5/2/01

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES HORTON, JAMES BARNHART, JEROME PAYTON, J.B., through his next friend, LORRAINE WEST, and K.M., through his mother DEBBIE MOORE, on behalf of themselves and all others similarly situated, Plaintiffs, 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.	CLASS ACTION NO. C94-5428 RJB DECLARATION OF ROBERT WILLIAMS, JR

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Robert Williams, Jr. declares

1. Experience. I have 15 years experience in the field of corrections (Att. A). Since February 1990 I have been superintendent of Green Hill School. In that capacity, I am responsible for the day-to-day management of the institution, which houses 170 to 190 juvenile offenders and has a staff of 200

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employees. Prior to coming to Green Hill, I was an associate superintendent at the Washington State Penitentiary for one year. Prior to that, I was an administrator in the Wisconsin adult correctional system from 1979 to 1987. My experience has given me broad managerial as well as hands-on experience in working with offenders and in dealing with security issues.

2. Green Hill Demographics. In Washington, there are five institutions for juveniles offenders. When sentenced, an offender is assigned to one of the institutions, based on such things as sex, age, nature of the crime, and prior offenses. By policy, the older and most serious offenders are placed at Green Hill -- the "end of the line" for juveniles, as some people call it.

This year Green Hill's population has fluctuated between 170 and 190 residents. The average age upon admission is 17.1, and the average length of stay is 602 days. Commitment may be up to age 21. Residents have been committed for a variety of offenses, and most of them are repeat offenders. On November 2, 1994, for example, the breakdown of residents by offense was:

> Murder 8, Robbery 21, Rape 24, Other Sex Offense 11, Arson 1, Assault 59, Burglary 24, Motor Vehicle Theft 7; Theft 3; Possession of Stolen Property 5; Malicious Mischief 3; Escape 1, Drug Offense 12, Other Offenses 7.

Of that population, 61 percent or 113 out of 186 had been convicted of a "violent" crime, which is a typical percentage for Green Hill, and higher than at the other institutions. Many of the residents were committed initially to Green Hill, though some

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transferred in from other institutions where they were too difficult to handle.

3. Pepper Spray Background. When I became superintendent of Green Hill in February 1989, my immediate challenge was to reduce the number of assaults. Although the mission at Green Hill School is to rehabilitate juvenile offenders, as superintendant, my first concern must be the physical safety of staff and residents.

Prior to my arrival, the practice was for as many as 20 staff from throughout the institution to respond to a dangerous situation. The idea was to physically subdue the resident by overwhelming him. The result was large numbers of injuries (some very serious) to staff and residents alike. A resident probably is more vulnerable because by necessity he is subdued by a number of staff members. Because there was no tracking system, I do not know the numbers of injuries prior to my arrival. The problem created severe morale problems at Green Hill, however. It was so serious that in 1988 the legislature created the crime of "custodial assault" and made it a Class C Felony. RCW 9A.36.100. Then, in 1989, the legislature required that residents who commit such assaults be considered for transfer to an adult prison if they posed too high a safety risk. RCW 13.40.280(3)-(4).

The problem with the then-existing method to control threatening residents was that the large number of responding staff created an excited environment in which residents felt "challenged" to engage in physical confrontation. Many residents viewed backing down as "loosing face" in the eyes of staff and

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other residents. Pulling responding staff off their normal assignments, moreover, created a lack of supervision elsewhere in the institution, leading to further security problems. Under the then-existing practice, when a resident was out-of-control or failing to obey an instruction, staff had no alternative to physically apprehending the resident in order to gain control. The result too often was injury to staff or the resident.

4. Use of Pepper Spray. I first authorized the use of pepper spray at Green Hill in October 1990. By that time, pepper spray was being widely-used by police officers and correctional staff throughout the country. It was viewed as a very effective and safe way to subdue a threatening suspect or inmate without the risk inherent in using physical or deadly force.

Since October 1990, I have authorized the use of pepper spray about 320 times, and actual use has occurred about 105 times. That is an average of about two times per month. During that time, there have been about 1,200 residents at Green Hill, and about 80 (six percent) of them have been exposed to pepper spray.

I believe that the use of pepper spray has reduced the risk of injury at Green Hill. From September 1989 through October 1990, there were 56 staff injuries caused by controlling residents, seven assaults of staff, and 18 injuries to residents. From October 1990, when pepper spray was introduced, through the present time, there have been 58 staff injuries, nine staff assaults, and 11 injuries to residents. These figures demonstrate a dramatic decrease in injuries. This decrease, in my judgment,

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is at least in part due to the fact that staff no longer must physically engage a resident in order to bring him under control.

Green Hill staff is dedicated to working with residents and trying to rehabilitate them. Many residents, however, are very strong and prone to violence, and so staff's paramount concern is their own physical safety, especially in the two "intensive management units" (IMU). That is why few issues are more important to them than being able to use pepper spray, which they regard as a safe and reliable method of avoiding physical confrontation.

Of the four other juvenile institutions in Washington, two do not use pepper spray, and the other two use it less frequently than Green Hill. The reason for this difference, in my judgment, is that Green Hill houses the older, most violent, and most assaultive juveniles in the system.

