Critical Report 94-1

Matters relating to a forced move of,
use of a chemical agent on,
and withdrawal of medication from
inmate Craig Gardner

To:	Sally Chandler Halford Director, Iowa Department of Corrections
From:	William P. Angrick II, Citizens' Aide/Ombudsman
Re:	Case number 91-151
Issued:	January 13, 1994
Released:	June 13, 1994

NOTE

Portions of the full report made to the Department of Corrections have been edited from this public report because some of the information is confidential by law. The inmate who is the subject of this report consented to release of certain medical information which would otherwise be confidential. The Citizens' Aide/Ombudsman initially asked the Director of the Department of Corrections to use her administrative authority to make public that information contained in this report which is deemed discretionarily confidential by statute, rule, or policy. She declined. Therefore information which was obtained from sources such as the videotape, inmate, or institutional records and institutional or departmental policy which in the opinion of the CA/O are confidential and not authorized to be released have been deleted from the public version of this report. The portions which have been omitted have been replaced by a "______".

TABLE OF CONTENTS

Preface 1
Forced Move and Use of a Chemical Agent 4
  Use of Force Policies 13
  Use of Chemical Agents 16
  Chemical Agents - Practices 18
Medication Removal 21
  Research 25
  Americans with Disabilities Act 34
  Present Status 35
Access to the Videotape 38
Findings and Conclusions 40
Recommendations 44

PREFACE

Craig Leslie Gardner, an inmate in the Iowa prison system, was the subject of a forced move by correctional officers while incarcerated at the Iowa State Penitentiary (ISP). This action involved the use of a chemical agent.

This investigation began as a review of the use of a chemical agent in a forced cell move on June 30, 1991. Craig Gardner's wife, Kelly, made the initial contact with the Citizens' Aide/Ombudsman (CA/O) on July 9, 1991, regarding the treatment of her husband in the Iowa prison system. Gardner told her he had been sprayed with Mace™ after he took his bed apart. She said her husband told her he was removed from his medication, Haldol®, which had been prescribed by doctors in the federal prison system. She said this drug was used to manage his mental illness which she believed was schizophrenia.

On July 16, 1991, then CA/O Assistant for Institutions Randy Meline and Assistant CA/O Judith Milosevich visited ISP and interviewed Craig Gardner. He provided his recollection of the events up to and during the forced cell move. During the course of this interview, the CA/O learned the move had been videotaped.

Gardner said prison officials removed him from all medication shortly after his commitment to the Iowa prison system, including a medication prescribed six years earlier to manage his diagnosed mental illness. The removal from that medication became equally important to this investigation.

A prison employee videotaped the forced cell move and use of a chemical agent. What began as a routine CA/O request for information, a copy of the videotape, escalated to litigation resulting in an approximate 18-month delay in the issuance of this report. The Department of Corrections (DOC) did not provide a copy of the tape until after review by the Iowa Supreme Court.

The CA/O studied the applicable, confidential ISP policies and federal court settlement and consent agreements on which they are based. The CA/O also reviewed applicable DOC policies. A release of information from the inmate gave the CA/O access to copies of the records from the ISP Health Care Unit (HCU). Included was a summary by the psychiatrist who suggested placing Gardner in the HCU, restarting medication, and monitoring the inmate's behavior. The CA/O examined various written documents surrounding this incident. The CA/O initially viewed the videotape in the DOC conference room, but ISP Warden Crispus Nix and DOC Director Paul Grossheim refused to provide a copy of the tape. Officials subsequently provided a copy after being ordered by the court.

The CA/O took sworn statements from Warden Nix; Lieutenant Arthur Andersen, Shift Supervisor; Captain Robert Cramblit, ISP Training Officer specializing in chemical agents; Dave Nickell, Electronic Engineering Technician; Pir Kazan Hassan, Psychologist; Adella Hull, Registered Nurse; and Roger Countryman, Correctional Officer. Dr. Paul Loeffelholz, DOC Medical Director, contacted the CA/O early in the investigation regarding mental health issues. All of these are or were employees of DOC with the exception of Nurse Hull, who is employed by Correctional Medical Systems, a private business which contracts with ISP to provide medical services.

John Henry, Deputy Warden of Operations, died in 1991, and Paul Grossheim, Department of Corrections Director, died in 1992. Warden Crispus Nix retired in March, 1993. Captain Robert Cramblit retired in December, 1992. Randy Meline left the Ombudsman's Office in August, 1991.

The arrival of a new Director of Corrections, Sally Chandler Halford; Deputy Director for Institutions, James McKinney; and ISP Warden, Thomas Hundley, appears to signal a different attitude in the corrections department. These officials agreed to meet with the CA/O Assistant for Corrections at the commencement of their appointments. The CA/O told each of these individuals at these meetings about its investigation into this episode, outlined specific problems,

and suggested review of certain practices. At their invitation, the CA/O meets with DOC Director Halford and Deputy Director McKinney monthly to discuss issues.

Warden Hundley has been especially responsive to issues brought to his attention. He has insisted on meeting with the CA/O after the representative visits the penitentiary. He has initiated changes in several practices. Most relevant to this report is the proposed addition of four Correctional Emergency Response Team (CERT) members so this specialized unit will be available evenings and weekends to conduct some forced moves which may include the use of nonlethal devices, including chemical agents.

FORCED MOVE AND USE OF A CHEMICAL AGENT

FACTS AND ANALYSIS

From April 10, 1991, until the events leading up to this forced move and use of a chemical agent, Craig Gardner was in the general population of the Iowa State Penitentiary, the only institution with a maximum security designation in the state. After orientation at this institution, he began working in the furniture factory. He was allowed the privilege of playing his guitar in church every week and participated in assigned prison programs. He had no record of disciplinary problems prior to this incident.

During a recorded interview with the CA/O, Gardner said he believed his disease became active again around June 23 through June 25. Reflecting upon his behavior, he recalled increased nervousness and a loss of appetite which he recognized as symptoms of his mental illness. He was unable to sleep. He compared this nervous feeling to when one has drunk a pot of coffee and is jittery from the caffeine. During the night of June 28, Gardner said he was up all night writing. At one point he wrote, "If there's a gleam in your eye, you're gonna die." An officer assigned to cellhouse 219[1] became concerned when he read this statement and reported this behavior to the appropriate officials.

Gardner recalled members of CERT escorting him to a meeting with Deputy Warden of Operations John Henry. "He said, 'What's this stuff you're writing in your cell?' I said, 'Well, I'm a poet and I'm a writer and when I get thoughts and feelings I have to write them down.' He said, 'We're not going to tolerate this kind of shit!' and he said, 'What's going on?' and I told him the story about when I was two and one-half years old, the first lie I ever told. I don't know why I told him that. He told them guys to get this nut out of here, you know. They took me over to the hospital and that's when they put me in the infirmary. Nobody had told me what was going on. I didn't know; my mind was playing so many tricks on me."

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[1] Prior to his move to the Health Care Unit, Gardner was in the inmate general population, housed in cellhouse 219.

After this meeting, the deputy warden placed Gardner in summary segregation[2] status based on his belief ____[3]

Dr. Gerdes' notes reported her interview with Gardner in the HCU sideroom. ____.

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[2] This is a confinement status that separates an inmate from other inmates if officials believe he may be a danger to himself, others or property.

[3] Custody score is a numerical value based in part on present and past criminal convictions, age, institutional behavior and length of sentence, used to place an inmate in minimum, medium or maximum security. An explanation of custody scores appear in the CA/O's report regarding classification issued November 1, 1985.

[4] [5]

[6]

Gardner recalled his refusal of medications. He said he was "catatonic." He said a nurse and two correctional officers came to tell him it was medication time, but he believed this was an attempt to poison him. He described his feelings as paranoia and a specific fear this was an attempt to kill him.

The CA/O took sworn testimony from Registered Nurse Adella Hull, who was on duty in the HCU the day the forced move took place. She was not certain whether Gardner's placement in the sideroom was for security or psychological reasons. She stated she checked the medical file prior to the move. She saw "he has a history of mental problems and behavior problems" and she "looked to make sure that he wasn't like an epileptic or a hypertensive or something like that." She reviewed the medical file "because as a nurse I have to be present to watch them move him and make sure he didn't have like a shoulder injury or something like that ... if he had a bad shoulder ... try to be careful."

