

# Memorandum



BLL:LK:SHR:MHN:AJB:AO:RC:drb  
DJ 168-27-3

<b>Subject</b>  Recommendation to Investigate the Black Hawk County Jail in Waterloo, Iowa	<b>Date</b>  April 16, 1998
--	-----------------------------------

**To**  
  
Bill Lann Lee  
Acting Assistant Attorney General  
Civil Rights Division

**From**  
  
*AR* Steven H. Rosenbaum  
Chief  
Special Litigation  
Section

## RECOMMENDATION

We recommend that you authorize us to initiate an investigation into conditions of confinement at the Black Hawk County Jail ("Jail") in Waterloo, Iowa, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 *et seq.* ("CRIPA"). Information we have obtained suggests that inmates confined at the Jail may be subjected to conditions that violate their constitutional rights. The allegations include inadequate medical and mental health care, inadequate suicide prevention and staff abuse of inmates.

This matter was referred to the Section by Steven J. Rapp, United States Attorney for the Northern District of Iowa.<sup>1</sup> Mr. Rapp sought our assistance after receiving complaints from the Black Hawk County Alliance for the Mentally Ill, a mental health advocacy group, and from individual inmates and family members, regarding the inadequacy of mental health treatment at the Jail. The timing of these complaints coincided with a suicide at the Jail in December 1997. Mr. Rapp had previously attempted to resolve mental health-related issues informally with Jail officials last Spring. When the issues resurfaced, Mr. Rapp wrote the Section requesting that we evaluate the allegations and take appropriate action.

## BACKGROUND

The Black Hawk County Jail is a recently constructed 272-bed facility that opened in September 1995. The new Jail replaced an old 64-bed facility that suffered from chronic overcrowding. The new "state of the art" facility is divided into six "pods" each of which house approximately 50 inmates. One unarmed deputy supervises

---

<sup>1</sup>Letter to Steven Rosenbaum from Steven J. Rapp, dated January 5, 1998.

CRIPA Investigation



JC-IA-001-001

each pod, circulating among the prisoners. Virtually all devices in the Jail, including doors, security devices, TV sets, camera monitors, and the water supply to sinks and toilets, are operated out of a master control room, which is staffed around the clock by two officers.

In addition to housing pre-trial detainees and sentenced misdemeanants from Black Hawk County, the Black Hawk County Jail takes in federal detainees and over-flow prisoners from other counties in Iowa on a contractual basis. Currently there are 32 federal detainees at the Jail. Approximately half of the Jail's inmates are from outside Black Hawk County.

### SOURCES OF INFORMATION

As stated above, we initiated this inquiry at the request of U.S. Attorney Steven J. Rapp. In addition to speaking with Mr. Rapp, Section attorneys spoke with Judy Meyers, President of the Alliance for the Mentally Ill of Black Hawk County and Richard Davenport, a counselor with the Black Hawk-Grundy Community Mental Health organization. We also received complaints from former inmates and their family members. We interviewed attorneys in both the Black Hawk County Public Defender's Office and the Legal Services Office in Waterloo, and received additional information from Tom Frerichs, a private attorney in Waterloo who sometimes represents inmates at the Jail.

Finally, we received minutes of the January 20, 1998, meeting of the Black Hawk County Mental Health and Developmental Disabilities Regional Planning Council Correctional Facility Coordination Task Force ("Task Force"). This meeting, the subject of which was the need for mental health services at the Jail, was attended by mental health and corrections professionals from the local community as well as by County officials. The Task Force has not yet issued any report or recommendations.

### FACTUAL ALLEGATIONS

#### I. Inadequate Health Services

##### A. Inadequate Mental Health Services

According to the information we have obtained, it appears that there are serious systemic deficiencies in the provision of mental health care at the Jail. As a result, seriously mentally ill inmates allegedly are not receiving adequate screening, evaluation or treatment for their conditions.

**1. Failure to Utilize Mental Health Professionals in the Screening, Evaluation and Treatment of Mentally Ill Inmates**

The information we have received strongly suggests that the Jail is not utilizing the mental health services it has available. Rather, Jail personnel (including both nursing staff and correctional staff) are routinely evaluating and dismissing inmate complaints and requests for treatment without the aid of qualified mental health professionals. Even inmates identified as chronically mentally ill, including those on prescription medications for mental illness, are seldom seen by mental health professionals. At best, their conditions are "monitored" by physicians who visit the Jail.

