

CCI NEWS, 21 Nov. 2021

By Nate A. Lindell DOC #303724

Since mid-October we were denied all recreation & dayrooms. A Memo from Warden Fuchs said it was b/c the fence was being repaired. But, COs told us the denial of rec will "only get worse," b/c old staff are retiring & nobody's applying for CO jobs. When the fence was repaired, dayroom didn't resume & rec was cancelled b/c "not enough staff" or "training." E.g., From Nov. 1st to Nov. 22nd, we were only offered rec on the 2nd, 4th, 9th, 10th, 11th & 17th -- we spend more time in our cell's than guys in Seg. It has us irritated, gaining weight, cholesterol up, etc. This pile of excuses for denying us rec has been going on since I came to CCI in 2019, & I've TRIED to file many I.C.s on it, managed to file these ones: CCI-2020-3332, CCI-2020-5798, CCI-2020-15309, CCI-2021-6120.

Because I already have EIGHT lawsuits going, I won't file one on the rec denials (have no time to properly litigate it). But, someone should, and they can claim in their suit that "Upon information and belief, many other convicts have filed I.C.s explaining the harms caused by chronic denials of rec, making the Warden aware of the dangers the practice poses," specifically cite my I.C.s noted above; then, on discovery, demand copies of all I.C.s submitted on the issue. *Taylor v. Litscher*, 2019 U.S. Dist. LEXIS 29922 at *2-4 (W.D. Wis. 21 Feb. 2019), held that an index of all I.C.s filed by others on the issue must be provided, while Magistrate Judge Duffin's 22 May 2020 Order in *Lindell v. Pollard*, E.D. Wis. Case #19-CV-255, required that copies of the entire files for I.C.s (& emails, Request Slips, etc.) on the issue must be turned over. That material is relevant to proving supervisors KNEW there was a problem, essential to establishing "deliberate indifference," *Sherrod v. Berry*, 827 F.2d 195, 204-205 (7th Cir. 2987) & *Edwards v. Thomas*, 31 F.Supp.2d 1069, 1074(N.D. Ill. 1999), AND justifying punitive damages, see e.g., *Martinez v. Cornell Corrections*, 229 F.R.D. 211, 212 (D.N.M. 2005)

But, in order for a litigator to learn the names & DOC #s of those who filed I.C.s (needed to contact filers & use them as witnesses), I.C. filers must write on their I.C.s something like: "I authorize anyone to read/copy this I.C. & any resulting file/reports/decisions," as I do on most of my I.C.s. Even if you don't sue, you can do this to help others sue.

A Sgt. just told me, in response to my question, "When's this bullshit gonna end, denying rec, dayroom, you guys seeming to take everything away?" He replied, "When we get more money." Thus it seems that what's going on is what Illinois convicts sued about in *Turley v. Rednour*, 729 F.3d 645, 651 (7th Cir. 2013)("...prison officials reportedly and regularly imposed lockdowns for improper purposes [i.e. to pressure convicts to demand hiring of more guards & better pay for guards, in order for convicts to get recreation], and with each continuing day and period of lockdown, Turley's injuries [i.e. mental & physical health deterioration] increased.") In *Delaney v. DeTella*, 356 F.3d 679, 684 (7th Cir. 2001) our federal appeals court ruled that 5 hours/week of recreation was a basic human need, and that scientific advancements might reveal that even more is necessary for physical/mental health -if you've gained weight, your lipids rose, mental health worsened do to these constant rec denials, explain so in your I.C.s.

A huge problem is our I.C.s being "returned," unfiled by ICRS staff. When that happens, do your best to comply with what the Return Letter demands of you, then resubmit it. If they still don't file it, or they ignore or "lose" your I.C.s, then write the Warden & explain the problem --CCE Greenwood told me in a letter (around year 2019) that the warden is the head of each

prison's ICRS Dept & that's who we're supposed to write when we have I.C.s ignored, "lost" or improperly returned; you MUST do this to exhaust your remedies or you'll probably have your suit dismissed. See *Ross v. Blake*, 136 S.Ct. 1850, 1859 (2016)(We must exhaust administrative remedies "available" to us, but not those made unavailable.); *Pavey v. Conley*, 544 F.3d 739, 740-41 (7th Cir. 2008)(Defendants bear the burden of proving a prisoner had an available administrative remedy & didn't exhaust it.); *Lindell v. Greff*, 2021 WL 718237 at *3 (E.D. Wis. 24 Feb. 2021)(Concluding that I exhausted the ICRS on my retaliation claim, even though the I.C. didn't mention "retaliation," because a Request Slip attached to the I.C. did, and, while it was Rejected, defendants failed to explain what rule I violated to cause the rejection.).

Some I.C.s I filed, which others may want to file on too are:

- Showers at rec being filthy, allow COVID to spread, & violate PREA (CCI-2020-11669, CCI-2019-22342);

- HSU staff not responding to requests for medical care (CCI-2020-4987, CCI-202014426, CCI-2021-7494);

- inhaler denied in cell in Seg (I won these -you must get your inhalers in RHU!) (CCI-2019-5500, CCI-2021-239);

- inhaler allowed to expire, w/out MD seeing me (I got it back -CCI-2020-6712);

- flu vaccines given late (won this)(CCI-2020-16774);

- failing to comply w/ the CDC's guidelines for COVID in prisons (CCI-2020-20803, CCI-2021-3160);

- refusing to diagnose & treat ongoing illness from COVID (CCI-2021-1136, CCI-2021-3565, CCI-2021-8247)

- denied care, HSU didn't respond, for heat sickness (won it CCI-2021-10946);

- denied COVID boosters (CCI-2021-17476);

- PSU meeting in dayrooms, denied privacy (CCI-2021-17606) - this was found illegal in *Wellman v. Faulkner*, 715 F.2d 269, 372 (7th Cir. 1983).

Anyone suing over any of these issues can cite these I.C.s in there suit & obtain them on discovery. Readers, please share the #s for your I.C.s on issues important to all of us, so others may use them!