

**UNITED STATES DISTRICT COURT**

**DISTRICT OF MAINE**

**KRISTIN DOUGLAS, a/k/a TINA** )  
**BETH MARTIN,** )  
 )  
**Plaintiff** )  
 )  
**v.** )  
 )  
**YORK COUNTY, et al.,** )  
 )  
**Defendants** )

**Docket No. 02-102-P-H**

**RECOMMENDED DECISION ON DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

The defendants, York County and the York County Sheriff's Department,<sup>1</sup> move for summary judgment in this action brought under 42 U.S.C. §§ 1983 and 1988 and 14 M.R.S.A. § 851.<sup>2</sup> I recommend that the court grant the motion.

**I. Summary Judgment Standard**

Summary judgment is appropriate only if the record shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "In this regard, 'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. By

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<sup>1</sup> The amended complaint also names "unknown defendants, deputy sheriffs," further identified as having "acted as guards employed by the York County Jail during the fall of 1971," Amended Complaint and Jury Claim ("Amended Complaint") (Docket No. 11) at 1 & ¶ 5, who have not been served and have not appeared in this action. My discussion of the motion to dismiss, which is based on the applicable statute of limitations, would apply to any such defendants in the same manner as it does to the moving defendants.

<sup>2</sup> By its terms, 14 M.R.S.A. § 851 appears to create a four-year statute of limitations for actions against a sheriff for his own negligence or misconduct or that of his deputies rather than to create such a cause of action. Whether the plaintiff's claims, other than those asserted under the federal statutes, arise from this statute or state common law makes no difference for purposes of this motion for  
(continued on next page)

like token, ‘genuine’ means that ‘the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party.’” *Navarro v. Pfizer Corp.*, 261 F.3d 90, 93-94 (1st Cir. 2001) (quoting *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995)).

The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party’s case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor. *Nicolo v. Philip Morris, Inc.*, 201 F.3d 29, 33 (1st Cir. 2000). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, the nonmovant must “produce specific facts, in suitable evidentiary form, to establish the presence of a trialworthy issue.” *Triangle Trading Co. v. Robroy Indus., Inc.*, 200 F.3d 1, 2 (1st Cir. 1999) (citation and internal punctuation omitted); Fed. R. Civ. P. 56(e). “As to any essential factual element of its claim on which the nonmovant would bear the burden of proof at trial, its failure to come forward with sufficient evidence to generate a trialworthy issue warrants summary judgment to the moving party.” *In re Spigel*, 260 F.3d 27, 31 (1st Cir. 2001) (citation and internal punctuation omitted).

## **II. Procedural Background**

The defendants initially moved to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(6), contending, as they do here, that the plaintiff’s claims are barred by the applicable statute of limitations. Motion to Dismiss, etc. (Docket No. 3) at 2. That motion was denied, except as to any claim for punitive damages. Order Affirming Recommended Decision of the Magistrate Judge (Docket No. 7). The plaintiff subsequently filed an amended complaint (Docket No. 11). The parties were then allowed ninety days for discovery limited to the issue of the applicability of the exception to

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summary judgment; the tolling statute at issue here applies to both.

the statute of limitations created by 14 M.R.S.A. § 853. Report of Conference of Counsel and First Phase Scheduling Order (Docket No. 14) at 1-2. In accordance with the order establishing that period of limited discovery, the defendants have now filed a motion for summary judgment based on a claim that the action is barred by the applicable statute of limitations and that motion is ready for action by the court.

### **III. Factual Background**

The following undisputed material facts are appropriately presented and supported in the statements of material facts submitted by the parties in accordance with this court's Local Rule 56.

