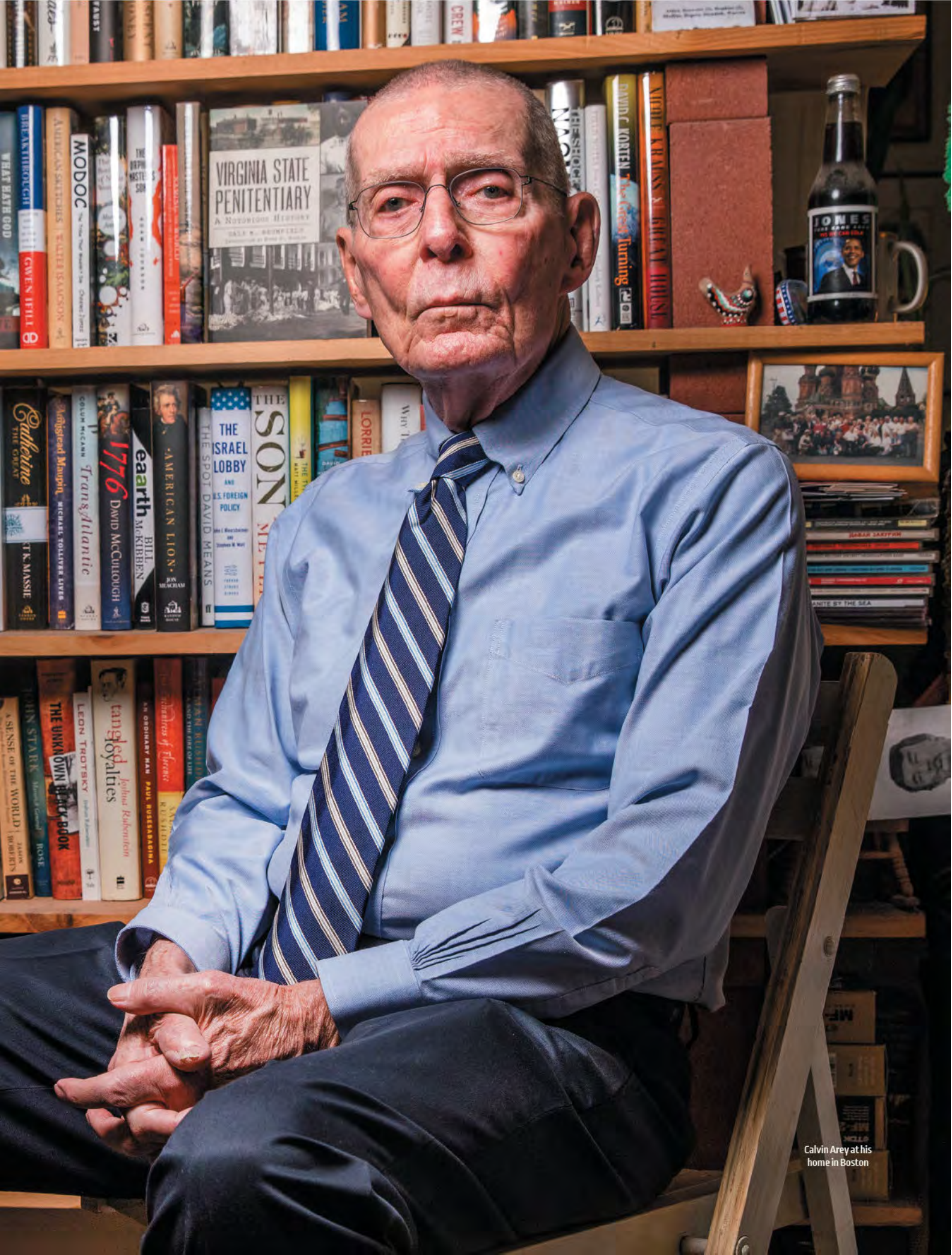




# THE UNBROKEN

Fifty years ago, a group of five maximum-security inmates at the Virginia State Penitentiary in Richmond bucked the brutal and racist Virginia corrections system — and won a significant victory for prisoners nationwide. Calvin Arey, who was one of those inmates, shares his story for the first time.

