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THE HONORABLE ROBERT J. BRYAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES HORTON, et al., on behalf of)
themselves and all others similarly)
situated,)
)
Plaintiffs,)
)
vs.)
)
BOB WILLIAMS, et al.,)
)
Defendants.)
_____)

No. C94-5428 RJB

DECLARATION OF
MICHAEL D. COHEN, M.D.

1. My name is Michael D. Cohen. I reside at RD2, Box 2016, Argyle, New York.

2. I received an MD degree from the University of California in 1979; I am certified by the Board of Medical Examiners; and I am licensed to practice medicine in New York, California, and Illinois.

3. Throughout my medical career I have specialized in pediatric medicine. I completed an internship in pediatrics in 1980 and a residency in pediatrics in 1983. I am

1 certified by the American Board of Pediatrics, and I am a Fellow of the American Academy
2 of Pediatrics. I have also made a number of presentations and prepared a number of reports
3 on matters pertaining to pediatric medicine.
4

5 4. I am currently the Medical Director for the New York State Division for Youth.
6 In this capacity, I am the chief medical officer for all institutions for delinquent youth under
7 16 years of age in the state of New York. I have also served as pediatric consultant for the
8 New York State Department of Health, and as the chief physician in the Adolescent Reception
9 and Detention Center at Rikers Island Correctional Complex in New York City.
10

11 5. I have been an expert consultant in a number of cases involving medical care
12 for institutionalized persons, including cases in New York, Wisconsin, Delaware, and Florida.
13 I have also been an expert consultant in a number of cases which address medical treatment
14 of confined youths. These include cases in Connecticut, Florida, North Carolina, South
15 Carolina, and the District of Columbia. In some of these cases I have served as a compliance
16 monitor for the court. My resume, which sets out more completely my education, employment
17 and experience, is attached as Exhibit 1.
18

19 6. I was asked by attorneys for the plaintiffs in this case to provide opinions and
20 conclusions regarding the use of aerosol oleoresin capsicum, commonly called pepper spray,
21 at Green Hill School in Chehalis, Washington. They provided me with six videocassettes
22 showing 25 incidents in which staff at Green Hill School sprayed youth at that facility. They
23 also provided me with incident reports and other documentation prepared by Green Hill staff
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25

1 contemporaneously with each incident, and copies of the institutional policies governing the
2 use of the spray.
3

4 7. I conducted a review of the medical literature concerning the effects of
5 capsicum. As a result of this review, as well as my own experience in pediatric medicine, it
6 is my opinion that aerosol oleoresin capsicum is harmful to youth with chronic lung disease.
7 It is also my opinion that the spray is likely harmful to other youth because of the increased
8 risk of injury to eyes, airways, and skin. In any event, the use of the spray has not been shown
9 to be harmless, as I believe it should before youth are exposed to it.
10

11 8. In addition to the direct harm caused by the spray, a number of procedures
12 governing the use of the spray are inadequate to protect the health and safety of youth. These
13 include procedures to screen youth with chronic lung disease; procedures which insure that
14 youth are promptly and safely allowed to clean themselves of residue from the spray;
15 procedures to determine the appropriate concentration of spray; and procedures to identify
16 adverse reactions after youth are sprayed. My opinions and conclusions are set out more fully
17 in my report, attached as Exhibit 2.
18

19 9. Because the spray poses real and potential dangers to youth who are exposed
20 to it, because the spray is used to punish youth and not to protect the safety of other youth or
21 staff at Green Hill, and because the medical and clean-up procedures are inadequate to protect
22 youth from further injury, it is my opinion that the use of pepper spray at Green Hill does not
23 comport with sound professional judgment.
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1 I declare under penalty of perjury that the foregoing is true and correct to the best of
2 my knowledge, information and belief.
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6 Dated: 10/24/94

Michael D Cohen MD

7 Michael D. Cohen, M.D.
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