The plaintiff was born on January 8, 1950. Defendants' Statement of Material Facts ("Defendants' SMF") (Docket No. 17) ¶ 1; Plaintiff's Response to Defendants' Statement of Material Facts ("Plaintiff's Responsive SMF") (Docket No. 20) ¶ 1. She graduated from high school in 1969. *Id.* ¶ 4. She had been expelled from one school and always did poorly in school. Plaintiff's Amended Statement of Material Facts in Dispute ("Plaintiff's SMF") (Docket No. 32) ¶¶ 9, 11; Defendants' Reply to Plaintiff's Amended Statement of Material Facts ("Defendants' Responsive SMF") (Docket No. 36) ¶¶ 9, 11. She currently lives on the island of Oahu in Hawaii. Defendants' SMF ¶ 6; Plaintiff's Responsive SMF ¶ 6.

From late winter 1970 through the following spring, the plaintiff worked at a rest home for seniors in Lawrence, Massachusetts. *Id.* ¶ 8. In the summer of 1970 the plaintiff worked at the Chat & Chew Restaurant and had a small apartment in Kennebunkport, Maine. *Id.* ¶ 9. At the end of the summer, the plaintiff went to Montreal to visit friends she met in Kennebunkport. *Id.* ¶ 10. Shortly thereafter, the plaintiff went to Europe for a week. *Id.* ¶ 11. During the summer of 1971 the plaintiff lived in Kennebunkport, rented an apartment and worked as a waitress at the Chat & Chew Restaurant.

*Id.* ¶ 12. In the fall of 1971, the plaintiff was arrested and subsequently incarcerated at the York County jail. *Id.* ¶ 13.

After her release from the York County Jail, the plaintiff went to stay with a friend in Newton, Massachusetts. *Id.* ¶ 14. She then went to New York for an abortion, after which she returned to stay with her friend in Newton through Thanksgiving of 1971. *Id.* ¶¶ 15-16. The plaintiff then stole a car and drove to Colorado, where she had previously been with some friends. *Id.* ¶¶ 17-18. The plaintiff got a job as a chambermaid in Aspen and stayed there until March or April, skiing on some of her days off. *Id.* ¶¶ 19-20. The plaintiff sold the car she had stolen in Massachusetts. *Id.* ¶ 22. After March or April 1972 the plaintiff moved to California, stealing another car on her way. *Id.* ¶¶ 20-22. For a period of time, she was homeless and lived out of the stolen car. Plaintiff's SMF ¶ 27; Defendants' Responsive SMF ¶ 27. In California, the plaintiff was arrested for stealing clothes and food and spent six months in jail. Defendants' SMF ¶ 23; Plaintiff's Responsive SMF ¶ 23.

After her release from jail in 1972 the plaintiff returned to Colorado and then traveled to Vermont in a Jeep she had stolen in Arizona. *Id.* ¶¶ 24-25. She was arrested and jailed in Vermont for stealing a gun. *Id.* ¶¶ 26-27. She was sentenced in federal court to a term of up to 6 years for stealing the Jeep. *Id.* ¶¶ 27-28. She spent five years in jail, from 1973 to 1978. *Id.* ¶ 29. While in prison, she worked for the prison dentist as a dental hygienist in all three prisons in which she was incarcerated. *Id.* ¶¶ 30-31. She also helped inmates who had not been given credit for time served in county jails. *Id.* ¶ 33. Her sentence was extended because of disciplinary problems. Plaintiff's SMF ¶ 43; Defendants' Responsive SMF ¶ 43. After her release in 1978, the plaintiff spent six months in a halfway house in San Francisco. Defendants' SMF ¶ 36; Plaintiff's Responsive SMF ¶ 36. After the halfway house she moved to an apartment with two roommates where she lived for four or five months

and paid rent. *Id.* ¶ 38. At some time after September 1979 she moved to Austin, Texas where she held various jobs, drove a vehicle and held a valid driver's license. *Id.* ¶¶ 40, 43-52.

