true.

Q Okay.

MR. SOROS: Thank you, I don't have anything further.

THE COURT: All right. Redirect, Mr. Richards.

REDIRECT EXAMINATION

BY MR. RICHARDS:

Q Mr. Cornelius, did you sign the declaration?

A Yes, I did.

Q Did you read the declaration before you signed it?

A Yes, I read it. Yes, I did read it and those things really happened. RUM Perttu threaten Mr. Richards over his legal mail, say if you don't give me a blow job I'm going to put you in the hole. He walked off and

threw it in the trash. I seen that. So that's not a lie. That's the truth, honest to Gods truth.

Q Do you feel that maybe the time frame, the amount of time that has lapsed since this period has caused –

MR. SOROS: Objection, leading.

[Page 149]

A I couldn't hear.

THE COURT: That's sustained.

MR. RICHARDS: Okay.

BY MR. RICHARDS:

Q Do you have any, I mean do you have any -- all right. You signed the declaration, correct?

A Yes, I did.

Q And you read the declaration you signed?

A Yes, I did. I read really good.

Q But you can't remember the specific dates that are in that declaration?

A Not the dates but it really happened. That's the truth. He did that in 4-unit in G.P.; that really happened. He did and said those words. He did that. That's, that's all that matters. I'm not lying.

MR. RICHARDS: That's it.

THE COURT: Okay. Thank you, Mr. Richards. Mr. Pruitt, do you want to ask any additional questions? Okay. Mr. Kissee, how about you?

MR. KISSEE: No, sir.

THE COURT: Okay. That's it for Mr. Cornelius. Thank you, Mr. Cornelius. We are going to let you go.

THE WITNESS: Yes, sir.

THE COURT: And who do we have next there, Mr. Richards?

[Page 150]

MR. RICHARDS: Larry Taylor.

THE COURT: Dillon, do you have Mr. Taylor? Where is Mr. Taylor, does anybody know?

MR. RICHARDS: He's on his way.

THE COURT: Okay. He's there with you all. Let's do this next witness and then we will take a break. How does that sound? Then we are -- so you've got Taylor -- while we are waiting for him, let's see. Mr. Richards, you have on your list, you have Larry Taylor and then Cody Simmons. It looks like that was the only other people you have, is that right?

MR. RICHARDS: And Spencer, don't forget Spencer.

THE COURT: You still have Spencer, Taylor and Simmons, that's everybody on the witness list here. And then we are going to go and see if the defendant

has anything else he wants to do. All right. Mr. Taylor, is that you?

THE WITNESS: Yes, sir.

THE COURT: This is Judge Vermaat. Before I put you under oath I saw Mr. Pruitt had his hand up here.

MR. PRUITT: If I'm not mistaken I thought Simmons was the first one, right?

THE COURT: Say that one more time.

MR. PRUITT: Wasn't Mr. Simmons the first one, Simmons or Stevenson.

THE COURT: Stevenson was the first one. You got a total of six on your list, we have done three, we have got

[Page 151]

three to go. Everybody agree with that? Mr. Richards, is that right?

MR. RICHARDS: Yes, sir.

THE COURT: I think that's the case. All right. Mr. Taylor, this is Judge Vermaat. Why don't you go ahead and raise your right hand.

LARRY TAYLOR, PLAINTIFF WITNESS, WAS DULY SWORN

DIRECT EXAMINATION

BY MR. RICHARDS:

Q Mr. Larry Taylor, can you state your name on record?

A Larry Taylor.

Q Your prison number?

A 432739.

Q Did you tender a formal declaration, declaration of plaintiff Richards regarding allegations in this case?

A Yes, I did.

Q Do you have a copy of that declaration?

A No, I don't.

Q Did you notarize that document when you signed it?

A Yes, it was notarized and signed.

Q Okay. You remember what ARUS notarized it?

A I can't recall right now.

Q Okay. On April 6th of 2020, did you (unintelligible) B. wing, cell 207?

A Yes, I did.

[Page 152]

Q Did you visually witness RUM Thomas Perttu who was the residential unit manager at that time pass prisoner Richards's cell holding a stack of grievances?

A Yes, I do recall that.

Q Did you see prisoner Richards's name on the grievance forms?

A Yes, I seen it when they, when he was walking by. He was standing in front of the cell. I seen the grievance.

Q Could you read the name on the forms?

A The names on what?

Q Could you read the prisoner Richards's name on the grievance forms?

A Yes, I did see that.

Q Did you witness RUM Perttu rip up three of the grievance forms when he was passing your cell?

A Yes, I did notice it. As soon as he left, as soon as he left Richards's cell he tore up the grievances.

Q Thank you. On April 13th of 2020 did you lock in 3-unit?

A Yes, I did.

Q Can you give me the wing number and the cell number?

A I can't recall that right now. I don't have -- I don't have the information with me because they did not, they told me I was going to court and they said it was a mistake and they ended up bringing me over here so I don't, I don't have that information right in front of me.

[Page 153]

Q Would you say that (unintelligible) cell 207 as on the first statement?

MR. SOROS: Objection leading.

THE COURT: Sustained. Sustained. That's leading, sustained.

BY MR. RICHARDS:

Q When RUM Perttu was making rounds did you notice him tear up prisoner Richards's grievances on that date?

A I'm not exactly sure what the date was, but I believe so, yes. I gave -- grievances.

Q Did you see prisoner Richards's name on the document?

A Yes, I did.

Q Did the document state prisoner grievance?

A Yep, they were grievances.

Q On May 1st, 2020, did you lock in 3-unit?

A Yes, I was still in 3-unit.

MR. SOROS: I'm sorry, can I get that date again? I apologize for the interruption.

MR. RICHARDS: On May 1st of 2020.

MR. SOROS: Thank you.

MR. RICHARDS: On May 1st of 2020 did you witness RUM Perttu making a round in the early afternoon hours?

MR. SOROS: Judge, I'm going to object to this line of questioning as being irrelevant. The complaint in this case had already been filed and therefore what any subsequent, what

[Page 154]

may have happened to any subsequent grievances would be irrelevant for today's testimony.

THE COURT: Yeah, that's true. The complaint was filed on April 23rd, 2020, that's correct. Sustained.

BY MR. RICHARDS:

Q Did you ever hear RUM Perttu threaten prisoner Richards not to file any grievance, make any verbal threats or physical harm or injury towards prisoner Richards?

A Yes, I heard him several times.

Q Can you give us a couple examples of those threats verbatim, off the top of your head?

A Not off the top of my head, not verbatim.

Q Okay. But do you agree that the statement made in your declaration is true, correct?

A Yes, my declaration is true.

Q And you signed under penalty of perjury, correct?

A Yes.

Q (Unintelligible) declaration in your hands help you recollect specific details?

A Yes, they would.

Q I have a copy of the declaration. Is there a way I can admit it, magistrate?

THE COURT: Not really. The problem is --

MR. SOROS: I'm going to object.

THE COURT: Go ahead, Mr. Soros.

[Page 155]

MR. SOROS: I'm going to object because it's not a court statement so it can't be admitted. It's classic hearsay.

THE COURT: It is a hearsay statement. He is still trying to refresh Mr. Cornelius's recollection or Mr. Taylor's recollection. That's what he is trying to do.

The document itself is not admissible as substantive evidence to the court. Mr. Taylor's direct testimony and his recollection, that is admissible. So you can't refresh his recollection. The problem is he doesn't have the document in front of him, and I'm not going to direct the defense lawyers to help you with your case by putting, by retrieving that and putting it up. That's also not the Court's job.

MR. RICHARDS: I understand. I have the document in my hand right now. Can I, can I have a staff member hand it to him? He's only a few feet away.

THE COURT: If you want to do it that way, you can, and the staff member has to be able to take it back from him after he's refreshed his recollection.

MR. RICHARDS: I understand. Mr. (Unintelligible) is there a way on record you can hand this to Larry Taylor (unintelligible) thank you, sir.

MR. SOROS: If I can get a clarification, Judge, before we go any further. There are actually two declarations that were submitted by Mr. Taylor.

THE COURT: Hold on, Mr. Soros, I'm having trouble

[Page 156]

hearing you; I'm having trouble hearing you, I'm sorry.

MR. SOROS: Take the document away from him. Don't give him the document yet. Thank you.

THE COURT: So let's talk about which document this is first.

MR. RICHARDS: Number 69.

THE COURT: How can we identify that just beyond 69.

MR. SOROS: It's ECF number 69.

THE COURT: Okay. Is that only one declaration, Mr. Soros, or is that more than one?

MR. SOROS: That's one declaration. There was an earlier one. I wasn't sure what document we were talking about.

THE COURT: So do you object at this point to Mr. Taylor taking a look at that document?

MR. SOROS: Not to refresh his recollection.

THE COURT: Okay. So you can, the corrections officer there can hand him the document there and, again, this should be ECF number 69 only. Take a look at it, Mr. Taylor, tell us when you're done. Can you hand it back? There you go. All right. Go ahead, Mr. Richards.

BY MR. RICHARDS:

Q Okay. Were you able to review that document?

A Yes, I did.

Q All right. I'm waiting for them to get back over here.

[Page 157]

Okay. So on 4/13/20 –

THE COURT: The next thing you need to ask him if his recollection is refreshed at this point.

BY MR. RICHARDS:

Q Is your recollection refreshed at this point, sir?

A Yes, it is.

Q On 4/13/20, what was your response witnessing RUM Perttu destroy and tear up prisoner Richards's grievance forms, what was your response, verbatim?

A I cannot recall verbatim exactly what my response was.

Q Okay. Based on -- what do you recollect based on what you observed? What do you recollect of what (unintelligible) what memories resurface (unintelligible) of these events?

MR. SOROS: I'm going to object. The question is what he read. It's not what he recalls from the actual incident.

THE COURT: I think what Mr. Richards just asked is what do you recall, and that's a fair question. What does he recall from the incident. What do you recall from the incident, Mr. Taylor.

THE WITNESS: On the incident of him ripping up the grievances?

THE COURT: Whichever one Mr. Richards is talking about. I'm confused on which incident we are talking about.

MR. RICHARDS: Both, both are the same incident. One was on 4/6/20, the other one was on 4/13/20, but they are both

[Page 158]

the same thing, RUM Perttu doing his rounds.

THE COURT: Mr. Richards, you're not testifying right now. You're asking questions.

BY MR. RICHARDS:

Q What memories have resurfaced? What do you recall based on what you observed?

A On the day that we picked up the grievances, on the day that he picked up the grievances walking past my cell?

Q That's correct.

A He was very agitated with you personally. He was very agitated with you and he was calling you names and talking about you have nothing coming and you're just being a bitch. That's the gist of what he was saying.

Q Do you have any specifics in regards to what names he called prisoner Richards, plaintiff Richards?

MR. SOROS: Objection relevance.

THE COURT: Sustained.

BY MR. RICHARDS:

Q Okay.

MR. RICHARDS: That will be all.

THE COURT: Okay. Thank you, Mr. Richards.
Mr. Pruitt, questions for Mr. Taylor.

MR. PRUITT: Yes.

[Page 159]

DIRECT EXAMINATION

BY MR. PRUITT:

Q Just one question. Mr. Taylor, you say that RUM Perttu when the incident had occurred he was very agitated. Can you be more specific about how he was agitated, what RUM Perttu let you know that he was very agitated?

MR. SOROS: Judge, I'm going to object as to asked and answered already under Mr. Richards's direct. And the witness indicated that he couldn't give any specifics.

MR. PRUITT: Because he stopped at his door.

THE COURT: Hold on, Mr. Pruitt. You know, Mr. Soros, if he wants to say what specifically, specific thing led him to think that he was agitated he can ask that. Go ahead, Mr. Taylor.

THE WITNESS: When Mr. Perttu left the cell, well first off, I could hear him so I could hear that he was very agitated, and when he walked by he was tearing up the grievances, calling Mr. Richards names. His whole demeanor in general was one of anger and disgust.

THE COURT: Okay.

MR. PRUITT: Nothing further, Your Honor.

THE COURT: All right. Mr. Kissee, how about you?

MR. KISSEE: I have a couple questions.

[Page 160]

DIRECT EXAMINATION

BY MR. KISSEE:

Q First one, when you are in segregation and you want to file a grievance, how do you go about obtaining a grievance form to file it while in segregation?

A Most of the time when you want a grievance form you generally ask the C.O. to bring you one. In some units they are on a little bitty cart and some units you might get them from the ARUS or the P.C.

Q All right. My last question is once you hand the mail, you put your mail out the door while you in segregation, it is given to whoever grabs it, the staff member, C.O., ARUS grab it out the, do you directly observe them, can you directly observe them put, placing your mail into the mailbox?