*By Dale Brumfield / Portrait by Alex Gagne*



Calvin Arey at his home in Boston

**“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”**

—13th Amendment of the U.S. Constitution,  
ratified Dec. 6, 1865

**WHEN HE WAS ADMITTED IN 1965** to the former Virginia State Penitentiary at Belvidere and Spring streets in Richmond to serve a 30-year sentence for armed robbery, the first thing Calvin Arey cared to accomplish was to stop chewing his fingernails.

He had no idea, however, that he and four other inmates would later be key players in a pioneering, yet now forgotten 1971 lawsuit that forced sweeping changes to a racist and barbaric Virginia penal system. The suit, which reverberated nationwide, established a prisoner Bill of Rights, eliminated indiscriminate physical abuse by corrections officials, helped desegregate the Virginia prison system and terminated the courts’ “hands-off” doctrine toward prison administration.

And for the past 25 years, Arey, who is now 80 and the last surviving plaintiff from that 1971 lawsuit, has quietly worked as a real estate agent in Boston. He is surrounded in his home by 2,500 books, many of them signed by the authors, and he goes for a walk every day before breakfast, with no one aware of his pivotal role in transforming American prison conditions.

Until now.

#### **FROM CONNECTICUT TO NORFOLK**

Alcohol made Arey’s life a mess as a teenager in Connecticut. “I left high school in 1959 in the middle of my senior year, drinking,” he admits candidly. “I was in the Marine Corps for a little over two years. I wound up getting a bad discharge for drinking and fighting my sergeant.”

His father then convinced an encyclopedia sales manager to hire him as a door-to-door salesman. “I sold [encyclopedias], and I drank,” Arey recalls. “I was always broke. The manager drove us around from state to state. I had the clothes on my back and a briefcase.”

Drinking cost him that job and, he estimates, 10 or 15 more sales positions. “I made a sale. The minute I got paid for it, I drank it up,” Arey says. “Every evening I’d be in a blackout.”

While unemployed, Arey met a woman named Rose who also liked to drink, so instead of finding another job, he committed two armed robberies. With police closing in, they rented a car and headed to Norfolk, a familiar city from his encyclopedia sales work.

In Norfolk, he held up two gas stations and a grocery store with an unloaded gun before ending up in the crosshairs of Norfolk police officers. “It was Ocean View Avenue,” he recalls. “They were chasing me and firing. They wound up putting several bullets in that rented car.”

While in lockup on the night of March 25, 1965, Arey and two

The Virginia State Penitentiary in Richmond operated from 1800 until 1991, when it was demolished.



BILL LANE, RICHMOND TIMES-DISPATCH COLLECTION, THE VALENTINE

other inmates, Clanton Bennett and Walter Smith, overwhelmed two guards, locked them in a room and broke out from the seventh floor, climbing down a firehose onto the courthouse roof. Bennett went first and made it, but Smith fell to his death on the sidewalk. Then Arey made it down. The two men broke out a courthouse skylight and ran through a door straight into a detective named Harris, who drew his gun and shot Bennett, who later died.

"I dropped to the ground," Arey says. "That was it."

He pleaded guilty to three armed robberies and was sentenced to 30 years in the Virginia State Penitentiary in Richmond.

### PADLOCKED IN RICHMOND

By 1965, the 165-year-old Virginia State Penitentiary was a crumbling, medieval fortress, but the maximum-security

C Building — a prison within a prison — was the ultimate hellhole. The building was outdated and decaying, with overflowing toilets and little to no heat in winter. "There were no mattresses in the section I saw, and it was stark," recalls now-retired civil rights attorney Phil Hirschkop. "It was what you see in the movies ... a really old-fashioned, horrible penitentiary."

