

✓
-pb
5/2/01



JI-WA-0002-0023

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES HORTON, JAMES BARNHART,)	CLASS ACTION
JEROME PAYTON, J.B., through his)	
next friend, LORRAINE WEST, and)	NO. C94-5428 RJB
K.M., through his mother DEBBIE)	
MOORE, on behalf of themselves)	
and all others similarly situated,)	JOINT DECLARATION OF
)	CRAIG D. APPERSON AND
Plaintiffs,)	JOSEPH DUBEY, M.D.

vs.

BOB WILLIAMS, in his official)
capacity as Superintendent of)
Green Hill School; JEAN SOLIZ,)
in her official capacity as)
Secretary of the Department of)
Social and Health Services; and)
SID SIDOROWICZ, in his official)
capacity as Assistant Secretary)
of the Juvenile Rehabilitation)
Administration; and the Chehalis)
School District,)
)
Defendants.)

Craig D. Apperson and Joseph Dubey, M.D., declare:

1. I (Craig D. Apperson), am the full-time psychologist at Green Hill School. I have held this position for ten years. In this capacity, I direct the clinical assessment and treatment plan for all juvenile offenders placed at Green Hill School. I also provide treatment, supervision, and consultation with counselors, and stay involved with the most difficult cases. A copy of my

1 resume is attached. My ten years experience has given me exposure
2 to hundreds of juvenile offenders.

3 I (Joseph Dubey, M.D.) have been the consulting psychiatrist
4 at Green Hill School for 18 years. A copy of my resume is
5 attached. I spend one day per week at Green Hill, and one day per
6 week at another juvenile institution, Maple Lane School. My
7 duties include prescribing medications, training staff, consulting
8 on cases with staff, and counseling residents who are in some type
9 of crisis.

10 Our experience have given us exposure to many hundreds of
11 juvenile offenders. Our professional opinions below are based on
12 a review of the literature and on our years of personal experience
13 in working with Green Hill residents and staff.

14 2. We agree with plaintiffs' experts that pepper spray
15 should not be used as "punishment" for either misbehavior or not
16 following a staff directive. Deliberate infliction of physical
17 pain or discomfort is never an appropriate consequence for
18 disobeying rules. For that reason, pepper spray should be used
19 only to maintain security and protect the physical safety of staff
20 and residents, which is the first concern of an institution. That
21 is the intent of the Green Hill pepper spray policy.

22 3. It is first important to understand who is being sprayed.
23 Nearly all sprays are on residents of the "intensive management
24 units" (IMU). Green Hill has two IMUs housing about 16 residents
25 each. Nearly all IMU residents have been convicted of serious,
26 violent crime. They have been placed in an IMU because they were

1 not able to obey the rules in the general population, and found
2 either seriously assaultive or escape risks. IMU residents,
3 without a doubt, are some of the most violent juveniles in
4 Washington. One purpose of the IMU is to protect the general
5 population by providing a more secure living environment for IMU
6 residents.

7 Many IMU residents are "predatory thrill-seekers" who take
8 pride in challenging authority to earn the respect of their peers.
9 Attribution theory research shows that serious offenders often fit
10 this category. They are extremely hard to work with because they
11 derive pleasure from violating rules and acting out violently.
12 They generally have anti-social personalities, and feel no regret
13 for their actions or empathy for their victims. Most sprayed
14 residents fit into this category.

15 4. Given Green Hill's population, it should be expected that
16 a certain number of residents will want to fight staff. (There is
17 a need to use pepper spray on about six percent of the
18 population.) A predatory thrill-seeker derives great pleasure
19 from this activity. "Taking on" a staff member, especially in
20 front of peers, is a source of ego gratification and false pride.
21 (Thus, stronger staff sometimes are targeted because they are a
22 bigger "trophy".) This problem is exacerbated by the fact that,
23 in institution, residents are forced to live by rules and to obey
24 instructions from staff. Staff must enforce rules, or else the
25 residents are in charge, and chaos follows. What this means is
26 that residents, who are resistant to authority, build up very

1 | personal and vengeful animosities towards staff, culminating in
2 | threatening and assaultive behavior. Some residents prefer
3 | attacking staff rather than attacking other residents, because
4 | staff are required to be measured in their response and cannot
5 | later extract revenge.