A No, that's not possible from any cell, from any vantage point, that's not possible. You never observe them.

MR. KISSEE: No further questions.

THE COURT: All right. Thank you, Mr. Kisse. Mr. Soros, so since Mr. Richards did refresh Mr. Taylor's recollection with a document, you are entitled to have that document. Have you been able to get a copy?

MR. SOROS: Yes, Your Honor, thank you.

THE COURT: All right. You may proceed.

MR. SOROS: Thank you, Your Honor.

[Page 161]

CROSS-EXAMINATION

BY MR. SOROS:

Q Mr. Taylor, I want to I guess go in reverse order and talk about the April 13th incident. Do you recall where you locked at that time?

A I locked a few cells away from Richards. I could hear him all the time. And I could hear him and talk to him all the time.

Q And do you remember what cell in particular that you locked in?

A I believe it was 207, I believe.

Q Housing unit 3, cell 207?

A I believe so.

Q Okay. And do you remember what cell Mr. Richards locked in?

A He locked just a few cells from me. I'm not exact what cell he was in.

Q If I told you that Mr. Richards locked in a different wing of housing unit 3, would you disagree with me?

A Yes, I would.

Q Okay. Because if that was actually true, the incident you describe you could not have observed, is that correct?

A No. I -- I'm not exactly sure which unit that I was in right now. But I know that I locked right by him. I was on the same wing with him.

[Page 162]

Q Okay. And, and that's really the only way you could have witnessed all of that happening, is that correct?

A Yes.

Q I'm sorry?

A Yes, yes, sir.

Q Okay. So when sticking with the April 13th incident when he tore up the grievances, did you actually see the grievances or was it because you saw that there was paperwork at Richards's door that led you to believe that they were grievances?

A No, I could see that they were grievances.

Q Okay.

A Puts out a lot of grievances. He usually puts them on the top of his cell. But I could see they were grievances and I heard him talking with Perttu.

Q And do you recall what that conversation was about?

A That conversation was about a lot of, it was about a lot of issues. It was about him, the way that he treated Mr. Richards, what he would say to Mr. Richards. It was like you just can't come by and you can't say crazy stuff to me. You can't say sexual stuff to me. It was along that kind of line.

Q So they weren't talking -- I guess what I was looking at I didn't know if they were discussing the mail and all the documents he was picking up, if he stated, you know, I'm

[Page 163]

picking up five grievances, just want to confirm, it wasn't anything like that?

A It wasn't like that. It was like he picks up grievances and he looks at them, he reads them, and then, you know, generally says something to you and walks away.

Q And you saw the grievances.

A I know they were grievances.

Q And how do you know they were grievances?

A Because I was talking to Richards when he was handing, putting the grievances on his thing. And I heard Perttu talk to him about the grievances themselves.

Q Okay. Do you know what the grievances were about?

A They were, they were grievances that I don't understand that they were like grievances pertaining to sexual harassment is what they were. Basically, if somebody says something to a C.O. or an ARUS or whatever, they will generally say, well, I don't care what you say, I'm going to do it anyway, you can't stop me. It was regards to the fact that you said something and that you shouldn't say something that's inappropriate, sexually inappropriate.

Q Okay. And you may have said this and I apologize if you've already testified. What happened to the grievances after he tore them up?

A I'm not exactly sure what happened to them after he tore them up. He was tearing them up as he was walking by my cell.

[Page 164]

I don't know if he just threw them away or what. He probably just threw them in the garbage.

Q I don't want you to guess. I only want to know what you know.

A All I seen was him tearing them up.

Q Okay. He was tearing something up as he walked by your cell?

A Yeah, the grievances.

Q Did he have any other documents with him at that time, any other mail?

A Yeah. He had other mail with him. He had other mail with him.

Q And were you able to read any of that mail?

A I wasn't able to read the other mail.

Q Okay. So you were only able to see Richards's –

A Those were the ones. He had the other stuff in his other hand and the grievances that he had just gotten he had in one hand. Okay. So he's holding in one hand, he has the grievances in the other, he is tearing up the grievances. But he still has the ones in his other hand.

Q Okay. And, and did he stop at your door or did he just --

A He didn't stop at my door.

Q Were you able to read anything of the documents he was tearing up as he walked by your door?

A No, I wasn't.

[Page 165]

Q Okay. What about the grievances that you observed him tearing up on April 6th, I think your testimony

was there were three grievances there. Were you able to read any of those grievances?

A I wasn't able to read them.

Q Again, tell me how you knew those were Richards's grievances.

A Because Richards puts them on his door. He grabbed the grievances from him, was looking at the grievances and I could see him looking at the grievances and talking to Mr. Richards then walking by my cell. That's how I knew they were the grievances that Mr. Richards had gave him.

Q So the two events were, sounds pretty much like it was the same situation or the same scenario?

A It was the same scenario basically, yes.

Q Okay.

MR. SOROS: All right, thank you, Your Honor. I have nothing further.

THE COURT: Okay. Redirect. Again redirect is really focusing on the subjects of the cross. Go ahead. It's not kind of a chance to redo all direct. Go ahead, Mr. Richards, redirect.

REDIRECT EXAMINATION

BY MR. RICHARDS:

Q Just one, just one. Mr. Taylor, when you saw those

[Page 166]

grievances did you see prisoner Richards's name on the grievance forms?

THE WITNESS: I didn't actually see them on the grievance forms, but when he took them, when he took them from your cell, I knew that those were the grievances that you had given him.

MR. RICHARDS: All right. Thanks. Nothing more.

THE COURT: Thank you, Mr. Richards. Mr. Pruitt.

MR. PRUITT: Nothing further, Your Honor.

THE COURT: Mr. Kissee.

MR. KISSEE: No, sir.

THE COURT: Okay. I'm going to bring up one point. Mr. Soros objected to questions about an incident on May 1st, 2020, because that incident did come up after the complaint in case 76 was filed. But I would just say that's not after the date of the complaint in case 194 or 122. 122 I don't know if there's -- there's actually a thwarting claim on that one too. If we are going in those other cases, 122 and 194, if we are going to use this testimony, we could but we cut out the testimony on the May 1st incident. Mr. Soros, for the purpose of making this testimony applicable to all three cases, would you mind letting Mr. Richards go into that May 1st incident?

MR. SOROS: No, Your Honor. We can, with that understanding I'm very, I'm --

THE COURT: I mean I can separate it out for purposes

[Page 167]

of case 76, but, again, if we are hoping to use all this testimony for all three cases then Mr. Richards should be able to ask about the May 1st incident.

MR. SOROS: Okay.

MR. RICHARDS: Your Honor, as a matter of fact, I'm going to concur with his original objection. I think it would be better to keep a clean record and wait until he does in the next hearing that way we can, we can just keep it separate for appeal purposes or review purposes.

THE COURT: That means we are going to have to bring Taylor back to do, to do the other cases.

MR. RICHARDS: Well, obviously we are going to have different questions regarding the other cases. There are two different incidents so there's going to be different questions and different testimony --

THE COURT: Okay. Won't do it then. Sounds good. Let's -- that's it for Mr. Taylor. You're done. And who do we have next? What's the plan here?

MR. RICHARDS: I will be calling Spencer, Cleveland Spencer.

THE COURT: Cleveland Spencer. Anybody know where he is?

MR. SOROS: Baraga.

THE COURT: Baraga, okay. Go ahead, Mr. Pruitt.

MR. PRUITT: Can I say something for Mr. Richards to

[Page 168]

be asking more clear when asking his plaintiffs to be more clear because –

THE COURT: Well, I mean you can always -- well I don't know that you can object to your co-plaintiff's questions.

MR. PRUITT: I mean it's not objecting but I'm listening to certain plaintiffs what they saying, I don't think they actually is hearing him correctly asking and he just answering questions not hearing or understanding what he asking to be specific or what he ask.

MR. RICHARDS: I'm limited on the documents I have. That's one of the reasons I'm limited on the questions. We don't have all the documents. We weren't, our preparation is not pristine. I don't have the ability to print things off court file so that really limits my ability when it comes to questioning. I have to be very general.

THE COURT: But the question is can your co-plaintiff, there is three plaintiffs in the case, can one plaintiff object to a question asked by another

plaintiff. I don't know. Never come up for me. Mr. Soros, what do you think?

MR. SOROS: I have never had that happen either. I don't know. I mean, you know, I guess I necessarily wouldn't object to that.

THE COURT: You know what, Mr. Pruitt, if you want to object to something Mr. Richards asks you may do so. And of

[Page 169]

course you're getting a chance to ask questions of the witnesses as well so you can do that yourself.

MR. PRUITT: I mean it's not necessary objecting, Your Honor, it's just -- witnesses answer certain things that I don't think they was clear on what the original question was. So --

THE COURT: But see the thing is, you know what, the witness answers. You know, you can't, if the question is -- you object to the question, you don't object to the answer. You want to object, you can't object to the answer; the answer is the answer. So, okay. I mean you can object to the answer as not responsive. That he's not answering the question that's asked of him. That's a common objection. But you can't just go hey, that's not clear enough. You just can't do that. All right.

I'm going to bring up one other point before we swear in Mr. Spencer. That is this document we have been talking about, ECF 69 or whatever. So, Mr. Richards, you don't need to start out by asking him if he,

you know, remembers signing a document. It doesn't come into evidence, it hasn't been admitted into evidence because it's hearsay. So it's not admissible for substantive evidence in this case. In the past try to use it to refresh somebody's recollection, that's fine. But the document, it doesn't matter at all until someone, until you run into a point where someone doesn't remember something.

[Page 170]

Does that make sense?

MR. RICHARDS: I understand. I just want to clarify on record that I want to keep my ducks in a row as far as my involvement.

THE COURT: You have a chronological list of questions. I understand that. So, yep. But I would just say the thing about the document doesn't, it makes no difference here until you get to the point where you're trying to refresh somebody's recollection with that document. You understand that?

MR. RICHARDS: I understand. Clarity and credibility.

THE COURT: All right. Well, so let's get Mr. Spencer sworn in. Mr. Spencer, I'm Judge Vermaat over in Marquette. Let's raise your right hand.

CLEVELAND SPENCER, PLAINTIFF WITNESS, WAS DULY SWORN

THE COURT: Okay. Would you please pull your chair up to the table. We are using the speaker that's

on that computer. So the closer you can get the better off it is for all of us. All right. That's perfect. Good job. That helps. Go ahead, Mr. Richards.

DIRECT EXAMINATION

BY MR. RICHARDS:

Q Can you state your name on record, please?

A Cleveland Spencer.

Q Prison number?

[Page 171]

A 692046.

Q Can you spell your last name, please?

A S-P-E-N-C-E-R.

Q In 2020 did you tender a formal declaration to plaintiff Richards regarding allegations in this case?

A Yes.

Q Do you have a copy of that declaration?

A No, I don't. I didn't even know I was coming to court.

Q Do you recollect the events that are pertinent to this case, that you are a declarant to?

A I can't be exact, but yeah, I know what's going on.

Q Okay. During the year of 2019, 2020, did you ever witness RUM Perttu destroy any grievances or throw out any grievances belonging to plaintiff Richards?

A Are you asking a question?

Q Do you want me to rephrase, repeat my question?

A Yes.

Q During the year of 2019 and early 2020, did you ever witness RUM Perttu destroy or throw out any grievances belonging to plaintiff Richards?

A Yes.

Q Did you ever hear RUM Perttu threaten prisoner Richards not to file any grievances?

A Not file any grievances?

Q Did you ever hear RUM Perttu threaten prisoner Richards to

[Page 172]

not file any grievances?

A I can't recall as far as all that.

Q During the years of 2019 and 2020 where you claim you saw RUM Perttu destroy or throw out grievances submitted by (unintelligible)?

A It was a lot (unintelligible) things being said during that time which is going through tearing up papers.

Q Okay. Can you give me an exact date or a time period when you saw these things occur?

A No, I can give you like, I know early morning rounds.

Q In early 2020 did you lock in the same unit as prisoner Richards?

A Yes.

Q When RUM Perttu made his rounds in early morning hours were you visibly at your door able to see RUM Perttu?

A Yes.

Q On occasions did you see RUM Perttu carry or have in his hand any grievance forms belonging to prisoner Richards? Did you observe prisoner Richards's names on those forms, how did you identify them as prisoner Richards's grievances?

MR. SOROS: Objection compound.

THE COURT: True. So, that's sustained. So, Mr. Richards, a compound question is when you're actually asking two or three questions at the same time, which you kind of did there. And so why don't you just pick one of them and

[Page 173]

ask that, okay.