[4]

[5]

[6] Gardner told the CA/O he is six foot, four inches tall and 240 pounds.

The CA/O asked Hull if it was her practice to tell officers about a history of mental problems prior to a forced move. "No, it's not my practice to tell them. That's kind of their privacy, you know, but if there's a medical condition, if there is a psychological problem, it would be psych's department to, you know, tell everybody...."

When Mrs. Gardner and her daughter arrived to visit Mr. Gardner on June 30, staff escorted them to the infirmary where they visited for approximately one hour. Gardner believed his behavior must have been very menacing, but he was absolutely certain the correctional officers were trying to kill him. Mrs. Gardner later said this was the first occasion she felt afraid to be around her husband.

According to sworn testimony from Lieutenant Arthur Andersen, once Gardner began dismantling his bed and flooding his cell, security staff in HCU contacted him as the senior staff person on duty at the institution. He in turn notified off-duty Deputy Warden John Henry and ordered staff to contact Electronics Engineering Technician Dave Nickell to videotape an anticipated move.

The ISP policy on the use of force ____

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________________________ Henry arrived and decided to move this inmate to cellhouse 220, the most secure cellhouse. He and Andersen discussed which officers would be called to assist in the forced move.

Henry ordered a canister of chemical agent be drawn from the turnkey.[7] Andersen picked up the canister[8] before proceeding to the Health Care Unit.

ISP's use of force policy in part states ____

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[7] Turnkey is the common name given in Iowa prisons to the officer(s) assigned to the Control Centers. The turnkey operates the opening and closing of doors in the administration building of ISP and strictly monitors those who enter and leave the institution.

[8] The chemical agent was a 520-gram canister of Magnum Mace™ MK-IX.

__________ Andersen's recollection was the inmate was to be moved the moment sufficient staff arrived. He said there was no discussion of alternative strategies to implement this move should the inmate fail to comply. Since security staff knew the inmate was tearing up his cell, they believed the move needed to occur immediately before further damage could occur. When he was asked what was left to destroy, the lieutenant said there were still expanded metal screens on the windows which, if removed, could provide an avenue of escape.

The metal screens the lieutenant described are __________ __________ __________ __________.

The CA/O also asked the lieutenant if there was any discussion with the other officers a chemical agent would likely be used. He said since he had the canister in his hand and use of a chemical agent was a standard practice in forced cell moves, he believed further notice to the officers was unnecessary.

As staff from various parts of the institution assembled to move Gardner, some went to cellhouse 220 to pick up the __________ __________ __________. Correctional Officer Roger Countryman who was on duty in cellhouse 220 helped to carry this equipment back to HCU and joined the team. His assistance had not been requested, nor was he told to leave once he arrived. His presence brought to 13 the number of staff participating in the move.

The taped record of the incident __________ __________ __________ __________ __________

[9]

Andersen testified he believed he had provided sufficient warning to Gardner.

This chemical agent used was manufactured by Defense Technologies, Inc. (Def-Tec), and carried a written advisory that the 520-gram canister contained 20 to 30 one-second bursts. Def-Tec recommends one-second bursts of this chemical agent with pauses in between to assess the subject's reaction.

[9] In sworn testimony to the CA/O, Nickell stated after briefly filming the hallway and Gardner, he suspended filming until Andersen arrived and attempted to communicate with Gardner. A second suspension in filming occurred later.

Gardner recounted the events 16 days later for the CA/O:

"I don't remember if it was that day or I think I was up all that day again and all that night. I couldn't sleep, and I think it was the next morning, I just started banging my bed, my bed came apart on both ends and I slipped through the part and I slid to one part of the corner of my bed up against the wall. I kept thinking that all my friends were going to come and we were going to sit up and play guitar and I wanted to make as much room as possible so we could get in a big circle and we were going to sing songs. I kept thinking, they're coming. Then I started banging on the door. I kept thinking, well, I gotta wake them up. They're out there sleeping. I gotta bang on the door and wake them up. So I started banging on the door with a part of the bed, banging the bed against the door. Well, then here come about 400 people and I could hear trains running through my head. I couldn't, I couldn't hear what they were saying. They were all inside the glass on the door and I could see their lips moving and they were waving at me and I seen the guy with the camera there and I was naked and I had plugged the cell, I had run the water from the toilet."

CA/O: "Video camera?"

Gardner: "I felt like I was on fire. Yeah. They had a video camera. I might have been imagining; maybe they didn't have a video camera, but I thought I seen a movie camera. I thought, oh, I'm in the movies now and I just, I had all these weird thoughts. I needed medication bad and ah, I turned on the shower. I remember turning on the shower and all my, I had taken all my clothes off. I watched -- I was butt naked in this cell and I put like an inch of water on the floor but there was a drain on the floor. I knew I wouldn't hurt the floor. There wasn't no carpet in there or nothing. So I started playing in the water. I was just playing in the water. The sun was shining outside, and I thought, well, it's time to play in the water. All my friends are going to come in and we're going to sing songs, and I remember a bunch of people coming and I kept telling them, 'Come on in. I've made plenty of room. There's room for all of you.' But they couldn't get the door open. They couldn't come in and I remember standing there and I could keep hearing these trains, you know, running through my head and the next thing I know I seen all this smoke and

stuff coming through the door and it was splattering all over me, and I thought, well, it's cigarette smoke. They're gonna let me smoke[10] and I thought that was cigarette smoke and I tried to breathe it all in and it was some kind of acid or gas or something.... It just burnt me all up. I'm just now starting to heal up. It burnt me real bad."

The videotape showed ____

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After officers administered the chemical agent, Gardner recalled, he had difficulty breathing and believed he fell in the standing water. ______________________ Then he heard an officer telling him to back up to the door to be handcuffed after which he could get some fresh air. He backed up and put his hands through the flap and was handcuffed, then felt what he believed to be an electric shock. He was convinced he was hit with a stun gun. He remembered falling on the floor. Because he believed he had been stunned, he said he was hesitant to comply with the orders to lie on the floor and put his feet through the flap. He thought he would be shocked again.[11]

The videotape showed ____

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[10] Because of his summary segregation status, ISP strictly controlled his access to smoking materials.

[11] The CA/O could find no evidence a stun gun had been used on Gardner; however, in a later interview he still believed he was "stunned."

Nickell did not film the opening of the door. The CA/O questioned the second suspension of the taping. Nickell provided a memorandum which stated he believed it would take longer to open it so he stopped filming in order to decontaminate his eyes.

Filming resumed

In the interview with Gardner 16 days after this event, the CA/O observed blisters on the trunk of his body, with the most severe burns in the groin area:

CA/O: "O.K., and all down through your chest and your abdomen, you've got this burn. It looks like it gets more severe, I'm doing this for the tape, down around in your groin area, especially to the right side."

Gardner: "My penis and my testicles are just not healing up. It was so bad.... July 2nd, if you check the log, I called the officers back. They called them back, my penis had just tripled in size. It was completely infected. The skin is just not healing on it. The doctors were really mad because they waited like a week before they'd even let me see the doctor. They (some security staff) said I deserved what I got."

Gardner said a CERT team lieutenant saw him in the shower, observed his skin condition, and personally escorted him to the HCU and demanded doctors examine Gardner.

USE OF FORCE POLICIES

The CA/O reviewed information from other sources which affects development of prison policy. Section 904.505(3), the 1993 Code of Iowa, states in part: "... (O)fficers ... shall ... only use such force as is reasonably necessary under all attendant circumstances."

According to the American Corrections Association (ACA) sample policy number 3.1.8, Use of Force and Restraints, force should only be "used when necessary and only to the degree necessary to subdue an individual inmate.... The use of force is sometimes necessary in the correctional environment for justifiable self-defense, protection of others, protection of property, and prevention of escapes, but only as a last resort.... Force should be employed only to the degree necessary to control the inmate, to a level that will be effective with a minimum of harm to both staff and the inmate."

The ACA sample policy further states force should be used in the following order: direct contact force or physical handling, batons, restraints, chemical agents, water hoses, nonlethal ammunition, deadly force.

