

EXPERT REPORT OF DAN PACHOLKE

*JAY F. VERMILLION, Plaintiff, v. MARK E. LEVENHAGEN, et al.,
Case No. 1:15-cv-605-RLY-TAB*

March 31, 2019

I. Introduction

I have been retained by the MacArthur Justice Center on behalf of its client, Jay Vermillion. As an expert in penology, I was asked to tour prison facilities to assess conditions of confinement and review documents regarding the practices and policies of the Indiana Department of Correction (IDOC) and the actions of IDOC employees named as defendants as they relate to this case. I was asked to assess if the Defendants complied with generally accepted practices, principles and standards, as well as IDOC policy, with regard to the management, placement, and retention of Jay Vermillion in segregation.

As described in further detail below, it is my opinion that the Defendants' conduct in this case deviated from accepted correctional practices and standards for the use of restricted housing. It is my further opinion that there was no legitimate penological justification for the Defendants to place Mr. Vermillion in segregation for an extended indeterminate period of time.

II. Methodology

1. Reviewed various documents relevant to Mr. Vermillion's experience as an inmate of IDOC. (See Attachment 4: Documents Reviewed)
2. Conducted a review of materials related to the management of segregation units.
3. On November 8, 2018, I viewed the Westville Control Unit where Mr. Vermillion was housed for over three years. That same day, I also

toured the Indiana State Prison, including the honor dorm where Mr. Vermillion had been housed prior to his placement in the WCU.

In preparing this report, I have also relied upon my thirty-five (35) years of experience and related training and education in the field of adult institutional corrections. This experience includes: Correctional Officer (2.5 years); Lieutenant (3 years); Captain (6 years); Superintendent (5 years); Director of Performance Management (4 years); eight years in administration (Deputy Director Prisons, Director Prisons, Deputy Secretary, and Secretary) in the Washington State Department of Corrections (WADOC); and work performed in over 20 states and four jurisdictions outside of the continental United States. I have also been a consultant with the National Institute of Corrections, Defense Technology Corporation and New York University and have published a number of articles related to the field.

As a Correctional Sergeant and Captain, I directly managed long-term segregation units, and as a Superintendent and Deputy Director, I led efforts to reform the system-wide use of long-term segregation in WA state, which resulted in an over 50% decrease in the number of people housed in this setting while also lowering system-wide violence for eight consecutive years. I co-authored a book and field guide on prison safety, Keeping Prisons Safe, and co-designed the WADOC CORE training program and the Correctional Officer Achievement Program (See Attachment 1-3: CV). At New York University, I was co-director of Segregation Solutions, an initiative assisting correctional agencies to reduce or

eliminate the use of segregation while also maintaining or improving safety in facilities.

III. Factual Background

1. Jay Vermillion is a 59-year-old inmate who has been in the custody of the Indiana Department of Correction (IDOC) since 1997. He currently resides at Pendleton Correctional Facility (PCF).
2. On July 12, 2009, when Mr. Vermillion resided at the Indiana State Prison (ISP), three inmates in his housing unit escaped and were later apprehended.
3. In the course of their investigation of the escape, IDOC staff interviewed a staff member who denied being involved in the escape but admitted to trafficking tobacco and alleged that he had brought in this contraband for Mr. Vermillion.
4. On July 22, 2009, Mr. Vermillion was interviewed by IDOC Internal Affairs Investigators Willard Plank, Dawn Buss, and Charles Whelan. When asked about Mr. Bates allegation that Mr. Vermillion was involved in trafficking tobacco, Mr. Vermillion declined to continue with the interview. Mr. Vermillion was then immediately placed in segregation.
5. On July 31, 2009, IDOC Internal Affairs Investigator Ralph Carrasco wrote a conduct report charging Mr. Vermillion with trafficking.
6. On August 12, 2009, Mr. Vermillion was found guilty of trafficking by Disciplinary Hearing Board Officer Bessie Leonard, who sanctioned him to

- one year in disciplinary segregation, demoted him from Credit Earning Class (CC) I to CCII, and took 30 days of earned time credit.
7. On August 12, 2009, Mr. Vermillion was transferred from ISP to Westville Correctional Facility and placed into their maximum control (segregation) unit.
 8. On September 4, 2009 and October 5, 2009, Case Manager Doug Barnes conducted Thirty Day Segregation Reviews of Mr. Vermillion which both state, "Your segregation time is still warranted and it has been determined that you should remain in segregation".
 9. On October 08, 2009, Mr. Vermillion's appeal of his disciplinary sanction and classification, having previously been denied by Superintendent Mark Levenhagen and WCU Classification Director Larry Warg, received a final denial with a modification from Final Reviewing Authority Charles Penfold. Mr. Penfold reduced Mr. Vermillion's sanction from one year to thirty days to comply with an Executive Directive issued on January 21, 2009 that limited disciplinary segregation sanctions to thirty days for Class A infractions. This Executive Order is reflective of the changes that many correctional systems have implemented in disciplinary segregation in the past few decades, as correctional professionals have become aware of the harmful impact and limited usefulness of extended periods of segregation.
 10. On October 22, 2009, Mr. Vermillion was transferred from disciplinary segregation to department wide administrative segregation, an indefinite

- change in status but not a change in housing unit. The change came about via an email exchange among Superintendent Levenhagen, Executive Director Brett Mize and others, reacting to the Penfold decision and concluding that Mr. Vermillion would “have to [be] put ... in AS [administrative segregation] somewhere.”
11. On October 22, 2009, a Classification Hearing was conducted by Case Manager Doug Barnes approving Mr. Vermillion’s placement in department wide administrative segregation “per B Mize”. In the box on the hearing report designated for the signature of offender, it states, “unable to sign”.
 12. On October 22, 2009, Mr. Vermillion, after being informed of his placement on department wide administrative segregation, appealed the decision.
 13. On October 28, 2009, Case Manager Doug Barnes conducted Mr. Vermillion’s first Administrative Segregation Review. It stated that “Department-Wide Administrative status shall remain in effect unless otherwise rescinded by the Executive Director.” Mr. Vermillion received these reviews approximately every thirty days throughout his time in administrative segregation.
 14. On November 10, 2009, Superintendent Levenhagen denied Mr. Vermillion’s appeal of his classification.
 15. On April 07, 2010, Mr. Vermillion filed a Petition for Habeas Corpus (3:10-CV-119-PPS).

16. On August 3, 2010, Final Reviewing Authority Charles Penfold remanded Mr. Vermillion's disciplinary action for a rehearing.
17. On September 07, 2010, Hearings Officer Robert Johnson found Mr. Vermillion guilty of the same trafficking violation and sanctioned him to one year in disciplinary segregation, demoted him from Credit Earning Class (CC) I to CCII, and took 30 days of earned time credit.
18. On December 08, 2010, Mr. Vermillion's appeal of his disciplinary sanction and classification, having previously been denied by Superintendent Mark Levenhagen and WCU Asst. Director of Operations David Leonard, received a denial from Final Reviewing Authority Charles Penfold. After resubmitting his appeal, Mr. Vermillion received another denial of his appeal from Mr. Penfold on February 23, 2011.
19. On March 23, 2011, Mr. Vermillion filed another Petition for Habeas Corpus (3:11-CV-123-TLS).
20. On May 5, 2011, Caseworker Sally Nowatzke completed Mr. Vermillion's annual classification review on Mr. Vermillion, overriding his level 2 security score to a level 4 and adding a note "remain 1 year clear of conduct".
21. On June 27, 2011, Mr. Penfold remanded Mr. Vermillion's disciplinary case back to the facility for a second rehearing.
22. On July 27, 2011, Mr. Vermillion received his third hearing on the trafficking charge from 2009. At the hearing, Hearing Officers B. Spencer

and Paula Antisdell found him guilty and sanctioned him to lose 60 days of earned credit time and receive a demotion to CCII.

23. On January 12, 2012, Mr. Vermillion, having already received a denial of his appeal from Superintendent Levenhagen, received a denial from Michael Barnes from IDOC's Legal Services Division.

24. On March 29, 2012, Mr. Vermillion filed his third Habeas petition (3:12-CV-150-PPS).

25. On February 18, 2013, Mr. Vermillion was transferred to Pendleton Correctional Facility.

26. On June 7, 2013, Mr. Vermillion was approved for release from department-wide administrative segregation and on September 19, 2013, he was placed back on general population.