In addition, poorly trained guards working with no oversight meted out indiscriminate punishments such as tear-gassing inmates inside unventilated cells, stripping them naked for days for slight infractions, removing bedding, duct-taping their wrists and ankles to the bars for days, or padlocking them inside their cells for months or even years for such bogus infractions as insubordination, sarcasm or the ever-popular "agitation."

Inmates in C were served two small meals a day, received almost no medical care (doctors never visited, only nurses) and had no access to work or religious programs. They were permitted 10 minutes a week for one shower, except for those who had broken a rule and had a padlock placed on their electronic cell door. "The ones 'on padlock' were only released once a week for five minutes for a shower," Arey recalls.

Inmates were also routinely subjected to stints in 6-by-10-foot basement solitary confinement cells, called "punitive segregation," or "meditation" cells, for practicing basic First Amendment rights such as writing letters to attorneys and legislators or even talking to fellow inmates.

Maryland attorney and law professor Michael Millemann also saw the conditions at the penitentiary and C Building firsthand. "When you tell the story [of the penitentiary], if you didn't tell people what you were describing, they would say, 'That's North Korea or a Russian gulag,'" he says. "The rules were whatever a guard thought was appropriate. So whenever a guard got pissed at the prisoner, [he] was the sole judge and sentencer."

When Arey arrived at the penitentiary in early December 1965, he was placed in the general population and assigned a job making socks. But when a pair of scissors was found in his cell during a shakedown, he was transferred to C and placed in solitary for 30 days.

"I was considered an escape risk because of what happened in Norfolk," he explains. "As for the scissors, Richmond was a tough place. I needed a little protection." >



## CRIME OF PUNISHMENT

Unlike most maximum-security inmates, Arey was nonviolent and never attempted an escape, yet he was inexplicably kept in maximum security for more than five years and endured three stints in solitary — two periods of 30 days each and one 43-day stretch. A solitary cell contained only a toilet, a sink and a Bible. A mattress was brought in at night but was frequently taken away for random disciplinary reasons. “One of those times, I wasn’t given a mattress the entire 30 days,” Arey says. “I was only given two blankets. And I used my roll of toilet paper for a pillow.”

His diet consisted of four slices of white bread twice a day, then two very small meals every third day, which according to court documents amounted to about 700 calories daily. “You’re constantly hungry because you’re being slowly, deliberately and methodically starved,” he recalls.

Since there was no work in C Building, there were no opportunities for inmates to earn money for basic necessities, Arey explains. However, by the end of his confinement, he worked as a librarian delivering paperbacks and as a cell cleanup guy.

He remembers cleaning a cell where an inmate had slashed his wrists. “This guy was lying in bed, and he’d cut his wrists. And ... he was actually floating in blood before [it] overflowed onto the floor ... A guard saw the blood seeping out from under the cell door.”

One time everyone in solitary was tear-gassed, seemingly for the hell of it. “They came around and closed the windows. I heard four or five shells go off. My [cell door] was solid, and they opened up the peephole, put the gun in there and popped the shell. I was trapped in there with tear gas until it dissipated, which took hours. It was awful. It was awful.”

But while in solitary, in addition to kicking his nail-chewing habit, Arey also vowed that he would read every book he could find. Because of these modest affirmations, he says, “I was able to walk out after 30 days with my head up.” Unbroken. And ready to fight.

## WRIT WRITING WITH BOB LANDMAN

The superintendent of Virginia State Penitentiary was Courtland C. Peyton, who worked under the supervision of William K. Cunningham Jr., director of the Virginia Department of Corrections. Professor Millemann explains that the prison system then was still segregated by race, and Peyton and Cunningham were “deeply invested” in holding on to arbitrary

power held over from the Jim Crow era. “Their belief [was] that if you change the relationship between the guards and the inmates, you undermine the correction system,” Millemann says. “All the worst instincts of the guards and the prison administrators were unchecked. The sadism, the arbitrariness, the racism. And courts followed with what was called the hands-off doctrine.”