The Jail has no mental health professionals on staff. Instead it contracts with a private provider called the Murphy Mental Health Group ("Murphy Group") to provide mental health services to inmates. According to Daun Keefe, a Murphy Group counselor who attended the January 20, 1998 Task Force meeting, the group is "underutilized."<sup>2</sup> It received only about five calls from the Jail between July 1997 and January 1998. This was far less than the two to five calls a week that the group was led to expect when it entered into its contract with the Jail.

The Jail's failure to utilize the Murphy Group has resulted in a sharp decline in the level of mental health services provided at the Jail. Prior to July 1997, the Black Hawk-Grundy Community Mental Health Center ("Black Hawk-Grundy") provided mental health services for inmates. Black Hawk-Grundy, a community mental health provider funded in part by Black Hawk County, provided inmate services out of its own budget.<sup>3</sup> According to Richard Davenport, a counselor at Black Hawk-Grundy, he provided approximately ten hours of service each week at the Jail, at the request of Jail officials.

There is no reason to believe that the need for inmate mental health services has declined since July 1997. Indeed, Bill Miller, Black Hawk County Jail Administrator, acknowledged at the Task Force Meeting that there are a significant number of mentally ill inmates at the Jail.<sup>4</sup> He stated that 11% of the

---

<sup>2</sup>Task Force Minutes, p. 3.

<sup>3</sup>Telephone Conversation with Richard Davenport, February 8, 1998.

<sup>4</sup>Task Force Minutes, p. 3.

inmate population of 266 are identified as mentally ill.<sup>5</sup> About 30 inmates are on medication prescribed by psychiatrists. What appears to have changed at the Jail since July 1997, is not the need for inmate mental health care, but the source of payment for that care. Since Black Hawk-Grundy stopped providing "free" mental health services for inmates, the Sheriff's Department has had to pay for mental health care on a fee-for-service basis out of its own budget. In apparent response to this financial disincentive, the Jail has drastically reduced its use of mental health professionals.

When asked at the Task Force meeting about the Jail's failure to utilize the Murphy Group, Miller responded that most of the mentally ill inmates are simply monitored by their personal physicians.<sup>6</sup> Our information suggests that, at most, such "monitoring" consists of physicians writing orders for medication. This does not constitute adequate treatment for inmates with serious mental illness.

## 2. Unavailability of Psychiatric Services

Even if the Murphy Group were fully utilized by the Jail, it could not by itself meet the mental health needs of the inmate population. The group consists of a physician who has a background in substance abuse treatment and two licensed mental health counselors. It does not include a psychiatrist.

At the Task Force Meeting the Murphy Group counselors acknowledged the unavailability of psychiatric referrals for inmates.<sup>7</sup> They observed that the Murphy Group cannot make psychiatric diagnoses, which are required to obtain government payments for certain inmate services and community placements. As a result, we learned, attorneys from the Public Defender's Office have had to obtain court orders to get inmates transported to Black Hawk-Grundy for psychiatric evaluations.<sup>8</sup> In other words, they have been forced to go outside the Jail's mental health "system" to obtain psychiatric services.

---

<sup>5</sup>Miller's estimate of the number of mentally ill inmates is probably low since it appears to be based solely on the number of inmates who are on medication for mental illness. Complaints we have received suggest there are other mentally ill inmates who have not been properly diagnosed and are not taking medication.

<sup>6</sup>Task Force Minutes, p. 4.

<sup>7</sup>Task Force Minutes, p. 3.

<sup>8</sup>Telephone Conversation with Sue Albright, Black Hawk County Public Defender's Office, February 11, 1998.

The absence of psychiatric services at the Jail has seriously restricted the ability of mentally ill inmates to obtain prescriptions for needed medications, particularly psychotropic drugs used for the treatment of mental illness. One inmate, for example, has struggled for many years with schizo-affective disorder. While incarcerated at the Jail, the inmate allegedly was denied all of his medications including Serentil (anti-psychotic medication), Cogentin (anti-convulsive medication), and Xanax (anti-anxiety medication). He claims that he visited the Jail nurse at least six times (at a cost of \$5 per visit), but was never given a good explanation why he could not get his medications. As a result of being denied his medications, the inmate became increasingly paranoid and started hallucinating. Eventually, he was sent to Iowa's Mental Health Institute ("MHI") where he received his medication and was stabilized. When he was returned to the Jail, however, he allegedly was again denied his medication until he started a letter-writing campaign. A private psychiatrist in Waterloo finally wrote orders for his medication.<sup>9</sup>