27. On November 14, 2013, Mr. Robert Bugher from IDOC Legal Services Division remanded Mr. Vermillion's disciplinary case from 2009 back to the facility for a fourth rehearing.

28. On February 13, 2014, the disciplinary charges against Mr. Vermillion were dismissed.

Timeline

Date	Action or Document	Authorized by/Author
01/21/09	Executive Directive re Disciplinary Code	
07/12/09	Escape at ISP	
07/22/09	All escapees apprehended	
07/29/09	Vermillion interviewed by IA & subsequently placed in segregation pending investigation	

08/12/09	DHB Hearing: Guilty Sentence: 1-year disciplinary segregation, 30 days ECT, demoted to CC II Vermillion transferred from ISP to WCU disciplinary segregation	DHB Bessie Leonard WCU Case Counselor Sally Nowatzke WCU Director of Operations Gary Brennan
09/04/09	Thirty Day Segregation Review	Case Manager Doug Barnes
09/15/09	Classification Appeal Denied	Supt. Mark Levenhagen
09/16/09	Classification Appeal Denied	WCU Classification Director Larry Warg
10/05/09	Thirty Day Segregation Review	Doug Barnes
10/08/09	CAB Appeal Response: Modify sanction to 30 days to comply w/ Exec Directive	Charles Penfold
10/08/09	Transfer Authority Form: WCU (D/S) to WCU (A/S)	
10/16/09	Correspondence returning affidavits V sent to ISP stating staff would not be signing per DOC Legal	Exec Asst. Howard Morton
10/22/09	Classification Hearing: Placed on department-wide administrative segregation	Doug Barnes "Per B Mize"
10/22/09	Classification Appeal	Vermillion
10/28/09	Administrative Segregation Review (repeated every 7 then every 30 days)	Doug Barnes
11/10/09	Classification Appeal Denied	Supt. Mark Levenhagen
04/07/10	Vermillion filed Habeas Petition 3:10-CV- 119-PPS	
05/10/10	Annual Classification Review	Caseworker Patterson
08/31/10	CAB Appeal Response: Remand for Rehearing	Charles Penfold
09/07/10	DHB Rehearing (#1): Guilty Sanction: 1yr D/S, 30 days ETC, demote to CCII	DBH Chairman Robert Johnson
09/29/10	Motion re V's Habeas petition; subsequent dismissal	Linda Leonard
10/11/10	CAB Appeal Denied	WCU Asst. Director of Operations David Leonard
12/08/10	CAB Appeal Denied	Charles Penfold

02/04/11	CAB Appeal Denied	Supt. Mark Levenhagen
02/23/11	CAB Appeal Denied	Charles Penfold
03/23/11	Vermillion filed Habeas Petition 3:11-CV-123-TLS	
05/05/11	Annual Classification Review, score overridden to level 4	Caseworker Sally Nowatzke
05/31/11	Vermillion appeals classification	
06/27/11	CAB Appeal: Remand for Rehearing	Charles Penfold
07/12/11	Motion re V's Habeas petition; subsequent dismissal	Stephanie Rothenberg
07/15/11	Classification appeal denied	Asst. Supt. Of Operations
07/27/11	DHB Rehearing: Guilty Sanction: 60 days ECT taken, demoted to CC II	DHB Chairpersons B. Spencer & Paula Antisdel
09/28/11	CAB Appeal Denied	Supt. Mark Levenhagen
01/12/12	CAB Appeal Denied	Michael Barnes
03/29/12	Vermillion filed Habeas Petition 3:12-CV-150-PPS	
02/18/13	Vermillion transferred to Pendleton Correctional Facility	
09/19/13	Vermillion placed in general population	
11/14/13	CAB Appeal: Remand for Rehearing	Robert (Bob) Bugher
02/13/14	Report of Disciplinary Hearing: Case dismissed	Jennifer Rinehart
02/14/14	Trafficking charge expunged in OIS, returned 60 days ECT, reversed demotion in CC	Bob Bugher (via email)

IV. Restricted Housing: National Perspective

Over the past two decades, efforts have steadily increased to understand and mitigate the use and negative impacts of segregation. In Washington State, our acuity around this issue was initially informed by the work of Dr. David Lovell and

Dr. Lorna Rhodes from the University of Washington, beginning with a study¹ they published in 2000 examining who we were keeping in segregation. This focus on understanding and mitigating the impacts of segregation and reducing its use overall continued through the latter half of my career, a process I described in a U.S Department of Justice (US DOJ) policy paper, *More than Emptying Beds: A Systems Approach to Segregation Reform*.² Washington State was not alone in these efforts. Across the country, many states and the federal government have initiated policies to reduce the use of segregation, building on the growing recognition that long-term isolation is harmful, counterproductive, and costly.³

Nationally, mental health professionals such as Dr. Stuart Grassian and Dr. Craig Haney started writing about the psychological impacts of segregation in the late 80's, and soon after, organizations such as the American Civil Liberties Union (ACLU) and Human Rights Watch (HRW) began investigating what was happening in these units. IDOC in particular should have an institutional memory around these issues as it was challenged in court regarding its segregation practices not long after opening its first super-max facility. This federal class

¹ Lovell, D., Cloyes, K., Allen, D., Rhodes, L. 2000. Who Lives in Super-Maximum Custody? A Washington State Study. Available at

https://www.researchgate.net/publication/290958512_Who_lives_in_super-

² Pacholke, D. & Mullins S. F. 2015. Bureau of Justice Assistance. *More Than Emptying Beds: A Systems Approach to Segregation Reform*. Available at

<https://www.bja.gov/publications/MorethanEmptyingBeds.pdf>

³ Léon Digard, Elena Vanko, and Sara Sullivan. *Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems*. New York: Vera Institute of Justice ("Vera"), 2018. Pg. 5-8. Available at: <https://www.vera.org/publications/rethinking-restrictive-housing>

action, filed in 1992 by the Indiana ACLU, accused the department of unconstitutional practices including excessive use of force, use of physical restraints as a punishment, and abusive use of chemical agents. In 1994 the action was settled, but in 1997, HRW issued a report, “Cold Storage: Super-Maximum Security Confinement in Indiana,”⁴ which criticized the operations of both super-max facilities operated by IDOC and assessed how they failed to comply with human rights standards in the hope of “assist(ing) the people and government of Indiana evaluate their legality, wisdom, and impact.”⁵ This report made recommendations for segregation reform in the treatment and conditions of confinement for mentally ill inmates, lengths of stay, improvements in physical conditions at the facilities, use of “harsh and counterproductive practices,” and monitoring.⁶

Starting in 2005, with their creation of the Commission on Safety and Abuse in America’s Prisons, the Vera Institute of Justice (“Vera”) has convened correctional and criminal justice professionals to identify issues and reform practices in segregation. In 2010, they began working more intensively with specific jurisdictions, including Washington State, to analyze their data, policies and practices, offer recommendations, and identify promising practices to reduce the use of segregation. In a report issued by Vera in May 2018, examining lessons learned from their more than ten years of working on restricted housing

⁴ Human Rights Watch. Cold Storage: Super-Maximum Security Confinement in Indiana. October 1997. Available at <https://www.hrw.org/legacy/reports/1997/usind/>

⁵ *Id.* pg. 3

⁶ *Id.* pg. 7-9

reform, these researchers found that “social isolation, sensory deprivation, and enforced idleness are a toxic combination that can result in...anxiety, depression, anger, difficulties with impulse control, paranoia, visual and auditory hallucinations, cognitive disturbances, obsessive thoughts, hypersensitivity to stimuli, post-traumatic stress disorder, self-harm, suicide, and psychosis”⁷ As Mr. Levenhagen noted in his deposition, the National Institute of Corrections has been offering training on the effects of restricted housing for over a decade (he recalls attending in 2006 or 2007).⁸

More recently, the Association of State Correctional Administrators in 2013 issued Restrictive Status Housing Policy Guidelines.⁹ In 2016, the US Department of Justice also issued a set of guiding principles on the use of restrictive housing.¹⁰ In 2016, the American Correctional Association (ACA) adopted new performance-based standards¹¹ for the use of restricted housing. These standards, though not representing the most progressive or innovative national practices, do set a bar as the basic practices in which all correctional systems should be operating at minimum. The guidelines and the standards reflect what the field has accepted as best practices after several decades of research, litigation, correctional trade publication articles and discussion at

⁷ Digard, et al. Pg. 5-6.