The plaintiff then returned to California, where she stayed at a place called Lavender Hill during the summer and fall of 1980. *Id.* ¶ 56. She then moved to San Francisco, where she lived with two roommates for a year and paid rent. *Id.* ¶¶ 58-59. She then moved to the East Bay area where she lived for about a year and paid rent. *Id.* ¶ 61. After that, she moved back to San Francisco where she lived with a roommate for a little less than a year. *Id.* ¶¶ 62-63, 66. She began going to Al-Anon meetings, which she has attended, off and on, for 10 years. Plaintiff's SMF ¶¶ 62, 136; Defendants' Responsive SMF ¶¶ 62, 136. While in San Francisco, the plaintiff earned an emergency medical technician certificate from a community college while working part-time. Defendants' SMF ¶¶ 77-82; Plaintiff's Responsive SMF ¶¶ 77-82. In 1983 or 1984 she worked at Sunset Transportation driving elderly, handicapped people to programs or facilities. *Id.* ¶¶ 84-88. In the fall of 1985 she enrolled in a one-year dental assistant program at the City College of San Francisco. *Id.* ¶¶ 96-97. She completed the program. *Id.* ¶ 99. Immediately thereafter she did fill-in work or temporary work for a variety of dentists. *Id.* ¶ 101. In 1987 she began working for Dr. John Fairchild as a dental assistant; she left her employment after less than a year because she was not making enough money. *Id.* ¶¶ 102-06.

The plaintiff then worked as an apprentice sheet metal worker for under a year. *Id.* ¶¶ 110-12. Her next job was with the University of California Dental School as a dental assistant, where she stayed for about a year. *Id.* ¶¶ 117-19. This was her only full-time job. Plaintiff's SMF ¶ 121; Defendants' Responsive SMF ¶ 121.

In 1989 or 1990 the plaintiff moved to Marin County at the encouragement of a woman with whom she maintained a relationship for three or four years, until 1993. Defendants' SMF ¶¶ 68-70;

Plaintiff's Responsive SMF ¶¶ 68-70. After attending classes at a college in Marin, the plaintiff went to work for Dr. John Johnson, an oral surgeon, for whom she worked part-time for about 2 ½ years. *Id.* ¶¶ 120-22, 132. After she left Dr. Johnson's office, the plaintiff did not try to find another job because she had been diagnosed with hepatitis C and knew that she could not work in a job where she would have contact with other people's blood. *Id.* ¶ 133. In 1992 she hired an attorney to represent her on a worker's compensation claim. *Id.* ¶ 138.

In 1993 the plaintiff moved in with Renie Lindley, with whom she continues to live. *Id.* ¶¶ 71-76. In 1994 or before, the plaintiff filed for Social Security disability benefits. *Id.* ¶ 134. After she was denied two or three times, she hired a lawyer who undertook the appeal process. *Id.* ¶ 135.

The plaintiff has received psychological treatment, off and on, since 1982. Plaintiff's SMF ¶ 132; Defendants' Responsive SMF ¶ 132. The plaintiff has never been a patient in a psychiatric hospital. Defendants' SMF ¶ 139; Plaintiff's Responsive SMF ¶ 139. The plaintiff never sought medication until 1994. Plaintiff's SMF ¶ 134; Defendants' Responsive SMF ¶ 134. Since 1971, excluding the period of time when she was in jail, she has maintained a checking account. Defendants' SMF ¶ 153; Plaintiff's Responsive SMF ¶ 153. She registered to vote twice. *Id.* ¶ 167. She is currently diagnosed with mental illness consisting of bi-polar disorder with current depression, post-traumatic stress disorder and mixed personality disorder with borderline dependent and anti-social features. Plaintiff's SMF ¶ 210; Defendants' Responsive SMF ¶ 210. The plaintiff does not contend that she ever forgot about the rapes that provide the basis for this lawsuit but states rather than she "ran as far away from it as I could and got away from it as far and fast as I could." *Id.* ¶ 219.

#### **IV. Discussion**

The plaintiff alleges that she was arrested for traffic violations during the fall of 1971 and incarcerated in the York County Jail either because she was unable to make bail or because court was

not in session. Amended Complaint ¶¶ 6-7. Her claims in this action are based on her allegation that she was repeatedly gang-raped by other inmates while she was incarcerated at the York County Jail as a result of policies maintained by the defendants at that time. *Id.* ¶¶ 15-16, 18-23. The defendants contend that this action is barred by applicable statutes of limitations. Motion for Summary Judgment, etc. (“Motion”) (Docket No. 16) at 6-16.