ISP policy on the use of force in part states:

The penitentiary's policy on the Use of Force ______________________________

______________________________ This policy assigned the responsibility for ensuring obedience to the Deputy Warden of Operations, John Henry.

The Iowa Law Enforcement Academy (ILEA) offers training for law enforcement officers and jailers in the use of force including the use of chemical agents. That training dictates a level of resistance be met with only that force necessary to subdue a subject. The videotape indicated

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The ISP policy for the Use of Chemical Agents is the product of two civil lawsuits filed by inmates.[12] The first, filed in 1973 by Antonio Zambrano, was resolved with a Consent Order on April 30, 1976. This order covered inmates confined in cells or otherwise partially restrained, and mandated prison officials give two specific warnings a chemical agent will be used if previous orders are not obeyed. The court further ordered a minimum amount of chemical agent should be used to avoid excessive contamination because additional bursts may be dispensed if needed.

Two years after the court filed this Consent Order, Michael Gavin *et al.* initiated a civil lawsuit. A Settlement Agreement was filed in this case in May, 1984 and included a section entitled, "Gassing." The provisions reinforced the Zambrano agreement: "Any such prisoner who is in his cell or partially restrained must, in addition to verbal warnings to comply with a lawful order, be warned on two separate occasions that gas will be used if said order is not complied with and be given a reasonable opportunity to comply." The settlement agreement continued, "Defendants reiterate their commitment in Zambrano to provide ISP personnel training in the use of gas... (and) to use the least amount of chemical agent necessary to control the situation...." The agreement further stipulated all prisoners placed in administrative segregation be provided with a one-page summary of the ISP policy relating to the use of chemical agents. The penitentiary must also list the situations that may necessitate a warning of the use of a chemical agent. Finally, the

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[12] Zambrano v. Brewer, No. 73-296-2 (S.D. Iowa April 30, 1976) and Gavin v. Ray, No. 78-62-2 (S.D. Iowa June 13, 1984).

supervisory employee at the scene is required to prepare a full written report about the use of the chemical agent. The settlement agreement was approved by order of the court on June 13, 1984.

As with the Use of Force policy, the Gavin order placed responsibility for compliance to the Use of Chemical Agents policy with the Deputy Warden of Operations. ______________________

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The Zambrano order mandated "...a full written report shall be made promptly by the supervisory employee at the scene and forwarded through the Security Director to the Warden or Deputy Warden on duty." This report is required to contain the name of the correctional officer granted the authority for the use of chemical agent; the name of the individual who authorized its use and the name(s) of the inmate(s) upon whom the chemical agent was used.

Additionally, the orders require this report must contain a statement describing the circumstances leading up to and contemporaneous with the use of chemical agent and the circumstances leading up to the restoration of order. Included in this statement must be the quantity and type of chemical agent used and why officers utilized the particular form of chemical agent, and the total exposure time for each inmate.

The Department of Corrections Chemical Agent Use Report used by the other Iowa institutions was then and is now four pages. This form contains all the court-required topics, and others, followed by blanks which must be filled in by the supervising officer. The Use of Gas form the penitentiary used was one page. This form is still in use today and does not appear to require all of the information required by the courts and DOC policy.

USE OF CHEMICAL AGENT

Defense Technologies (Def-Tec) sold the patent for MK-IX Magnum Mace™, the product used in this episode, to Mark Sport, Inc. This product is no longer available for sale according to both of these companies.

During Captain Cramblit's testimony some confusion developed over the product used on Gardner. Cramblit described this product as a fogger. The Use of Gas form completed by Andersen described ____[13] However, the only canister in the ISP Armory bearing the serial number 766497 was a can of Magnum Mace™, a fogger.

Research into the major ingredient in this type of product, Chloroacetophenone (commonly abbreviated as CN and called tear gas or Mace™), revealed it causes acute local skin and eye irritation which increases in severity in relation to the amount of time these areas remain exposed. General warnings by the manufacturer about this ingredient cautioned improper use has produced chemical burns of the skin with blistering and peeling.

Def-Tec issued a statement to purchasers regarding the product used on Gardner, entitled "Instructions for Def-Tec Aerosol Irritant Projectors." In part it stated:

"Def-Tec Aerosol irritant projectors are weapons. Contents may cause severe injury unless used in accordance to these instructions or the directions contained in the police chemical agent's (sic) manual published by the I.A.C.P. (International Association of Chiefs of Police). Although, when properly used, it is less likely to cause injury than conventional weapons, it should be used only in situations where a weapon is justified and necessary. Keep away from children.

"1. Aerosol irritant projectors must always be used in an upright position. Use short one-second bursts....
"3. Never use in confined areas. Use only with adequate air supply....

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[13] A streamer administers the chemical agents like a water pistol, while a fogger produces a wide dispersal of chemical agent, producing fog-like conditions.

"First Aid....

"2. Flush contaminated areas with large quantities of cold water or a dilute baking soda solution and expose to fresh air as soon as possible after arrest is effected (sic). Caution: Failure to follow this instruction may result in severe skin irritation, depigmentation or other skin injury...."

As part of the research into chemical agents, the CA/O participated with a class of police recruits at the Iowa Law Enforcement Academy in the indoctrination into chemical munitions. Recruits spent an hour in the classroom studying the different products available, discussing the effects of these products, and watching a film. Outside the classroom, recruits observed a demonstration of various products with explanations of their intended use. For more than four years, those demonstrations have included the loosing of a CN grenade inside a large metal container (not unlike an underground storage tank in appearance, though much larger) through which the recruits must pass. No special protective gear is worn, but recruits are instructed to wear clothing covering most of the body. The face is not protected or covered in any way. This exposure lasts for only 30 seconds or so, but provides experience in the effects of chemical munitions.[14]

For the past two years, DOC has used a "gas house" located at the Corrections Training Academy in Mount Pleasant. DOC now requires all new recruits to undergo exposure to chemical agents in this structure.

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14 Gardner's exposure to the chemical agent lasted approximately ___________.

CHEMICAL AGENTS - PRACTICES

Captain Robert C. Cramblit, now retired, was the designated ISP training officer at the time of this incident in the use of chemical agents. He testified in the two years prior to the date of sworn testimony, DOC offered training at ISP in the use of chemical agents two times. He stated there usually was a class of 20 participants and complete coverage of the material took approximately four hours.

The CA/O asked Cramblit if there was a generally recommended method by which chemical agents should be administered. He said it would depend upon the product used and the conditions under which it was used. After repeated questioning, he said the suggested administration for this product is one-second bursts. CA/O research into these products showed manufacturers of chemical agents recommend one-second bursts since additional product may be used if the subject has not become incapacitated.

The CA/O asked the captain about the usefulness of warning subjects gas would be used. He said the warnings that gas would be used frequently discouraged inmates from any further resistance and encouraged compliance. The CA/O explored his potential role in the reviews of incidents where chemical agents had been used. He stated he could not recall being asked to review incident reports to determine if the correct product was used and in the proper manner. He stated he had seen one taped incident. The videotape he reviewed was of this episode on the day prior to his testimony. His opinion was this was the appropriate product to use under these conditions and the method of application also was correct.

In his testimony regarding the warnings, then Warden Nix stated he believed the memorandum provided to inmates who are in lockup status warns gas will be used under certain conditions and is sufficient warning.[15] The CA/O questioned whether CERT would have made this move in the

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[15] The policy statement given to inmates regarding the Use of Chemical Agents states, "If a chemical agent is considered, the inmate will be warned twice to obey the lawful order and be given a reasonable time to comply with the order before a chemical agent is used. In addition, if the inmate is in a cell or is partially restrained, two separate warnings that a chemical agent will be used if he does not comply with the order must be given."

same manner. His response was those individuals are trained to perform these types of tasks and probably do them better. Specifically, he said:

"If you do it every day, you know, if you jump rope every day, you can do it a little better than if you do it once a week. It's like playing handball and then trying to play basketball. Two different sports, two people in good shape, so the skills are different, so I would say that they do it on a daily basis. And I think that -- it has been my experience that if you have a CERT team to do it rather than all of these things that you talked about -- if you have the cellhouse officer removing the person who has thrown coffee on the officer, then you get yourself into a retaliation concept, because you threw coffee on my friend, where if you have the CERT team coming in they are not tied up with the other people in the cellhouse. They don't feel that comaraderiship (sic) and that -- you know, that kind of togetherness, and we found out it's a more effective way of doing it, but I'm not saying we shouldn't refine our procedures to deal with this in the future on the weekend, but normally if this had happened on a weekday, then the CERT team would have been the one to extract him from his cell."