MR. RICHARDS: Yes, sir.

BY MR. RICHARDS:

Q How could you identify the grievances in RUM Perttu's hand as belonging to prisoner Richards?

A I really, really just going on when he was ranting I try to pull him over, ask what was going on. Then it was just Richards, fucking Richards.

Q Did you see prisoner Richards's name on the grievances in RUM Perttu's hand?

A No, not necessarily.

Q But you heard RUM Perttu make a grievance or complaint about prisoner Richards filing grievances (unintelligible)?

A Right.

Q Can you (unintelligible) verbatim some of the things he said?

A I can't remember. Seem like he was frustrated or upset about whatever it was (unintelligible) in that moment. But I can't recollect. I got my own issues. I can't recollect word for word what he said.

Q Have you ever received any mail or any unprocessed, specifically, any unprocessed grievances belonging to prisoner Richards in the mail to your cell from an officer or anybody passing out mail?

A Not that I know of (unintelligible).

[Page 174]

THE COURT: I'm sorry, Mr. Spencer I had trouble hearing you there. Would you speak up just a little bit louder? We are all trying to speak loudly and just do the best you can, okay.

THE WITNESS: Personally not me, no.

BY MR. RICHARDS:

Q Okay. (Unintelligible) the events described in your declaration are true, correct?

A Yes.

Q I don't have available the declaration so I cannot refresh your memory as far as recall on those. So that will be it.

THE COURT: Thank you, Mr. Richards. Mr. Pruitt, would you like to ask Mr. Spencer any questions?

MR. PRUITT: No, Your Honor, no. No, sir.

THE COURT: All right. Thank you, Mr. Pruitt. Mr. Kissee, how about you?

MR. KISSEE: I just have two quick ones.

DIRECT EXAMINATION

BY MR. KISSEE:

Q Being when you are locked in a segregation unit, administrative segregation, and you want to file a

grievance, how do you go about obtaining a grievance form? I can't hear. It's a whole bunch of background noise.

A You got to holler at your officers. Officers, collect it from the officers.

[Page 175]

Q All right. When, after you fill your grievance out and whether you place in an envelope or you just stick it out the door, once you turn your grievance or mail into a C.O. officer, can you directly observe them placing your mail into the mailbox?

A No, not at all.

MR. KISSEE: No further questions.

THE COURT: All right. Thank you, Mr. Kisse. Mr. Soros, you may cross, please.

MR. SOROS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SOROS:

Q Mr. Spencer, just a few questions. I want to make sure I understand your testimony. And as I understand it, and correct me if I'm wrong, you don't remember reading any -- or you don't remember seeing prisoner Richards's name on any of the grievances that RUM Perttu was carrying, is that correct?

A I don't recall (unintelligible).

MR. SOROS: Okay. All right. Thank you, Your Honor. I have nothing further.

THE COURT: Thank you. Mr. Richards, any redirect?

MR. RICHARDS: No, sir.

THE COURT: Okay. Anything from you, Mr. Pruitt, redirect?

MR. PRUITT: No, sir.

[Page 176]

THE COURT: Mr. Kissee.

MR. KISSEE: No, sir.

THE COURT: All right. So we have one more. Simmons, I believe. All right. Thank you, Mr. Spencer. Have a good day.

THE WITNESS: You too.

THE COURT: All right. Mr. Simmons, is that you?

THE WITNESS: Yes, sir.

THE COURT: All right. This is Judge Vermaat. I'm over in Marquette. I'm going to ask you to pull your chair as close to the table as you can. And you know what prisons are like, they are loud, there's a lot of background noise, I'm just going to ask you to speak loudly when you're speaking, okay.

THE WITNESS: All right. Sounds good.

THE COURT: Please raise your right hand.

CODY IAN SIMMONS, PLAINTIFF WITNESS,
WAS DULY SWORN

THE COURT: All right. Mr. Richards, you may inquire.

MR. SOROS: Your Honor, actually before we start any examination of the witness, I would like to renew our objection that we had raised previous as far as the writ for Mr. Simmons. He didn't arrive to Baraga until, as I understand, August 11, 2021, so I don't know how he would have any information relevant to the specifics of case 76 which is from 1999 to -- or 2019 to 2020.

[Page 177]

THE COURT: Yeah. So yeah. Case 76 was filed in April of 2020, the last claim is April 21st, 2020. 122, case 122 it looks like the last incident is June 15th, 2020. And case 194 has a last incident of June 25th, 2020. So, Mr. Richards, how is it that Mr. Simmons will have anything relevant to this case if he didn't get to Baraga until August of 2020?

MR. RICHARDS: His observation of grievance process and procedure at this facility establishes a pattern of misuse and abuse of the grievance system, and I think that's relevant in the case where multiple plaintiffs are claiming that the grievance process, their grievances are not being processed. And if we can show a pattern through other inmates who also are involved with the grievance system, I think that would be relevant, not particular, not hearsay, only

particular to their grievances and not being processed while they are at the facility or what type of retaliation could be relevant to them and its relationship to.

THE COURT: Mr. Soros, what do you think about that pattern? Before you jump into this. When you're talking about personal characteristics, propensity is not admissible. That's 404(a). For example,, if you had someone, this is the example I always give, if you have somebody who robs a bank and he did it three prior times you don't put on evidence that he did it the other three times to prove he did it on the fourth time,

[Page 178]

otherwise, all of our trials would be about all the stuff somebody did before. In other words, you can't put on propensity evidence. So what Mr. Richards is saying is sort of a systemic propensity. I recognize it's separate in time by at least two months. What do you think about that?

MR. SOROS: It's not two months, it's a year and two months.

THE COURT: Oh, it's a year and two months.

MR. RICHARDS: It's the same --

MR. SOROS: Hold on, Mr. Richards. It's my turn to talk. So, first of all, we have a significant amount of time. And actually I'm looking at the allegations in the complaint by all three of the plaintiffs here. It's not that the grievance system was generally unavailable, but that RUM Perttu thwarted their efforts to access that system.

THE COURT: That's true.

MR. SOROS: So it's a much narrower question that we're dealing with here. And, therefore, that's why it makes it even more irrelevant.

THE COURT: Okay. Let me hear from Mr. Pruitt first. Mr. Pruitt, go ahead.

MR. PRUITT: If I'm not mistaken, just brought up that (unintelligible) Simmons just rode into this facility, how is that accurate to the case of him being a witness (unintelligible).

[Page 179]

THE COURT: Well, that's a good point. So, Mr. Richards, back to you on the pattern thing. It's 14 months afterwards. How are you going to tie that back to RUM Perttu thwarting, first of all, or let's say you were talking about a pattern of, at AMF of the facility intercepting grievances. How are you going to tie that back? It's a big gap in time.

MR. RICHARDS: It's not just intercepting the grievance on behalf of RUM Perttu. Don't get me wrong. One of the things in which the witness will be testifying to is his interaction with RUM Perttu thwarting his grievances as well. Even a year after the fact.

THE COURT: But that's propensity, right, that's the propensity stuff I was talking about.

MR. RICHARDS: And the failure of the facility to file those grievances also. I think on a systemic level

it demonstrates a pattern. Doesn't necessarily demonstrate personal propensity but demonstrates pattern. It also shows character evidence of RUM Perttu. And I do want to say at the very least, it's a characteristic and it's something that we can prove is a characteristic of an ongoing pattern and a personal characteristic.

THE COURT: You know, I appreciate all your arguments. You made good arguments there, Mr. Richards. I'm going to sustain the objection. You've got an appellate record. You can bring it up to the district judge or you can bring it up to

[Page 180]

the Court of Appeals if it comes to it. Just giving Mr. Simmons separateness in time here, you know, he didn't get to Baraga, it's undisputed at this point, until August of 2021, so he's not been there a few months. I don't think I'm going to allow that testimony. I think it's too remote in time to come in at this point.

So I think that's going to take care of it, Mr. Simmons, and we are not going to have you testify here today.

THE WITNESS: Okay. Have a good day, guys.

THE COURT: All right. Thank you, have a good day. Go ahead. Who else do you have here, Mr. Richards? Let's see, it's 3:00 o'clock. We have been going since 1:00 o'clock. It's actually a good time to take a break. Before we take a break, are you putting on any other witnesses or is that it?

MR. RICHARDS: That's all of our witnesses. I just wanted to know when we do our closing arguments.

THE COURT: When you're done, when you're done, and Pruitt is done, and Kissee is done I'm going to go back to the defense and they get a chance to put on a rebuttal case. So they could put on any other evidence they want to put on. And at that point I would hear, after that I would hear closing arguments. Okay.

MR. RICHARDS: Yes, sir.

THE COURT: All right. So how about ten minutes?

[Page 181]

Does that sound all right, 3:05. Let's plan on being back here at 3:15. Does that work for everybody? All right. Let's do that.

(Recess taken, Resume Proceedings)

THE COURT: All right. So let me just, we are still recording. I guess I should ask is everybody ready to get going again?

MR. RICHARDS: Yes, sir.

THE COURT: So, Mr. Richards, is that it for your witnesses at this point?

MR. RICHARDS: Are we capable of calling ourselves as witnesses?

THE COURT: You are.

MR. RICHARDS: Then I would like to call myself as a witness.

THE COURT: Okay.

MR. RICHARDS: And could you help -- how exactly do I go about --

THE COURT: I'll put you under oath and then you can make a statement. And if Mr. Soros wants to object to something you're saying, he just objects. When he does that you stop testifying. And I then rule on the objection and you keep going. You don't ask yourself questions. You just, you just testify. You tend to be kind of a fast talker so I would just say slow it down a little bit.

[Page 182]

MR. RICHARDS: Yes, sir.

THE COURT: That's what we can do. Mr. Soros, does that work for you?

MR. SOROS: Judge, that's fine. But actually, Mr. Ho is going to be responsible for the cross-examination of Mr. Richards.

THE COURT: Okay. Mr. Richards, please raise your right hand.

MR. RICHARDS: Can you see me, sir?

KYLE BRANDON RICHARDS, PLAINTIFF,
WAS DULY SWORN

THE COURT: Okay. Well, so, Mr. Richards. Go ahead I should say.

DIRECT EXAMINATION

BY MR. RICHARDS:

Q Sir, on August 19th of 2020 I submitted --

THE COURT: Mr. Richards, no. Here's the thing. You can't read. This is not, this is not reading. What you're reading is not a court statement. That is not, that's not permitted here. This is your personal knowledge. We go through this with all these other witnesses. You're testifying as to your personal knowledge. Go ahead.

MR. RICHARDS: I'm going to move this out from in front of me.

THE COURT: There you go.

MR. RICHARDS: I testified that during 2002 -- year of

[Page 183]

2019 and 2020, on multiple occasions I had submitted through my door for collection numerous PREA grievances as submitted against RUM Perttu related to incidents alleged in this complaint. I acknowledge that those grievances were thoroughly written, they were submitted, I kept a retainer copy on hand. I had placed the grievances on my door multiple times throughout the months of 2019 through 2020. Routinely they were collected. On some occasions they were destroyed. The ones that were collected were

never processed, never returned to me, never received a tracking number.

August, November, December, February, March and April of, I'm sorry, April, March of 2020, and August, September and October, November of 2019. Throughout that particular time period.

THE COURT: Okay. Is that it?

MR. RICHARDS: Am I allowed to refresh my own memory with a document or --

THE COURT: Well, you know, I mean, Mr. Richards, that is a little bit awkward. You know, it's unusual for -- this is an unusual scenario to begin with. I would say, you tell me specifically what you want to refresh your memory on. What is the specific thing? Because what I don't want is for you to read a document. That's not permitted. That's an out of court statement that you're then reading. That's not how this works. Not how this works.

[Page 184]

MR. RICHARDS: Absolutely. I just want to refer to my complaint regarding the original dates in which I submitted those grievances. That way the dates are on record. It's impossible, given there are three different cases, it's impossible for me to know offhand what exact dates I submitted those grievances.

THE COURT: Mr. Ho, do you mind if he looks at the complaint specifically for the purpose of identifying specific dates?

MR. HO: I'm okay with that.

THE COURT: Okay. So here's what you'll do, Mr. Richards, is you'll look at the complaint, you'll identify the dates, and then you're going to put the complaint back down and flip it over and you're not reading from it. Do you understand?

MR. RICHARDS: Yes, sir.

THE COURT: Okay. Go ahead. So I will ask you this one question, Mr. Richards. Is your recollection refreshed at this point?

MR. RICHARDS: Yes, sir.

THE COURT: All right. Keep going.