“The Supreme Court directs federal courts adjudicating civil rights claims under 42 U.S.C. § 1983 to borrow the statute of limitations applicable to personal injury actions under the law of the forum state.” *Street v. Vose*, 936 F.2d 38, 39 (1st Cir. 1991).<sup>3</sup> Under Maine law, the applicable statute of limitations is provided by 14 M.R.S.A. § 752, which requires that an action be commenced within six years after the cause of action accrues. The plaintiff contends, Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion for Summary Judgment (“Opposition”) (Docket No. 25) at 3, that this statute is tolled in the circumstances of her claim by 14 M.R.S.A. § 853, which provides that “If a person entitled to bring any of the actions under sections 752 to 754 . . . is a minor, mentally ill, imprisoned or without the limits of the United States when the cause of action accrues, the action may be brought within the times limited herein after the disability is removed.”<sup>4</sup> For section 1983 claims, the tolling of the statute of limitations is also governed by state law. *Benitez-Pons v. Commonwealth of Puerto Rico*, 136 F.3d 54, 59 (1st Cir. 1998). Section 853 also applies by its terms to the plaintiff’s claims under 14 M.R.S.A. § 851, to which a limitations period of four years otherwise applies.

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<sup>3</sup> The plaintiff’s claim under 42 U.S.C. § 1988, which seeks an award of attorney fees, Amended Complaint ¶ 86, is governed by the same statute of limitations and tolling statute as are her claims under 42 U.S.C. § 1983. *See Wilson v. Garcia*, 471 U.S. 261, 266-680 (1985). My discussion of the section 1983 claims applies as well to the attorney fee claim.

<sup>4</sup> Minor changes, not including the language quoted here, were made to section 853 in 1977 and 1985. Historical Note, 14 M.R.S.A. § 853 (1980 & Supp. 2001).

This action was brought more than 30 years after the cause of action accrued. Counting all of the time during which the plaintiff was imprisoned, as set forth in the summary judgment record, the tolling statute would not save her claims. The only issue before the court, and the only issue presented by the parties, is the question whether the tolling statute makes this action timely as a result of the plaintiff's mental illness. Under Maine law, a person is "mentally ill" for purposes of 14 M.R.S.A. § 853 if she suffers from an overall inability to function in society that prevents her from protecting her legal rights. *McAfee v. Cole*, 637 A.2d 463, 466 (Me. 1994). "Whether a person is mentally ill within the meaning of 14 M.R.S.A. § 853 is a question of fact." *Bowden v. Grindle*, 675 A.2d 968, 971 (Me. 1996). The plaintiff invoking this exception to the statute of limitations must have been mentally ill when the cause of action accrued, *Dasha v. Maine Med. Ctr.*, 665 A.2d 993, 994 (Me. 1995),<sup>5</sup> and for a sufficient period of time so that the complaint was filed within six years after the disability imposed by the mental illness ceased.

In this regard, the plaintiff relies on the opinion of Diane H. Schetky, a forensic psychiatrist. Opposition at 9-10; Affidavit of Diane H. Schetky ("Schetky Aff.") (Docket No. 22) ¶ 2. Dr. Schetky opines, in relevant part, as follows:

8. . . . It is my impression that only recently (2000), with the help of treatment for her depression and Post Traumatic Stress Disorder, has [the plaintiff] been strong enough to contemplate bringing a lawsuit for the rapes. This is a brave step on her part which requires revisiting the trauma and her rage and one she could not have taken prior to finding the supportive relationship she is now in and being among people who validate her traumatic experiences and do not blame her for them.