In sworn testimony, Andersen told the CA/O he had warned the inmate the chemical agent would be used, and the warning was on videotape. However, when he viewed the videotape, Andersen

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_____ The CA/O asked Andersen if he showed the canister to the inmate. Andersen stated he tries not to display it because he doesn't want to make a threat of it. As the questioning progressed regarding the warnings required by policy, the lieutenant said, "Are you trying to get to the point that each time I give a direct order I say, 'Gas may be used,' because I have never done that." He stated he tries to let an inmate know it is there and will be used if needed.

Andersen was asked about the training provided in the use of chemical agents. Andersen stated he believed training in the use of gas and use of force were offered at the week long training he attended in 1980. He did not recall receiving any training in these topics since that time.[16]

The CA/O asked nurse Hull about the move.

CA/O: "...(T)his was a pretty typical forced move."

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[16] At the time Andersen began working at the penitentiary, the correctional training academy in Mount Pleasant did not exist. Andersen testified that he received his training from the DOC in Burlington at the Armory.

Hull: "Yes. When it goes this far, it was typical. He was given his warnings. It was all on videotape. Everyone was notified. To me it was nothing out of the ordinary, except that he jammed the door, and they did not know that until the end, but that was the only thing that was not typical, I felt, was when the door was jammed, and then he couldn't be released from the room."

CA/O: "Have you observed them using gas before?"

Hull: "Yes, I have."

CA/O: "Can you estimate how many times you think you've observed officers having to use gas to bring an inmate under control?"

Hull: "I'd have to say 20, 25 times."

The CA/O also asked Nickell about his observations of the "fairly large number" of forced moves he had filmed. He said, "Generally speaking, it was typical of those where gas was used, yes."

After reviewing the videotape, training officer Cramblit said the move was appropriate. Cramblit said he considered this "the most humane way to do it." Warden Nix reviewed the videotape and concluded the move was "probably done fairly well."

Director of DOC Paul Grossheim concluded: "Use of chemical agents and methods of use were appropriate for that situation."[17]

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17 Letter to the CA/O dated August 27, 1991.

MEDICATION REMOVAL

FACTS AND ANALYSIS

Prison admissions are initially taken to the Iowa Medical and Classification Center (IMCC), Oakdale, where staff gathers intake information and performs physical and mental evaluations. Many inmates are accompanied by a presentence investigation report which provides some background information. This includes, but is not limited to, information about family members, prior employment, prior arrests, prior incarcerations, and medical and mental health histories if received. The classification chief then determines institution placement. Considerations include the length of sentence, nature of the crime, program needs, and custody score.

Gardner said he had been receiving Haldol[R] Decanoate, a psychotropic drug first prescribed for him at a federal prison, approximately six years prior to his commitment to the Iowa Department of Corrections. Medical staff administered this medication intramuscularly (IM) once per month to help control the manifestations of his mental illness. Gardner said the last injection he received before his Iowa prison commitment was the end of January, 1991. During his pretrial detention, his injections were administered by Abbe Mental Health Center staff in Cedar Rapids. Until the events precipitating this forced move approximately six months later, Gardner received no psychotropic medications. Likewise, until these events, Gardner denied having delusions. According to Gardner, he adjusted well at IMCC. He was in general population and worked in the kitchen.

During his classification and orientation period, staff told Gardner where he would continue his incarceration. During this time, medical staff decided to discontinue his medication. Gardner informed medical and classification staff he did not want to go off his medication. He said when he discussed this topic with DOC Medical Director Dr. Paul Loeffelholz, the doctor exhibited little confidence in the opinion of the doctors from the federal institution in Missouri. Gardner stated he begged the doctor and his casework counselor to allow him to remain on the medication, because he was so frightened he would lose his mind.

Gardner described the orientation he received to Haldol[18] while in federal custody. They sent him to the United States Medical Center for Federal Prisoners (USMCFP) in Springfield, Missouri, where he stayed for several months until he was adjusted to the medication. He stated he was told he would have to take the medication as long as he lived or his illness would get progressively worse.

The federal system's orientation included movies about mental illness and Gardner was required to take special classes about his diagnosed illness. By the time he left, he was convinced he must remain on this medication for the rest of his life.

Gardner was granted parole from the federal system and moved to Waterloo, Iowa where he married and fathered two children. The CA/O questioned him closely whether he had ever failed to take his medication and he promptly replied never, explaining he was simply too scared.

Psychologists and nurses at the USMCFP told the CA/O the federal system employs an extensive orientation to medication. At the time Gardner was in the federal system, these orientations were the responsibility of the psychology department. Staff conducted individual sessions with inmates, describing the medication, its intended use and the potential for side effects. Staff also held classes which described the diagnosed mental illnesses. At the time of Gardner's commitment, the staff of USMCFP and the Menninger Institute produced educational videotapes which described the medications and the need for them.

Currently, the nursing staff performs USMCFP's medication orientation. They show professionally produced videos and monitor inmate behavior during this orientation to determine adjustment to medication. Furthermore, after an inmate transfers, the psychology staff of the receiving institution reinforces the need for medication, its intended use, and the potential side effects.

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[18] Haldol[R] Decanoate is a long-acting antipsychotic drug intended for use in the management of patients requiring prolonged neuroleptic therapy. Physician's Desk Reference, pages 1284-5, 1990. The American Psychiatric Association refers to some medication using the terms antipsychotic, psychotropic and neuroleptic interchangeably, as does this report.

The films described are available from the American Psychiatric Association. They vary in content from those prepared for professional staff to those intended for family members. During the CA/O's interview with Gardner, he recalled his orientation to the Iowa prison system. Medical staff took away the back support brace he was wearing and told him it would not be returned. Staff also discontinued all medication he had been prescribed prior to his incarceration.

Gardner said he talked to Dr. Loeffelholz. "He told me that I wasn't an emergency, the state was not going to pay for my medication, that he didn't believe in a lifelong illness. I had signed all the release forms. He had all the records from Springfield, Missouri. He mocked the doctors in Springfield. He said, 'Oh, they don't know what they're talking about.'"

The CA/O discussed the issue of medication withdrawal with Loeffelholz on August 19, 1991 when he telephoned after receiving a copy of a CA/O letter sent to Paul Grossheim, then Director of the Iowa Department of Corrections. During that conversation, Loeffelholz said many inmates enter the system on psychotropic medications. He believed most physicians overprescribe these medications and it was important to observe behavior without medication to determine whether it is needed. This psychiatrist said he believed no psychiatric disorder is permanent; the belief these disorders are permanent is a simplistic approach not supported by data.

The CA/O asked Loeffelholz if inmates removed from medication remained at IMCC longer than other inmates for observation. He said they did not. The CA/O asked if medical staff made any notation in the file to alert other institutions' staff to observe an inmate's behavior for signs signifying a return of the mental illness, and he said they did not. Nor does medical staff follow up on inmates removed from medications, according to Loeffelholz.

Loeffelholz shared his personal, unsolicited view of the episode with Gardner. He said he believed Gardner was simply trying to deny responsibility for his actions with these claims. He believed that was borne out by the fact after this episode, when medication was offered to Gardner, he refused it.

In a later conversation with CA/O Assistant Steve Exley, Loeffelholz estimated about 10 percent of new inmates on psychotropic medications were allowed to stay on them. He also estimated about 3 percent of Iowa's prison population is on psychotropic medications. Loeffelholz said he believes there is no higher percentage of mentally ill people in prisons than in the general public. He estimated the prevalence of mental illness in the general public at 3 percent.

Loeffelholz also said these inmates are sent to other institutions without any suggestions from medical staff to observe behavior which might indicate a return of the onset of symptoms.