⁸ Levenhagen deposition pg. 5 & 6.

⁹ Available at <https://www.asca.net/pdfdocs/9.pdf>

¹⁰ Available at <https://www.justice.gov/archives/dag/report-and-recommendations-concerning-use-restrictive-housing>

¹¹ The full 2016 standards are available online at www.aca.org. Select “Standards & Accreditation”, then “Standards & Committees”, and then select “Restrictive Housing Committee”.

conferences, training events, and national and regional correctional professional meetings.

V. Restricted Housing Practices: Length of Stay

In 2018, the Association of State Correctional Administrators (ASCA) and the Arthur Liman Center at Yale Law School (Liman) published a research project,¹² the fourth in a series examining nationwide data on the use of solitary confinement. Data was collected from 43 responding jurisdictions that collectively accounted for 80.6% of the U.S. prison population. Of the responding jurisdictions, 22.8% of those prisoners in restrictive housing were there for 15 days to one month; 31.6% served one to three months; 15.9% served three to 6 months; 11.1% served 6 months to a year; 9.7% served one to three years; 4.3% served three to six years; and 4.7% had been in restricted housing for six years or more. (2018 ASCA-Liman, pg. 14). In their response to the ACSA-Liman Survey, IDOC reported that during the time period surveyed, 6.6% (1,741) of its population was being held in some form of restrictive housing (pg. 12), an increase from their data in the previous report published in this series, 2016's *Aiming to Reduce Time-in-Cell*,¹³ in which they reported that 5.9% (1,621) of their

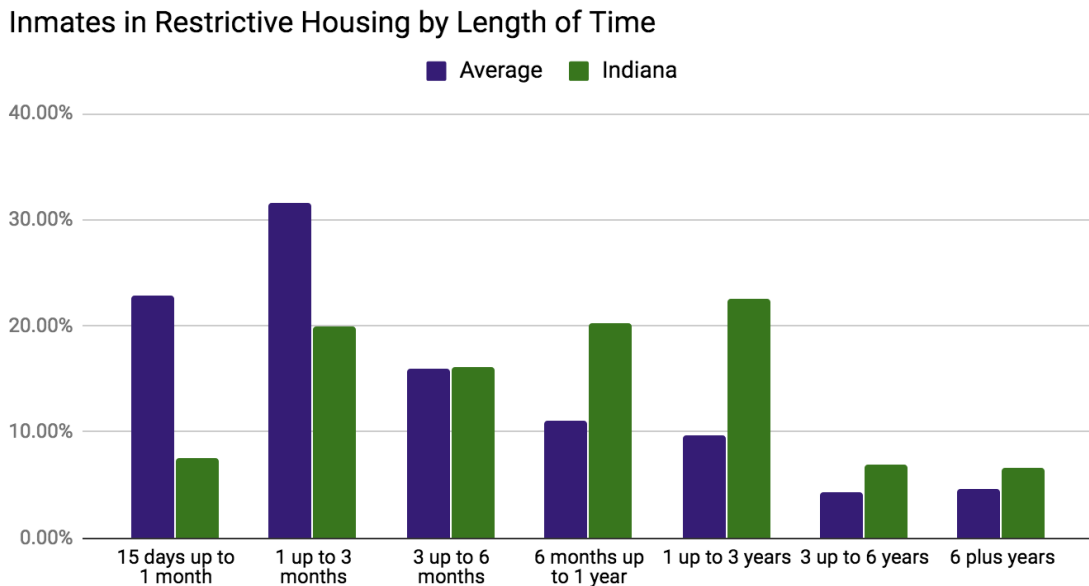
¹² Resnik, Judith and VanCleave, Anna and Bell, Kristen and Harrington, Alexandra and Conyers, Gregory and McCarthy, Catherine and Tumas, Jenny and Wang, Annie, *Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell* (October 10, 2018). Yale Law School, Public Law Research Paper No. 656.

¹³ Resnik, Judith and VanCleave, Anna and Bell, Kristen and Boykin, Olevia and Guilmette, Corey and Hudson, Tashiana and Li, Diana and Meyers, Joseph and Mirell, Hava and Albertson, Skylar and Gifford, Alison and Purcell, Jessica and Posick, Bonnie, *Aiming to Reduce Time-in-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms* (November 2016). Yale Law School, Public Law Research Paper No. 597. pg. 22.

population was in restrictive housing. For the 2018 report, IDOC communicated that of the 1,741 inmates they held in restricted housing, 7.5% served 15 days to one month; 20% served one to three months; 16.1% served three to six months; 20.3% served six to twelve months; 22.5% served one to three years; 7% served three to six years; and 6.6% served more than six years (pg. 15).

The ASCA-Liman reports are the best benchmarks the correctional industry has to understand the national practices and trends in restrictive housing length of stay. As illustrated in Chart 1, IDOC's average length of stay vary from the national trend. Specifically, IDOC has double the inmates serving 6 months to three years in restrictive housing than the national average and it uses shorter 15 day to 3 months sanctions far less than the national average.

Chart 1*



*Data from ASCA-LIMAN Restrictive Housing 2018 Report

Restricted housing practices have been evolving for several decades. IDOC's Executive Directive #09-07, issued on January 21, 2009, on which Mr. Penfold relied when he modified Mr. Vermillion's initial disciplinary sanction from six months to thirty days, reflects this national shift towards shorter lengths of stay in restricted housing. Unfortunately, as the ASCA-Liman Report data reflects, changes in policy doesn't always equate to changes in practice. Correctional staff still exercise a great deal of discretion, especially in the use of administrative segregation, which can result in abuses such as inmates remaining in segregation for extended periods with no penological purpose, despite positive changes in the formal policy.

VI. Administrative Segregation

A 2016 report on the topic released by the U.S. Department of Justice National Institute of Justice defines administrative segregation as a practice "used to separate those deemed to pose a significant threat to institutional security from the general population." It further states, "Inmates are often classified to administrative segregation or transferred to these units and facilities based on patterns of disruptive behavior, security threat group identifications, or designation as high-risk inmates."¹⁴

¹⁴ N.A. Frost & C.E. Monteiro, U.S. Department of Justice National Institute of Justice, March 2016. Administrative Segregation in U.S. Prisons. Page 5.
<https://www.ncjrs.gov/pdffiles1/nij/249749.pdf>

IDOC has two types of administrative segregation. According to their Administrative Segregation Policy # 02-01-111(V), Facility Administrative Segregation can be used for offenders “who have not been charged with a rule violation” based on “threat to self, others, property, the security and/or orderly operation of the facility presented by the offender’s continued presence in the general offender population.” The policy then provides a list of example reasons for this placement, with the caveat that administrative segregation assignment is not limited to these. The examples listed include history of escape risk, active member of a security threat group who pose a threat to the safe and orderly operation of the facility, and a documented history of behavior that causes staff to believe that that the offender’s continued presence in general population would be detrimental to the security of the facility, among others.

The policy also describes a second type of administrative segregation called Department-Wide Administrative Segregation. Appendix XVI-C of Policy # 02-01-111, Criteria/Procedure for Placement in Department-Wide Administrative Segregation Unit, offers details regarding criteria for admittance. “Offenders selected for a Department-wide administration segregation unit must have exhibited extraordinary security concerns, such as seriously injuring staff or offenders, participating in a hostage situation, identified security threat group leader, heavily involved in trafficking or have a lengthy history of serious (Class A and/or Class B) conduct violations.”

IDOC's administrative segregation policies were examined in a 2013 project of the Liman Public Interest Program at Yale Law School, which conducted a national review of correctional policies on administrative segregation.¹⁵ In reviewing these policies nationwide, they found that "most permit placement in segregation based on a wide range of rationales" and that "the elasticity suggests that administrative segregation may be used for goals other than incapacitation." In their review, some commenters noted that administrative segregation had the potential for overuse if the placement decision was based on being "mad" at rather than "scared" of an inmate. In other words, officials with broad discretion might misuse administrative segregation to retaliate against an inmate rather than using it as a tool to manage inmates who pose a legitimate threat to the security of the institution. In looking at different policy examples regarding placement, their review notes IDOC Policy #02-01-111 as an example with "few enumerated factors and general authority." Lacking clear factors necessary to make an administrative segregation placement and general authority to do so leaves a great deal of discretion to correctional administrators to use, or misuse, this classification.