9. It is also my opinion that from a young age, certainly as a child, as a result of the abusive family upbringing imposed upon Ms. Douglas, she has been, and continues to be, mentally ill. It is also my opinion that as a result of this mental illness, and the exacerbation of the rapes inflicted upon her at the York County Jail, that Ms. Douglas has been at all pertinent times,

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<sup>5</sup> For this reason, I will not consider the extensive discussion of the plaintiff's current mental condition provided by the plaintiff. Opposition at 8-10.

suffering from an “overall inability to function in society that prevents plaintiff[s] from protecting [her] legal rights.” . . .

10. Given Ms. Douglas’ low level of functioning in general, it would have been impossible for Ms. Douglas to have gathered enough emotional and psychological strength to proceed forward in any type of lawsuit concerning the jail house rapes.

*Id.* ¶¶ 8-10. The defendants counter with the opinion of Carlyle B. Voss, a psychiatrist who also examined the plaintiff. Dr. Voss states, in pertinent part:

Since the alleged rapes in 1971, Ms. Douglas’ psychological disorders have not resulted in an inability to function in society in a way that prevented her from protecting her legal rights. This is most notably established by holding several jobs after the alleged rapes, living independently, and participating in a wide range of life activities.

Affidavit of Carlyle B. Voss, M.D. (Exh. E to Defendants’ SMF) ¶ 6e.

Maine case law provides some guidance to a court evaluating evidence with respect to the standard established by 14 M.R.S.A. § 853. In *McAfee*, after stating that the term “mental illness” in section 853 “refers to an *overall inability* to function in society that prevents plaintiffs from protecting their legal rights,” the Law Court cited four cases from other jurisdictions. 637 A.2d at 466 (emphasis in original). In the first cited case, *Smith v. Smith*, 830 F.2d 11 (2d Cir. 1987), the Second Circuit noted, in construing a similar New York statute tolling the statute of limitations “based on insanity,” that the statute “does not apply to a person claiming a mere post traumatic neurosis. It applies only to those unable to protect their legal rights because of an over-all inability to function in society.” *Id.* at 12 (citations and internal quotation marks omitted). In the second cited case, *Hildebrand v. Hildebrand*, 736 F. Supp. 1512 (S.D. Ind. 1990), the court noted that an Indiana court had construed a similar tolling statute that used the term “mentally incompetent” to mean a person “who by reason of his or her mental state is incapable of managing or procuring the management of his or her ordinary affairs.” *Id.* at 1524. In the third cited case, *Hickey v. Askren*, 403 S.E.2d 225 (Ga. App. 1991), the

court held that the test under a tolling statute that used the term “mental incapacity” was “not whether one did not manage his own affairs, acquiescing in the management thereof by others, or whether one has merely managed his affairs unsuccessfully or badly” but rather “whether the individual, being of unsound mind, *could not* manage the ordinary affairs of his life.” *Id.* at 228-29 (citation omitted). In the fourth cited case, *Yannon v. RCA Corp.*, 517 N.Y.S.2d 205 (2d Dept. 1987), the New York tolling statute at issue in *Smith* was construed to define a person as “insane” for the purposes of tolling a statute of limitations “if he is unable to manage his business affairs and estate and to comprehend and protect his own legal rights and liabilities because of an overall inability to function in society.” *Id.* at 206.

In *Morris v. Hunter*, 652 A.2d 80 (Me. 1994), the Law Court held that evidence that a person “although perhaps unable to make complex decisions without assistance, can do so if provided with time and a careful explanation” was enough to raise a genuine issue of material fact as to whether he was mentally ill within the meaning of section 853. *Id.* at 82. In *Bowden*, the Law Court again construed section 853.

If a person is mentally ill when the cause of action accrues she may bring an action within the statutorily prescribed time limit after the disability is removed. 14 M.R.S.A. § 853 (Supp. 1995). Pursuant to the tolling statute mental illness refers to “an *overall inability* to function in society that prevents plaintiffs from protecting their legal rights.”