MR. RICHARDS: On August 20th I submitted PREA grievances through the side of my door. I put them through the side of my door and they were collected by RUM Perttu. On January 1st I submitted four PREA grievances to the side of my

[Page 185]

door. They were also collected by RUM Perttu who proceeded to rip them up and throw them out. The same events occurred on April 15th in which I submitted three additional PREA grievances to the side of my door regarding sexual harassment claims and they were again taken from my door and ripped up.

THE COURT: All right. Thank you, Mr. Richards. Cross-examination, Mr. Ho.

MR. HO: Okay.

CROSS-EXAMINATION

BY MR. HO:

Q Okay, Mr. Richards, you just stated that on August 20th, 2019, grievances were collected and destroyed, is that correct?

A That is correct. That is correct.

Q Were those, how many grievances were there on August 20th, 2019?

A Approximately four.

Q Approximately four. Were those general grievances or -- sorry. Were those just general grievances?

A No, sir, they were PREA grievances.

Q And then is it your testimony that on January 1st, 2020, there were four PREA grievances that you submitted which were, which were destroyed by Mr. Perttu?

A That is correct.

Q Is it your testimony that on April 15th, 2020, you had put three PREA grievances outside your door and those grievances

[Page 186]

were destroyed by Mr. Perttu?

A That is correct.

Q Are there -- are these only grievances that, that you're alleging to have been destroyed by Mr. Perttu?

A No. There are other grievances that other plaintiff, that other witnesses have testified to on other occasions. These are just the ones in my testimony that weren't covered by the witnesses.

Q Okay. So is it your testimony that you have submitted PREA grievances on other occasions besides these, these three you just mentioned?

A Correct.

Q Okay. And when are those, what are those dates?

A Periodic dates that I don't have specifics. Unless some of my witnesses gave specific testimony regarding the dates (unintelligible) the other occasions in which grievances were destroyed, were intercepted, or that I submitted I don't have offhand, I don't know offhand.

Q Okay. Are there any other dates besides those that have been provided by yourself or provided by the witnesses, any other dates where you have alleged, where you're claiming you have submitted these grievances, any other dates?

A The dates that are in the complaint, there are dates listed in the complaint document, verified complaint document signed by all three plaintiffs. I would like to stipulate to those in

[Page 187]

regards to any specific dates other than the ones stated in my testimony.

Q My question is besides, besides the ones that you've testified to today, and ones that the witnesses have testified to, are there any other dates where you submitted grievances which were allegedly destroyed by Mr. Perttu?

A Yes. As I stated those are listed in my complaint. I just don't recollect exactly when those dates are off-hand.

Q Isn't it true that you were on modified access status from April 14th, 2020, to July 14th, 2020?

A That is correct.

Q Okay. Isn't it true that you received a modified access status memo on April 14th, 2020?

A That is correct.

Q Isn't it true that the memo instructs you that while you're on modified access status you need to request Step I grievance forms from the grievance coordinator?

A That is correct.

Q Okay. Isn't it true that you wrote the affidavits or declarations by almost all of the non-plaintiff witnesses in this case?

A I assisted in the writing of it, that is correct.

Q Is that your handwriting in these affidavits and declarations?

A That is correct.

[Page 188]

Q Okay.

MR. HO: No further questions.

THE COURT: All right. Yes, let me ask Mr. Pruitt what he's got going. What's up, Mr. Pruitt?

MR. PRUITT: I ask Mr. Ho to turn down the base on his mic.

THE COURT: Yes. Somehow there's something wrong with your mic there, Mr. Ho. It sounds fine to me, but obviously Mr. Pruitt keeps hearing something unusual. I'll tell you, Mr. Pruitt, Mr. Ho has done cross-examination of Mr. Richards. So, I mean I don't know whose going to do the other ones or if it's going to come up. Mr. Richards, okay, Mr. Richards, do you want to make a statement in redirect?

MR. RICHARDS: No, no, sir, I do not.

THE COURT: Okay. Sounds good. So let's go to Mr. Pruitt. Mr. Pruitt, do you want to testify in your own behalf?

MR. PRUITT: Yes, yes, yes, Your Honor.

THE COURT: All right. Raise your right hand, right hand, other one.

KENNETH PRUITT, PLAINTIFF, WAS DULY SWORN

THE COURT: Okay. So, again, the ground rules here are you can tell your story and if, if Mr. Soros I think is going to do the cross here objects, you got to stop talking. I'll figure out his objection and then you can keep going,

[Page 189]

okay?

MR. PRUITT: May 20 of 2020 I do believe May 4th of 2020 I was in unit 3, 238, directly across the hallway from Mr. Richards.

MR. SOROS: Judge, I'm going to object as to the relevance. This is beyond the date that the complaint was filed.

MR. PRUITT: First filed that date.

THE COURT: The complaint was filed on April 23rd, 2020, in the first place, in case 76. So, you know, you'll get a chance, you'll be there when we do 194, I'm sorry, 122 or 194, the other one you're in, and if you want to testify you can certainly do so. The stuff from May of 2020 is not relevant. Okay.

MR. PRUITT: Okay. That's where I was about to speak on. So if it's not relevant then I'll pass then.

THE COURT: Okay. Sounds good. Mr. Kissee, how about you, do you want to testify?

MR. KISSEE: Yes, sir.

THE COURT: Okay. Please raise your right hand.

ROBERT KISSEE, PLAINTIFF, WAS DULY SWORN

THE COURT: Okay. Go ahead.

MR. KISSEE: All right. First I want to start off, there's been multiple times that I've tried to submit regular grievances and PREA grievance pertaining to this issue,

[Page 190]

pertaining to this issue but every time I would try to get a grievance they would tell me, oh, well, you got to get Perttu, get a grievance from Perttu, get a PREA from Perttu. So during, I did all the attempts, I sent kites, I sent kites to the grievance coordinator, and somehow I never hear no response from it. Which to me shows a history of coercion between the grievance coordinator, RUM Perttu and the administration at AMF.

And I'm letting it be known on record that I did everything that was in my control that I could to make sure that I try to exhaust my remedies. But due to me being in segregation, and RUM Perttu being the superior of the unit, of unit 3, all the C.O. and staff basically was oh, get it from Perttu; which he was the superior person in that unit so he was the one that was stopping everything from happening. And due to his authority over the officers, they didn't want to override him, you know.

Then, you know, before I left Baraga, came down here to Macomb, I was assaulted and I was assaulted which I was placed in the hole back in the 3-block. I was back in the 3-block but during the assault as I was being assaulted by two prisoners they stated, Perttu said held up. So that shows that his authority not over administration but staff and inmates that he may have on his payroll.

THE COURT: All right. Thank you, Mr. Kissee.

[Page 191]

Cross-examination.

MR. SOROS: Briefly, Your Honor.

CROSS-EXAMINATION

BY MR. SOROS:

Q Mr. Kissee, I've reviewed the complaint in this matter and you made some allegations regarding the grievance process, basically actually the PREA grievances also, but everything you've just testified to was never put in there. Why is that?

A Because what I was told by Mr. Ho in our last hearing was that we are -- focus on the --

MR. SOROS: That the complaint that you filed to start this action, and specifically pages 23 and 24 you have allegations about how you were thwarted or you were unable to file grievances, and you laid out some stuff about Perttu. But all the stuff you just talked about now was never in your complaint. Why didn't you put that in your complaint?

THE WITNESS: Because the complaint when it was filed it was due to the harassment and what he was doing at that moment. But then with me filing, attempting to file a grievance after that, the complaint was already submitted and assault was, taken place after it was already submitted.

BY MR. SOROS:

Q So your testimony that you gave us just now is everything after the complaint, is that what you're telling me?

A Correct.

[Page 192]

Q Okay. So it's not relevant to our case we are talking about, your ability to file the grievances before filing the complaint, this all came afterwards?

A Right. But them grievance was contained --

Q I understand. So you have two incidents in your complaint where you talk that Perttu thwarted or hurt your ability to file a grievance, and one is on 1/21/20, and you tell me that, and you state in your complaint that RUM Perttu took two PREA grievances?

A Correct.

Q Okay. And I mean when you put out a PREA grievance you put it out right away, I mean the incident happens and you put out a PREA grievance?

A I was told -- what we are told it's supposed to be within a set amount days, I think a week, somewhere around there. I'm not -- I don't got direct knowledge on how many, but the quicker the better is what I assume.

Q So what were those two PREA grievances that you filed on January 21st that you put out that you assert that RUM Perttu destroyed -- what complaint allegations were those referring to?

A Sexual harassment towards me from RUM Perttu trying to --

Q What day, what was the date of the harassment?

A I can't give the record of the exact date. I'm not going to waste your time and my time. But I can't remember the exact

[Page 193]

date.

THE COURT: Mr. Pruitt.

MR. PRUITT: I just want to -- that attorney right there that was just speaking to Mr. Kisse.

THE COURT: Yeah, if you want to object you can object. If you want to object you can object.

MR. PRUITT: I want to object.

THE COURT: What's your objection?

MR. PRUITT: I also want to ask him a question to his answer to Mr. Kissee too.

THE COURT: So you want to ask Mr. Kissee a question?

MR. PRUITT: The one that was just talking to Mr. Kissee.

THE COURT: You want to ask the lawyer the question? Well, yeah, that's not how it works. So we are taking testimony from a witness right now, and you actually don't get to question the lawyers. The lawyers aren't witnesses here in the case. Yeah. Okay. Mr. Soros, are we done?

MR. SOROS: Just one more. I would like, Mr. Kissee, you also have RUM Perttu on February 17, 2020, three PREA grievances. And again I'm trying to match these up to allegations in the complaint, and I'm wondering can you tell me what those three PREA grievances refer to or were connected to as far as allegations in your complaint?

THE WITNESS: They was connected with him basically

[Page 194]

coming to me trying to entice me to do sexual favors for him.

BY MR. SOROS:

Q And do you recall what date that happened at?

A I don't remember exact dates, sir.

Q Okay.

MR. SOROS: Thank you, Your Honor. I don't have anything further.

THE COURT: Okay. Sounds good. Mr. Kissee, do you want to say anything else?

MR. KISSEE: No, Your Honor.

THE COURT: Okay. All right. Let me just go back to the top here, Mr. Richards. Are you all done?

MR. RICHARDS: Yes, I am.

THE COURT: Mr. Pruitt, are you all done?

MR. PRUITT: Can I ask Mr. Kissee one question, though?

THE COURT: Well, tell me what question you wanted to ask him.

MR. PRUITT: He basically said that anything prior to us filing this lawsuit and these complaints there was issues going on prior to. And that would be retaliation, wouldn't it?

THE COURT: So that's a whole separate legal issue. I mean and there are some retaliation claims in the complaint. But that's really not, you know, you're not going to ask a lawyer or Mr. Kissee kind of legal interpretation questions.

[Page 195]

Okay?

MR. PRUITT: All right, all right.

THE COURT: Do you have anything else you want to put on?

MR. PRUITT: No, sir.

THE COURT: How about you, Mr. Kisse, are you done?

MR. KISSEE: Yes, Your Honor.

THE COURT: Okay. So over to you, Mr. Soros, or Mr. Ho. Do you have witnesses that you want to put on at this point?

MR. HO: Yes, I would like to call Mr. Perttu as a rebuttal witness.

THE COURT: Okay. RUM Perttu will be coming on as a rebuttal witness. RUM Perttu, please raise your right hand.

THOMAS PERTTU, DEFENDANT, WAS DULY SWORN

THE COURT: Okay. Go ahead, Mr. Ho.

DIRECT EXAMINATION

BY MR. HO:

Q All right. Mr. Perttu, can you please state your full name for the record and spell your last name?

A Thomas Perttu, P-E-R-T-T-U.

Q And how are you currently employed?

A I work for the Michigan Department of Corrections as a resident unit manager at Baraga Max.

Q And how long have you been a RUM or resident unit manager

[Page 196]

at Baraga?

A I have a couple stints at Baraga. I was here in 2007 through 2009 and then recently since December of 2018.

Q Okay. And how long have you been employed by the MDOC?

A 25 years plus.

Q Okay. And what was your previous position before becoming the RUM at Baraga?

A I was a RUM at Ojibway Correctional Facility since 2012.

Q Okay. And you were there 2012 until December of 2018 then?

A Yes.

Q Okay. Between June 19th and May 2020, did you work in any other capacities at Baraga?

A No.

Q Okay. And after May 2020 did you work in some other capacity at Baraga between May 2020 and now?

A Yes. I was acting ADW from July to January 2021.

Q Just to clarify, that's July of 2020 to January of 2021?

A Yes.

Q Okay. And ADW is short for what?

A Assistant deputy warden.