When Mr. Vermillion's initial disciplinary sanction of one year in disciplinary segregation was found to be outside of an executive directive limiting this

¹⁵ H. Metcalf, J. Morgan, S. Oliner-Friedland, J. Resnik, J. Spiegel, H. Tae, A. Work, & B. Holbrook. June 2013. Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies. Available at: [https://law.yale.edu/system/files/area/center/liman/document/Liman_overview_segregation_June_25_2013_TO_POST_FINAL\(1\).pdf](https://law.yale.edu/system/files/area/center/liman/document/Liman_overview_segregation_June_25_2013_TO_POST_FINAL(1).pdf)

sanction to 30 days, IDOC administrators decided to reclassify Mr. Vermillion to department-wide administrative segregation, as discussed in an email chain on October 8, 2009. Department-wide administrative segregation (DWAS) is an indefinite placement requiring an override of his medium custody classification score. It was Charles Penfold, who served at IDOC as the Final Reviewing Authority for Adult Disciplinary Policies and Procedures in the initial years of Mr. Vermillion's placement in segregation, who modified Mr. Vermillion's initial disciplinary sanction of one year to 30 days upon appeal. In deposition, when asked why he thought Mr. Vermillion had initially received a sanction outside the allowable limits on disciplinary segregation, Mr. Penfold speculated that this was due to the escape at the facility, the "hype based on the case" and "all of the inconveniences that it cost the facility". In his words, they were trying to get "their pound of flesh."¹⁶

In assessing IDOC's placement of Mr. Vermillion in department-wide administrative segregation, nothing in the documents related to this case indicated to me that Mr. Vermillion exhibited extraordinary security concerns. In a charge that was later dropped and expunged from his record, he was initially found guilty of trafficking, for which he served a term in disciplinary segregation. He has only one infraction on his record, a Class C for insolence, vulgarity, or profanity. His disciplinary record does not justify placement in administrative

¹⁶ Penfold deposition pg. 95.

segregation at all, much less holding him there for the debilitating period of more than three years.

In the October 8, 2009 email chain, Mr. Levenhagen, the Superintendent of ISP at the time, asserts that Mr. Vermillion was the funder or “money man” who “financed the entire escape.” This assertion is not supported by the Escape Investigation Report, which documents a great deal of staff and inmate misconduct, including that of Counselor Bates, who told investigators he had trafficked in contraband (a cell phone and tobacco) with Mr. Vermillion, but does not offer concrete evidence connecting Mr. Vermillion to the escape.

When asked in deposition why he believed that Mr. Vermillion was involved in the escape, Mr. Levenhagen stated that he believes this because a large amount of cash was found in the law library where Mr. Vermillion worked and because the escapees had cash when they left the prison that it was “more than coincidence”. If this connection were strong enough to implicate Mr. Vermillion in the escape, there certainly would have been some mention of it in the investigative report. There is none. When asked if there were any other evidence that Mr. Vermillion provided cash to any of the escapees, he states that to his knowledge there is none and that he had “not heard anything more substantial than that.”¹⁷

¹⁷ Levenhagen deposition pg. 146-150.

When questioned regarding how the escape had affected him personally, Mr. Levenhagen admitted that the incident was a professional embarrassment and that he felt humiliated. He speculated that he may have been “treated a little bit more kindly” because the superintendent who preceded him, Ed Buss, was the IDOC Commissioner at the time of the escape so “it was actually more his administration more than mine.”¹⁸ Levenhagen stated that he “was instructed to take action” by either Commissioner Buss or the Commissioner’s Chief of Staff, Dan Ronray, which is why he forwarded the email chain to Executive Director Brett Mize and stated that they would “have to put him in AS [administrative segregation] somewhere.” In deposition, Brett Mize stated that he knew nothing about the outcome of the ISP escape investigation and the only information he had related to Levenhagen’s allegations against Vermillion was this email.¹⁹

This exchange suggests that the Defendants were using DWAS to retaliate against Mr. Vermillion for something they never charged him with and did not have sufficient evidence to support. In my experience, and in the IDOC’s written policies, administrative segregation should be used for inmates presenting a serious threat to the safety of employees, contract staff, volunteers or other inmates as demonstrated through a pattern of violent or seriously disruptive behavior, or for inmates with extreme protection needs. It is not meant to punish

¹⁸ Levenhagen deposition pg. 113-115.

¹⁹ Mize deposition pg. 152-153.

an inmate based on nothing more than the suspicions of embarrassed prison officials.

The dangers of misusing administrative segregation in this manner are apparent. In this case, Mr. Vermillion had no way of knowing that he was in administrative segregation for suspected involvement with the escape, because he was never notified or charged with anything related to the escape. Under those circumstances, there was no way for him to argue or prove that he was *not* involved in the escape. Instead, he was placed in disciplinary segregation based on a trafficking charge, for which he was found guilty and ultimately sentenced to 30 days, after his original sentence was reduced to conform with IDOC policy. Mr. Vermillion appealed, and the charges were finally expunged from his record after four rehearings, but regardless of the outcome of the appeal, there was never reason to hold him in segregation for more than 30 days. Nonetheless, after his disciplinary segregation sanction was reduced to 30 days, he was moved to administrative segregation status indefinitely. Once he was there, he had no possible way to contest his placement or work his way out. He was subject to the whims of IDOC officials, and they held him there for more than three years.

The fact pattern in this case is similar to fact patterns that I have seen throughout my career when reviewing administrative segregation cases. The facility suspected wrong doing, subsequently issued a violation, and when the

disciplinary sanction was complete (in Mr. Vermillion's case after being reduced on appeal), IDOC maintained him in administrative segregation status, effectively increasing the segregation sanction without regard to the evidence in the case or due process considerations. As a result, Mr. Vermillion spent more than three years in segregation, ostensibly for a trafficking charge that was ultimately dropped.

Disciplinary segregation and administrative segregation should not be interchangeable. Administrative segregation is not intended to be a punishment for a specific infraction. It should be a hold of necessity based on an inmate's current condition or status. Mr. Vermillion's placement on department-wide administrative segregation appears to be based on Mr. Levenhagen and other IDOC administrator's belief that Mr. Vermillion was involved in the escape, something for which there is no evidence and for which he was never charged. I see no evidence that Mr. Vermillion represented an actual security concern. It is the job of correctional professionals to solve safety and security problems in a manner that is legal, fair, and causes the least amount of harm. If IDOC's security concerns related to Mr. Vermillion were about trafficking, they had far less harmful, less expensive, and more practical options rather than placing him in indefinite segregation. By moving Mr. Vermillion to a different institution or limiting his ability to work in positions where he wouldn't be closely monitored, they could have addressed their concerns, caused less harm to Mr. Vermillion, and saved themselves a lot of time and effort.

The escape at ISP brought to light extensive inmate and staff misconduct. The event was humiliating for Mr. Levenhagen as it surely was for Commissioner Buss. I would concur with Mr. Penfold's opinion that IDOC administrators wanted their pound of flesh. They were mad at Mr. Vermillion rather than scared of him, and this led to his placement in administrative segregation.

VII. Reviews of Administrative Segregation Status

The 2018 Vera Institute of Justice report examining lessons learned from their more than ten years of working on restricted housing reform in jurisdictions throughout the country.²⁰ The report includes several recommendations for administrative segregation. First, they recommend systems minimize placement in administrative segregation and shorten lengths of stays. To accomplish this, they suggest using "procedural safeguards, such as frequent multidisciplinary team reviews to ensure that it is used 1) only as a last resort, when people cannot be housed in the general population because they pose a serious threat to the safety of others; and 2) only when a less-restrictive setting is not sufficient." They also suggest frequent reviews of this placement by a multidisciplinary team with the goal of returning inmates as soon as possible to a less-restrictive setting. This echoes guidance provided by the U.S. Department of Justice's in 2016 which stated that administrative segregation (which they call

²⁰ Léon Digard, Elena Vanko, and Sara Sullivan. Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems. New York: Vera Institute of Justice, 2018. Available at: <https://www.vera.org/publications/rethinking-restrictive-housing>

preventative segregation) should be used only as a last resort, when “officials conclude, based on evidence, that no other form of housing will ensure the inmate’s safety and the safety of staff, other inmates, and the public.” They also state that this placement “should be guided by clearly articulated procedural protections, including the use of a multidisciplinary review team.”²¹

IDOC Policy 02-01-111, The Use and Operation of Adult Offender Administrative Segregation, requires periodic administrative segregation placements reviews (Section VII), conducted by the Classification Committee or staff designated by the Facility Head. Unfortunately, in practice, these reviews seem to be meaningless as conducted at WCU.

