

# Solitary Watch

## Criminal Justice Issues and Prisoners' Rights

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by [Voices from Solitary](#) | July 30, 2014

*Ty Evans is serving time in Pendleton Correctional Facility in Indiana for attempted murder. There, he became a self-taught legal advocate for other incarcerated men a jailhouse lawyer. There is no right to counsel for those serving prison sentences who seek to challenge their convictions or their sentences which is just one aspect of the utter failing of indigent defense in this country. For those who cannot afford an outside attorney, the only place to turn for help with negotiating the complicated path through the criminal justice system is to jailhouse lawyers, who help them represent themselves pro se. Evans calls them the worst attorneys in America, but some are in fact highly skilled and dedicated, despite being hamstrung at every turn. Nonetheless, their work is often done in vain, since courts tend not to take pro se cases very seriously, no matter how substantive they may be.*

*At Pendleton, Evans served as a legal advocate for men in solitary confinement, who lack even the ability to go to the prison's law library for themselves. Recently, after writing a book to help prisoners defend themselves, he was summarily removed from his position. Prisoners in solitary still ask for my help, he writes, but I am no longer able to provide it. He can receive mail: Ty Evans, 158293, Indiana State Prison, 1 Park Row, Michigan City IN, 46360. James Ridgeway*

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Imagine having been convicted of a serious crime, having the right to attack the validity of your conviction, and being appointed an attorney who has not passed the bar, who has little education, and who has no experience with the law.

This attorney will be confined to one room in his house, have no computer, no Internet, and no phone. He'll consult a fixed number of legal books, and may review up to 15 published legal opinions per week. He'll have no money to spend on your defense for things like DNA testing, ballistics, or expert witnesses. Work he submits to the court will be handwritten and, given his aptitude, virtually unintelligible. Your freedom will depend solely on this man's efforts, and if you've been wrongfully convicted it will be up to this man to prove it.

Surely, you think, convicted prisoners do not receive this kind of legal representation in America. But you would be wrong, very wrong.

For thousands of prisoners, this is exactly the level of legal assistance they have. They are *pro se* litigants, forced to attack their convictions and sentences entirely on their own. They fight their cases from prison cells scattered across the United States, usually only with the assistance of other prisoners like themselves. They are, collectively, the worst attorneys in America.

Per a long line of Supreme Court rulings anchored on *Pennsylvania v. Finley* (1987), it has been held that the Sixth Amendment right to counsel does not extend to the post-conviction stage. Once a prisoner has been convicted by a jury and lost his direct appeal of that verdict, there is no more right to counsel.

One might presume that the direct appeal constituted a thorough examination of the case but, in fact, the appeal only reviews trial errors preserved by counsel. Things outside of the trial record, such as failure to call witnesses, failure to use exculpatory evidence, failure to

ensure proper jury instructions, etcetera, are not contained in the trial record and are not reviewable on direct appeal.

However, after the direct appeal, a prisoner retains the right to challenge the conviction on a number of Constitutional grounds, most of which involve a claim of ineffective assistance of counsel. He may do this through state post-conviction proceedings or a state habeas corpus petition, and then through a federal petition for a writ of habeas corpus. In other words, a prisoner who has been convicted simply because his trial attorney did not protect the defendant's right to fair trial can enumerate the defects in the attorney's representation and argue that there stands a reasonable probability of a different outcome were the defendant represented by competent counsel. Prisoners know this as the *Strickland* rule, from the Supreme Court case, *Strickland v. Washington* (1984).

The most damaging trial defects are almost always a result of trial counsel's errors and omissions. The prisoner's problem is, knowing what counsel failed to do requires a complete knowledge of criminal law trial rules, evidence rules, civil rules, state and federal statutes, and constitutional law. Few prisoners have a solid grasp of the labyrinthine legal system that has put them behind bars. So, those that have a vague idea of how to challenge their convictions struggle to articulate their claims, while thousands of others have no idea that post-conviction remedies are even available and do not attempt to overturn invalid convictions or excessive sentences.