675 A.2d at 971 (quoting *McAfee*; emphasis in original). In that case, the Law Court held that the plaintiff had been mentally ill within the meaning of the statute when she was suicidal; could not think, remember or understand what was going on; at times had difficulty cooking her own meals, leaving the house and driving; was receiving psychiatric care and medication as an outpatient; and was hospitalized three times for psychiatric disorders in a single year, after which her condition began to improve. *Id.* at 970-71, 972.

Here, while Dr. Schetky repeats the language of *McAfee* in stating her opinion, her affidavit as a whole makes clear that her focus is on the plaintiff's inability to bring this lawsuit. Schetky Aff. ¶¶ 7-8, 10-11. Indeed, she states that the plaintiff's mental illness *together with* "the exacerbation of the rapes" caused her inability to function in society, in the terms set out in *McAfee*. *Id.* ¶ 9. This is not the focus of the *McAfee* standard. The mental illness alone must cause the inability, which is the overall inability to function in society, not just the inability to protect the legal rights that might be at issue in the instant case. *See generally Callahan v. Image Bank*, 184 F.Supp.2d 362, 364 (S.D. N.Y. 2002). Here, as Dr. Voss notes, the plaintiff demonstrated immediately after the alleged rapes and throughout most of the following 30 years an ability to function in society which, while certainly not approaching optimal or even perhaps average functioning, must be deemed sufficient to have permitted her to protect her legal rights. In fact, she acted to protect her legal rights by hiring an attorney to represent her in a workers' compensation claim in 1992, Defendants' SMF ¶ 138; Plaintiff's Responsive SMF ¶ 138, and by hiring an attorney to appeal the denial of her application for social security benefits in 1994 or before, *id.* ¶¶ 135-37. Assuming *arguendo* that the plaintiff was mentally ill at the time this cause of action accrued in 1971, both of these events occurred more than four years (for the state-law claims) or six years (for the section 1983 claims) before this action was brought in 2002.

In addition, the evidence in the summary judgment record establishes that the plaintiff, from 1971 to the present: maintained a checking account, except for the times she was incarcerated; made living arrangements and paid rent; found jobs; obtained certification as an emergency medical technician and dental assistant after training; twice registered to vote; held a driver's license; and participated in political activity other than voting, *id.* ¶¶ 156-66. This evidence compels a conclusion that the plaintiff was not suffering, from the date on which this cause of action accrued in 1971 through

May 4, 1996 (six years before this action was filed), from a mental illness that imposed an overall inability to function in society that prevented her from protecting her legal rights. As a result, this action is untimely and barred by the statutes of limitations set forth in 14 M.R.S.A. §§ 752 and 851.

### **V. Other Matters**

The defendants include in their motion an alternative argument based on laches. Motion at 16-17. The plaintiff filed a motion asking the court to “dismiss” that portion of the defendants’ motion. Plaintiff’s Motion to Dismiss Defendants’ Motion for Summary Judgment (Docket No. 19). Because my recommendation is based on the statute of limitations, I do not reach the defendants’ alternative argument, and the plaintiff’s motion to “dismiss” is therefore moot.

The defendant also filed a motion to strike portions of the plaintiff’s statement of material facts. Defendants’ Motion to Strike (Docket No. 31). To the extent that this motion addresses inaccurate record citations in the first statement of material facts filed by the plaintiff, those errors have presumably been remedied by the plaintiff’s filing of an amended statement of material facts. To the extent that the motion addresses alleged hearsay, unqualified opinion evidence and allegations concerning the rapes, I have not relied on any of the factual allegations identified by the defendants in reaching my recommended decision. This motion is accordingly moot as well.

### **VI. Conclusion**

For the foregoing reasons, I recommend that the defendants’ motion for summary judgment be **GRANTED**.

### **NOTICE**

*A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum and request for oral argument before the district judge, if any is sought, within ten (10) days after being served with a copy thereof. A responsive memorandum and any request for oral*

*argument before the district judge shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

Dated this 17th day of April 2003.

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David M. Cohen  
United States Magistrate Judge

**Plaintiff**

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*aka*

**TINA BETH MARTIN**

V.

**Defendant**

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