RESEARCH

As of December 7, 1993 DOC classified as mentally ill only 2 percent of the inmate population.[19]

According to an article in the Mental and Physical Disabilities Law Review, "at least 15 percent of a prison population of convicted felons are likely to have serious or significant psychiatric problems."[20]

A monograph entitled "Mental Illness in America's Prisons" discussed the prevalence issue. The report is edited by Henry J. Steadman and Joseph J. Cocozza and includes reports from a variety of authors.[21] The authors generally agree the prevalence of mental illness in prisons may be under reported.

"Surveys of facility administrators suggest that 6 to 8 percent of adjudicated felons are currently being designated as seriously mentally ill. Clinical studies, however, suggest that 10 to 15 percent of prison populations have a major DSM-III-R thought disorder or mood disorder and need the services usually associated with severe or chronic mental illness: medications, day treatment, case management and specialized housing. In addition, one-third to one-half of the population are likely to need outpatient mental health services during their incarceration (James et.al. 1980; Neighbors, 1987).

"...(P)rison prevalence rates for schizophrenia range from 1.5 percent to 4.4 percent (2.5 to 7.3 times the rate in the general population). Rates of 3.5 percent to 11.4 percent are reported for major depression (as high as 3.3 times the rate in the general population) and 0.7 percent to 3.9 percent for mania (2.3 to 13 times the rate in the general population). For these three major DSM-III-R disorders, it is clear that the best methodological studies suggest that at any given

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19 DOC statistic obtained from the Agency for Criminal and Juvenile Justice Planning.

20 Cohen and Dvoskin, "Inmates with Mental Disorders: A Guide to Law and Practice," Part I, 16 Mental and Physical Disabilities Law Reporter 339 (1992).

21 National Coalition for the Mentally Ill in the Criminal Justice System, "Mental Illness in America's Prisons," October, 1993.

time 10 to 15 percent of state prison populations are suffering from a major mental disorder and are in need of the kinds of psychiatric services associated with these illnesses."[22]

"... Steadman, Dvoskin and their colleagues ... conducted a survey of the inmates in the New York State prison system to determine the extent of psychiatric disabilities among inmates. The results showed that 5 percent of inmates were 'severely psychiatrically disabled,' demonstrating psychopathology similar to that found in state psychiatric center acute inpatients. Another 10 percent were 'significantly pyschiatrically disabled,' similar to patients in crisis beds in the community."[23]

"The need for identifying and providing services to MIOs (mentally ill offenders) is premised on the fact that mental disorder may hamper an inmate's ability to function in the prison.... According to Dvoskin and Steadman (1989), one of the 'core principles' of providing mental health services to offenders is to 'help make the prison a safer place for both inmates and staff' (p. 205)."[24]

"...(M)ost mental health evaluations in prisons are conducted at the time of admission or following a crisis in which an inmate displays acute psychological problems. These mental health services may be effective in identifying inmates who require services upon admission to the prison, or to identify the specific needs of inmates who have suffered an acute episode. However, many inmates who develop mental health problems after being incarcerated, or whose problems become more severe under those circumstances, fall between the cracks left open by limiting mental health assessments to the time of admission and following crisis episodes. For this reason, it is important for prisons to implement a comprehensive screening and evaluation program, and to involve all personnel working with inmates in prisons in the process of continuously identifying inmates who may display symptoms of mental illness and who may require intervention."[25]

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[22] Jemelka, Rahman and Trupin, "Prison Mental Health: An Overview" published in "Mental Illness in America's Prisons," page 11. Parenthetical statements and emphasis in original.

[23] Ogloff, Roesch and Hart, "Screening, Assessment, and Identification of Services for Mentally Ill Offenders," published in "Mental Illness in America's Prisons," page 61.

[24] *Ibid.* at pages 62 and 63.

[25] Ogloff, Roesch and Hart, "Screening, Assessment, and Identification of Services for Mentally Ill Offenders," published in "Mental Illness in America's Prisons," pages 64 and 65.

"(T)here should be a formal process for staff and duty officers to refer inmates to the mental health program.... The most obvious problem with limiting ongoing psychological evaluations and services to those which occur after a crisis has occurred is that, by then, the problems will have escalated to the point where intervention is extremely difficult.... The 'treatment' usually consists of medication and/or psychotherapy that is conducted through an outpatient clinical or inpatient unit."[26]

"The DIS (Diagnostic Interview Schedule) has been used extensively in research on the prevalence of mental disorder among correctional inmates (e.g., Bland and Newman, 1990; Cote and Hodgins, 1992; Hodgins, in press; Hodgins and Cote, 1990; Motiuk and Porporino, 1991; Neighbors, Williams, Gunnings, Lipscomb, Broman and Lepowski, 1987; Wormith and Borzecki, 1985). In general, the findings suggest that a majority of inmates (50 percent to 90 percent) meet the criteria for substance use disorders or antisocial personality disorder, and a significant minority (10 percent to 30 percent) meet the criteria for a serious, acute mental disorder such as a depressive, bipolar, schizophrenic, or organic disorder."[27]

"Correctional officers should be in a position to detect early signs of mental health problems and to initiate referral to mental health professionals so that appropriate services could be provided. Ongoing screening and evaluation is feasible in all prisons since it is relatively inexpensive to train correctional officers to identify symptoms of mental disorder (Dvoskin, 1990).... Often, especially in prisons with limited budgets for treatment, the most appropriate treatment might not be available so compromises often must be made. It is all the more important, then, that ongoing evaluations of the effectiveness of the assessment/treatment decisions be built in from the start."[28]

A 1965 report by the Iowa Mental Health Authority included statements on Iowa prisons' mental health treatment, terming the psychiatric unit at Anamosa a "snake pit." "A subcommittee focused on the adult offender and report that 10 to 15 percent of the inmates in Iowa's

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26 *Ibid.* at pages 66 and 67.

27 *Ibid.* at page 69.

28 *Ibid.*, pages 80 and 82.

correctional institutions were 'blatantly psychotic.' ... The report's recommendations were directed at a psychiatric or medical model of treatment of the offender, and the recommendation was made to establish the Iowa Security Medical Facility. At about the same time, the 61st General Assembly appropriated $5,610,000 for the building of the Iowa Security Medical Facility at Oakdale."[29]

A recent report by the Iowa Legislative Fiscal Bureau compared Iowa prison spending to those of seven surrounding states as well as national averages. "For health care, Iowa spends the least of the surrounding states at $2.95 per inmate per day. These costs are about half the national average."[30]

The report showed 3.1 percent of Iowa inmates participated in mental health programs on January 1, 1992, compared to a regional average of 2.3 percent and a national average of 5.1 percent.

The American Psychiatric Association (APA) and the Washington State Psychiatric Association filed an *amici curiae* brief with the U.S. Supreme Court in the case of State of Washington vs. Walter Harper.[31] In its brief, the APA argued inmates may benefit from psychotropic medications, even in a case where the inmate wished to refuse the medications, as Harper sought:

"Psychotropic medication is widely accepted within the psychiatric community as an extraordinarily effective treatment for both acute and chronic psychoses, particularly schizophrenia," the APA said. "...The value of antipsychotic medication for the long-term treatment of chronic psychosis is equally well-established. 'Maintenance antipsychotic drug treatment has proved to be of enormous value in reducing the risk of psychotic relapse and rehospitalization. Numerous double-blind, placebo-controlled clinical trials can be cited to

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29 Boudouris, James, "Mental Health and Correctional Institutions: Issues and Paradoxes," April, 1979, page 2. Boudouris was correctional evaluation program director for the Iowa Division of Adult Corrections. Iowa Security Medical Facility is now known as Iowa Medical and Classification Center.

30 "Iowa's Prison System Compared to Surrounding States," October 20, 1993 report by the Iowa Legislative Fiscal Bureau, which drew from the Corrections Yearbook, 1992.