6 | 5. Thus, in an institution for violent offenders, like Green
7 | Hill, there will be times when residents threaten staff. It is
8 | simply a fact of life. When this happens, and a resident cannot
9 | be "talked down", staff can respond in one of two ways. First,
10 | they can physically subdue the resident by overwhelming him. This
11 | generally involves several staff members wrestling him to the
12 | ground, and then handcuffing him. Second, they can use an agent
13 | like pepper spray, which will incapacitate the resident without
14 | the need for physical force.

15 | The advantage of pepper spray, of course, is that it prevents
16 | injuries risked caused by physical confrontation. During a fight,
17 | staff is often injured, and in fact a number a serious injuries
18 | have occurred during our time at Green Hill. In addition, there
19 | also are many documented cases nationally of inmates who suffer
20 | serious injuries, including head injuries, when they are subdued
21 | on the ground by several officers. (Longitudinal studies show
22 | that such head injuries increase the risk of future violence by
23 | the injured person.) There is no doubt that pepper spray has
24 | reduced the number of injuries occurring at Green Hill and other
25 | correction institutions. That is why so many police and
26 | correctional officers now use it.

1 6. Plaintiffs' expert, Mr. DeMuro, says that pepper spray
2 "reinforces feelings of anger, alienation, and hostility."
3 Spraying, however, does not reinforce these feelings as much as
4 being taken down physically by staff (which is the alternative
5 response to an assaultive situation). Physical combat is very
6 personal, and therefore engenders strong feelings. Moreover, it
7 often results in an injury which can cause intense and lingering
8 hostility and disability. By contrast, the use of pepper spray
9 does not involve physical contact, and the effects always are
10 short-lived.

11 There is no doubt that most residents are angry after being
12 sprayed. Most of their anger, though, actually is frustration
13 that staff directives can be enforced, and that they are deprived
14 of the opportunity to fight staff members. Moreover, residents
15 often are angry when they receive any type of negative
16 consequence, whether it be time-out, loss of privileges, or pepper
17 spray. This anger could be avoided by letting residents do
18 whatever they want, but that simply is not an acceptable
19 alternative.

20 7. Plaintiffs' expert, Dr. Milan, says that "spray may well
21 exacerbate behavioral problems ... by providing a vehicle for
22 youths to demonstrate toughness and defiance of staff in order to
23 enhance their reputation among their peers." No doubt some
24 residents view being sprayed that way. We believe many more
25 residents view fighting with staff that way, however. With
26 fighting, residents have the opportunity to go on the offensive

1 and to inflict injury on a staff member. They can "grandstand" to
2 their peers by resisting staff and fighting back. With pepper
3 spray, however, there is no fighting back, and no "getting in your
4 licks." There is little or no glory in being sprayed. This
5 belief is supported by the fact that few residents are sprayed
6 more than once.

7 9. Mr. DeMuro's extreme bias in favor of permissiveness and
8 against control is revealed when he objects, not only to pepper
9 spray, but also to the use of "room confinement" and IMUs. These
10 two practices are standard operating procedures in juvenile and
11 adult institutions throughout the country. Green Hill relies on
12 short-term room confinement as a sanction for misbehaving (along
13 with loss of privileges). Mr. DeMuro's contention that, because
14 residents resist it, even room confinement is inappropriate, is
15 simply untenable. There must be a sanction for violating rules,
16 or else all control breaks down. Furthermore, IMUs are an
17 accepted means of separating residents with behavior problems who
18 cannot function in the general population and who need special
19 programming. The IMUs do not cause residents to become out-of-
20 control; the residents are placed there precisely because of their
21 out-of-control background.

22 It also should be recognized that, unlike a adult prison,
23 Green Hill does not deal with assaultive residents by placing them
24 in isolation or prolonged confinement. The theory is that
25 isolation, while it offers maximum protection, is not therapeutic

26

1 for the resident. This shows Green Hill's commitment to work
2 with residents.