### 3. Failure to Follow Physician's Orders

Even where physicians or psychiatrists have written orders for inmates, our sources advise us that the Jail has refused to follow them. This recently happened in two cases involving the Jail's contract provider, Dr. Murphy. In a letter dated February 23, 1998, Dr. Murphy wrote the Jail's head nurse that he was "extremely concerned" that the Jail was restricting his ability to use his medical judgment in prescribing medication (specifically opiate agonist therapy). The letter described an incarcerated patient with severe medical and substance abuse problems. Murphy wrote that it would "defy medical judgment" to unnecessarily subject the patient to the physical stress of sudden narcotics withdrawal. Still, the Jail's staff refused to follow Dr. Murphy's medical judgment regarding this patient, apparently on the ground that opiate agonist therapy involves the use of a controlled substance.

Another patient of Dr. Murphy's has been diagnosed with schizophrenia and depression, and takes Haldol and Diazepam (a controlled substance) for his mental illness. While he was incarcerated at the Jail the inmate allegedly was not given his Diazepam, which had been prescribed by Dr. Murphy. Nor was the inmate evaluated by a physician or mental health professional. After the inmate was released from Jail, he began experiencing symptoms of a schizophrenic cycle. He alleges that it was the

---

<sup>9</sup>Letter to Andrew Barrick from Judy Meyers, dated February 17, 1998.

interruption in his medication that caused him to relapse.<sup>10</sup>

At the Task Force Meeting, Mike Havenstrite, the head of Black Hawk County Department of Correctional Services, reported another such incident. According to Havenstrite, when one of his parole officers revoked a client's parole, he notified the Jail that the client's prescription medications for mental illness should not be interrupted. When the client was not given the medication he needed or evaluated by a doctor, he began to regress. The parole officer made the decision to have the inmate released from Jail rather than suffer further.<sup>11</sup>

We have received other complaints that Jail inmates have been denied their prescribed medications for mental illnesses. Some, but not all, of these medications were denied summarily on the ground they were controlled substances, and thus banned from the Jail.<sup>12</sup> No psychiatric evaluations were done to determine the severity of the inmates' conditions or to see if other types of medication could be used to treat those conditions. In some cases the medications were taken away suddenly upon the inmate's admission to the Jail, without proper detoxification procedures to prevent the potentially serious effects of withdrawal.

#### 4. Charging Inmates for Mental Health Treatment

Black Hawk County Jail has a policy of charging inmates a fixed fee of \$5 for health services encounters and \$4 per month for prescription medications.<sup>13</sup> The information we have received suggests that these fees are charged to all inmates who can pay, even those who have been identified as chronically mentally ill. As described above, one inmate, a diagnosed schizophrenic, was

---

<sup>10</sup>Letter to Steven Rosenbaum from Ken Myli, dated January 18, 1998; Letter to Steven Rosenbaum, undated, from Shirley and Harvey Myli (parents of Ken Myli).

<sup>11</sup>Task Force Minutes, p. 1; Letter to Andrew Barrick from Judy Meyers, dated February 8, 1998, p. 4.

<sup>12</sup>While it is standard practice to minimize the use of controlled substances in correctional institutions, it is not standard practice to ban use altogether. For example, the Federal Bureau of Prisons, in its drug formulary, limits the use of certain controlled substances to specified situations. As with any other medication, if a physician wishes to use a controlled substance in a manner that is not covered by the formulary, the physician may seek a waiver from the Bureau's health services office.

<sup>13</sup>Letter to Andrew Barrick from Judy Meyers, dated February 8, 1998, p. 3; Telephone Conversation with Judy Meyers, March 9, 1998.

charged six separate fees for visits to the Jail nurse where he repeatedly attempted to obtain medication for his psychosis. He was never seen by a psychiatrist until he was transferred to a psychiatric hospital.

In findings letters, we have taken the position that charging inmates who have funds available minimal fees for certain health services is not per se unconstitutional. But we have objected when such fees significantly inhibit access to medical or mental health care. Our sources have expressed concern that the Jail's policy of charging chronically mentally ill inmates for mental health services may discourage such inmates from seeking care and taking the medications necessary to stabilize their conditions. In addition, the Jail's policy is inconsistent with the position of the American Medical Association's National Commission on Correctional Health Care, which states that no fees should be charged for mental health care or for pharmacy medications necessary to maintain health.<sup>14</sup>

#### 5. Inadequate Suicide Prevention

We have also received allegations that the Black Hawk County Jail has failed to implement adequate suicide prevention policies and has failed to provide adequate mental health treatment for suicidal inmates.