The hands-off doctrine held that the internal affairs of prisons were outside the courts’ jurisdiction, and this unwillingness by the courts to defend the basic human rights of abused inmates protected Virginia’s prison system from public scrutiny. This made it almost impossible for mistreated inmates to get a fair hearing.

“The courts ... gave great deference to the superintendent,” Hirschkop explains. “The superintendent was one of the most powerful figures in prison society because literally no one looked over his shoulder.”

“The superintendent could with a stroke of the pen take away someone’s good time, or screw up their parole,” the retired attorney continues. “He would add many years to a person’s sentence without any jury, prosecution or conviction.”

After serving his first 30 days on bread and water in solitary, Arey was moved upstairs, where he met a legally savvy fellow inmate named Bob Landman. Since Virginia did not provide court-appointed lawyers for post-conviction habeas petitions to challenge inmates’ convictions

or sentences, Landman did it for them.

Incarcerated since 1963 for robbery, Landman possessed a self-made legal mind and had been eligible for parole several times, but he was never considered, as Peyton wanted him to languish in maximum security because of his “writ writing.” Landman was prolific — he assisted in filing more than 2,000 appeals and habeas petitions for fellow inmates, as well as 20 lawsuits on his own behalf.

Millemann has positive memories of Landman, who also endured 266 days in solitary confinement and 743 days on padlock because of his prison legal work. “Very impressive, intense, humorless, unbending,” Millemann says. “[He] had to be.”

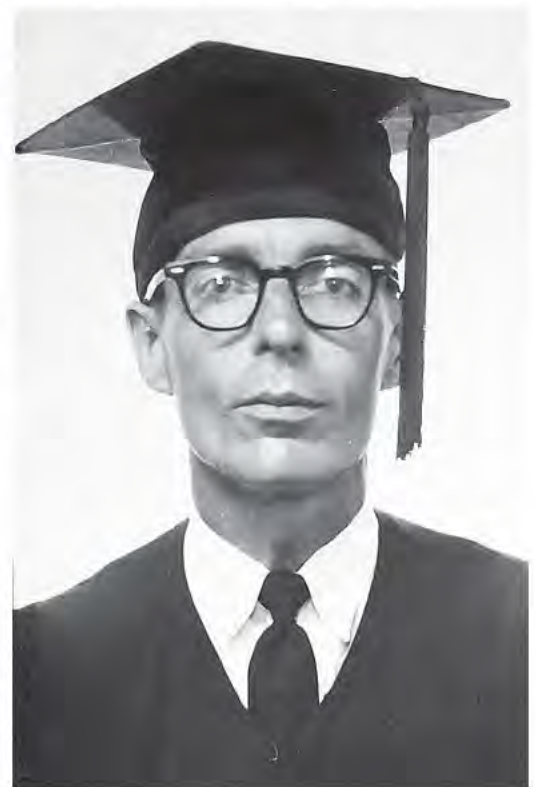
After meeting Landman, Arey learned of a case, *Powell v. Texas*, in which the defendant received a reduced sentence because he was an alcoholic. Arey’s court-appointed attorney had never mentioned Arey’s alcoholism at trial, therefore he thought there were grounds to contest his conviction.

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PAPER FOR A PILLOW.”**

—CALVIN AREY



Below: Thanks to his lawsuit, Arey was able to earn his GED while in prison in 1971; right: Robert Landman (left) and Calvin Arey in 1973



He sent a note via a guard to Superintendent Peyton seeking permission for Landman to assist him.

It was an act that triggered years of abuse. "It seemed like 10 minutes later, they padlocked me," Arey recalls. "And it was in retaliation simply because I felt I had a right to somebody helping me."

Once Arey was out of padlock, Landman agreed to help him, and that led to their partnering to assist other inmates with filing legal papers. "Bob would draft the petition, and I wrote three copies," Arey says. "Although I hadn't finished high school, I could print well."