Q Okay. And what do you do as a RUM?

A I'm in charge of -- we have two RUMs here. One is in charge of general population, one is in charge of the segregation units. When I came here in December of '18 I was segregation RUM and I'm responsible for the housing units, make

[Page 197]

sure you do your rounds, inspections, make sure everything is being done, all the paperwork that the P.C.s are doing is completed on a timely manner.

Q Okay. And how many housing units are there at Baraga?

A There's 8 including a 1-level one. So there's three ad seg units and four general population units.

Q Okay. And between -- and, sorry, and you said when you were RUM at Baraga since December 2018 you had been the seg RUM the entire time?

A I was seg RUM until I took the acting ADW in July, and this January of 2020 I became the general population RUM.

Q Okay. So you're currently the general population RUM then?

A Correct.

Q So which housing units were you assigned to between June 2019 and May 2020?

A Units 1, 2 and 3.

Q And are those the, the seg housing units then?

A Yes.

Q Okay. What was your assigned shift between June 2019 and May 2020?

A 07:00 to 15:30.

Q Okay. All right. Is one of your jobs as RUM to do rounds of your assigned housing unit?

A Yes.

Q Okay. Can you tell me about the process of doing rounds?

[Page 198]

How do you do rounds?

A Well, I go into a unit and we have a wand system, guard one they call it, it's like a wand and we have a

file that you hit your button, I pick up a wand out of the unit bubble, identify it and lock, match it up to my file, it tells the wand that's me and then I take up and I go from -- did everybody freeze up -- oh, no -- but then I go up on the wings and I do my rounds; it's usually side to side; I'll do one wing and then down or up, whatever way I go and do the wing down below. In fact, I do have a wand here. This is what the wand looks like. I have a fob on my key and every person has one of these and you match it up like this; that tells it it's me. So when I hit the button -- every door has another one of these, not the fob but just this little button mounted on the door, so when I hit it it tells me when I was at that cell.

Q So does the wand then keep track of where you've been when you're doing rounds?

A Yes. And every Wednesday midnight shift downloads all the wands in the facility and they are recorded on the computer.

Q Okay. Okay. And you call them buttons or sensors or buttons?

A That's what we call them, yes.

Q And where are the buttons located?

A They are on the prisoner's door.

Q On every prisoner's door?

[Page 199]

A Yes.

Q Okay. Are they located elsewhere?

A Yes. There's one inside of every unit bubble.

Q Okay. And what is the unit bubble, if you can explain that?

A Our units are set up as they are kind of like a V. shaped unit and the bubble is like in the middle of that V., at the narrowest point; it allows the officer in that bubble to see A., B. side, any -- either side up or down at any time.

Q When you say two, two wings, you're saying that, that's how the housing unit is laid out?

A Yes.

Q Okay.

A It's two sides. You have, you have a V. that goes out on the left side would be your A. wing would be in the bottom, B. wing would be on top on the opposite side, C. wing is the bottom, and D. wing is the top. Q Okay, okay. All right. Then you say that the bubble is located at the point of the V.?

A Yes.

Q And there are buttons on, at the bubble and buttons on every, every door, is that correct?

A Yes, yes.

Q Okay. Now, so how do you use the wand when you, when you do a round?

[Page 200]

A I take the wand around, I just go from cell to cell, and I'm doing inspections while I'm looking, I'm looking to see if they have got their windows covered, cell conditions, how the prisoner is doing. And I look in there and I go from side to side, back and forth down the wing. Then I get done, I go to the other wing and I do the same thing coming back up.

Q So what is your usual practice, do you start, is there a wing you always start on first?

A No. It depends if they got something going on. Pick one side and I start and I go to the other side.

Q Okay. And do you, so do you do the A. wing and then the B. wing or -- do you do the same side first or do you do the same floor first?

A I walk down the wing if I'm doing a round, see if they got anything going on. If they got a bunch of movement going down there, maybe I'll go up on the other wing first. But I'll do like the left side, A., B., or B., A., or the other side, C., D., or D., C. It depends on what's going on.

Q Okay. So you'll do one side first before completing the other side, is that correct?

A Yes. Yes.

Q Okay. Now, do you -- let's see. Now, is it your practice to use the wand every time you do rounds?

A Yes.

Q Okay. Now, do you use the wands when you go into another

[Page 201]

housing unit?

A Yes. Whenever I enter a housing unit I grab the wand and I'll use that in that unit. I don't take one from one unit to the other. Every unit has their own wands.

Q Okay. And what is the purpose of that?

A It's for accountability. So everybody has a bubble inventory that they do and that way nothing gets missed and taken to a different unit and gets lost.

Q Okay. And what is the purpose of you, of you wand-ing yourself into another unit?

A It's, that's to show that I did rounds and I've been in that unit.

Q Okay. So just kind of track where you are, right?

A Right. I'm required to do rounds so that's how they track it.

Q Okay. Okay. And to be clear, what information does the wand track?

A Just identifies the time that I am at that button when I hit that button with the wand.

Q Okay. And what is the -- what sort of, what sort of data does that, I mean does that track? Does it track time and what else?

A That's it. The cell lock is on there because every button is coded for the location. So if I went to a cell I would hit that and would give the cell number and the time was there.

[Page 202]

Q Okay. And how do you access information logged by the wand?

A Somebody would have to download it for me if I wanted to look at it because I'm not that privy. But somebody would download it; if I needed it they could print it off for me.

Q Okay. And what is, what does that downloaded information tell you?

A It tells you the unit and then it will by cell and the time, the location I was at.

Q Okay. And when you go to a unit that you're not assigned to do rounds, would you, would you use the wand and log yourself in that way?

A Yes.

Q And log yourself that way?

A Yes. Usually if I went to a unit that I'm not assigned to, I would just use the bubble, round one. Most times I'm just coming into the unit. I'm not doing rounds in the unit because it's not my area of responsibility.

Q So even if it's not your area of responsibility, would you still log yourself?

A Yes. In the unit bubble at least, yes.

Q Yes. Okay. Now, can you please tell -- we had talked about this a little bit. So about how many, how far apart are the housing units, 1, 2 and 3?

A The housing units are set up when you come inside our

[Page 203]

facility you have all the units are individual. They are separate from each other. So if you walk in a unit right away from the control center maybe 50 yards you have unit 1, then maybe another hundred yards down is unit 2 depending, because the units are kind of turned the way they're built, and down from there unit 3 is that way, that's how far apart. All the units inside are set up the same way. They have a V. shape unit with the bubble in the middle, and A. and B. side are on one side, and C. and D. are on the other side.

Q Okay.

A All the units here on level 5 are the same.

Q And just to be clear, is it your testimony that all the units are separate, in separate buildings?

A Yes.

Q Okay. Now, can you please describe how personal mail is handled in the seg housing units?

A Prisoner mail, prisoner mail, if you want to talk just regular mail, the officers pick up the regular mail or even if they have grievances or whatever, that will be placed in the unit mailbox for pickup at the end of the shift by custody staff. And that mailbox is located just as you start, or exiting or entering the door that's on the hallway coming in. When the P.C.s do rounds, rounds for doing legal rounds have to be completed by 10:00 o'clock. So they, they would do the rounds and they normally are the ones that pick up any mail.

[Page 204]

Occasionally I do help if we are short staffed for whatever reasons. But they're the ones that do the mail, and if the mail comes we go up on the wing and we do our rounds and they got mail, and we grab it and process it.

Q Okay. And, and you said you had -- you talked about the mailbox. Is there just one mailbox then in the, in the housing units?

A Yes. The segregation units have one mailbox. The prisoners don't have access to put mail in the box in segregation. In G.P. they have an access to put it in the mailbox or P.C. counselor box if they need something that P.C. should look at.

Q Okay. And, and is it one of your general -- your assigned duties to pick up prisoner mail?

A Could you repeat that?

Q Is it, is it one of your, your duties to pick up prisoner mail?

A Yes. Like I said, I don't normally pick it up. The P.C.s will do the rounds. Like I said, if they're short staffed, I will assist and help them pick up rounds. Because we have to have them done by 10:00 o'clock in segregation.

Q Okay. And that is, is that 10:00 a.m., just to be clear?

A Yes, 10:00 a.m. is the deadline it has to be completed by.

Q Okay. All right. Can you, can you please kind of describe the process -- how you would pick up prisoner mail if you have

[Page 205]

to on a certain day?

A If I grab mail I'll pick it up and I'll just grab this, I have a piece of paper here. Let's say these are whatever, mail or whatever, if they got an envelope going out, I'll fold it up and put the envelope in there. And any other mail I get I fold it up like this, and the reason I do that because when I started was personal mail had the addresses on it. I don't want the prisoner seeing that, so I just got into the habit of always folding my mail and carrying it like this so nobody can see what it is. Because I didn't want personal information to get to another prisoner. Once I got -- once we get -- we do our rounds, I'll do one side or the other, A., C, I mean A., B. or C., D, when I get done with that side, I go back to the office and I separate what I have, whether it's disbursements, personal mail, grievances, kites that are going to somebody like the

grievances and kites incident I will put in the unit mailbox to be picked up at the end of the day. The reason we do that, because if we go from one unit to another sometimes we end up with a lot of mail and if we have to carry all this extra stuff, it just adds up at the end of the day.

Q Okay. So you would go through the mail and kind of sort through the mail. You said where would that take place?

A In the P.C. office in the back.

Q In the P.C. office. In the back, is that near where the V. is?

[Page 206]

A Yes, it would be behind the V. basically.

Q Okay.

A And then once I got done with that, if I did one side, then I would go to the other side and start fresh on that side with nothing.

Q Okay. So, so after you sort the mail then, what would you do with that?

A Oh, the disbursements and stuff like that that needed to be signed would be left in the P.C. office and the mail could just be regular mail, the same what the officers could pick up I put in the mailbox.

Q Okay. Do you ever carry mail from one housing unit to another?

A No. Well, if we are going it would go in the bag. Normally I give it to the P.C.s because they have a bag so there is usually a P.C. that's doing rounds with me if I'm helping out so --

Q Okay.

A But they would have it in their bag and they would take it, they go unit to unit and bring it all up-front at the end of their day or before 2:00 o'clock.

Q So the P.C.s do that?

A Yes.

Q Okay. And so, so do you ever do mail pickup by yourself or is it usually with somebody else?

[Page 207]

A It's usually with somebody else. There is very few occasions where I would do legal mail or pick up mail in the unit by myself.

Q Okay. Okay. Now, are the housing unit mailboxes locked?

A Yes.

Q Do you have a key to that mailbox?

A No, I don't have a key. The afternoon shift would come around in the evening and get the key from up front and that's the only one that has a key for it. It's up in the front entranceway.

Q The front entrance, you mean by the admin building?

A The administration building, yes.

Q Okay, okay. And what, okay, so let's see. Now, to be clear, who picks up the mail from the housing unit mailboxes, you said it was the --

A It would be a custody staff on afternoon shift.

Q Okay. And what do they do with the mail at that point?

A Come down with the cart and they grab the mail and put it in the bag and it's identified by the unit they picked up, then they put them all in a cart, wheel them around and bring them back up front to the administration building and lock it between the doors by the mail room.

Q Okay. Where is the mail room?

A Mail room is in the administration building.

Q And where is that?

[Page 208]

A It's up-front when you first come in. We have -- that's our administration building when you first come into the facility and there is gates you go through to get inside the facility to where the units are.

Q Who are allowed to be inside the mail room?

A As far as staff?

Q Yeah, or among the staff, who are allowed to be --

A You got your mail room clerk. During the day while the mail room staff are there, you know, other staff can go in there to access their mailboxes from the back side.

Q Okay. But if you are -- if you're not mail room staff do you have access to the mail room?

A No.

Q Okay.

A No. That's a separate key altogether. We don't have access to it.

Q And you don't have access to that key, do you?

A No.

Q Backtrack just very quickly. When you pick up the mail from, let's say as you're doing, if you're picking up the mail on a round or while you're doing rounds, do you, would you carry mail from one housing unit to another if you're just picking up the mail?

A No, I wouldn't. I would give it to the P.C. We would have mail, regular mail and kites disbursement, stuff like that

[Page 209]

would get carried from one unit to another, but we separate the grievances. Kites go into somebody else,

we put them in the unit mailbox to go up-front when the mail is picked up.

Q But you wouldn't walk with mail from one unit to another just, you wouldn't just carry that out in the open, would you?

A No.

Q Okay. Do you mix mail from one wing to another, with another wing of the same housing unit?

A No. When I do a side on -- if it was up or down I would go unit -- if it was up or down I would go up, down one wing or up the stairs to do the wing on that one side. Then I would bring whatever I had back to the P.C. office and sort it out.