31 32 494 U.S. 210, 110 S.Ct. 1028, 108 L.Ed.2d 178 (1990).

support this conclusion and have been the subject of several review articles.' Kane, Treatment of Schizophrenia, 13 Schizophrenia Bull. at 143. (Footnote omitted.)[32]

"...(M)edication is directly therapeutic in both the short and long term and, in no event, readily interchangeable with physical restraints.... There is simply no clinical basis for a concern that antipsychotics impinge on protected interests in speech or thought. To the contrary, the documented effect of antipsychotic medication on the severely mentally ill is to further traditional concerns for freedom of speech and thought by enhancing the mentally ill person's ability to concentrate, to read, to learn, and to communicate."[33]

"...(A)s the trial court noted, Harper's tendency towards assaultive behavior, which his doctors have attributed to his mental disease, increased when he did not take his medications...."[34]

The APA argued:

"Permitting a psychotic prisoner to remain unmedicated for months within the general prison population presents a very real danger of violent confrontations resulting in serious physical injury to that prisoner, to other inmates, or to prison officials. (Footnote: The alternative of unmedicated administrative segregation for a psychotic prisoner alleviates the threat his or her illness may present to others, but it cannot relieve and may likely aggravate the dysphoria that many psychotics experience before receiving proper treatment. In addition to subjecting the prisoner to the often intense discomfort of untreated psychosis, such a transfer to solitary confinement would likely deprive a prisoner of a significant measure of liberty enjoyed among the general population....)

"Further, it cannot be overemphasized that antipsychotic medication is prescribed to treat the most serious of psychiatric disorders. Even in those cases that could not be described as emergencies, a two to four month delay in administering treatment can cause harmful and irreversible deterioration of a prisoner's mental condition. (Footnote: See Gutheil, *et al.*, Legal Guardianship in Drug Refusal: An Illusory Solution, 137 Am. J. Psychiatry 347 (1980)....)"

Jemelka, Rahman and Trupin in "Mental Illness in America's Prisons" argue for continuity of care for inmates:

"Segregated housing in conjunction with mental health services is essential for the most severely disturbed prison inmates. Many of these offenders are too disruptive for general population placements and can better benefit from treatment services if segregated from the general prison population.... Residential care should be provided only to offenders who have been evaluated as

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[32] Brief for the American Psychiatric Association, *et al.* as *amici curiae* at 11, Washington v. Harper, 494 U.S. 210, 110 S.Ct. 1028, 108 L.Ed.2d 178 (1990).

[33] *Ibid.*

[34] *Ibid.* at page 14.

acutely or chronically mentally ill, or seriously disturbed....[35]

"Mentally ill offenders are best managed by an identified mental health case manager who is responsible for activating and monitoring a continuum of treatment and classification services to a caseload of mentally ill offenders.... Effective case management will ensure consistency of service delivery, and will monitor mentally ill offenders' progress, including changes in levels of functioning and treatment needs....[36]

"A system designed to ensure adequate information and accountability is critical in the delivery of mental health services...."[37]

"We strongly recommend that efforts be made to provide mentally ill offenders with the same level of mental health care available to persons with mental illness in other institutions and in the community."[38]

In another publication, the APA states:

"These guidelines assume that inmates in any correctional setting are entitled to mental health treatment.... The fundamental goal of mental health services should be to provide the same level of care to patients in the criminal justice process that is available in the community.... (The treatment should help the inmate) make use of rehabilitative opportunities."[39]

"Severely mentally ill inmates should not be housed in correctional facilities unless the following conditions are met: ... b. written procedures for adequate observation, ... d. medical and mental health staff available to provide adequate treatment and supervision...."[40]

"The full range of psychopharmaceutical agents should be available to the practitioner in the correctional setting.... (T)he use of antipsychotics, antidepressants, lithium, and other generally utilized medications are to be administered as necessary."[41]

The courts generally recognize that deliberate indifference by prison personnel to an inmate's serious medical needs violates the inmate's Eighth Amendment right to be free from cruel and unusual punishment. Grossly incompetent or inadequate medical care can constitute deliberate

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35 Jemelka, Rahman and Trupin, "Prison Mental Health: An Overview" in "Mental Illness in America's Prisons," October, 1993, pages 14 and 15.

36 *Ibid.* at page 15.

37 *Ibid.*

38 *Ibid.* at page 19.

39 Task force report by the APA, "Psychiatric Services in Jails and Prisons," 1989, page 10.

40 *Ibid.* at page 12.

41 *Ibid.* at page 13.

indifference, as well as refusal to provide essential care. See Smith v. Jenkins, 919 F.2d 90 (8th Cir. 1990). In Smith, the court overturned a summary judgment in favor of a prison psychiatrist and remanded the case back to district court for rehearing to determine the sufficiency of treatment when the psychiatrist withdrew all medications from an inmate. The psychiatrist removed this Arkansas inmate from medication prescribed for a psychiatric disorder after an examination by the prison doctor. The court ruled Smith was entitled to prove his case by establishing the doctor's course of treatment, or lack thereof, so deviated from professional standards it amounted to deliberate indifference in violation of his Eighth Amendment right to be free from cruel and unusual punishment.

Courts have scrutinized some of Dr. Loeffelholz's past practices. In Knecht v. Gilman, 488 F.2d 1136 (8th Cir. 1973), the court found medical staff under the supervision of Loeffelholz injected some inmates with apomorphine, a drug which produces nausea and vomiting for 15 minutes to one hour. The court found "that the drug could be injected for such pieces of behavior as not getting up, for giving cigarettes against orders, for talking, for swearing, or for lying. Other inmates or members of the staff would report on these violations of the protocol and the injection would be given by the nurse without the nurse or any doctor having personally observed the violation and without specific authorization of the doctor." Loeffelholz was prohibited from continuing this practice unless he had signed consent from the inmate and an understanding the inmate could revoke this consent at any time.

In another federal case, a monetary judgment was entered against Dr. Loeffelholz and two other defendants. Magistrate Longstaff filed a Report and Recommendations in that case, which was then adopted by District Court Judge Vietor. See Herlein v. Reagan, No. 82-669-D (S.D. Iowa June 21, 1985).

In this case, Herlein was placed in the Special Treatment Program (STP) because he was disruptive on his unit. While the staff at the institution described STP as medical treatment, the court found the program was in reality a form of discipline and punishment. This program required an inmate be housed in a segregation cell clothed in only underwear. The inmate must

earn all privileges through good behavior. The first night he may earn a blanket, the second night a blanket and mattress, and so on. However, violations of the rules while in this program could result in staff depriving up to two meals within a 24-hour period and controlling all water to the cell, preventing the inmate from flushing the toilet.

In Herlein's situation, the court found the following: 1. Staff denied Herlein nine meals, two of which were within a 24-hour period, during the month he was in the program; 2. Staff denied Herlein blanket and mattress on one night and mattress on seven occasions; 3. Staff flushed Herlein's toilet only six times in a 30-day period. The court concluded that under the totality of the conditions, Herlein was subjected to cruel and unusual punishment while under confinement in the STP program.

The court also determined Herlein's due process rights were violated, because Herlein had not given informed and voluntary consent to the STP treatment program and had not been afforded any notice or hearing before placement on the program.

The court enjoined the defendants from further use of the STP unless the defendants implement use of a consent form and revocation of consent form.

In a similar case, Green v. Baron, 662 F.Supp. 1378 (S.D.Iowa, 1987), James Green filed suit against officials of the DOC regarding their use of the STP for punishing him prior to an adjudication of guilt on his criminal case. In its order, the court admonished the Iowa Attorney General's office for not bringing the unpublished report and order in the Herlein case to its attention.

On review, the Court of Appeals found that the deprivations Green received through STP did not constitute punishment, because they were reasonably related to the legitimate governmental goal of stabilizing his behavior so he could participate in his criminal trial and were not excessive in relation to that purpose. Green v. Baron, 879 F.2d 305 (8th Cir. 1989).

A review of the Iowa Corrections Training Center's Basic Correctional Preservice Program course synopsis showed no mention of mental illness, although there is reference in section entitled "Personal Safety" to recognizing "inmate warning signs, personal behaviors and emotions which lead to physical confrontations...." A review of the "Personal Safety" course outline, however, showed a focus on use of force and types of force but no mention of mental illness or its signs or symptoms.

AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) may have some impact on the rights of inmates with mental disabilities, although no published court decision has yet addressed this issue. The ADA defines the term "disability" as: "A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual; B) A record of such an impairment; or C) Being regarded as having such an impairment." If an individual meets any one of these three tests, he or she is considered to have a disability for purposes of protection under the Act. The ADA does not exempt criminal justice agencies and correctional institutions.