Arey ultimately lost his alcoholism petition in the Virginia Supreme Court.

Arey and Landman's writ-writing exacerbated their abuse. In 1968, both were sent to solitary for 43 days simply for discussing a court order against tear-gassing, during which time neither of them was permitted to file legal pleadings or to send letters to attorneys.

Another time, Arey smuggled a letter to state Sen. Henry Howell, a Democrat from Norfolk, describing his degrading living conditions. Howell wrote back, and he also wrote to Peyton asking why an inmate could not write directly to him. When Arey read Howell's letter aloud in C, he was transferred again to solitary for 30 more days on bread and water. Upon his release from solitary, he found that he had lost more than

a year of good time against his sentence, and he was strongly advised not to complain about the mistreatment he received.

#### 'RIPPLES OF HOPE'

***"Every time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and ... those ripples build a current which can sweep down the mightiest walls of oppression and resistance."***

*—excerpt from the "Day of Affirmation Address" by Robert F. Kennedy, University of Cape Town, Cape Town, South Africa, June 6, 1966*

After his first emergence from solitary in January 1966, Arey read Robert Kennedy's speech in a passed-around newspaper, and it inspired him to keep fighting. "Kennedy's words validated the justice in our struggle," Arey says. "We felt we were on the right side and the racist prison administration was on the wrong side. And no matter where you are, if you stand up for an ideal, or reach out to help somebody, all these little acts add up. And they're like little ripples."

In 1969, after enduring years of mistreatment, Arey and >

Calvin Arey was eventually transferred from the Virginia State Penitentiary to work farms, where he served until he was released on parole in 1972.

Landman teamed up with fellow inmates Leroy Mason, Thomas Wansley and Roy Hood to, in Kennedy's words, "strike against injustice" and file what became one of the most significant class-action prison-rights lawsuits in America, *Landman v. Royster*.

"*Landman v. Royster* was like the grandfather of several suits filed just before it," Hirschkop recalls. "It was filed in federal court because state courts would not touch it."

Mason, Wansley and Hood were fellow "agitators" who had endured similar abuses under Peyton and Cunningham. Mason had been elected inmate spokesman during a penitentiary work stoppage in August 1968, which resulted in an agonizing monthslong lockdown in unventilated, overcrowded cells. He also filed a lawsuit, *Mason v. Peyton*, that legally desegregated the Virginia prison system (although full desegregation did not occur until after the Landman case). In retaliation, Mason had been placed in isolation, where he spent 30 days killing and stacking in a corner the cockroaches that poured out of his mattress.

Wansley was in prison battling two rape convictions for which he was fully exonerated in 1977. For his participation in the work stoppage, and for being a plaintiff in *Mason v. Peyton*, he had served 10 months on padlock.