Q Okay.

A And then, then go to the other side.

Q Okay. So you do one side of one wing first, sort it, and then do the other side?

A Right.

Q And sort it. Now, talk a little bit about segregation prisoners.

A When a prisoner is in segregation permitted to leave their cells -- they are not permitted by themselves. If they come out of their cell they are escorted by a custody staff.

Q Okay. All right. Do they, and how often does that happen?

A Well, they get escorted to go out the yard in the seg cages in between the V.s out in the back, showers, able to use the

[Page 210]

phone, or see the psych, or be interviewed by somebody, or court or like that.

Q Okay. Now, when a prisoner leaves, when a prisoner in seg leaves a cell to shower, go to the yard or there was a callout, is he allowed to walk through other housing units?

A No. Like I said, each unit is separate from each other.

Q Okay. Now, if a prisoner in seg leaves his cell to do one of the things we talked about, is he allowed to walk through the other wing of his housing unit?

A No. If they are -- first of all, if they comes out of segregation he is going to be escorted by staff.

Q Okay.

A So the only time he would be on the other wing, let's say we had a problem in the shower or we had extra showers that were done on the bottom and they had to finish up another wing, they may take a prisoner from one wing to another just to do that shower. But he is escorted by staff and locked into the shower.

Q Okay. All right. Now I'm going to walk through some of the allegations that were made against you by some of the witnesses. Okay?

A Okay.

Q And so, so I am going to give you some -- I'm just going to go kind of go in order of what the witnesses have said and I'm going to ask you if you, you know -- I'm going to ask you

[Page 211]

about each incident separately. Okay. All right. So witness Stevenson testified that on March 20th, 2020, he observed you in unit 2 rip up and throw grievances in the hallway trash bin. Do you remember that testimony?

A Yes.

Q Something to that effect. Okay. Is there a hallway trash bin?

A There's a trash can at the end of every hallway; it's against the wall.

Q And then at the end of every hallway, is it at the center tip of the V. or is it the end tip of the V.?

A It would be at the beginning of the wing if you went up the stairs from the bubble.

Q Okay. Okay.

A It wouldn't be at the end of the wing, it's at the beginning of the wing.

Q Beginning of the wing. Okay. I see. Now, do you -- now do you have a way to figure out where a prisoner locked at any given time?

A Yes, we do have access to having where a prisoner locked.

Q Okay. And what can you, what can you tell me about where prisoner Stevenson was locked on March 20th and where Mr. Richards was locked on that day, March 20th, 2020?

A Did you say prisoner Stevens?

Q Stevenson, yes.

[Page 212]

A Yes, he locked in unit 1 and prisoner Richards locked in unit 3.

Q So they were locked in different units at the time?

A Yes.

Q Okay. All right. And on March 25th it is alleged that you were making, making rounds in unit 2 and ripping up grievances authored by Richards and throwing them in the trash. Now can you tell me where Stevenson and Richards, which unit they were locked in at that time?

A Prisoner Stevenson locked in unit 2 at that time and prisoner Richards locked in unit 3.

Q Okay. Now, on or around April 12th Mr. Cornelius, moving on to Mr. Cornelius now, it is alleged that he saw you at Richards's door where you ripped up some grievances and stated that you were going to throw them in the trash. Do you remember that testimony?

A Yes.

Q Okay. Can you -- can you tell me where Mr. Cornelius and Mr. Richards locked between April and, April 12th of 2020 and May 20th of 2020?

A I believe Mr. Cornelius even said he locked in unit 4 and Richards locked in unit 3.

Q Okay. Okay. And so, so they were in separate units during that, during those dates, is that correct? A Correct.

[Page 213]

Q Okay. Now, now, April 12th, 2020, I believe that is a Sunday, is that correct?

A Yes.

Q Okay. Do you work on Sundays?

A No.

Q Okay. And are you able to testify whether you did any rounds in unit 4 on, on the dates that Mr. Cornelius talked about, I believe there are May 4th, May 6th and May 20th, do you have recollection whether or not you did any rounds in unit 4 those days?

A Yes, I haven't did any rounds in unit 4. Those are general population units and I was at administrative segregation room.

Q Okay. All right. And would there have been any reason for Mr. Cornelius who is housed in unit 4 to be in the seg unit?

A On that day, no.

Q On those dates.

A Not on those dates, no.

Q Okay. All right. And there's some allegations that, from Mr. Cornelius that you, you ripped up grievances by Mr. Richards on June 1st. Did you work that day?

A What day would that have been?

Q June 1st, 2020.

A No. No. I was off on sick leave that day; I remember now.

Q Okay. All right. Now, we're going to move to Mr. Jackson, okay?

[Page 214]

A Okay.

Q All right. So between March 19, 2020, and July 25, 2020, can you tell me whether Mr. Jackson and Mr. Richards were locked in the same housing unit at any given time?

A Not that I recall. I would have to look at their lock history.

Q Okay. Is that something you have available?

A I do have their lock history here, yes.

THE COURT: Mr. Ho, that's not an exhibit.

MR. HO: It isn't an exhibit. I'm just asking him if he wanted to -- if you had a chance to review that would you be able to refresh your recollection.

THE COURT: No, no, that's not -- that's a business record. You can't refresh your memory with that. I mean it has to be something -- no.

MR. HO: Okay. Okay.

BY MR. HO:

Q Okay. So it is -- so let's see. Now, did you ever do any, did you ever do any rounds in unit 5 at any given time?

A No.

Q Okay. All right. Let me see. Okay. Now, did you -- now, if you recall did Jackson, was Jackson locked in a seg unit in April of 2020?

A I don't recall officially but I do believe he was locked in unit 2 at one point.

[Page 215]

Q At one point. But you don't remember exactly when that was?

A No.

Q Okay. Do you know when, where Mr. Pruitt was locked in April of 2020?

A I believe he was in unit 1 but I'm not sure.

Q Now, okay. Now I'm going to move on to Mr. Spencer, okay?

A Okay.

THE COURT: How much longer do you think, Mr. Ho?

MR. HO: Just a little bit more. Mr. Spencer, Mr. Taylor then I have a list of some questions. So probably another five to ten minutes.

THE COURT: Okay.

MR. HO: Okay.

BY MR. HO:

Q All right. Did you -- let's see. Do you recall whether or not Mr. Spencer locked in one of the segregation units in April of 2020?

A I believe he did not lock in my segregation unit.

Q Okay. Okay. And during that time did Mr. Richards lock in the segregation unit in 2020?

A Yes.

Q April 2020. All right. Okay. And with regards to Mr. Taylor, was Mr. Taylor locked in the segregation unit in we will call it between February and May 2020?

[Page 216]

A I believe he was in unit 3, yes. He even testified I believe he was in unit 3 on B. unit.

Q All right. And do you recall which wing Mr. Richards was in?

A He was in 229 so he would have been up on D. wing.

Q Okay. And so are B. wing and D. wing, are they opposite sides of the building?

A Yes.

Q Are they also separated by a floor?

A Yes.

Q Okay. All right. And do you recall whether or not you worked on April 6th of 2020?

A Yeah, I wasn't at work. I was on a revised work schedule because I worked the weekend just to do screening because we were doing COVID. So I would come in at night shift. Any afternoon, to scan the staff coming in to take their temperatures. So I used that time to take off the 6th.

Q Okay.

A I did not go inside at all.

Q Okay. All right.

A I was up-front in the administration building.

Q Okay. Now, on May 1st, did you work that day, May 1st, 2020, did you work that day?

A No, I believe I was off on annual leave.

Q All right. And just now Mr. Richards he had testified that

[Page 217]

there were three specific dates where you collected his grievances and destroyed them. Do you recall that?

A I don't remember exactly dates.

Q Right. And I have the dates as August 20th, 2019. Did you work that day?

A No, I was off on sick leave.

Q Okay. And I have the second day as of January 1st, 2020. Did you work that day?

A No, that was a holiday. I wasn't here.

Q Okay. All right. And on April, on April 15th, did you work that day, 2020, did you work that day?

A April 15th.

Q Yes.

A I don't think -- I don't recall.

Q Okay. You don't recall. Okay. All right. Now, did you ever destroy any grievances filed by Mr. Richards?

A No.

Q Did you ever destroy any grievances filed by Mr. Pruitt?

A No.

Q Did you ever destroy any grievances filed by Mr. Kissee?

A No.

Q Did you ever rip up any grievances filed by any of those three individuals?

A No.

Q Did you ever ask another prisoner to rip up any grievances

[Page 218]

filed by Mr. Pruitt, Mr. Richards, or Mr. Kissee?

A No.

Q Did the warden ever instruct you to destroy any grievances filed by Mr. Richards?

A No.

Q Did the warden ever instruct you to destroy any grievances filed by Mr. Pruitt or Mr. Kissee?

A No.

MR. HO: No further questions.

THE COURT: Thank you, Mr. Ho. All right. Cross-examination. Mr. Richards, you may proceed.

CROSS-EXAMINATION

BY MR. RICHARDS:

Q Yes, sir. I do have a few questions. Mr. Perttu, are you required to wand each door every time you pass through a unit or only at formal rounds?

A When I go past every, every door every time.

Q Correct. Let me repeat. Are you required to wand each door every time you pass through a unit or only upon formal rounds?

A Yes, whenever we do a round.

Q What about an informal passing through of a unit; if you are just informally passing through are you required to wand each door?

A Yes. There is no such thing as an informal round.

[Page 219]

Q So you have never passed through a hallway or through a unit without having to conduct a formal round?

A If I'm up on the wing and I go down that wing I'm using the wand.

Q Okay. And at what date was plaintiff Richards moved to unit 4?

A I don't recall what date that was.

Q Is it possible for unit staff to alter log records regarding prisoner cell locations? Let me say is it possible for them to change the log records? Let's say they want to correct something or they feel something is inaccurate, can they change computerized log records at cell locations?

A No.

Q So you're saying it's not possible to alter the logs, once it's put in the computer and logged and tracked it's set in stone?

A Yes.

Q Whose responsible for keeping track of the record of the days you work?

A HR, Human Resources.

Q Okay. Is it possible for a person or employee to alter or change those records of the days you work?

A No.

Q Have you ever been called in to work on an emergency basis, maybe a holiday or some other day in which you are not working

[Page 220]

or not designated to work, conduct a round or fill in for somebody, an emergency?

A No.

Q All right. During the year of 2019 to 2020, how many times approximately, or estimate, did prisoner Richards (unintelligible) of being sexually harassed by yourself?

A Can you repeat that?

Q During the year of 2019 and 2020 how many times approximate or estimate did prisoner Richards complain to you of being sexually harassed by you?

A None.

Q Did any of your coworkers make you aware or bring to your attention PREA reports made against you by prisoner Richards?

A You have to say that again. I didn't hear you.

Q Did any of your coworkers make you aware or bring to your attention PREA reports being made against you by prisoner Richards?

A No.

Q When you collect mail from a prisoner what is exact your procedure for turning it in and making sure it gets to the grievance coordinator?

A The mail grievances are placed in the unit mailbox to be picked up later that day by staff.

Q If a prisoner cannot afford the postage for mailing a Step III grievance, how are they supposed to submit a Step III, what

[Page 221]

is the procedure regarding that?

A They would submit it with a disbursement and legal would be approved because it is considered legal mail. And that would be given right up-front to the mail room because it has to be processed through the mail room.

Q Does a prisoner in segregation have direct access to the facility mailbox or do segregation inmates rely on staff to submit their grievances to the mailbox for them?

A You're going to have to repeat that. I did not hear you.

Q Does a prisoner in segregation have direct access to the facility mail room or does segregation inmates rely on staff to submit their grievances to the mailbox for them?

A They have to rely on staff. They don't have access to it.

Q When a grievance is submitted to staff can you explain exactly the route that grievance travels before it gets to the grievance coordinator's office?

A It's placed in the unit mailbox, picked up by a facility staff, they usually a yard or a recovery, and is brought up to the mail room. Mail room disseminates it to the grievance coordinator mailbox. And the grievance coordinator picks it up from there.

Q You would agree that once a prisoner has submitted their grievance to a staff, turned in, the prisoner has done their part in regards to trying to exhaust or remedy a grievance?

A I have no idea where you're at within the grievance

[Page 222]

process.

Q I'm just --

A Pick up a grievance we place it in the mailbox.

Q And from there forward you have no other interaction with that grievance?

A Correct. Unless it's assigned to one of us. The grievance coordinator will assign it to somebody.

Q Once an article of mail or grievance document is submitted to staff, who is legally responsible for the delivery and security of that document or mail?

