

Mike DeWine, Governor

Annette Chambers-Smith, Director

DOC # 08

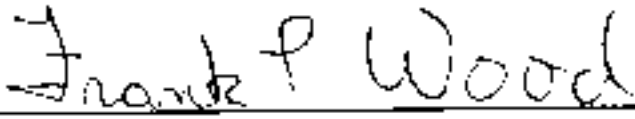
Notice of Disciplinary Appeal - Chief Legal Counsel/ Designee

Institution: RIC1	RIB Case Number: RIC1-22-1784
Inmate Name: WOOD, FRANK P	Number: A504107

Chief Legal Counsel / Designee:

I received my appeal response from the Warden's office for the case listed above on 4/13/2022 that upheld my RIB conviction. (Inmate has 14 days from the date listed above to appeal to Legal Services. Mail or kite completed form to the address below. Attention: Legal Services - RIB)

In my opinion the decision of the Rules Infraction Board and the Warden's Office was incorrect for the following reasons:
(Be brief and specific in stating the basis for your appeal)

Signature: 	Number : A504107	Date: 4-19-2022
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DRC 4074 (Rev 01/2020)

4545 Fisher Road, Suite D · Columbus, Ohio 43228

www.drc.ohio.gov

DISCIPLINARY APPEAL

4545 FISHER ROAD, SUITE D

COLUMBUS, OHIO 43228

FRANK P. WOOD,

Pro Se Appellant,

CHIEF LEGAL COUNSEL/

vs.

DESIGNEE,

Reviewing Agent

SERGEANT DAVID VINER

Charging Officer

DISCIPLINARY APPEAL

Frank P. Wood (#A504-107)

Sergeant David Viner

Richland Corr. Inst.

Richland Corr. Inst.

P.O. Box 8107

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Mansfield, Ohio 44901

Mansfield, Ohio 44901

PRO SE

CHARGING OFFICER

GROUNDS FOR RELIEF

GROUND I.

Petitioner Frank P. Wood was denied his U.S. 14th Amendment right to Due Process when Sergeant David Viner relied on the false testimony of Inmate Calvin Felding to secure a bogus Conduct Report in violation of Smith v. Matrish, 436 Fed. Appx. 554, HN18 through HN20, Conclusion (6th C. 2011); United States v. Bagley, 473 U.S. 677, Headnotes, Opinion (1985). 18 USC §1621, §1622.

GROUND II.

The bogus charging instrument deprived Wood of his U.S. 14th Amendment right to Due Process as it prejudiced him of a valid presentation or indictment under the U.S. 5th Amendment.

GROUND III.

The bogus charging instrument deprived Wood of his U.S. 14th Amendment right to Due Process by prejudicing him of his right to confront the witness against him under the U.S. 6th Amendment.

GROUND IV.

The bogus charging instrument was void of witness testimony that confirmed Inmate Brian Henley assaulted Wood from behind with a deadly weapon. This violated Wood's U.S. 14th

) Amendment right to Due Process as it prejudiced him of his U.S. 6th

Amendment right to have compulsory process for obtaining witnesses in his favor. The suppression of material and exculpatory evidence violated Brady v. Maryland, 373 U.S. 83.

GROUND IV.

The bogus charging instrument created a structural error (Smith v. Metzger, 436 F. Appx. 554; State v. Perry, 2004 Ohio LEXIS

HNI, HNB) in Wood's appellate process. Such deprived him of his U.S. 14th Amendment right to Due Process as it prejudiced him of his U.S. 1st Amendment right to redress of grievances and an adequate appellate review.

MEMORANDUM

I. Introduction

1. Petitioner for relief, Frank P. Wood ("Wood"), was harassed by inmates Brian Henley ("Henley") (#A485-121) and Calvin Felding ("Felding") (#A693-707) for nearly one-and-a-half years. Henley and Felding made every attempt to hedge Wood into a fight. To date, Wood has exercised self-control and self-constraint. Wood, Felding, and Henley all lived in the same housing unit; 2-Lower at Richland Correctional.
2. On the morning of 3-11-2022, Henley verbally exploded at 2-Lower Case Manager Ms. Bishop. Henley was never cuffed for a cool-down period. Their argument was over Henley being moved out of the unit because he was "causing too many problems". Henley and Felding then decided this was their last chance to attack.
3. Within the hour, as Wood exited the shower, Henley struck Wood in the head, from behind, with a padlock. Face-down, on camera, Henley continued to strike. After Wood got out from under Henley, Henley punched Wood in the back of the head and ran out the other door, believing he got away with the assault. All but the first blow is on camera.
4. Wood was taken to medical where a doctor and a nurse

glued multiple lacerations shot. Pictures were taken of his wounds, wounds consistent with DDRC records of such an assault with a deadly weapon, i.e., a padlock.