Mr. Vermillion received what IDOC refers to as Thirty Day Segregation Reviews, but these were not conducted by a multidisciplinary team nor did they contain any actual meaningful review or due process. In reviewing the documentation of Mr. Vermillion’s placement reviews while he was in administrative segregation, it is clear that these reviews were perfunctory. These nearly identical one-page forms contain nothing specific regarding Mr. Vermillion other than his name, DOC number, arrival date, and cell location. This is further supported by statements made by Doug Barnes, the former Case Manager of the Westerville Control Unit and the individual that conducted the majority of Mr. Vermillion’s reviews while he was in department-wide administrative segregation. In deposition, Mr. Barnes

²¹ U.S. DOJ pg. 5

was questioned as to the substance of the review process for Mr. Vermillion and department-wide administrative segregation in general. When he was asked the purpose of the 30-day review, he stated:

“I never fully understood. Because unless something had changed externally, the review wasn’t going to change anything.”²²

When asked to describe the process he used to perform the reviews he stated:

“I would spend a few minutes looking at the roster of the offenders, and then I would use a computer to print out the forms that said they were to review. It was not a review that the offender participated in and there was no special review of the records.”²³

Upon further questioning, Mr. Barnes stated that even though a mental health review was required every 30 days, those reviews weren’t factored into their segregation review. Likewise, Mr. Barnes stated that he “rarely saw” and only occasionally looked at the weekly behavioral logs kept by custody staff on the unit when performing a review and that these would not normally factor into what he was reviewing. Mr. Barnes also acknowledged that the thirty-day review forms were prefilled and that although he would occasionally change the form if there were changes in policy, the text did not vary for specific offenders.²⁴ Mr. Barnes was also asked if he was familiar with Indiana Statute IC 11-10-1-7, which

²² Barnes deposition pg. 157-158.

²³ *Id.* Pg. 158-159.

²⁴ *Id.* Pg. 160-163.

requires that IDOC conduct a review “at least once every 30 days to determine whether the reason for segregation still exists”. Though he was not familiar with the statute, when asked if he would have been effectuating the law when he did his 30-day reviews, he responded, “That appears to be the case.”²⁵

Sally Nowatzke, Mr. Vermillion’s Caseworker when he was at WCU, was asked in deposition about the annual classification reviews required under IDOC Policy 01-04-101 “Adult Offender Classification” for every inmate, not just those in segregation. She explained how all inmates are assigned a level with 4 being the highest custody or security level and 1 being the lowest and how for any inmate in segregation, if they scored a 1 or a 2, she would apply an automatic override to a level 3 or 4, regardless of their conduct.²⁶ Ms. Nowatzke was asked if she was ever asked to provide input or information for the segregation review required in IDOC Policy #02-01-111, to which she responded no.²⁷ On this issue, Mr. Barnes was asked whether an inmate scoring as a Level 1 in their annual classification review would cause him to recommend that the inmate be removed from administrative segregation and he responded that he would not “because this has nothing to do with the ultimate reason why they were placed on department-wide administrative segregation.” He further states, “unless that reason changes in the mind of the director of adult facilities, they’re going to remain on department-wide segregation.”

²⁵ Barnes deposition pg. 169-170.

²⁶ Nowatzke deposition pg. 144-147.

²⁷ *Id.* pg. 167.

In reading the depositions of Mr. Barnes and Ms. Nowatzke, it was clear that they did not take responsibility, in either the classification or the 30-day segregation reviews, to actually assess whether the reason for segregation still existed. Both articulated that placement in department-wide administrative segregation was a decision made above their authority level and that any changes in that placement decision would usually be generated from that authority level. In deposition, Gary Brennan, who served as Unit Manager and supervised the work of Mr. Barnes, stated that he only “periodically”²⁸ looked at the 30-day reviews but acknowledged that he knew Mr. Barnes dropped names in a boilerplate review and didn’t conduct any analysis of individual circumstances.²⁹ He clearly did not ensure that the 30-day or the classification reviews were in done in accordance with the letter and intent of the policy. For Mr. Vermillion, and likely any inmate on DWAS, these reviews were meaningless. Mr. Vermillion’s actual classification level, which should be largely determined by security risk, was always overridden due to his placement designation. Thus, his risk, actual custody level, and conduct, was never factored into his segregation reviews. It wasn’t until 2013, after Mr. Vermillion was moved to Pendleton Correctional Facility, that he received an actual review and was recommended for removal from DWAS.

²⁸ Brennan deposition pg. 222.

²⁹ *Id.* pg. 222-224

Both Mr. Barnes and Ms. Nowatzke were asked if they knew why Mr. Vermillion had been placed on department-wide administrative segregation and both recalled being told that it was because he was involved in the ISP escape.³⁰ This is yet another indicator that Mr. Vermillion was being punished with placement in segregation for an offense that he was never charged with, was unable to defend himself against, and for which he would never receive a real review.

VIII. Conditions of Confinement

I toured the Indiana State Prison and saw the honor unit in which Mr. Vermillion had lived prior to his transfer to segregation. In this unit, Mr. Vermillion lived in a large cell and had the ability to earn privileges such as possessing a pet cat. It was designed for inmates whose positive behavior had earned them the right to have greater privileges. Mr. Vermillion's placement on this unit speaks to his conduct in the facility up until he was placed in segregation for years for the violation that the IDOC ultimately expunged from his record.

I also toured the Westville Control Unit (WCU) where Mr. Vermillion spent the majority of his years in segregation. WCU functions as a super max facility. Inmates in this unit are confined to their cell 23 hours a day with an hour out-of-cell time each day for showering or recreation. WCU was dirty, somewhat in disarray, and inmates could be heard yelling from cell door to cell door on the day of our tour. Access to books, congregate programs, phone calls and other

³⁰ Nowatzke deposition pg. 209, Barnes deposition pg. 110-111.

activities is minimal. I find it surprising that given IDOC's history of being litigated against over super max conditions of confinement and the Human Rights Watch report issued more than two decades ago, that IDOC does not demonstrate more acuity around the condition and management of these units.

In the 2018 Vera report, their other recommendation for improving use of administrative segregation is to increase the availability of productive activities in these settings and to "ease their return to the general population."³¹ This would include access to programs, both in-cell and congregate, increasing out-of-cell time and group interaction. Similarly, ASCA's 2013 Guidelines suggest that systems "provide structured and progressive levels that include increased privileges as an incentive for positive behavior and/or program participation"³²

Educational and other programs can help address underlying criminogenic needs, which are the factors that research has found most directly relate to an individual's likelihood to re-offend. Of these, anti-social values, anti-social personality, criminal peers, dysfunctional family, low self-control, substance abuse, and a lack of a prosocial way to occupy one's time, such as work or school, are the criminogenic needs that if addressed, make the biggest impact on future criminal behavior. These programs provide participants with new skills in order for them to live more productively in general population or when released

³¹ Vera 2018. Pg. 33.

³² ASCA pg. 2.

and they allow an inmate to demonstrate a willingness to change. These programs are even more important in administrative segregation as it is an indefinite placement intended to be used for inmates that pose the highest safety and security risks to the institution. Absent meaningful programs, the facility or system has by default decided that merely residing in segregation for an undefined period of time will correct the deficit that got them there in the first place, in effect, abdicating its responsibility to rehabilitate, a duty made clear in the title “department of correction”.

Congregate activities give inmates a chance to interact with others, reducing isolation and helping to mitigate the negative psychological impacts of segregation. These activities are also necessary for assessing their behavior around others, e.g., do they interact appropriately with the instructors and engage in prosocial practices with their peers in the classroom? Without these opportunities, correctional professionals lack the information they need to adequately assess an inmate’s current abilities and limitations in interacting with other people. In Washington, as in other states, observations about these interactions are an important part of the segregation review process.