A Could you repeat that again?

Q Once an article of mail or grievance, document is submitted to staff who is legally responsible for the delivery and security of that document or mail?

A Staff would place that mail into the unit mailbox for to be picked up later.

Q Who is legally responsible for the delivery and security of the grievance, document or mail?

A All staff are.

Q Okay. Once a prisoner has done his part to submit a grievance, is he, is he still responsible for the security and delivery of that grievance?

A No. Mail would be placed in the unit mailbox.

Q And that would make staff responsible for delivery and security, correct?

[Page 223]

A Yes.

Q Can your facility account for lost mail or packages by the U.S. postal office, particularly grievance forms that are mailed for Step III?

MR. HO: I'm sorry. I'm sorry. Can you please repeat that question?

BY MR. RICHARDS:

Q Can your facility account for lost mail or packages by the U.S. postal office, particularly grievances being sent to Step III. If we are sending our Step III grievances to Lansing, can your facility account for lost mail or packages by the U.S. post office including those grievances?

A No. Once the mail room processes the mail it's placed in the U.S. Postal Service picks it up at the facility and it goes from there.

Q Would you concur that administrative segregation creates a greater hardship or burden upon a prisoner seeking to pursue a grievance?

A Could you repeat that?

Q Would you concur that administrative segregation creates a hardship or burden upon a prisoner, greater hardship or burden upon a prisoner seeking to file a grievance rather than a prisoner who is in general population, that it's more difficult for a prisoner?

A No.

[Page 224]

Q Why so? Can you explain?

A General population prisoner can place it in the mailbox and it will go up front just like the rest of the mail. Segregation prisoner can have the staff member place it in the mailbox and get processed the same as it would have been if it was out in G.P.

Q But a prisoner would have to rely on the good faith of staff to deliver it, correct?

A Staff are professional and they are going to do their job.

Q All right. Do you personally oversee the regular supply of grievance forms in the housing units?

A I oversee it through the P.C.s, the prison counselors order supplies and paperwork and stuff like that.

Q Has there ever been a shortage of grievances in the year of 2019, 2020?

A Not that I'm aware of.

MR. RICHARDS: Nothing further.

THE COURT: Thank you, Mr. Richards. Mr. Pruitt.

MR. PRUITT: No, Your Honor, I don't got nothing.

THE COURT: Okay. That's fine. Mr. Kissee, how about you?

CROSS-EXAMINATION

BY MR. KISSEE:

Q Well, I got two questions. First being, being if I'm placed in segregation how do I, who do I got to speak to to

[Page 225]

obtain a grievance form so I can file a grievance?

A Any staff member.

Q All right. Next question is. Once the mail is grabbed out the door, when I'm no longer visible or proof of where it goes, is there, once visible proof, is there any chance that it could be placed in the wrong box and not the mailbox?

A No. There is only one mailbox in segregation.

Q All right. And you stated when you go to, once you go, if you go on A. and B. side with the mail, whatever mail you got you go to your office and separate it, is there anybody that can, that observes you doing this or is there a camera in your office?

A No.

MR. KISSEE: No further questions.

THE COURT: All right. Thank you, Mr. Kisse. Redirect, Mr. Ho.

MR. HO: I don't have any questions.

THE COURT: Okay. Do you have any more witnesses in rebuttal?

MR. HO: No, Your Honor.

THE COURT: Okay. That is it. Well so, it's 4:22. I would like to hear closings but I'm going to give you a few minutes because I know everybody is a little bit tired. How long do you think you need? It's Mr. Ho's motion or I don't know which lawyer is going to argue on behalf of RUM Perttu.

[Page 226]

Who is going to do the argument there, who do you think?

MR. HO: Probably me.

THE COURT: How long do you think you need for closing?

MR. HO: Argument itself?

THE COURT: Yeah, the argument itself. Five minutes?

MR. HO: Not even. But, yeah.

THE COURT: Let me just run through the plaintiffs. Mr. Richards, what do you think?

MR. RICHARDS: About five minutes.

THE COURT: Mr. Pruitt.

MR. PRUITT: About five minutes.

THE COURT: How about you, Mr. Kissee?

MR. KISSEE: Well, everyone says five minutes so I'm going to go with five minutes.

THE COURT: All right. All right. The way it works is it's Mr. Ho's motion. He'll get to argue, the plaintiffs get to respond. I'll let all three of them do it. It's going to come back to Mr. Ho to make a rebuttal. That's going to be it. We will still do a quick on the record on 122 and 194. I'm going to give you, what do you think, can we start at 4:35? It's 4:23 right now. 12 minutes from now. Will that be all right? We will be done by 5:00 o'clock. So 4:35 we will be back ready to roll at 4:35.

MR. HO: All right. Great. Thank you.

[Page 227]

(Recess taken, Resume Proceedings)

THE COURT: The recording is paused. Now we are on the record. All right. Let's just make sure I have all three of the plaintiffs. I have RUM Perttu, I have the two lawyers. Ready to go. Mr. Ho, you can proceed.

MR. HO: Okay. May it please the Court. Today we heard evidence establishing that the grievance process was available to the three plaintiffs. We heard testimony that the grievance forms were readily available and easily obtained in the housing units. And the grievance records show that Richards, Pruitt and Kissee all have pursued Step I and Step II grievances in 2019 and 2020.

Now, Richards himself, he had actually pursued grievances through Step III during this time, including grievances against Perttu. Now, the regular grievance (unintelligible) show that the plaintiff did not exhaust any relevant grievances through the three-step process.

We heard testimony from Inspector Cummings who testified that the prisoners can easily submit PREA grievances and that they can submit a PREA complaint to any staff member, and that PREA complaints, they don't have to be made on grievance forms. And the PREA records establish that Richards, Pruitt and Kissee did not file any PREA grievances at Baraga in 2019 or 2020.

[Page 228]

We also heard from the plaintiff's witnesses. And the plaintiff's witnesses admit themselves that they were at different housing units at the time when Mr. Richards, Mr. Pruitt and Mr. Kissee were housed. And some witnesses testified and they admitted that they did not see or they could not see clearly exactly what was written on these grievances that Perttu allegedly destroyed. And we heard testimony establishing that a prisoner system Mr. Richards cannot go from one housing unit to another housing unit. They cannot be, they cannot be at the housing unit that they are not assigned to.

We heard testimony from Mr. Perttu that when he did rounds he would, he would use the wand to log where he had been and that he, they never did rounds at the other housing units. And we also heard, heard testimony as to some of these specific dates. And some of the dates that the witnesses offered Mr. Perttu was not even, was not even working during those dates.

Now, Mr. Richards himself, he testified as to three dates: August 20th, 2019, January 1st, 2020, and April 15th, 2020. And Mr. Perttu he testified that on two of those dates he was not even at the facility.

Lastly, Mr. Perttu he has denied ever destroying any grievances filed by, by any of the prisoners; he has denied tearing up the grievances filed by Mr. Richards, Mr. Pruitt or Mr. Kissee.

[Page 229]

And simply, Your Honor, you should find that the plaintiffs have not carried their burden that Mr. Perttu thwarted the grievance form. Thank you.

THE COURT: Okay. So I'll just say this so we are clear on the law. This is the Alexander v. Kafsetta (phonetic). The defendant still has the burden of proving that the plaintiffs didn't thwart, but then when we have -- or didn't exhaust. But when we have a thwarting claim basically it's a burden of production; they have the burden of producing some evidence that they were thwarted in filing their grievances and then you basically, we have done this, this is the way the trials work, then the defendant has the burden of showing that actually the (unintelligible) correct. So I think the way the case has come in, it makes sense. I know they actually have a burden of proving, it's more that they were thwarted, it's more of a burden of production which you then have to rebut is basically how I see it. Do you agree with that, Mr. Ho?

MR. HO: I think that's it.

THE COURT: Okay. All right. Let's go over to Mr. Richards. Go ahead, Mr. Richards.

MR. RICHARDS: Your Honor, to keep it brief and simple. Today I sought to prove to this Court that the grievance remedies and process was not available to plaintiffs because they were thwarted from exhausting the grievance

[Page 230]

process. We ask the Court to expect that RUM Perttu deliberately impeded plaintiff from filing grievances by intercepting numerous grievances filed by plaintiffs.

I will put on the record the testimony of Taylor, Stevenson, Jackson, Cornelius and other witnesses, many of whom said they saw particularly plaintiff's names on the grievance forms; particularly some of the testimony also including that they written on the grievance forms, especially Jackson claims of sexual harassment, claims of sexual abuse. So they saw context of the grievance as well, the PREA grievance. (Unintelligible) respectfully admitted that the grievances were shoved into a cell, he was told to rip them up. That testimony was actually relevant.

Second, the grievance coordinator Hamel, PREA Investigator Cummings establish (unintelligible) or rejected them without sufficient basis. So if you look at a lot of the grievances, look at the basis for the rejection, sometimes I don't think the rejection was especially with regard to the director's office memorandum where Cummings testified that they weren't even collecting grievances at that time of the year. It wasn't even being collected.

Third, (unintelligible) according to MDOC policy (unintelligible) again taking (unintelligible) section J., subsection (unintelligible) which does not permit plaintiffs (unintelligible) claim 3 of this case was exhausted. We proved

[Page 231]

on record that claim 3 was exhausted in a timely manner.

The plaintiffs established (unintelligible) examination of witnesses who had testified that on numerous occasions witnesses saw RUM Perttu intercepting and destroyed plaintiff's submitted grievances (unintelligible) grievance coordinator.

THE COURT: Mr. Richards, so if you would either just slow down just a little bit or look up. Because you're looking down and you're speaking through a mask and you're going pretty fast and it's just hard to understand all of it. So I would just recommend either look up or slow down a little bit. It will make you a little easier to understand, okay.

MR. RICHARDS: Yes, sir.

THE COURT: Okay.

MR. RICHARDS: Plaintiffs established the authenticity of these facts through trial testimony and examination of witnesses who had testified that on numerous occasions witnesses saw RUM Perttu intercept or destroy plaintiff's submitted grievance and confirmed the grievance coordinator Hamel and PREA investigator Cummings failed to file (unintelligible) plaintiff grievances.

During the year of 2019 and 2020 plaintiff Richards testified that he alone submitted at least 46 grievances. Of these grievances submitted only,

approximately only 4 were actually properly filed by the grievance coordinator. The rest

[Page 232]

were lost (unintelligible) by facility staff.

The only question in this hearing is (unintelligible) how much effort must plaintiffs expend to exhaust remedies from being harassed, threatened or obstructed daily. Although a prisoner still required to exhaust in the face of retaliation, the U.S. Supreme Court has exhaustion can be (unintelligible) that will deter a person of ordinary (unintelligible) 541 Federal 1077, Eleventh Circuit in 2018. That's 458 Federal Third 678 from the Seventh Circuit in 2006. And last, (unintelligible) that's 495 Federal Third of the Seventh Circuit in 2007. (Unintelligible) plaintiffs are far from persons of ordinary -- as many of the plaintiffs such as Richards are (unintelligible) with mental disabilities. We were not able to (unintelligible) for the record, but we -- I can state on the record whether it's admissible or not. (Unintelligible) retaliation will have a greater impact on a person who is mentally vulnerable. And the second is the effect of administrative segregation is a form of retaliation for attempting to file grievances have an overwhelming impact.

Segregation makes it much more difficult for plaintiffs to exhaust remedies.

The Court needs to be (unintelligible) impact (unintelligible) upon mentally fragile prisoners by all means carry a heavy burden of exhaustion.

And last, the effect of diligence. The plaintiffs

[Page 233]

refer to document number 105, an opinion and order authored by Judge Hala Jarbou in this case, 20cv76. Judge Jarbou stated clearly in her response to a report and recommendation for summary judgment, if in fact RUM Perttu destroyed plaintiff's grievances in the matter that plaintiff will not be permitted to file others.

Page 2 of Document 105 or page ID 466 in this docket, Judge Jarbou cites *Napier versus Laurel County*, 636 Federal Third 218 of the Sixth Circuit at 2011 stating, "Prisoners are not required to 'utilize every conceivable channel to grieve their case.'" Judge Jarbou further states, Prisoners are not necessarily obligated to go beyond the scope of the MDOC's requirements by filing multiple grievances in order to prevent grievances -- to prevent prison officials from thwarting their efforts to exhaust remedies.

Rather, a prisoner must show that they made a single valid attempt and a single valid effort to exhaust remedies. If prison officials have to thwart that effort the prisoner has exhausted their obligation.

So I'm asking your honorable court consider Judge Jarbou's opinion in this matter in Document 105, page 2, that's page ID 466 (unintelligible).