On December 17, 1997, David S. Price, a Jail inmate, hanged himself from a horizontal window bar after picking away the rubber caulking between the bar and the window.<sup>15</sup> According to our sources, Price had a history of depression.<sup>16</sup> A witness has claimed that Price submitted a request for mental health care the day he died. Price saw the nurse that day, but was not referred to a mental health professional. According to the witness, Price was distraught after being charged \$5 to see the Jail nurse and then refused treatment. The Sheriff's Department and the State Division of Criminal Investigation are in the process of investigating this suicide.

Price's suicide raises the question whether Jail personnel, particularly the Jail nurse, had reason to know that Price was depressed and potentially suicidal. Further investigation would be required to determine whether the facts warranted placing

---

<sup>14</sup>National Commission on Correctional Health Care, Position Statement, "Charging Inmates a Fee for Health Care Services".

<sup>15</sup>Letter to Andrew Barrick from Judy Meyers, dated February 8, 1998, pp. 5-6.

<sup>16</sup>Telephone Conversation with Tom Frerich, February 18, 1998.

Price on suicide watch or, at least, performing an immediate mental health evaluation. Price's death also raises significant safety concerns. It is our understanding that inmates continue to be housed in cells with horizontal window bars that have easily-removed caulking between the bars and the glass. If an investigation of the Jail is approved, we would need to determine whether any of the cells at the Jail are safe for suicidal inmates.<sup>17</sup>

An earlier suicide at the old Black Hawk County Jail was also closely linked to mental health care issues. In June 1993, Scott Donald Leohr, a diagnosed paranoid schizophrenic, hanged himself from a shower head. Prior to his suicide, ~~Price~~ <sup>Leohr</sup> began exhibiting symptoms of psychosis, including hallucinations and paranoia, but was not seen by a mental health professional. After his death, Leohr's family brought a wrongful death action in federal court, alleging that the County failed to adopt and implement adequate mental health care and suicide prevention policies, and acted with deliberate indifference to Leohr's medical needs. The lawsuit was settled for an undisclosed amount of damages.<sup>18</sup>

We have heard reports that there may have been other attempted suicides at the Jail. In one case, an inmate allegedly attempted to commit suicide with a laundry bag string.<sup>19</sup> In another, an inmate purportedly tried to hang himself with his uniform which he had braided.<sup>20</sup> It appears that these suicide attempts may not have been documented as required by the Jail's own policy.<sup>21</sup>

#### **B. Inadequate Medical Care**

Although the initial complaints we received focused on the lack of adequate mental health care at the Jail, we now have information that suggests there may be serious deficiencies in the delivery of general medical care as well.

---

<sup>17</sup>Telephone conversation with Judy Meyers, March 10, 1998.

<sup>18</sup>Letter to Andrew Barrick from Judy Meyers, dated February 8, 1998, pp. 3-4.

<sup>19</sup>Letter to Andrew Barrick from Judy Meyers, dated February 8, 1998, p. 5.

<sup>20</sup>Telephone conversation with Sue Albright, Black Hawk County Public Defender's Office, February 18, 1998.

<sup>21</sup>Letter to Andrew Barrick from Judy Meyers, dated February 8, 1998, p. 5.



For example, when one inmate was admitted to the Jail in March 1997, he allegedly told the captain on duty that he was sick and needed to see a doctor or nurse. It is alleged that the nurse would not see him. The inmate continued to experience flu-like symptoms including pain, headaches, sore-throats, and excessive thirst. He submitted several formal requests for medical care, but was denied treatment during the 45-50 days he was incarcerated at the Jail. After sentencing, the inmate was sent to Oakdale, Iowa's correctional classification facility. During his physical examination, the inmate was diagnosed as severely diabetic. The physician at Oakdale allegedly told the inmate that his condition placed him at risk for a stroke or heart attack. The inmate has since filed a lawsuit against Black Hawk County for failure to provide medical evaluation or treatment for his serious medical condition.<sup>22</sup>

Another inmate complained of open sores and skin lesions while incarcerated at the Jail. The nursing staff at the Jail allegedly did not treat the inmate's condition or allow her to see a physician. Later, when the inmate was examined at Oakdale, doctors discovered that she suffered from a contagious skin disease. This inmate has also filed a lawsuit in federal court alleging the violation of her right to medical care.<sup>23</sup>

We also received a complaint from a former inmate who suffers from chronic mental illness, seizures and nerve pain resulting from a head injury. He claims that when he reported seizure activity to Jail personnel, he was repeatedly told to "go sleep it off." Despite numerous requests, it is alleged, the inmate was not permitted to see a physician.<sup>24</sup>

Finally, another former inmate alleges that Jail personnel would not administer her prescription Ritalin while she was incarcerated. Correctional staff allegedly told the inmate that the nurse would not see her because her condition was not "life-threatening." The inmate was never seen or evaluated by medical personnel, even when she began experiencing migraine headaches as a result of being denied her medication.