Until recently, I worked as a lay advocate for prisoners housed in solitary confinement in one of the worst prisons in America. Pendleton Correctional Facility in Indiana houses 1,458 prisoners, and 22% are in the most restrictive form of segregation, either for disciplinary reasons, for an administrative investigation, or for protective custody. At last count, 50 had life sentence. For the 1,408 with release dates, the average amount of time left to serve is 20 years. Nearly all went to trial, nearly all have lengthy sentences, and nearly all will be involved in collateral attacks on their convictions at some point during their incarceration. Their need for qualified legal assistance is overwhelming, yet very few will have the means to employ professional counsel. (An exception is that Congress has enacted statutes requiring counsel for the duration of legal proceedings for those with death sentences.)

For the 78% in Pendleton's general population, there is a physical access to a law library. The facility allows a prisoner to visit the law library 1 or 2 hours a week, and up to 7 hours a week if a prisoner can show a verifiable filing deadline in a pending case. The library has computers with a LEXIS database and MS Word software. There are several law clerks on duty, none of whom possess any certifiable legal credentials. Even with these conveniences, prisoners have great difficulty filing reasonable and presentable documents in court.

For the 22% in Pendleton's solitary confinement, there is no physical access to the prison law library. Clerks make weekly trips to the solitary units, pick up request forms, and spend maybe 5 minutes per prisoner discussing what the prisoner may need. Most of the solitary prisoners are indigent, enduring conditions where the food is always room temperature, and the heat or cold intolerable. Roughly a third of these prisoners have documented mental illness. Many are managed through medication. On days when they elect to exercise, they are led to a recreation cage on a dog leash. Some are illiterate. Few have even the slightest grasp on how to file things in court, yet many try.

The legal work done by these *pro se* prisoners is, across the board, pretty bad. According to one Indiana attorney who formerly clerked in the Indiana Court of Appeals, briefs submitted with a *pro se* litigant's name on the cover are treated practically with disgust from the outset, placed in a separate pile and given only a cursory glance by the Appellate Court judge. The judge tells the clerk, Write a denial, and the clerk opens the Attorney General's electronically filed brief and modifies it to write the court's opinion. Thus, even a good *pro se* brief will get lost in the shuffle.

For two years I readily shouldered the burden of doing legal work for these prisoners: researching, drafting briefs and motions, and writing detailed explanations for these men. Law clerks are only required to deliver requested materials, but these guys obviously needed more. My only credentials are years of experience, and a bachelor's degree.

In 2012, after answering the same questions over and over, I wrote a book outlining how to fight your case in Indiana as a *pro se* prisoner. A publisher accepted my work and bound a 620-page manual titled, *P.C. Guidebook: The Complete Guide to Post-Conviction Relief for the Pro Se Prisoner*. I operated under the presumption that such a book would be welcomed as a way to improve prisoner *pro se* filings, and that maybe even the prison staff would take pride in the work of one of their prisoners. But the Indiana Department of Correction didn't see it that way, and when the publisher sent in advertisements, the IDOC banned the book. Without reading it. Because my name was on the cover.

Naturally, I sued. The ACLU accepted the case, and the IDOC settled, allowing the book to be advertised and sold within Indiana prisons. On the morning of October 18, 2013, prisoners who had ordered the book received it from the prison mail room. That afternoon, I was removed from my position as a law library clerk, per Internal Affairs, citing that I was a threat to the safety and security of the facility. They have never identified the specific nature of the threat. I had not violated any rules. An appeal of my job loss to the superintendent was denied, no further reasoning given.

Prisoners in solitary still ask for my help, but I am no longer able to provide it.

The worst attorneys in America are still employed in force, piling up briefs that no judge will read, filing motions that no court will fairly consider. While few of these prisoners would be termed actually innocent, a sizable minority are serving sentences that are too severe, or have been convicted of offenses that have been over-charged by the prosecutor, although still guilty of lower level felonies. While not innocent, they fall under the broader definition of wrongfully convicted. Yet, where is the legal help for these men?

Per the state legislatures, Congress, and the courts, they are not entitled to legal assistance. Per a plain reading of the U.S. Constitution, they are. I have been told that the law won't change to allow these men attorneys, because there wouldn't be enough attorneys to fill the need. How odd that the wealthiest country in the world cannot afford justice.

The Voices from Solitary series publishes dispatches from people surviving the lived experience of solitary confinement.

Accurate information and authentic storytelling can serve as powerful antidotes to ignorance and injustice. We have helped generate public awareness, mainstream media attention, and informed policymaking on what was once an invisible domestic human rights crisis.

Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by [Voices from Solitary](#)

September 30, 2022

by [Voices from Solitary](#)

September 19, 2022

by [Voices from Solitary](#)

September 6, 2022

Solitary Watch encourages comments and welcomes a range of ideas, opinions, debates, and respectful disagreement. We do not allow name-calling, bullying, cursing, or personal attacks of any kind. Any embedded links should be to information relevant to the conversation. Comments that violate these guidelines will be removed, and repeat offenders will be blocked. Thank you for your cooperation.

I would like to purchase the guidebook written by Ty Evans but cant seem to locate it. Can you help me?

@Jay

The answer to the question Which prison was referred to on the cover of Mr Nice?

Is USP Terre Haute or as he claims in the book: Known as Terror Hut.. because of the slaughter and rapes that took place there. It goes on to discribe those that he shared this experience with. He summed up the experience as Terrifying!

SW has covered the CMUs there. Probably he would have made the list had he arrived later on. Therefore I do not believe we are too far off topic.

<http://solitarywatch.com/2011/01/24/inside-little-gitmo-documents-detail-inmate-surveillance-at-federal-prisons/>.

Dear Mr. Alan, i dont like to talk of things i know very little about, and perhaps a little to young to have been able to make an informed comment about; have not exposed to media.

However i have looked .ar all media connected to Howard. Dont want to spend too much time on this since its for people suffering in SHU

You make some correct observations and make valid points.

Marks graduated with multiple degrees from our prestigious university, and used his skills to help others, even teach them to read and write, it depends upon your own ethical line to decide if hes with anything due to his huge cannabis crimes.

Do question everything; yes Howard was recruited by mi6 to infiltrate the IRA and used this in his defence.

Your question about where he we held after the 7yr; i dont have that off the top of my head it can come when the person who has borrowed the autobiography freakinreturns it!! Marks had dealings with learn too, i wish i could pull all the info out my mind but cant . The one thing i would criticize badly is that he had little time with his children because of his importation. He tried LSD and detested it. With best regards to all watchers

Manson was and is a product of the system. Notes Ive collected on him but forgot where.

Charles Manson was the cult leader of a small band of followers that he called The Family. Mansons followers carried out several notorious murders in the late 1960s for him which inspired the book and movie both titled Helter Skelter.

After Mansons mother, had sent him to Gibault School for Boys in Terre Haute, Indiana at the age of 10 he ran away and began living on the streets. It was during this time that Manson began his life of crime, in order to support himself. He was rearrested in Indiana and sentenced to the local Juvenile Center, then after escaping he was moved to Father Flanagans Boys Town. He also escaped from Boys Town and went on a joy ride in a stolen car to visit relatives. During this time he committed more robberies which led to his arrest.

At the age of 13 Manson was sentenced to Indiana Boys School in Plainfield, Indiana where he was abused by other boys and even guards. According to Manson he was raped and tortured by older boys under the encouragement of a guard who sat by watching and masturbating. Like so many other reformatories the Indiana school dates back to 1867 when the Indiana General Assembly created a House of Refuge. In 1883 the name was changed to Indiana Reform School for Boys and then in 1903 they just dropped the premise of Reform from the name.

In 1951 Manson also escaped from Plainfield and was arrested in Beaver, Utah where he was sentenced to federal time for driving a stolen car across the state line. While serving time there Manson sodomized another boy while threatening him with a razor blade. Because of this assault he was moved to a higher security lock up. After a few more such incidents he was moved again to Chillicothe, Ohio Reformatory where he became a model prisoner and was paroled in May 1954 he was 20 years old.

He continued to be in and out of prisons until March 21, 1967, when Manson was released from prison for the last time, by this time he had spent more than half of his 32 years incarcerated.

Only to be rearrested for the Tate and LaBianca murders in 1969.

[http://en.wikipedia.org/wiki/Sharon\\_Tate#Murder](http://en.wikipedia.org/wiki/Sharon_Tate#Murder)

I quote from something I wrote about this era:

Consider my situation. I was a 49-year-old man facing life in prison for encouraging people to face up to new options with courage and intelligence. The American government was being run by Richard Nixon, Spiro Agnew, John Ehrlichman, Robert Haldeman, G. Gordon Liddy, John Mitchell, J. Edgar Hoover and other cynical flouters of the democratic process. Would you have let men like these keep you in prison for life for your ideas?