We did our part. Our only obligation is to submit a single grievance regarding a single incident. Unless that is thwarted, unless facility staff (unintelligible) their own

[Page 234]

policy by destroying the grievance or circumventing that grievance we have met our burden. We are not required to go through other channels; we are not required to file multiple grievances; we are not required to do anything other than that occasion utilize that grievance process. Once we are obstructed there Judge Jarbou made very clearly we have met our obligation (unintelligible) there is no other requirement that utilize every single (unintelligible) possibility to grieve an issue. (Unintelligible) here in this case I believe diligence was most definitely asserted. With that I leave the Court to tender judgment.

For the record, claim 3 was exhausted and we have that stipulated by the Court.

THE COURT: Thank you, Mr. Richards. Mr. Pruitt.

MR. PRUITT: Okay. Just there was a grievance and complaints filed so, Your Honor, I just ask that just go over it yourself. Nothing else.

THE COURT: All right. Thank you, Mr. Pruitt. Mr. Kissee, anything you want to say?

MR. KISSEE: Yes, sir. I say I believe that our chance to file grievances due to coercion by C.O. and administration stopping us to file correct paperwork. We have shown multiple attempts to file our grievances. We shouldn't have to go above and beyond to submit a grievance when it is our right for protection against retaliatory behavior.

[Page 235]

RUM Perttu said once he collects the mail from one side of the unit, he goes to his office to separate the grievance and kite where there is no camera. Who says while he is in that office he don't destroy them, or the witnesses stated and said you rely on staff for your mail in and out. So if there is coercion your attempt to file the correct paperwork would be altered.

Then Thomas Hamel stated him and Perttu both worked at Ojibway prison together. So this shows a history of a pattern that history together. He also stated that in the time of this filing COVID was stopping from the correct staff. But then he switched up and says something else, which that's a whole another story. That was corrected and then he backed out.

All I have to say is I feel that we have shown, we have took on the burden to show proof of attempts and that due diligence was not met due to coercion with the C.O.s at Baraga and the administration at Baraga, and I believe that we shall be granted that we show proof of our grievance process being altered due to we was in segregation and they have control of everything that comes in and out of our cell.

THE COURT: All right. Thank you, Mr. Kisse. Mr. Ho, you get the last word. Anything else you want to say?

MR. HO: No, Your Honor, thank you.

THE COURT: Okay. All right. So we will take this under advisement. I'm not going to give you a ruling right

[Page 236]

now. I know everybody wants me to decide right this instant. But I won't do that. I will issue a report and recommendation on this subject. Everyone gets a chance to object once I'm done with that.

Let's see. That is, that takes care of 2:20cv76. What I'm going to do is not just yet, Dillon, but we will go off the record on this case, we will come back on the record in each of the other two cases, we will record where we are in terms of whether or not any of the testimony from this case, 76, can be used in 122 and 194. That's what we're going to do next. And then we will have to figure out a schedule for those other two. So, Dillon, why don't you go ahead and turn it back on and I'll call the next case.

So it is November 4th at 4:50 p.m. This is U.S. Magistrate Judge Vermaat. We are back on the record for a status conference in Richards versus Perttu, 2:20cv122. We are conducting this hearing by Zoom. Mr. Richards is here by Zoom, RUM Perttu is here as well, and the two defense lawyers are Mr. Soros, Assistant Attorney General Soros, and Assistant Attorney General Ho, Mr. Richards represents himself.

Today was scheduled to be the day for a trial or evidentiary hearing on the question of whether or not Mr. Richards exhausted his administrative remedies. We did not, we weren't able to do that because the bench trial in another related case, it's not legally related, but another

[Page 237]

similar case just took longer than expected. That other case is 2:20cv76. So the question I'm going to have for Mr. Richards and then for the attorneys is are they willing to agree that the testimony of some or all of the witnesses who testified in 2:20cv76 can be used in 2:20cv122, which would alleviate the need to call those witnesses back. That's the question. So the witnesses the defendants put on were Richard Russell from MDOC, the grievance manager and hearings administrator, Thomas Hamel who is the grievance coordinator from Baraga Max, Craig Cummings who is an inspector there and is the PREA investigator, and then the defendant also called RUM Perttu.

So let me just ask Mr. Richards first, are you agreeable to having the testimony those witnesses gave -- let me just say, Hamel, Cummings and Russell -- the testimony they gave be considered in 2:20cv122.

MR. RICHARDS: The thing is I would not object with the use but I do object to them not being present or available for questioning again because they are different incidents. Even if we did use the testimony of those witnesses for the defense, or even if we used it for the plaintiff, we still need to call everybody back. I think it would be efficient to say that we can use that testimony, but it should not preclude us being able to call them back and ask questions.

THE COURT: So I get what you're saying. The

[Page 238]

testimony they have already given is admissible but you want to have the opportunity if necessary to ask them additional questions.

MR. RICHARDS: Absolutely.

THE COURT: Mr. Ho, is that your view as well?

MR. HO: I'm amenable to do that.

THE COURT: Yeah, you know, it is significantly more efficient because you're just going to kind of build on what everybody has said on 2:20cv76. How about the other witnesses? So the other witnesses were Larry Taylor, Michael Jackson, Mr. Stevenson, Cleveland Spencer, Michael Cornelius and Cody Simmons. I didn't allow Mr. Simmons to testify. So those additional six witnesses, really five, Mr. Richards, would you want to call them and start from scratch or what would you want to do on that?

MR. RICHARDS: We can, we can call them back. I'm definitely going to need to call them back. But we can also use the testimony they gave today to really narrow down what we need to call them and question them for. That way we are not sitting here for an hour on each plaintiff, on each witness for the plaintiff. We stipulate to the facts that occurred today and then just do a quick touch up on the questions that --

THE COURT: Mr. Ho, are you all right with that?

MR. SOROS: Judge, if I can just interject. I had prepared the cross on all the witnesses. I don't think

[Page 239]

Mr. Spencer is involved in the other two cases. So I'm not sure we would even need to call him back.

THE COURT: Okay. What do you think, Mr. Richards, is that right? Is he not involved in the -- it's a slightly different time range.

MR. RICHARDS: I think, I think it can be held for relevancy. I think if you're going to attack that particular witness or try to impeach him or try to attack credibility we should do it while he is present or do it during, on the record during that hearing itself.

THE COURT: All I'm trying to do is figure out if we need to have these witnesses come in and if we can use what they have previously testified to. So --

MR. SOROS: And we are good with using their previous testimony.

THE COURT: Okay. Sounds good. And then if necessary we would have to call -- we are going to do something like this again. Hopefully it just won't take as long as what I think we are going to know end up doing. Go ahead.

MR. RICHARDS: We are still going to be calling all of our witnesses on the writ for habe (phonetic) on each case. I'm just saying we can narrow down the time frame that we, that we need for questioning. We are going to be calling all of our witnesses individually for each case.

THE COURT: Okay. All right. Well, you're entitled

[Page 240]

to do that. I'm not going to prevent you from doing that. Okay. Does that cover everything we need to say on 2:20cv122? I think it does.

MR. RICHARDS: Do we have a date scheduled?

THE COURT: No. We are going to have to work out a date. It's not going to be next week I will assure you of that. I'm not going to project. Cathy will have to figure that out.

Okay. Let's go off the record on 2:20cv122 then we will go back on the record on the other case, the next case, 194. Go ahead, Dillon, you can cut it off and turn it back on.

All right. This is U.S. Magistrate Judge Vermaat. We are on the record in Richards, Pruitt and Kissee versus RUM Perttu, RUM Niemi and Warden Taskila in case 2:20cv194. All the plaintiffs are here. RUM Perttu is here, and the attorneys for the defendants are here as well.

This was scheduled to go to trial, this case was scheduled to go to trial this afternoon, November 4th. I'll just say it's November 4th right now at 4:57 p.m. We did a bench trial on another case and that was 2:20cv76. It just went longer than we expected so we didn't get it done. So we're going to have to reschedule the bench trial on 2:20cv194.

So what I want to do is just talk a little bit about the witnesses that are needed.

So the witnesses who testified in 2:20cv76 testified

[Page 241]

on many of the same subjects that are going to come up in 2:20cv194. And so what I'm going to ask the parties is whether they are agreeable to using the prior testimony and making that part of the record in 194 and then making those witnesses available if we need to supplement that testimony. Mr. Richards, are you all right with that?

MR. RICHARDS: Yes. Yes, I'm absolutely fine with that. As long as the witnesses are available we can always, you know, catch up on their testimony and still have a chance to exam them in each case. As long as that's available to us we are satisfied.

THE COURT: Mr. Pruitt, are you okay with that?

MR. PRUITT: Yes, sir.

THE COURT: Mr. Kissee, how about you?

MR. KISSEE: Yes, sir.

THE COURT: All right. And Mr. Ho, how about you?

MR. HO: Yes, thank you.

THE COURT: All right. So date is to be determined. We will figure it out. Anything else we need to

talk about from the plaintiff's side, any of the plaintiffs? No. Okay. How about on the defense side? Long day, I appreciate it. All right.

MR. HO: Just a quick question. Do you, for the 194 case, does the plaintiff, do the plaintiffs plan on calling any of the defendants as witnesses?

[Page 242]

THE COURT: I'm sorry. Seeing Mr. Pruitt shake his head yes. So that would require -- 122 is easier because it's just Mr. Richards and RUM Perttu. That's an easier one to do. The second one, 194, this case, we are on the record in 2:20cv194, it's a little more, three defendants, three plaintiffs, so a little more effort on that one. We will get together and figure out a date that will work for everybody. Okay. Sounds good. We can go off the record. Thank you all.

MR. SOROS: Everybody have a good afternoon.

(Proceedings concluded)

[Page 243]

INDEX

Defense Witnesses:	Page
RICHARD RUSSELL	
Direct Examination by Mr. Ho	4
Cross-Examination by Mr. Richards	28
Cross-Examination by Mr. Pruitt	40

Cross-Examination by Mr. Kisse	41
Redirect Examination by Mr. Ho	42
THOMAS HAMEL	
Direct Examination by Mr. Ho	46
Cross-Examination by Mr. Richards	64
Cross-Examination by Mr. Pruitt	79
Cross-Examination by Mr. Kisse	81
CRAIG CUMMINGS	
Direct Examination by Mr. Ho	82
Cross-Examination by Mr. Richards	93
Cross-Examination by Mr. Pruitt	95
Cross-Examination by Mr. Kisse	95
DELIUN KENNON-KEYONTE STEVENSON	
Direct Examination by Mr. Richards	104
Cross-Examination by Mr. Soros	111
Direct Examination by Mr. Pruitt	118
Direct Examination by Mr. Kisse	120
Cross-Examination by Mr. Soros	121
Redirect Examination by Mr. Richards	123

[Page 244]

MICHAEL JACKSON

Direct Examination by Mr. Richards	126
Direct Examination by Mr. Pruitt	131
Direct Examination by Mr. Kissee	132
Cross-Examination by Mr. Soros	133
Redirect Examination by Mr. Richards	139

MICHAEL CORNELIUS

Direct Examination by Mr. Richards	141
Direct Examination by Mr. Kissee	146
Cross-Examination by Mr. Soros	147
Redirect Examination by Mr. Richards	149

LARRY TAYLOR

Direct Examination by Mr. Richards	151
Direct Examination by Mr. Pruitt	159
Direct Examination by Mr. Kissee	160
Cross-Examination by Mr. Soros	161
Redirect Examination by Mr. Richards	166

CLEVELAND SPENCER

Direct Examination by Mr. Richards	171
Direct Examination by Mr. Kissee	175
Cross-Examination by Mr. Soros	175

KYLE BRANDON RICHARDS

Direct Examination by Mr. Richards	182
Cross-Examination by Mr. Ho	185

[Page 245]

KENNETH PRUITT

Direct Examination by Mr. Pruitt	189
----------------------------------	-----

ROBERT KISSEE

Direct Examination by Mr. Kissee	190
Cross-Examination by Mr. Soros	191

THOMAS PERTTU

Direct Examination by Mr. Ho	195
Cross-Examination by Mr. Richards	218
Cross-Examination by Mr. Kissee	225

Defense Exhibits:	Admitted
A	16
C1	17
D1	22
E1	25
C2	56
D2	60
E2	61
B	88
C3	88
D3	89
E3	90

[Page 246]

C E R T I F I C A T E

I certify that the foregoing is a transcript from a Zoom recording of the proceedings in the above-entitled matter to the best of my ability.

/s/ Kathy J. Anderson

Kathy J. Anderson, RPR, FCRR

Grand Rapids, MI 49503