The ADA's definitions of major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The Act "is intended to cover those who have a record of an impairment." This includes those who have a history of an impairment that substantially limited a major life activity, someone who has been misclassified as having an impairment, and someone who previously had an impairment, but who may have recovered. This explanation includes persons with histories of mental or emotional illness.

The Act prohibits overt denials of equal treatment of individuals with disabilities. "A public entity may not refuse to provide an individual with a disability with an equal opportunity to participate in or benefit from its program simply because the person has a disability." The Act also calls for agencies to attempt corrective measures to enable those with disabilities to participate in the same programs with those not disabled.

PRESENT STATUS

Gardner was eventually persuaded to resume his medication. The Haldol[R] was administered in tablet form. A few months later Gardner broke his television and radio. After this incident there was discussion about whether Gardner was swallowing the pills. Staff decided to use the injectable form of Haldol[R].

ISP staff filed additional disciplinary reports as a result of this later incident. All of these disciplinary reports and the reports issued as a result of the forced move were dismissed during the pretrial/discovery phase of a court proceeding.

In January, 1993 according to the medical file, Gardner complained of falling asleep during the day and requested his medication be reduced. The notes reflect he told the doctor he had been maintained on a smaller dose prior to his Iowa commitment. On January 16, 1993, Gerdes reduced his medication from 100 mg IM per month to 75 mg IM per month and suggested further review in six months.

In March, 1993, the DOC transferred Gardner to the Mount Pleasant Correctional Facility (MPCF) so he could participate in the Sex Offender Treatment Program (SOTP). According to notes in his medical file,on April 10, 1993 medical staff reduced his medication to 50 mg IM per month. Gardner reported his symptoms returned. Medical staff increased his dosage on July 6, 1993 to 100 mg IM per month. On September 14, 1993, staff returned it to 75 mg IM per month.

In August, 1993, Mrs. Gardner contacted the CA/O regarding her observations of bizarre talk and actions by her husband. The CA/O learned Dr. Roumlu Lara, psychiatrist at the Iowa Medical and Classification Center, Oakdale, had seen Gardner and recommended another attempt to reduce the dose. The CA/O attempted to talk with Lara about observations from Gardner's wife, but Lara directed the CA/O to MPCF psychologist, Robert Pierce. Lara said since he had heard nothing from the psychologist, as far as he was concerned, "no news is good news."

The CA/O attempted to reach Pierce to report these observations, however was unable to make contact with him. The CA/O contacted another MPCF employee and asked the institution to arrange for Pierce to see Gardner. Prison staff placed Gardner in administrative segregation until his behavior could be evaluated.

In October 16, 1993, while still in segregation, Gardner refused to leave the shower area and staff conducted another forced move. According to the Use of Force report________________

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Gardner was transferred to the Iowa Medical and Classification Center for psychiatric evaluation.

Mrs. Gardner contacted the CA/O again on October 22, 1993, expressing concern about her husband. When the CA/O contacted Loeffelholz about Gardner, the psychiatrist said, "She doesn't know what she is talking about. She can stick it in her butt as far as I'm concerned." He said, "He's a fool and she's a fool and they're both a waste of our time." Loeffelholz said Gardner uses the mental illness label so "he can say he is not responsible for his own behavior." "I don't give a shit," Loeffelholz continued and said he would fill Gardner full of medications if that is what everyone wants. Loeffelholz informed the CA/O he has included a memorandum in Gardner's file that states the inmate is completely responsible for his actions. The CA/O observed this notation in the DOC Health Services file. ____

____ This appears in the middle of a page of hand-written notations.

Gardner received additional disciplinary reports following the forced move from the shower area. When Gardner appealed his disciplinary reports, Warden Russell Rogerson dismissed them November 15, 1993, stating, in part,

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In a previous paragraph, Rogerson stated, __________________________________

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ACCESS TO THE VIDEOTAPE

DOC provided copies of all its documentation upon the CA/O's request, with the exception of the videotape. Initially, the prison employee who made the videotape told the CA/O a copy would be forthcoming. Later, the executive assistant to the warden said the CA/O would not receive a copy. When contacted directly, Nix threatened to discontinue taping of all situations involving use of force if the CA/O pursued the request for a copy of the tape.

The CA/O subpoenaed Nix for a copy of this tape, but he still refused. DOC Director Paul Grossheim refused to obey a similar subpoena issued to him. The DOC allowed staff of the CA/O only to view the tape at the DOC office.

The CA/O believed the statute governing its powers granted authority to request and receive a copy of this record, and sought enforcement of the subpoenas in Polk County District Court.

Polk County District Court Judge Richard Strickler quashed the subpoenas and filed a protective order which allowed the CA/O to view the tape at the DOC office, but prevented the CA/O from obtaining a copy.

DOC argued it had not impeded the CA/O from conducting the investigation, the CA/O would have unlimited opportunity to view the tape, and no purpose would be served by providing the CA/O a copy. When CA/O Assistant for Corrections Judith Milosevich, accompanied by CA/O Legal Counsel Ruth Cooperrider and CA/O Assistant for Public Safety Michael Ferjak, made arrangements with then DOC Deputy Director of Institutions Chuck Lee to view the tape again at the DOC office, Lee provided the CA/O with the videotape and left the viewing room. However, about midway through the viewing, he returned and sat down behind the CA/O contingent. After viewing the tape once, the CA/O staff informed Lee they wished to view it again. He said that was fine. However, he gave no indication of leaving so CA/O staff could discuss in private what it saw.

Legal Counsel Cooperrider informed him the CA/O staff wished to review the tape without his presence. Lee said he had a responsibility to ensure CA/O staff did not take the tape. CA/O staff convinced him they had no intention of stealing the tape, at which time he left. After the viewing, the CA/O returned the tape to DOC in its original condition.

The CA/O appealed to the Iowa Supreme Court. The CA/O argued on appeal its authority to examine the videotape included the right to have a copy, and possession of a copy was essential to an expeditious, fair, and thorough investigation. The CA/O argued there was no evidence to support DOC's argument regarding security risks. The Iowa Supreme Court agreed and on April 21, 1993 reversed the district court's ruling. On May 26, 1993, Polk County District Judge Larry Eisenhauer ordered DOC to provide a copy of the tape to the CA/O. The CA/O was finally given a copy of the tape.

FINDINGS AND CONCLUSIONS

The facts of this case demonstrate Gardner's treatment was unreasonable, unprofessional, and unwarranted.

Court settlements mandate certain procedures for conducting forced moves and using chemical agents. The Iowa Department of Corrections officials who are the subjects of this report -- Director Paul Grossheim, Warden Crispus Nix and Deputy Warden of Operations John Henry -- readily agreed to these procedures, and developed policies which reflect what actions were required before and after the use of force. Yet they conducted this move and use of chemical agent in violation of their policies and absent court mandated safeguards.

These officials reviewed the use of force in this case and concluded it was appropriate, thus admitting either ignorance of or willful disregard for the requirements of the court orders and their own policies.

No consideration was given to observation of Gardner to determine whether he posed any further threat to property. No consideration was given to alternatives to an immediate move.

There appeared to be little or no preparation: No officer knew where the restraints were, nor were they certain which key would unlock the door.

Officers held no consultation with HCU staff to determine the reason for this inmate's assignment to this area. HCU staff involved in the move did not know the reason for Gardner's placement in the sideroom. No consideration was given to other methods to convince this inmate to move to a new location.

Officers failed to follow widely accepted policies and practices regarding which level of force was appropriate. Officers did not use the minimum level of force available to attempt control but instead started with the highest level of force allowed by their policy, short of deadly force.

Officers gave no explanation why the move began with this level of force. Based on testimony, except for the jammed door, this was a typical move. Therefore one could conclude officers typically ignored court-ordered standards and the institution's policies.

When officers used the chemical agent they failed to give the additional required warnings. The senior officer on the scene, second only in rank to the deputy warden, said he was unaware of the requirement to give these warnings. Despite DOC officials' assurances to the court that proper training would be provided, in this officer's case it was not. According to testimony, this was a typical and proper move, which indicates to the CA/O substantive training was nonexistent or, at best, woefully inadequate.

The deputy warden whose responsibility it was to ensure adherence to the force and gas policies ignored the warnings required by both the policies and court orders. He gave no instructions regarding the administration of the chemical agent. The officers administered the agent in quantities exceeding manufacturer's instructions and failed to follow the recommended method of administration.