Flashbacks, autobiography of Timothy Leary

California Mens Colony was a newer style facility located in San Luis Obispo County.

At the time I stopped by to pick up other prisoners Huey Newton, the cofounder of the Black Panthers, was just beginning his 2-15 year sentence there for voluntary manslaughter of an Oakland police officer that had pulled him over. Newtons conviction was overturned on appeal in May 27, 1970 and he was released on \$50,000 bail on August 8, 1970, to await a new trial.

Ironically Newtons release was only one month before Timothy Leary escaped from the institutions low security section. The Ex-Harvard Professor had been serving two 10 year sentence in C.M.C. both for marijuana possession. Leary had first taken responsibility in 1965 for three roaches, and a matchbox of weed found in his car on the Texas, Mexico border near Laredo after being denied entry into Mexico. Leary was traveling with his two children and girlfriend at the time. Let out on bond Leary was rearrested in December 1968 after two joints were found in his possession. He claimed they had been planted by the officer.

(Im still amazed at the difference between the two crimes and their penalties.)

Leary had escaped with the help of members of the radical Weathermen organization who had prearranged to have him smuggled out of the U.S. to Algeria where he joined Eldridge Cleaver, and the Black Panther Partys government in exile. Not too long after his arrival Leary had to flee to Switzerland when Cleaver attempted to extort him. From Switzerland he traveled to Beirut, Lebanon and finally to Kabul Afghanistan where he was captured and brought back to the US.

Once in the states Leary was returned to C.M.C. where he spent four months in solitary confinement. Then Leary, the original LSD guru, was transferred to Folsom Prisons Solitary Confinement Unit and ironically housed in the cell next to Charles Manson, who told him, Ive been waiting to talk to you for years. Manson was the cult leader of a small band of followers that called themselves The Family, Under Mansons direction the cult were all heavily using LSD, as well as other mind altering drugs, when they carried out several notorious murders in the late 1960s. These murders inspired a movie and book both titled Helter Skelter.

Manson continued: Now we have plenty of time. We were all your students, you know. You had everyone looking up to you. You could have led people anywhere you wanted And you didnt tell them what to do. Thats what I could never figure out Why didnt you? Ive wanted to ask you that for years.

L: That was the point. I didnt want to impose my realities. The idea is that everybody takes responsibility for his nervous system, creates his own reality. Anything else is brainwashing.

M: That was your mistake. No one wants responsibility. Everyone wants to be told what to do, what to believe, whats really true and really real. At least that seemed to be the Families reality.

After another four months in the hole Leary was released into Folsoms general population. Then he was transferred to Vacaville where spent another five months in the hole. Leary was eventually released by CA Gov. Jerry Brown in May 1976 after cooperating with the Feds investigation of the Weathermen.

Learys early release was primarily a repudiation of the governments conduct, alluded to in the quote above taken from his autobiography Flashbacks, i.e. the Watergate break-in, and other such illegal activities directed towards civil rights groups.

So one might say why mention this old news. Well here is todays headline:

California governor (Jerry Brown) reverses parole for

Charles Manson associate Bruce Davis

By Ed Payne, CNN

updated 8:16 AM EDT, Sat August 9, 2014

<http://www.cnn.com/2014/08/09/justice/charles-manson-associate-parole/>

Found this book description on Amazon:

Publication Date: July 7, 2011

During the mid 1980s Howard Marks had 43 aliases, 89 phone lines, and owned 25 companies throughout the world. Whether bars, recording studios, or offshore banks, all were money laundering vehicles serving the core activity: dope dealing. Marks began to deal small amounts of hashish while doing a postgraduate philosophy course at Oxford, but soon he was moving much larger quantities. At the height of his career he was smuggling consignments of up to 50 tons from Pakistan and Thailand to America and Canada and had contact with organizations as diverse as MI6, the CIA, the IRA, and the Mafia. This is his extraordinary story.

Not many like him for sure.

Most jail house lawyers tend to be intelligent but few have a post graduate education.