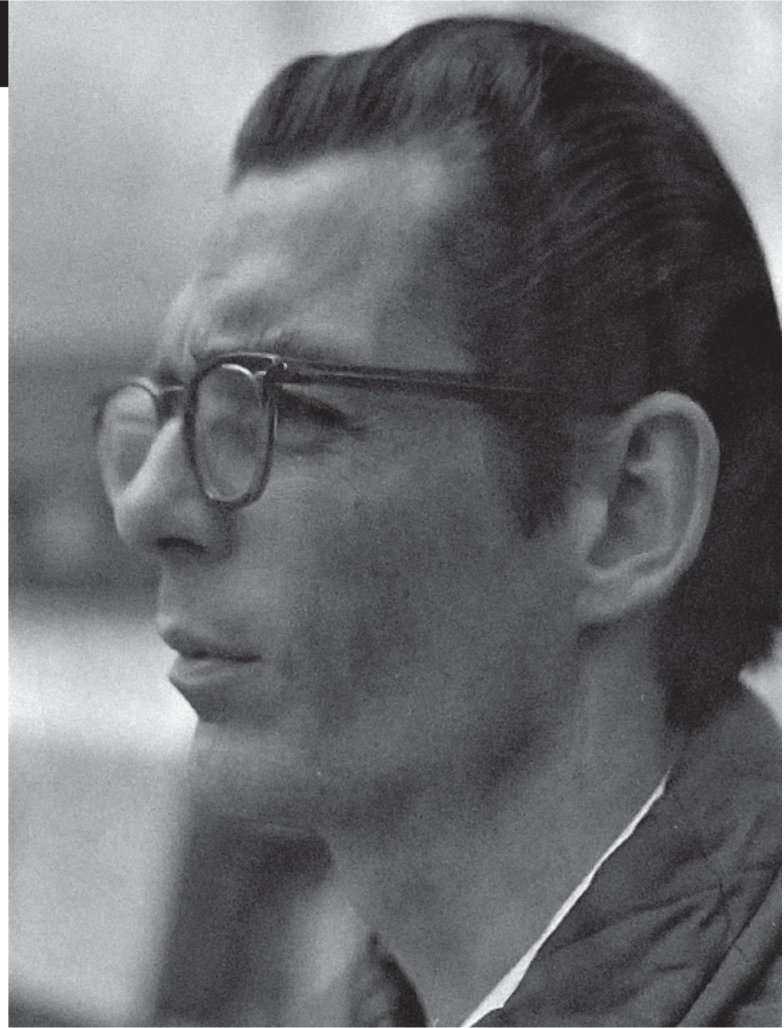
Hood also spent months on padlock for complaining about the guards' mistreatment of another prisoner, and for allegedly conferring with an attorney about the penitentiary's indiscriminate use of tear gas.

With the inmates represented by attorney Hirschkop, *Landman v. Royster* was gavelled to order in the U.S. District Court for the Eastern District of Virginia on Oct. 30, 1971, under Judge Robert Merhige Jr. The defendants, represented by Attorney General Andrew Miller, included State Corrections Director William Cunningham; Penitentiary Superintendent Peyton; Director of the Department of Welfare and Institutions Otis Brown; and State Farm Superintendent M. L. Royster, who was deceased by the trial date. Peyton died on June 16, 1969, after deposition by Hirschkop, but his name, like Royster's, remained on the lawsuit.

"During deposition Peyton complained of chest pains," Hirschkop remembers. "He went home that night and died of a heart attack."

During the trial, a parade of 46 inmates described horrific treatment. Edward Belvin stated that when he insisted on medical care, furious guards handcuffed and chained him, then duct-taped his neck to the bars of his cell, where he remained for 14 hours until another guard cut him down. He was also kept naked for 17 days in solitary.

Another inmate testified that after several incidents of



agitation, he was taken to solitary for the third time, where he was punched with a tear gas gun then chained to the cell bars in a semireclined position for five days. He was forced to urinate and defecate in this position.

The testimony went on and on.

It became clear that Director Cunningham was woefully ignorant of the punishments being administered by superintendents and guards under him, or when he was aware, he did nothing to stop them. He claimed he "was probably aware" of some of Landman's punishments, although it was proven he had full knowledge. He knew inmates were restricted to bread and water for long periods, claiming falsely it was "usually discontinued" after 30 days. Not only was he cognizant of the Mason and Wansley punishments, he approved them.

Hirschkop remembers that the defense tried to claim there was no jurisdiction in a federal court over the Virginia prisons, and that the inmates were lying. "They brought in conjured affidavits from different guards," he says. "A lot of these guards did not have high school diplomas. And they were very much prejudiced against African Americans."

By 1971, the prison system had ignored the 1969 desegregation case *Mason v. Peyton* and was still operating under the 1950 segregation statute. Superintendent Peyton claimed

he would never put a Black prisoner in a cell with a white prisoner, but Hirschkop countered that the issue went beyond accommodations. Jim Crow pervaded all aspects of penitentiary life. All work areas were segregated, as were the barbershop, shower stalls and Sunday-morning worship services. Hirschkop also claimed the Black prisoners were purposefully denied access to Black newspapers. Also, the suit found that the best jobs inside the penitentiary were given to white inmates. *Landman v. Royster*, among its other victories, finally broke that cycle and forced the prison system to desegregate for good.