5. Multiple staff and medical workers repeatedly declared Wood to be "the victim". They knew, for this is why he was placed in the Temporary Protection Unit. "Protection" being the operative word.

6. Post-assault, Felding is on camera running in-and-out of Sgt. Viner's office, multiple times, telling Sgt. Viner the story he wanted to hear. Felding's lies became a Rule 19 violation for fighting against Wood: "the victim". This was despite the fact that several inmates told Sgt. Viner that they saw Henley attack Wood from behind. And, to no surprise, cameras do not place Felding in the restroom at the time of the assault.

7. Felding lied. What more, Wood is the only one in this situation to repeatedly ask for polygraph under AR 5120-9-26 and to see the Highway Patrol. Thus far, neither have taken place. And he's asking again now.

II. Rules Infraction Board ("RIB")

8. On 3-16-2022, Wood was taken to the RIB and placed in front of

a podium. Officer Albrecht (SP?) and a Lieutenant were present. The Lieutenant then informed Wood that he was being charged with a Rule 19 violation for fighting. Officer Albrecht then interjected with, "But he's the victim." Then there was a quick exchange of whispers. The Sanhedrin had spoken.

9. Against all reason, ethics, and logic the Lieutenant declared, "I'm going to find you guilty based on what the ticket says." Abuse of discretion, for injuries and cameras reveal Sgt. Viner wrote a bogus Conduct Report.

10. 'Why?' is the all-probing question here. Ulterior motives.

III. Disciplinary Appeal

11. On 3-22-2022, Wood submitted a Notice of Disciplinary Appeal to Warden / Designee Mr. Melton. Despite two (2) staff members and one (1) Inmate as direct witnesses on Wood's behalf, cameras, lacerations that were glued shut, inter alia, Mr. Melton denied Wood requested relief via deliberate indifference (Exhibit-A). Hence, this appeal.

12. Wood's Disciplinary Appeal has been included as (Exhibit-B). It contains Wood's Mecit Affidavit of Frank P. Wood, and internal DOC #01: Conduct Report.

IV. Deference

13. Both the RIB and Deputy Warden Melton committed plain error by giving deference to Sgt. Viner's motivationally-generated Conduct Report. Wood prays Chief Legal Counsel to take Judicial Notice (Fed. R. Evid. 201) of camera recordings and medical records that support his claims, and not to commit the same error by recalling that "deference does not preclude relief." Miller-El v. Cockrell, 537 U.S. 322, 340 (2003).

V. Presumption of Correctness

14. Wood's affidavit is comprised of evidentiary facts, direct witnesses, ODRC camera recordings and medical records, and state, court, and public records. Therefore, at this juncture, recorded fact findings favoring Wood's affidavit are entitled to the same presumption of correctness due findings favoring any challenger (Burden v. Zant, 498 U.S. 433 (1991) (*per curiam*)), especially when the facts are "undisputed" and established by the state-court record (Browder v. Director, 434 U.S. 257, 98 S. Ct. 556, 1978 U.S. LEXIS 253 at [*] Led HABA and Footnotes 10), and the Record flatly contradicts State [RIB] fact findings (United States ex rel. Ross v. Franzen and Wolf, 688 F.2d 933, 939 (7th Cir. 1982)), as in the instant matter. [EMPHASIS ADDED].

15. With the above in mind, Wood seeks to remind this Judiciary that pro se litigant's pleadings are to be liberally construed (Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed. 2d 251 (1976); Loe v. Armistead, 582 F.2d 1291, 1295 (4th Cir. 1978), (citing Hicks v. Canterbury, 2015 U.S. LEXIS 146031, [*17]), as it conducts de novo review (28 U.S.C. § 636(b)(1)(C), ibid at [*16]), while reviewing the record as a whole (Nippon Steel Corp. v. United States, 458 F.3d 1345, HNB through HNB (2006)).

VI. Affidavits

16. Wood contends that the charging instrument: the bogus Conduct Report that was secured using sham legal Process (O.R.C. 2921.52), was void ab initio. In sync, Sgt. Viner, Felding, and Henley are the ones legally responsible for challenging Wood's properly constructed and supported affidavit with another.
17. Clarifying the above assertion, it is universally accepted that a properly constructed and supported affidavit may be considered evidence. Likewise, an affidavit must be controverted by an affidavit. But when that properly constructed ("under the penalty of perjury") and supported (camera, injuries, witnesses, timing, etc.) goes uncontested by another, the statements of the former are "taken as true, since there is no evidence contesting it." (Mayersberger v. Marietta Coal Co., 2014-Ohio-

-21, *13). And, "if a case-making fact in the movant's affidavit is uncontested, then [this Judiciary] can take that fact as true and grant" requested relief. [emphasis Added]. (Carter v. Licking Cty. Bd. Of Commrs., 5th Dist., No. 99CA43, 1999 Ohio App. LEXIS 5270, 1999 WL 1071709, at *3 (Nov. 4, 1999). (Maversberger, Id.). (see also: Budreau v. Mendel, 2000 U.S. App. LEXIS 9898, *4; Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 1986 U.S. LEXIS 38, ***
5b). In addition, a party against whom relief is sought "may not rest upon the mere allegations or denials of the party's pleadings, but the party's response by affidavit." (Maversberger at *P14).