My older brother also developed some legal skills while in Deuel Vocational Institute in CA in 1967. The place was dubbed Gladiator School by the guards. This is said to be where EME was founded in the 50s and where George Jackson was held before Soledad.

It helped to be useful in such a place but the guards didn't appreciate it at all.

This fact never changes.

Marks case reminds me of Timothy Leary.

The difference is the infamous Harvard Professor was held in California Men's Colony in the late 60s over just a small amount of marijuana because of his advocacy on drug use and his influence over youth. He escaped with the help of the Weathermen and fled the country to Algeria where Eldridge Cleaver was in exile.

What prison in the states was the book referring to when it claims Marks spent seven years in America's toughest penitentiary? The intro has him heading to Oakdale, LA.

[http://www.amazon.com/Mr-Nice-Howard-Marks-ebook/dp/B005CAPJWW/ref=sr\\_1\\_1?s=books&ie=UTF8&qid=1407505173&sr=1-1&keywords=mr.+nice+howard+marks](http://www.amazon.com/Mr-Nice-Howard-Marks-ebook/dp/B005CAPJWW/ref=sr_1_1?s=books&ie=UTF8&qid=1407505173&sr=1-1&keywords=mr.+nice+howard+marks)

Firstly my utmost respect goes to this man who took his own fate into his own hands and won his case with the legal system. I also know of a Welsh man, who imported cannabis to Britain, (you may know him Mr. Howard Marks) an intelligent man who spent over a decade for this flout of the rules and was released the same day as Mike Tyson (rape).

Howard is a well known character in UK and used his time in prison to educate other inmates on the law in order for them to understand how to legally stand up for themselves in court.

He had many successes.

This shows that many people could gain their freedom, or shorten sentences, if legally educated.

Mr. Nice by Howard Marks, an intriguing book.

I just wanted to add that between that 1963 Supreme Court decision establishing the constitutional right of criminal defendants to an attorney and 1970 when the Comprehensive Drug Abuse Prevention and Control Act was passed the total prison population had actually shrunk.

This new Act set the legal foundation for the government's war on drugs, first declared by President Richard Nixon but was actually following LBJ's lead. Their concern was driven by the high number of troops returning home with drug addictions.

Congress followed this Act in 1984 by passing the Sentencing Reform Act which then established the United States Sentencing Commission which in turn established guidelines that were enacted in 1987 to alleviate sentencing disparities.

These guidelines provided for determinate sentencing at the time of sentencing, as opposed to indeterminate sentencing, which would only later be determined by a parole commission after the person had started serving his or her sentence. As part of the guidelines reform, Federal parole was abolished.

The Sentencing Reform Act was followed by the Anti-Drug Abuse Act of 1986, which set mandatory minimum sentences for drugs, including marijuana. Under this act the same mandated minimum sentence of 5 years without parole was established for the possession of 5 grams of crack cocaine as for 500 grams of powder cocaine.

This 100:1 disparity was later reduced to 18:1 by the Fair Sentencing Act of 2010.

The first President George Bush maintained President Reagan's hard line, when he created the First National Drug Control Strategy to establish policies, priorities, and objectives to eradicate illicit drugs issued by the Office of National Drug Control in 1989.

Combined with the Anti-Terrorism and Effective Death Penalty Act and the Prison Litigation Reform Act (PLRA), both passed in 1996 (see above) is there any doubt that,

The gates to the abyss were opened wider?

The increase in the numbers held in prison following these legal maneuvers are hard to otherwise explain.