3 9. Dr. Milan contends use of pepper spray "poisons the
4 environment and undermines efforts at rehabilitative treatment."
5 That sweeping conclusion cannot credibly be reached by someone who
6 has never been to Green Hill, and clearly is not familiar with its
7 rehabilitative programs. In fact, the exact opposite is true.

8 Although the only justification for using pepper spray is
9 institutional security and prevention of injury, a by-product has
10 been a generally a better -- not worse -- treatment environment.
11 As stated, there is less violence because residents have less
12 incentive to assault staff. This means that staff are far less
13 apprehensive in working with residents, and that an "us versus
14 them" staff mentality dissipates. Furthermore, assaulting staff
15 often is a way for residents to avoid dealing with their feelings
16 and problems. If assaulting staff is not an option for a resident
17 because of the possibility of being sprayed, then that resident is
18 more likely to deal with his problems in counseling.

19 10. Plaintiffs' experts paint a badly inaccurate picture of
20 an institution relying on pepper spray to deal with residents
21 having behavior problems. In fact, there are many mental health
22 programs available in the IMUs where most of the spraying is
23 necessary. Residents have an assigned counselor who is available
24 to them every day. They may make an appointment to meet with the
25 staff psychiatrist who comes weekly, and I am available for
26 consultation on difficult cases. A therapist from Lewis County

1 Mental Health has started a group for residents who were abused.
2 A Christian-based group is starting. Many residents are involved
3 in the "Cage is Your Rage" video and workbook program. Developed
4 by the American Correctional Association (ACA), it focuses on
5 dealing with institutional life. There are required groups on
6 such topics as anger management and victim awareness. A Special
7 Needs Program, based ACA standards, will open next month to
8 provide an intensive eight-hour treatment for residents having the
9 most serious mental health problems. There is a bio-feedback
10 program which measures bodily responses to help residents change
11 their reaction to stressful situations to prevent destructive
12 behavior. Most IMU residents attend a certified high school.
13 Staff is required to take a Crisis Prevention Intervention course.
14 Indeed, IMU residents receive more intensive programming than
15 other residents, with the hope their behavior will improve so they
16 can safely return to the general population. In fact, such
17 improvements often do occur.

18 Finally, Green Hill residents all have been convicted of
19 serious crimes. They generally are the oldest and most violent
20 offenders in the system. Most have problems accepting authority
21 and lack many social skills. They do not like being incarcerated.
22 The fact that about 94 percent of the residents are not sprayed
23 indicates that staff is skilled in managing their behavior.

24 13. In conclusion, it is our professional opinions that
25 threatening residents must be restrained. Whenever possible,
26 staff should resolve the problem through talk and negotiation.

1 When this fails, use of pepper spray is a much better restraint
2 method than the alternative of asserting physical control. It
3 prevents injury to both staff and resident. Because of fewer
4 threats and assaults, there is a better treatment environment.

5 WE CERTIFY UNDER PENALTY OF PERJURY THAT WE HAVE READ THE
6 FOREGOING AND, TO THE BEST OF OUR KNOWLEDGE, IT IS TRUE AND
CORRECT.

7 DATED this 21st day of November, 1994.

8 
9 _____
CRAIG D. APPERSON

10
11
12 _____
JOSEPH DUBEY, M.D.

13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 | When this fails, use of pepper spray is a much better restraint
2 | method than the alternative of asserting physical control. It
3 | prevents injury to both staff and resident. Because of fewer
4 | threats and assaults, there is a better treatment environment.

5 | WE CERTIFY UNDER PENALTY OF PERJURY THAT WE HAVE READ THE
6 | FOREGOING AND, TO THE BEST OF OUR KNOWLEDGE, IT IS TRUE AND
CORRECT.

7 | DATED this 21st day of November, 1994.

8 |

9 |

CRAIG D. APPERSON

10 |

11 |



JOSEPH DUBEY, M.D.

12 |

13 |

14 |

15 |

16 |

17 |

18 |

19 |

20 |

21 |

22 |

23 |

24 |

25 |

26 |