18. Wood's attached Merit Affidavit of Frank P. Wood and this Disciplinary Appeal are substantively rendered one (1) interwoven item pursuant to Civil Rule 10(c). Adoption by reference, which states, in pertinent part, that

*** A copy of any written instrument attached to a pleading is part of that pleading for all purposes.

19. In the most symbiotic fashion, Wood's affidavit and the evidence cited within establish several "case-making fact[s]" (Maversberger, supra at *P14): Henley and Felding were Co-complicitors in the assault against Wood; the injuries were lacerations caused by a weapon; Henley attacked Wood from behind; Wood never had a chance, as "the victim", to defend himself;

and the Conduct Report was the result of lies; etc.

20. With DDRC cameras verifying the sequence and timing of events in Wood's affidavit, and injuries confirming assault with a deadly weapon, the cameras and pictures of Wood's injuries serve as best and direct evidence. Wood has presented several issues of material fact sufficient to make the "prima facie case" against Felding and Henley. (United States v. Kis, 1981 U.S. App. LEXIS 18007, HN9, **28). In this light, regarding Wood's claim of being an innocent victim of a violent crime in the instant matter, *res ipsa loquitur*. With the presumption of correctness, weighing solely in his favor, literally, the issue "is so one-sided that one party must prevail as a matter of law." (Anderson v. Liberty Lobby Inc., 477 U.S. 242, 251-252, 106 S. Ct. 2505, 91 L.Ed. 2d 202 (1986); (citing Lyons v. Brandly, 2007 U.S. Dist. LEXIS 101907, **29). For clarity, that "one party" is Wood and that "law" is the *Lex Terrae*. So says Due Process.

21. CAVEAT: Whenever you throw out the Due Process of a law, the Equal Protection of that law naturally follow suit.

22. To contest and contradict such immutable correctness, via affidavit and memorandum, Sgt. Viner, Felding, and Henley would have to proffer an affirmative defense against Wood's substantive ground for

) relief. For no new credible and material evidence exists outside ODRC records, i.e., camera footage and medical records that would render Wood guilty of fighting.

23. Should Sgt. Viner, Felding and Henley to challenge, they would have to rely upon this same evidence. To do so would only vindicate Wood of the bogus charging instrument. At this juncture, it would be best for them to sit silently in concession of the facts.

VII. Suppressed Evidence

) 24. Sgt. Viner's Conduct Report was void of witness statements favoring Wood. Why?

"Omnia praesumuntur contra spoliatores."

The Law Dictionary. Copyright (c) 2002,
Anderson Publishing Co.

25. Indeed, "all things are presumed against a spoliator, e.g., if he wrongfully withholds or destroys evidence, it will be presumed to be against him." (id.).

) 26. Sgt. Viner further failed to interview Wood. This resulted in a one-sided inquiry which always arrives at a one-sided result. After all, Lord Byron did declare, "The truth is best discovered by seeking answers on both sides of the question."

27. Wood is demanding a polygraph. AR 5120-9.26.

VIII. Criminal Charges

28. Evidence confirms that Inmate Brian Henley (#A485-121) is guilty of felonious assault with a "deadly weapon" pursuant to O.R.C. § 2903.11. A felony - 2.

29. Evidence confirms that Inmate Carvin Felding (#A693-707) is guilty of complicity (O.R.C. § 2923.03 (A)(2)) of felonious assault with a deadly weapon (O.R.C. § 2903.11), for Felding did "Aid and abet" Henley pre- and post-assault.

30. As Wood concedes his error in law where he believed Felding and Henley were co-conspirators (Wood's Affidavit, p. 19 & 20, Item 7B), he also concedes that the base charge of Felonious Assault may be raised to Attempted Murder (O.R.C. § 2923.02 (A)(1)). This assertion is valid for several reasons:

- i. Wood was attacked with a deadly weapon from behind
- ii. Wood went unconscious on the first blow
- iii. Henley continued to strike Wood's head while he was face down
- iv. Wood believes Henley would have killed Wood had not the second blow woken him up.
- v. The head is the most vital part of the body
- vi. Henley fled the scene believing he got away with the assault.