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IT'S REALLY TOUGH FOR INMATES THAT DON'T KNOW THE LAW WHEN THEY ARE FIRST CONVICTED.. MANY ATTORNEYS ARE SELL-OUTS.. INEFFECTIVE-INCOMPETENT. EVERY PRISON THAT I WAS IN HATED JAILHOUSE ATTORNEYS AND IMPLEMENTED PROCEDURES TO PREVENT THEM FROM HELPING OTHER INMATES.. EVERY ONE.. FOR THE AVERAGE INMATE IT'S NEARLY IMPOSSIBLE TO SEEK REDRESS AFTER GETTING TO PRISON.. IN 1973 I ORDERED A JAILHOUSE MANUAL FROM SAN FRANCISCO.. THAT BOOK STARTED ME OFF LEARNING LAW IN MY CASE THE COURTS WERE CORRUPT AND AFFIRMED MY CONVICTION.. BUT LEARNING LAW HELPED ME REVERSE 4 LIFE SENTENCES WHILE IN FEDERAL PRISON.. AND I HELPED MANY INMATES GET ACQUITTED IN SERIOUS CASES NEVER CHARGED FOR MY SERVICES WHILE ON THE WEB I NOTICED A CASE WHERE A 21 YEAR OLD GIRL GOT 2 CONSECUTIVE LIFE SENTENCES FOR KILLING 2 COPS WITH HER CAR SAD CASE.. AND SHE HAD INCOMPETENT ATTORNEYS BEEN IN 10 YEARS AND SHE MAY BE ENTITLED TO A REDUCED SENTENCE IM OUT AFTER 37 YEARS AND STILL HELP OUT INMATES WHEN I SEE THAT MY ASSISTANCE MEANS SOMETHING..

In 1963 the Supreme Court's ruling on Gideon v. Wainwright established the constitutional right of criminal defendants to an attorney, even if they had no money to pay for one.

When Gideon v. Wainwright was decided, fewer than half of all defendants were poor now, over 80 percent are.

In the 1960s, there were 200,000 people in jails, in prisons.

Today, we have 2.3 million people in jails and prisons so our need for lawyers is much greater.

But this increased need is not being met so we find that over 90% of all cases in this country are resolved by a plea deal.

Twenty years after Gideon, Strickland v. Washington created minimal standards for effective lawyering. The problem was they created the standard very, very low.

We all know the result; the gates of the abyss opened wider and the prison population grew ever faster with many suffering the dual consequences of longer sentencing and harsher prison conditions.

Unable to pay for proper legal representation the jail house lawyers were their only hope of salvation.

Appeals increased along with the incarcerated population with many an inmate filing a frivolous shot in the dark appeals.

So in 1996 the Anti-Terrorism and Effective Death Penalty Act was passed. This act required that prisoners who wish to appeal their convictions by state courts must petition the federal courts within one year. In addition, inmates must make all their claims for relief at one time.

Impoverished, and under-educated, rank-and-file prisoners operating from behind bars, were henceforth required to file their appeals quickly and correctly.

All of these conditions have deepened the distrust of the American justice system, and this attitude is made worst by the racial imbalance in prisons and with each humiliation and abuse that prisoners endure.

Rage against the system began in the 1960s, and lead to confrontations with the men running these prisons in the 1970s. When these frustrated prisoners acted out, even more draconian measures were deployed against them.

And today if such prisoners wish to challenge these harsh measures, another law waits to thwart all their efforts:

The Prison Litigation Reform Act (PLRA), also passed in 1996.

The PLRA imposes strict filing procedures which require hard-to-come-by documentation, combined with inflexible time restraints all of which are technically incomprehensible to almost all inmates. The result is even constitutionally meritorious cases are often thrown out of court.

All of this is exponentially more difficult for juveniles in adult prisons to manage. But sadly they, too, must navigate this maze of bureaucratic red tape, even as they struggle just to survive another day in prison.

Is it right that persons who have been seriously abused should be denied legal recourse because others have filed frivolous cases? When they choose to seek justice, should they have to navigate a system obviously geared to make it next to impossible to have their grievance heard? A bedrock principle of international human rights law is the equality of all persons before the law. But in reviewing this act, Human Rights Watch has said that it is not aware of any other country in which national legislation singles out prisoners for a unique set of barriers to vindicating their legal rights in court. This is all the more alarming because the monitoring of conditions in prisons, jails, and juvenile facilities, in the U.S. is primarily left up to the federal courts.

The result of the PLRA is that fewer law suits have been filed by prisoners, and of those filed, fewer are being won. Many acts that would be treated as serious crimes if perpetrated upon those of us in the free world can legally be perpetrated upon prisoners under the tenets of this act. This includes any act that is deemed to produce only mental or emotional injury. Thus, the internationally recognized harm that is done to inmates in SOLITARY CONFINEMENT is sanctioned and ignored, as is the emotional distress caused by the rape of inmates, whether by other prisoners or by guards.

P.O. Box 11374  
Washington, DC 20008

[info@solitarywatch.org](mailto:info@solitarywatch.org)

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