Current best practices include use of structured and progressive levels that include increased privileges as an incentive for positive behavior and/or program participation”³³ Providing incentives for positive behavior is more effective than

³³ Vera pg. 33, ASCA Guidelines, pg. 2.

only addressing negative behavior. It appears that the unit in which Mr. Vermillion was housed provides few incentives for positive behavior. Despite a remarkably strong behavioral record, he remained in administrative segregation and, according to Mr. Barnes who conducted his required placement reviews, his behavior was not factored into his continued placement in administrative segregation.

Step-down programming is also viewed as a best practice in segregation management.³⁴ These typically involve a system of review with established criteria to prepare an inmate, either those who have been in segregation for an extended period of time or who cycle through frequently, for transition to the general population or to the community. Through a gradual lifting of restrictions and increased time with others, these inmates are better prepared to self-manage in general population. These programs often involve a multidisciplinary review team that includes mental health, case management, and security practitioners. This team coordinates behavior response and sets transition goals as it assesses progress. These programs, usually located in specific housing units, are typically designed with the assumption that the transitioning inmates were in segregation due to a lack of ability to self-manage or cope in general population. IDOC's two super-max facilities have a step-down program available to some inmates called ACT.³⁵ For reasons I could not ascertain in the

³⁴ Vera pg. 33, ASCA-Liman 2018, pg. 63

³⁵ IDOC Executive Directive #09-48

documents provided to me and were not known to the facility staff questioned about this in deposition, Mr. Vermillion was not approved to participate in ACT despite having requested to attend and meeting the requirements for participation.

From all available documentation, Mr. Vermillion's placement in administrative segregation was based on a belief by IDOC administrators that he was involved in the 2009 escape at ISP. His behavior while institutionalized was never violent and IDOC's own custody tool assessed Mr. Vermillion as being appropriate for a medium security setting. The fact that IDOC administrators did not even attempt to offer him programs, increased congregant time out-of-cell, or participation in the step-down program, even if pretextual, makes clear that their intentions were never rehabilitative. Mr. Vermillion's placement in department-wide administrative segregation was an indefinite punishment for an offense he was never charged with rather than for security purposes.

IV. Conclusion:

There was no legitimate penological purpose for holding Jay Vermillion in department-wide administrative segregation for any length of time, much less three years. His disciplinary record in no way justified his placement here. If in fact IDOC administrators were concerned that Mr. Vermillion was involved in trafficking in contraband, in addition to imposing the maximum 30-day segregation period allowable under IDOC disciplinary rules, there are common

sense precautions they could have been taken such as moving him to another facility and restricting him from obtaining employment in areas that have low staffing levels or sensitive materials. These are follow-up actions that would have mitigated potential risks without subjecting Mr. Vermillion to years of extreme isolation.

The fact pattern in this case is not dissimilar from fact patterns that I have seen in reviewing administrative segregation cases throughout my career. The facility staff suspected wrong doing, issued a violation on Mr. Vermillion, and when the sanction was reduced, IDOC administrators maintained him in administrative segregation status, effectively administering a longer sanction without regard to the evidence of the case or due process. Even more alarming, his segregation placement appears to be a punitive response to IDOC administrators' belief that Mr. Vermillion was guilty of assisting in an escape, an offense for which he was never charged.

After reviewing the documents in this case, I have no doubt that Mr. Vermillion's extended placement in administrative segregation, which lacked any meaningful review or penological justification, was a way to sidestep the established disciplinary process. His three-year stay in segregation for a perceived offense for which there was no proof and for which he was not charged that was extremely excessive, especially in light of the stark conditions and lack of congregant activities or programming at WCU. From the information I have

reviewed, I conclude that IDOC's placement of Mr. Vermillion in department-wide administrative segregation was an action taken to accomplish one thing- to retaliate against and to punish Mr. Vermillion.



3/31/19

Dan Pacholke

Date

ATTACHMENT 1

DAN PACHOLKE

PROFILE

Served the Washington State Department of Corrections for 33 years, starting as a Correctional Officer and retiring as Secretary. Leader in segregation reform and violence reduction in prisons. Extensive experience in program development and implementation, facility management, and marshaling and allocating resources. Proven ability to make change. Led efforts resulting in a 30% reduction in violence and a 52% reduction in use of segregation in Washington State Prisons. Co-founder of Sustainability in Prisons Project. Champion of humanity, hope and legitimacy in corrections.

EMPLOYMENT HISTORY

Principal, Dan Pacholke Consulting, LLC. 2018 to Present

Offering a full range of consulting services in the field of corrections.

New York University, Litmus at Marron Institute of Urban Management

Associate Director 2016-2017

Collaborate with researchers and practitioners to develop alternatives to segregation and transform corrections management. Advance stakeholder-led research and innovation by soliciting, supporting, and disseminating the best new strategies to create safer, more rehabilitative corrections environments.

Washington State Department of Corrections

Secretary 2015-2016

Governor appointee providing executive oversight of the agency with a yearly operating budget of 850 million and 8,200 full time employees. Reorganized agency to allow for greater emphasis on effective reentry. Led department through response and recovery from a crisis resulting from the discovery of a sentencing calculation error that had occurred for over 13 years.

Deputy Secretary 2014-2015

Oversight over operations divisions: Offender Change; Correctional Industries; Community Corrections (16 Work Releases and 150 field offices); Prisons (15 facilities); and Health Services. These combined operations had a yearly operating budget of 700 million and 7,166 full time employees. Emphasis on core correctional operations, violence reduction, and performance management leadership to affect positive and sustainable system wide change.

Director, Prisons Division 2011-2014

Oversight over 15 institutions and contract relationships with jails and out of state institutions incarcerating approximately 18,000 offenders. Also responsible for providing emergency response and readiness oversight to all facilities and field offices of all divisions. Advanced multi-faceted violence reduction strategy to include the development and implementation of the "Operation Ceasefire" group violence reduction strategy for application in close custody units in prisons. Expanded Sustainability in Prisons Project programs to all prison facilities. Implemented classroom-setting congregant programming in intensive management units.

Deputy Director, Prisons Division 2008-2011

Administrator over 6 major facility prisons, multi-custody level for adult male offenders

Attachment 1

with a biennial budget of 290 million. Provided leadership and appointing authority decision making to six facility Superintendents. Through Great Recession implemented staffing reductions, offender movement alterations and cost savings initiatives while maintaining safety and security. Represented the Department in legal issues, labor relations, media, staff discipline hearings, union relations and bargaining. Oversaw statewide operations of Emergency Preparedness and Response, Intelligence & Investigations, Intensive Management Units, Offender Grievance Program, Offender Disciplinary Program, Food Service, Sustainability and Close Custody Operations. Implemented statewide system of security advisory councils and security forums to improve staff safety.

Monroe Correctional Complex

Interim Superintendent 2008

Led a 2,486-bed, multi-custody facility for adult male offenders.

Stafford Creek Corrections Center

Superintendent 2007-2008

Led a 2,000-bed, multi-custody facility for adult male offenders with a biennial budget of 39 million. Implemented Sustainability in Prisons Project initiatives to include large scale composting to include zero-waste garbage sorting. Initiated first dog training programs for male offenders.

Cedar Creek Corrections Center

Superintendent 2003-2007

Led a 400-bed, minimum-security adult male correctional facility, with a biennial budget of 7.3 million.-Directed operational and related program activities to include security and custody programs, medical services, plant maintenance, education, and food service. Co-founded the Sustainability in Prisons Project with Nalini Nadkarni, PhD.

Monroe Correctional Complex

Special Assignment Deputy Superintendent 2002

Formulated new strategic direction in order to enhance operations and security at the Complex, which consists of four separate units and houses approximately 2,300 adult male felons. Managed unit operations and security. Supervised the Intelligence Investigative Unit and Offender Grievance System. Developed and implemented capital construction initiatives at the Special Offender Unit and the Washington Reformatory Unit to enhance security of these Units.

Headquarters

Performance System Administrator 1999-2002

Led the development and implementation shift from staff training department to an organizational performance system. Administered staff performance academies, supervised five regional teams, four Program Managers and provided leadership for policy development to support this department wide program. Administered the Department's Emergency Response Plan, Emergency Operations, Officer Safety Program and Firearms Training Unit.