These examples suggest that the Jail personnel, including both the nursing staff and correctional staff, may be making medical judgments that they are unqualified to make and denying

---

<sup>22</sup>Telephone conversation with Rosie Sisk, February 12, 1998.

<sup>23</sup>Telephone Conversation with Charles Fagan, Black Hawk County Public Defender's Office, February 26, 1998.

<sup>24</sup>Letter to Andrew Barrick from Keith Carey, dated February 8, 1998.

inmates' access to qualified physicians. The staff's restrictive screening practices pose a serious risk to the health of inmates.

## II. Alleged Staff Abuse

There have been allegations of staff abuse at the Black Hawk County Jail. A private attorney in Waterloo, who sometimes represents inmates at the Black Hawk County Jail, has received complaints from five or six unidentified individuals who separately report experiencing similar incidents.<sup>25</sup> In each case, the individual was arrested and brought to the Jail for driving while intoxicated. While still in the intake area of the Jail the individuals were allegedly strapped into a restraining chair. Their heads were then covered with a black bag and they were beaten by unidentified staff members. Each of the alleged incidents occurred in the evening hours, during the Jail's second shift. As far as we know, these alleged beatings have not been formally reported or investigated.<sup>26</sup>

A separate incident of alleged excessive force was recently investigated by the FBI.<sup>27</sup> The investigation was predicated on a complaint furnished to the FBI by an investigator for the Black Hawk County Public Defender's Office. The investigator advised the FBI that on the evening of October 12, 1997, an inmate was severely beaten by Jail deputies. The investigator furnished a set of photographs that showed the inmate with black eyes, cuts on his face, and bruises on his face and torso.

It is undisputed that a physical altercation occurred after the inmate was discovered lying on the shower floor. The deputies acknowledge using chemical spray, an electronic stun device and fist and knee strikes, but they claim that such force was necessary to bring the inmate under control and place him in a restraint chair.

The inmate involved in this incident had a history of substance abuse and mental illness including depression, anxiety, and panic attacks. In the past, he had taken the drugs Paxil for his depression and Lorazapine for his anxiety disorder, but he

---

<sup>25</sup>Telephone Conversation with Tom Frerichs, February 18, 1998.

<sup>26</sup>We will inform Mr. Frerichs that there may be a basis for a criminal civil rights investigation of these allegations if an adequate factual basis is presented. We will encourage Mr. Frerichs to identify the victims or have the victims report the incidents to the FBI.

<sup>27</sup>Report of FBI SA Richard L. Heft, January 22, 1998, Omaha, Nebraska, Case Identification Number 282A-OM-44496.

was not on these medications at the time of his arrest. The inmate also had a history of self-reporting grand mal seizures. The inmate claims that he may have been having a seizure at the time of the incident with the deputies, as he has no recollection of what occurred.

Although the Criminal Section has closed its investigation of this incident, we believe the deputies' actions suggest that Jail staff may not be adequately trained to respond to disruptive inmates, particularly those suffering from mental illness, seizure disorders and/or substance abuse problems.

**CONCLUSION**

The information obtained suggests conditions at the Black Hawk County Jail that may violate the constitutional rights of the inmates confined to that facility. We recommend that an investigation be initiated. We have advised the United States Attorney for the Northern District of Iowa of this recommendation and he supports the investigation.

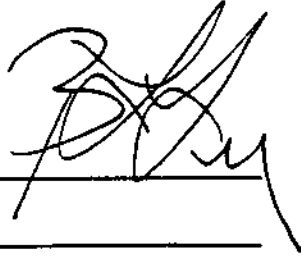
Accordingly, we have attached for your signature the appropriate letters notifying state and federal officials of our intent to investigate the Black Hawk County Jail.

Attachments

Approved

Disapproved

Comments:

A handwritten signature in black ink, appearing to be 'R. H. M.', is written over a horizontal line. The signature is stylized and somewhat illegible.