The Department of Corrections Chemical Agent Use Report used by the other Iowa institutions was then and is now four pages, compared to one page used by the penitentiary. ISP still utilizes the same Use of Gas form today and it does not contain all of the information required by the courts and DOC policy. The CA/O does not know why the penitentiary continues to use a form which does not comply.

According to Nix, the team of specially trained individuals who generally handle forced moves was not available in the evenings and on the weekends. Nix did not believe it was practical to have a CERT team available at all times. The CA/O believes there should be some better provision for conducting these moves if a CERT team is not available.

At first glance, the practice of removing inmates from medications in order to observe behavior and determine the need for medication appears to be a sound principle. However, questions arise

when the removal of inmates from their medication is not supported by observation, nor by follow up. Later, when behavior results that may be attributable to a mental illness, the prison issues disciplinary sanctions against the inmate.

Some mentally ill inmates may be more aggressive when taken off their medication. Institution staff may be at greater risk from these inmates. Correctional officers charged with daily supervision are unlikely to have the expertise to recognize those behaviors which may signal the return of the symptoms of mental illness.[42]

Various authorities cited in this report argue the prevalence of mentally ill inmates may be under reported by prison authorities, and that mentally ill offenders have difficulty following prison rules. The CA/O believes the maximum security institution at ISP houses many of the severely mentally ill offenders in the Iowa prison system because of the number of disciplinary reports mentally ill inmates are likely to receive. Disciplinary reports result in disciplinary segregation and will increase the custody level of an inmate, and often result in a transfer to a more secure institution.

Segregated inmates are not allowed to participate in prison programs. Therefore those mentally ill inmates who have received disciplinary reports are not offered the same opportunity for treatment in possible violation of the ADA.

The CA/O does not mean to suggest a correctional institution will never need to conduct a forced move, nor that verbal persuasion will always work. Nor does the CA/O believe all inmates always require the medication on which they may enter the correctional system. But neither does the CA/O believe any inmate should be treated in the manner Craig Gardner experienced. The errors made in conducting this forced move were many and egregious, but some of these problems already have been remedied.

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[42] Cohen and Dvoskin, "Inmates with Mental Disorders: A Guide to Law and Practice," Part I, 16 Mental and Physical Disabilities Law Reporter 339 (1992).

More disturbing to the CA/O, who admittedly is not a medical professional, are the ongoing practices regarding inmates who arrive at prison with diagnoses of mental illnesses, or those who develop mental illnesses later. For example, Dr. Loeffelholz's practice of removing medications from 90 percent of the inmates who arrive with them differs so radically from treatment described in the literature, the CA/O could find no references to similar practices elsewhere. There was similarly no discussion in the literature of the practice of transfering those inmates to other institutions without a significant period of observation by medical staff. Such practices cry out for professional review.

Most inmates will eventually leave the prison system. They should not leave it in worse condition than they entered it.

RECOMMENDATIONS

Given the findings, the CA/O recommends:

- Treatment of the mentally ill in the Iowa prison system should be evaluated to determine if the practice of immediately removing nearly all inmates from their psychotropic medications without a signicantly longer period of observation and follow up by medical personnel meets professional standards as set by the American Psychiatric Association. If it fails to meet professional standards, it should be changed.
- The same practice be evaluated to determine if it meets the standards for the mentally ill established by the Americans with Disabilities Act. If it fails to meet ADA standards, it should be changed.
- The use of force training must follow the guidelines established by the courts and DOC policy.
- Those officers authorized to use nonlethal devices be prohibited from such use unless they have received training since 1991.
- Officers routinely receive training in recognition of the onset of symptoms of mental health episodes.
- The warden routinely review all videotapes or audiotapes of the use of force.
- The warden routinely review all videotapes or audiotapes of the use of any weapon/device.
- Iowa State Penitentiary change its Use of Gas report form to the form developed by the Iowa Department of Corrections Central Office.
- The briefing required by policy should include specific information from health care staff regarding not only physical conditions but mental illness considerations as well.
- Officers not be allowed to join a move unless specifically ordered or requested.
- Officer Countryman's actions in this case be reviewed, and counseling or other personnel actions be undertaken if deemed appropriate.
- Nurse Hull's philosophy of not advising correctional staff about a person's mental condition prior to a forced move be reviewed and, if deemed appropriate, counseling or other

personnel action be provided to make it clear correctional staff should be made aware of mental health concerns in these cases.

- Correctional officers and medical personnel be made clearly aware at all times of the reason for a person's placement in a sideroom of the ISP infirmary.
- Supervisors of forced moves provide better oversight regarding correct procedures than was provided in this case.
- DOC develop policy to outline access, maintenance and level of security for videotapes.

Investigated by: Judith Milosevich
Assistant for Corrections

TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF CORRECTIONS
SALLY CHANDLER HALFORD, DIRECTOR

To: William P. Angrick II
Citizens' Aide/Ombudsman

From: Sally Chandler Halford
Director, Iowa Department of Corrections

Date: February 15, 1994

RECEIVED
FEB 17 1994
CITIZENS' AIDE/OMBUDSMAN

Subject: Response
Critical Report 94-1
Case number 91-151

The case involving Craig Leslie Gardner occurred on June 30, 1991. As the Director of the Iowa Department of Corrections since January 4, 1993, I will focus on current procedures adopted and/or reviewed since my arrival as well as future plans.

Treatment of Mentally Ill

The Deputy Director of Institutions and I met with the Medical Director, Dr. Paul Loeffelholz to discuss and clarify procedures for inmates who come into the Iowa prison system on psychotropic medications. These procedures include:

A) All inmates who are currently on psychotropic medications will continue to be evaluated by a Medical Doctor.

B) If the inmate is to remain on the psychotropic medication, this information will be documented and sent to the recieving institution.

C) If the inmate is taken off the psychotropic medication, then the inmate will remain at the Iowa Medical and Classification Center for a evaluation period. During this time he/she will be closely monitored by the medical staff. A Medical Doctor will then determine if the individual should remain off medication or if they should be administered medication and what type of medication.

If the inmate is placed back on the medication, then the procedures outlined in B above will be followed.

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If the inmate is to remain off the medication after this observance period, then the medical staff will document what behaviors the staffshould watch for as well as information about the inmate and hiscondition.

At the Penitentiary they have added a psychologist to their new employee orientation schedule in order to advise staff how to recognize potential mental problems with inmates, and how to make a referral to the Psychology Department. They will also be reviewing all forms related to the various court orders under which they operate and identify any deficiencies that may exist.

Use of Force

The Warden at the Iowa State Penitentiary has taken some steps to improve our ability in handling situations that may require the use of force. The Warden has moved members of our CERT (Correctional Emergency Response Team) team to the second shift. This team is trained more thoroughly then the the other staff in handling situations involving force as well as use of equipment such as chemical agents. This will allow ISP to better utilize these officers throughout the time inmates are out of their cells instead of just the first shift, thus a specialized team to deal with violent or unusual circumstances is ready.

Our Department Use of Force policy is going through an extensive review by legal experts and our own Corrections Officials. Mr. William Collins, a noted legal expert in the Corrections field, has reviewed our policy and has made some recommendations and we are in the process of reviewing them. The policy will include de-escalation techniques, as well as step by step instructions on the type of force to be used.

Training

The penitentiary has updated the employees training requirements to insure that all of the staff is properly trained in the area of use of force. This includes cell extractions, chemical agents, and defensive tactics.

We are also developing a TQM (Total Quality Management) program for our training program. The group will consist of a variety of correctional employees throughout the state. We will include members of central office, the training academy, wardens, correctional supervisors, and input from A.F.S.C.M.E.

Our intention for this TQM project is to evaluate our training on an on-going basis and incorporate the best new techniques and ideas into current training. We want to improve and emphasis inter-personal skills of all our staff. Use of force will be part of a comprehensive program on inmate management.

The Wardens at the Institutions are required to review all Use of Force reports and forward them to the Deputy Director and me, for our review. We are routinely doing this with videotapes or audio-tapes when available. We are then using these for further training and as a learning tool.

Conclusion

These immediate and short-term goals are intended to improve on the quality of our prison system.