Headquarters

Emergency Response Manager 1995-1999

Developed and implemented statewide emergency response system. Directed the development of departmental policy, emergency response team academies and response protocols. Managed emergencies and security events. Directed Critical Incident Review Teams in the post incident analysis of critical incidents department wide. Led

Attachment 1

development of security plans for the management of high-risk operations to include 400 offenders out of state, Y2K, and execution security.

Clallam Bay Corrections Center

Correctional Captain 1989-1995

Responsible for the security management of a maximum, close, and medium custody male facility. Oversaw facility mission changes including: close custody conversion; implementation of blind feeding; facility double bunking; opening of an intensive management unit; opening of first direct supervision unit; and developed the facility's Emergency Response Plan.

Clallam Bay Corrections Center

Correctional Lieutenant 1986 -1989

Washington Corrections Center

Correctional Sergeant 1985-1986

McNeil Island Corrections Center

Correctional Officer 1982-1985

PUBLICATIONS

Useem, Bert, Dan Pacholke, and Sandy Felkey Mullins. "Case Study—The Making of an Institutional Crisis: The Mass Release of Inmates by a Correctional Agency." *Journal of Contingencies and Crisis Management* (2016)

Pacholke, Dan (2016, July 27). Change is relative to where you begin. Vera Institute of Justice. Think Justice Blog. <https://www.vera.org/blog/addressing-the-overuse-of-segregation-in-u-s-prisons-and-jails/change-is-relative-to-where-you-begin>

Pacholke, Dan and Sandy Felkey Mullins. *More Than Emptying Beds: A Systems Approach to Segregation Reform*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2016. NCJ 249858.

Pacholke, D. (2014, March). Dan Pacholke: How prisons can help inmates lead meaningful lives [Video file]. Retrieved from https://www.ted.com/talks/dan_pacholke_how_prisons_can_help_inmates_live_meaningful_lives?language=en

Young, C., Dan Pacholke, Devon Schrum, and Philip Young. *Keeping Prisons Safe: Transforming the Corrections Workplace*. 2014.

Aubrey, D., LeRoy, C. J., Nadkarni, N., Pacholke, D. J., & Bush, K. Rearing endangered butterflies in prison: Incarcerated women as collaborating conservation partners. 2012.

AWARDS

Olympia Rotary Club, Environmental Protection Award, 2013

Governor's Distinguished Managers Award, 2012

Secretary of State, Extra Mile Award, 2007

Governor's Sustaining Leadership Award, 2003

CONSULTING

Attachment 1
Sustainability in Prisons Project, Co-Director
2004-2015

Nebraska Department of Correctional Services
2015

With Bert Useem, PhD, provided system assessment following May 2015 disturbance at Tecumseh State Correctional Institution in which two inmates were killed. Identified underlying causal factors and provided recommendations.

National Institute of Corrections
1998 to 2002

Provided training and consultation services to state, territory and federal correctional systems. Responsible for delivering of training to include: Management of Security, Entry Level Supervision, Emergency Preparedness Assessment, Disturbance Management and Basic Security.

Defensive Technology Corporation
Senior Instructor
1995 to 1998

Provided tactical and specialty munitions training to correctional and law enforcement personnel throughout the U.S.

Security Auditing & Critical Incident Reviews
Lead Auditor

Completed security audits and critical incident fact finding reviews in facilities throughout the Washington State Department of Corrections and two correctional jurisdictions in other states, one of which involved multi-jurisdictional entities.

EDUCATION:

The Evergreen State College, BA, Olympia, Washington

ATTACHMENT 2

PUBLICATIONS by Dan Pacholke

Useem, Bert., Pacholke, Dan., Mullins, Sandy Felkey. The Making of an Institutional Crisis: The Mass Release of Inmates by a Correctional Agency. (2016)

Pacholke, Dan (2016, July 27). Change is relative to where you begin. Vera Institute of Justice. Think Justice Blog. <https://www.vera.org/blog/addressing-the-overuse-of-segregation-in-u-s-prisons-and-jails/change-is-relative-to-where-you-begin>

Pacholke, Dan and Sandy Felkey Mullins. More Than Emptying Beds: A Systems Approach to Segregation Reform. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2016. NCJ 249858.

Pacholke, D. (2014, March). Dan Pacholke: How prisons can help inmates lead meaningful lives. https://www.ted.com/talks/dan_pacholke_how_prisons_can_help_inmates_live_meaningful_lives?language=en

Young, C., Dan Pacholke, Devon Schrum, and Philip Young. Keeping Prisons Safe: Transforming the Corrections Workplace. 2014.

Aubrey, D., LeRoy, C. J., Nadkarni, N., Pacholke, D. J., & Bush, K. Rearing endangered butterflies in prison: Incarcerated women as collaborating conservation partners. 2012.

ATTACHMENT 3

Career Highlights

- Reduced violence in Washington State prison system by over 30% while also reducing the number of people held in long-term administrative segregation by over 50%.
- Designed and implemented congregate group programming in the intensive management units (IMU's). The programs offered included evidence based programs and other complimentary offerings. Today all IMU's in Washington State prisons offer congregate programming.
- Designed and implemented the first prison Ceasefire model. This deterrence-based model reduced serious violent incidents (assault against staff, use of a weapon and multi on single man fights) by 50% and continues to be utilized in Washington State close custody (Level IV) prison to reduce serious violence.
- Co-authored a protocol for in-custody Swift, Certain and Fair sanctioning. This deterrence-based model offers a strategy for the reduction of low-level in-custody violations.
- Implemented the Correctional Officer Pre-Service training model at Clallam Bay Corrections Center. This 10-week program offered half-time course work and half-time OJT in order to certify newly hired correctional officers. This program was implemented state wide as the CORE Program, a six-week standardized training required of all staff that work in prisons.
- Served as a lead design team member on the creation and implementation of the Correctional Officer Achievement Program (COACH), a yearlong, on-the-job training program accredited by the WA State Board for Technical and Community Colleges.
- Led the design and development of a comprehensive agency-wide Emergency Response Plan and complimentary learning academies: Emergency Response Instructor (40 hrs.); Emergency Response Team (40 hrs.); Special Emergency Response Team (40 hrs.); Crisis Negotiator (40 hrs.); Joint Operations (24 hrs.); and the Designated Incident Management Team (multiple ICS certifications).
- Co-Authored, *Keeping Prisons Safe, Transforming the Corrections Workplace* and accompanying field guide which are used in CORE and Annual In-Service Training at WA DOC.
- Co-founder and past co-director of the Sustainability In Prisons Project; this program brings nature into prison and features science education. It is recognized internationally and features programs to restore endangered species e.g., Oregon Spotted Frog, Taylor Checker spot Butterfly, Indigenous Box Turtles and over fifty different rare and endangered native prairie plants.
<http://sustainabilityinprisons.org>.
- Offered two TEDx events in prison. These events featured inmates, staff and volunteers as TEDx speakers.

Attachment 3

- Implemented Dog retraining programs in all Washington State Prisons.

ATTACHMENT 4

The following documents were reviewed in preparing this report:

Item	Description
1.	Jay F. Vermillion v. Willard Plank, et al., Case No. 1:15-CV-605-RLY-DKL. Southern District Court, Southern District of Indiana, Indianapolis Division. Plaintiff's Third Amended Compliant Under Title 42 U.S.C 1983
2.	Jay F. Vermillion v. Mark E. Levenhagen, Sally Nowatzke, Brett Mize, Howard Morton, Gary Brennan, Williard Plank, Dawn Buss, Charles Whelan, Ralph Carrasco., Case No. 1:15:cv-00605-RLY-TAB. United States District Court, Southern District of Indiana, Indianapolis Division. Entry Discussing Partial Motion for Summary Judgment.
3.	Jay F. Vermillion v. William Plank, et al., Case No. 1:15-CV-605-RLY-DKL. United States District Court, Southern District of Indiana, Indianapolis Division. Plaintiff's Declaration in Opposition to The Defendants Partial Motion for Summary Judgment.
4.	Jay F. Vermillion v. Mark E. Levenhagen, Superintendent, Sally Nowatzke, Case Counselor, Brett Mize, Director of OP IDOC, Howard Morton, Admin Asst ISP, Gary Brennan, Director of OP WCU, Williard Plank, Dawn Buss, Charles Whelan, Ralph Carrasco. 1:15:cv-00605-RLY-DKL. United States District Court, Southern District of Indiana, Indianapolis Division. Defendant's First Request for Production of Documents to Plaintiff.
5.	Jay F. Vermillion v. Mark E. Levenhagen, Superintendent, Sally Nowatzke, Case Counselor, Brett Mize, Director of OP IDOC, Howard Morton, Admin Asst ISP, Gary Brennan, Director of OP WCU, Williard Plank, Dawn Buss, Charles Whelan, Ralph Carrasco. 1:15:cv-00605-RLY-DKL. United States District Court, Southern District of Indiana, Indianapolis Division. Defendants' First Set of Interrogatories to Plaintiff.
6.	Jay F. Vermillion v. Mark E. Levenhagen. Case No. 1:15-cv-605-RLY-TAB. United States District Court, Southern District of Indiana, Indianapolis Division. Stipulated Protective Order.
7.	In the Matter Of: Jay F. Vermillion v. Mark E. Levenhagen, Superintendent, ET AL. Deposition of Jay F. Vermillion. March 16, 2017.
8.	Jay F. Vermillion v. Mark E. Levenhagen. Case No. 1:15-cv-605-RLY-TAB. United States District Court, Southern District of Indiana, Indianapolis Division. Declaration of Charles Whelan.
9.	State of Indiana, Segregation/Confinement Report. Offender Vermillion 973683. Dated 7/29/09.
10.	Incident Report. Offender Vermillion 973683. Dated 7/29/09. Offense Trafficking.
11.	Disciplinary Hearing Form. Offender Vermillion 973683. Dated 8/6/09.

Documents Reviewed
Attachment 4

12.	State of Indiana, Department of Corrections Executive Order # 09-07. Dated January 21, 2009.
13.	Letter to Jay F. Vermillion from C.A. Penfold, Final Reviewing Authority, Operational Support Division. RE: CAB Appeal, Case # ISP09-08-0006. Dated October 8, 2009.
14.	Report of Classification Hearing. Offender Vermillion 973683. Classification Committee: Recommendation and Basis: Placed on Department Wide Administrative Segregation Per B. Mize. Date Signed 10/22/09.
15.	Letter to Jay F. Vermillion from C.A. Penfold, Final Reviewing Authority, Operational Support Division. RE: CAB Appeal, Case # ISP09-08-0006. Disciplinary Hearing remanded back to the facility for a rehearing. Dated August 31, 2010.
16.	Letter to Jay F. Vermillion from C.A. Penfold, Final Reviewing Authority, Operational Support Division. RE: CAB Appeal, Case # ISP09-08-0006. Rehearing denied. Dated February 23, 2011.
17.	Letter to Jay F. Vermillion from C.A. Penfold, Final Reviewing Authority, Operational Support Division. RE: CAB Appeal, Case # ISP09-08-0006. Disciplinary Hearing remanded back to the facility for a rehearing. Dated June 27, 2011.
18.	Letter to Jay F. Vermillion from Michael Barnes, Legal Services Division. RE: Case # ISP09-08-0006. Appeal Denied. Dated January 12, 2012.
19.	Letter to Jay F. Vermillion from Robert D. Bugher, Legal Services Division. RE: DHO Appeal Case # ISP09-08-0006. Matter set for rehearing. Dated November 14, 2013.
20.	Report of Disciplinary Hearing. Offender Vermillion, Jay 973683. Case number ISP09-08-0006. Date of Hearing 2/13/14. Decision: Dismissed.
21.	E-mail chain. From Rinehart, Jennifer to Scaife Jacqueline. Subject: Vermillion #973683.
22.	Transfer Authority Form. Offender Vermillion, Jay 973683 dated 8/12/09.
23.	Indiana State Prison 7 Day Administrative Hold Review. Review date 8/12/09. Inmate Vermillion Jay 973683. Decision: Continued assignment to Administrative Hold (Pre Segregation) Status.
24.	Segregation Confinement Report. Offender Vermillion 973683. Dated 7/29/09
25.	Report of Classification Hearing. Name: Vermillion, Jay 973683 dated 9/31/09.
26.	Transfer Authority Form. Offender Vermillion, Jay 973683 dated 10/8/2009. Decision: WCU (D/S) to WCU (A/S).
27.	Screen Print. Classification Designation. Dated 10/22/09. Offender Vermillion, Jay F. 973683
28.	Classification Appeal. Name of Offender: Vermillion Jay F. 973683. Dated 11/6/09.
29.	Executive Directive #09-48

Documents Reviewed
Attachment 4

30.	Indiana Department of Corrections Policy and Administrative Procedure 02-04-102 Dated 1/1/2018 Disciplinary Restrictive Status Housing
31.	Indiana Department of Corrections Policy and Administrative Procedure 02-04-101 Dated 6/1/2015 The Disciplinary Code for Adult Offenders
32.	Indiana Department of Corrections Policy and Administrative Procedure 02-01-111 Dated 9/1/2008 The Use and Operation of Adult Offender Administrative Segregation
33.	Location and Bed History – July 1, 2009 to present
34.	Deposition of Charles Penfold
35.	Deposition of Jennifer Rinehart
36.	Facility Packet #3 Section 4 004984-005041
37.	Facility Packet #3 Section 5 005232-005361
38.	Facility Packet #2 Section 6 004606-004749
39.	Facility Packet #3 Section 6 005378-005433
40.	Facility Packet #2 Section 5 004449-004605
41.	Facility Packet #1 Excess Conduct 003908-003955
42.	Facility Packet #2 Section 6 004606-004749
43.	Facility Packet #3 Confidential Section 004759-004852
44.	Facility Packet #2 Section 4 004373-004448
45.	DHB Case File from Hearing 02-13-14 000009-000020
46.	Facility Packet #2 Section 3 004323-004372
47.	Conduct Summary July 1, 2009 to present 003902-003904
48.	Report of Classification and Hearing Documents
49.	Facility Packet #1 Excess Correspondence 003956-004117
50.	Facility Packet #2 Confidential Section 004118-004290
51.	Facility Packet #2 Section 1 004291-004313
52.	Facility Packet #2 Section 2 004314-004322
53.	Indiana State Prison 7 Day Administrative Hold Review(s)
54.	Facility Packet #3 Section 1 004855-004892
55.	Facility Packet #3 Section 3 004696-004983
56.	Facility Packet #3 Section 2 004893-004940
57.	Deposition of Andrew Berglund
58.	Deposition of Douglas Barnes
59.	Deposition of Sally Nowatzke
60.	Deposition of Charles Penfold
61.	Deposition of Doug Barnes
62.	Deposition of Hubert Duncan
63.	Deposition of Mark Levenhagen
64.	Escape Report Case File 09-ISP-0175
65.	Trafficking Case File 09-ISP-0186
66.	Deposition of Brett Mize
67.	Deposition of Gary Wayne Brennan

ATTACHMENT 5

Supplemental Information: Dan Pacholke

Compensation:

- \$200.00 dollars an hour for research, report writing, and all associated casework. \$100.00 dollars an hour for travel and \$300.00 dollars an hour for courtroom testimony and depositions.

Expert Work: Required a Deposition or Courtroom Testimony.

- *Gregory Strange v. The District of Columbia* (Civil No. 2016 CA 001250 B. Superior Court of the District of Columbia Civil Division)--Deposition
- *Deon Hampton v. Jacqueline Lashbrook, et al* (Civil No. 3:17-cv-00936-DRH. United States District Court for the Southern District of Illinois)—Courtroom Testimony, twice.
- *Darrick Hall v. John Wetzel, et al* (Civil No. 17-CV-4738 United States District Court for the Eastern District of Pennsylvania)—Courtroom Testimony
- *Fransisca Flores as the Personal Representative of the Estate of Lino Flores v. Stephen Morris, et al* (No. 16-02756 (D.AZ) In the United States District Court for the District of Arizona)—Deposition
- *Terry White v. William Stephens, et al* (Case No. A16CV059 In the United States District Court for the Western District of Texas, Austin Division) – Courtroom Testimony
- *Imhotep H'Shaka v. James O'Gorman, et al* (Case No. 9:17-cv-00108-GTS-ATB In the United States District Court Northern District of New York) – Deposition 3/2019