IX. Detective Butler

31. On 4-18-2022, Wood's sister, Valentina Marie Papp, spoke with Detective Butler of the State of Ohio Highway Patrol out of Bucyrus, Ohio. The Highway Patrol has jurisdiction over Ohio's prisons and Det. Butler is assigned to Richland Correctional.

32. Det. Butler declared that his office is not only responsible for internal investigations regarding cases like this, he confirmed he was "never made aware", but guaranteed to look into the matter. Such confirms what Wood discovered after the RIB hearing: "The ticket was never investigated" (Wood's Affidavit, p. 19 of 20, Item 22).

33. Failure to report a crime may be a misdemeanor. (Disciplinary Counsel v. Cisinacane, 102 Ohio St. 3d 117, *121 (2004)), but obstructing justice is a felony (O.R.C. § 2921.32).

X. Excited Utterance

33. In shock from the brutal assault, after leaving medical and upon being placed in a holding cell in Segregation, Wood filled out an ODRC Voluntary Statement Form. St. 1). "under the stress of excitement caused by the event", and having no time for reflective thought. (State v. Wallace, 32 Ohio St. 3d 87, *90 (1998)), Wood contends that his Voluntary Statement rests safely within the Excited Utterance.

exception of Ohio Evidence Rule 803(2) and Federal Evidence Rule 803(2).

XI. Subpoena

34. The lieutenant at the RIB hearing was wearing an audio-video recording device, a GO-PRO® of sorts, just like the lieutenant that took pictures of Wood's headwounds. Whatever the lieutenant said, whispered, at the RIB hearing is recorded, just like all camera footage is recorded and stored in Columbus.

35. Under Ohio Crim. R. 17 and U.S.C.S. Fed. Rules Crim. Proc. R. 17, all ODRC audio, video, photographic, submitted documents by Wood, medical records, investigative reports, witness statements, and any other recording or document pertinent to the determination of this case, are subject to subpoena.

36. This assertion holds absolute weight, for the ODRC is financially supported by tax dollars, rendering it a public domain entity, just like NASA. Therefore the above-mentioned documents and recordings fall under Title 5 U.S.C.S. § 551, § 552, Public Information. Better known as Freedom Of Information Act or "FOIA".

XII. Hate Crime

37. Wood, an Italian-American, was targeted by two (2) African-Americans. As a slave-for-profit under the latter half of U.S. Const. Amend. 13, Section 1, Wood is a minority and a ward of the State of Ohio. This renders Wood "the victim" under the Hate Crime Prevention Act of 2024, and Felding and Henley guilty of destruction of State Government Property.

XIII. Human Rights

38. The Universal Declaration of Human Rights was signed by President Jimmy Carter in 1972, rendering it Federal law. When ODEC staff failed to cuff Henley after he verbally assaulted Ms. Bishop, Henley continued to walk up and down dorm aisles shouting, "I'm going to take this out on somebody!" They knew.

39. The failure to cuff enabled the assault. Therefore, failure to cuff violated the Universal Declaration of Human Rights at

Article 3, Everyone has the right to life, liberty, and security of person; and

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

40. In sync, subjected to arbitrary arrest, detention or exile
(ibid at Article 9), failure to cuff violated U.S. Const. Amend. 8,
which the Framers intended to protect Wood from cruel and
unusual punishment.

41. www.FreeFrankWood.com.

XIV. Conclusion

42. Via cameras, timing, and injuries that do not match Sgt.
Viner's bogus Conduct Report, Wood has successfully proven
that he is factually innocent of the alleged and falsified
Rule 19 violation for fighting. The Conduct Report must now
be vacated in its entirety, with prejudice, and removed from
Wood's prison record without delay.

43. Inmates Felding and Henley are guilty of, at least, felonious
assault with a deadly weapon (2923.01) and complicity (2923.03
(A)(2)), and possibly attempted murder (2923.02 (A)(1)).

44. Wood demands the indictment, arrest, prosecution and
convictions of Felding and Henley.

45. Relief is accordingly sought.

Honor and Integrity,

Frank P. Wood

Frank P. Wood (#A504-107)

Richland Corr. Inst.

P.O. Box 8107

Mansfield, OH 44901

CERTIFICATE OF SERVICE

I, Frank P. Wood, do hereby verify that a true and accurate copy of the foregoing Disciplinary Appeal was placed in the Richland Correctional Institution's mail box, with a proper Cash Slip that is signed and witnessed attached, on April, 19, 2022, and forwarded via Regular U.S. Mail to:

Chief Legal Counsel (Disciplinary Appeal)

4545 Fisher Road, Suite D

Columbus, Ohio 43228.

Frank P. Wood

Frank P. Wood