At the conclusion, the court wrote that three general classes of "constitutional deprivation" had been exposed: Discipline had been imposed for the wrong reasons, discipline had been administered with no procedural due process, and punishment determined to be unconstitutional had been imposed in multiple instances. The court also found that the evidence displayed a "disregard of constitutional guaranties of so grave a nature as to violate the most common notions of due process and humane treatment."

In a separate sentencing trial in January 1973, monetary damages were awarded to three of the five plaintiffs, but in a largely unprecedented decision, Judge Merhige ruled that Director Cunningham, not the state, was personally liable for those damages. Cunningham then had to pay out of pocket \$15,303.20 to Landman, \$3,605.00 to Mason, and \$2,357.25 to Wansley.

"I heard the guards took up a collection for Cunningham," Arey recalls. He and Roy Hood were not entitled to damages, since Judge Merhige ruled that they were originally sentenced to C Building and thus not eligible.

After the case closed, Cunningham stepped down as director of corrections but got a seat on the Virginia Parole Board. Accordingly, as Arey became eligible for parole in 1971 after serving a quarter of his sentence, he was enthusiastically rejected.

#### SOBERING UP

After five years in C Building, Arey was placed in the general population, where, thanks to his lawsuit, he

could earn his GED and take some college courses through Virginia Commonwealth University programs. He was then transferred to work farms, also called "stick camps," and was allowed to participate in "crime doesn't pay" programs for high school students before he made parole in 1972.

Upon his return to Connecticut, he fell back into alcoholism, committed an armed robbery and again served time in Connecticut and Massachusetts prisons.

Arey, however, has now been sober since 1988. "I've never in life been able to stop drinking," he says of his battles with alcoholism, "but [because of prison] I was stopped. For 33 years, I've just never started again."

*Landman v. Royster* resounded across the country. It significantly changed the Virginia system and drove similar actions in several other states. "At the time, all hell was breaking loose," Hirschkop explains. "In Virginia, it forced change in the prison system. It exposed the crap. It got the public more interested. It got the legislature more interested. It set a precedent for numerous other states for statewide class action."

The case also led to the creation of the National Prison Project, which for 50 years has been a leader in protecting prisoner rights.

Millemann and Hirschkop have great respect for Arey and his four co-plaintiffs in this seminal case. "They had the courage to do the right thing, the endurance to resist arbitrary and awful punishment, compassion for others,"

Millemann explains. "Those are all attributes that are good human qualities, and they exhibit them all."

Arey sees the groundbreaking *Landman* case as a positive affirmation of his time in Virginia, but it was his first small victory that seems to bring him the greatest personal satisfaction. "I still remember putting my hands behind my back and walking back and forth to stop biting my nails," he recalls of those dark, ugly days in C Building solitary. "I could only walk three steps one way and three steps the other. But by the time that 30 days was up, I actually had fingernails growing.

"And I never bit them again." ■

#### 'IT'S A LONG STORY, DALE'

A book brought Calvin Arey and me together.

On May 22, 2020, as Arey hunkered in his Boston home in the early days of the pandemic, he received an email from a genealogical website associate in north-west Canada. She had just read about him in my book, "Virginia State Penitentiary: A Notorious History."

"Is this you?" the surprised woman asked.

"I thought my past was behind me, but not so," Arey replied. Then he introduced himself to me by email.

I was stunned to hear from him. I mailed him an autographed copy of the book and told him I would love to tell his entire story.

Arey had established himself as a successful real estate agent and was hesitant. No one in Boston knew about his past.

After a full year of correspondence, however, Arey said he was ready to talk: "It's a long story, Dale."

—Date Brumfield