5. New Policy. On October 1, 1994 Green Hill adopted a new pepper spray policy (Att. B) which attempts to address all the concerns raised by plaintiffs.

a. Criteria For Use. There are two criteria for using pepper spray on a resident who fails to comply with a staff directive (Att. B at 3). The first criteria is when staff believes that use of other physical restraint measures to gain compliance, without the use of pepper spray, likely would result in injury to someone. In making this determination, staff must consider the resident's demeanor, his verbal statements, and his history of causing injury.

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EXAMPLE - John Doe misbehaves by throwing things in the cottage. Staff tells him to go to his room as a consequence, but he refuses to go. He clenches his fists when staff approach him to take him to his room. He tells staff he will fight them rather than go voluntarily. Staff cannot talk John into going voluntarily going to this room.

In this example, pepper spray may an appropriate response to maintain institutional security. First, of course, staff directives must be followed by residents. Thus, in the example, when John misbehaved and refused to go to his room, staff must require him to go. Otherwise, staff loses control, and the residents are the ones in charge. Residents must know for certain there are consequences for misobeying directives. Thus, John may go to his room volunarily, or be forced to go with the assistance of staff either by physical apprehension or by use of pepper spay. If John will not go voluntarily, then staff makes an assessment of whether they can physically apprehend him, and take him to his room without someone being injured. The fact that John's fists are clenched, and he is threatening to fight, may lead staff to conclude that injury would result if they attemped to physically apprehend him. Thus, use of pepper spray may be justified.

The other criteria for using pepper spray is when a resident in his room engages in disruptive behavior which creates a serious disturbance that threatens institutional security.

EXAMPLE - After bedtime, John Doe in his room is banging and yelling. This keeps other residents in the cottage awake, and incites others to join in. Staff tells John to stop this activity, but his refuses and threatens staff.

In this example, if John's disruptive behavior continues for

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a long period of time, use of pepper spray may be appropriate. John's room behavior is creating in the cottage a serious disturbance that possibly threatens institutional security. This type of situation is discussed on pages 26 to 28.

These two criteria demonstrate that pepper spray is not used as punishment, as plaintiffs contend, but instead as a means of of prevent injury and maintaining institutional security. Moreover, contrary to plaintiffs' contention, something more than a failure to follow a staff directive is required; there also must be a threat to institutional security.

b. Compliance with Staff Directive. The new policy assures a resident ample opportunity to comply with the staff directive before being sprayed. Generally, there is considerable time after a disturbance starts until the time spray is even considered. Staff must attempt verbal negotiation right up until the time pepper spray actually is used. Moreover, they must wait at least ten minutes from the time security arrives on scene with the spray, except in cases of emergency (Att. B at 3-4). Normally, there will be at least 30 minutes from the time pepper spray in first threatened to the time it actually is used. Our objective is to resolve the issue without having to use pepper spray.

Plaintiffs object that residents are sprayed even after they comply with the staff directive. Invariably, near the time spray is used, the resident will cease his threatening behavior, and will assume a defensive posture to avoid the spray. This does not necessarily mean the resident intends to comply voluntarily with

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the staff directive. Moreover, there have been many instances when a resident, just before pepper spray is to be used, verbalizes that he will comply, and then returns to threatening behavior when the threat of spray is retracted. A impasse is created. The new policy attempts to resolve this issue by prohibiting use of spray when the resident indicates compliance, but allowing its use, without the normal waiting period, if the resident soon resumes his threatening and non-compliant behavior (Att. B at 4).

About two times in the past the name of a resident was placed on a spray canister. The purpose simply was to warn the resident that continued assaultive behavior may result in spraying, in hopes of deterring that behavior in the future so that spray would not be needed. This practice has not occurred in a long time, and it is not our intent to use it in the future.

c. Pre-authorization. Plaintiffs complain that some sprays are "pre-authorized" by the superintendent. The former policy required the superintendent to approve each use. In practice, however, I sometimes pre-authorized use on a resident who had previously assaulted staff; in such cases, staff could use pepper spray if the resident again engaged in the same threatening behavior, without the need to contact me and explain the specific facts. The new policy expressly prohibits pre-authorization (Att. B at 2). In each case, staff requesting authorization must explain to me the specific facts of the case. I am almost always reachable in my office or at home, or by car phone or beeper, and

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I will designate someone to act in my place on those limited times when I am not reachable. I consider the use of pepper spray an extremely serious matter, and I deny ever making any jokes or light-hearted comments regarding its use, as alleged in plaintiffs' submissions.

d. Administrative Review. Plaintiffs complain there is a lack of administrative review of a pepper spray incident. In the past, formal reviews were not always conducted. The new policy requires a supervisory review of each incident, which then must be reviewed by the superintendent, who is required to initiate a "Major Incident Review" if there appears to be a injury or procedural violation (Att. B at 6). If staff misuses pepper spray, I will consider whether disciplinary action is appropriate, and whether changes in the policy are necessary to prevent future misuse.

e. Training. Plaintiffs complain there is a lack of staff training. Prior to the filing of this lawsuit, all staff authorized to use pepper spray were required to complete a training course. (At Green Hill, there is a separate "counseling" staff, and a separate "security" staff, and it is the former which is called in to administer the sprayings.) The training course generally lasts about a half-day, and is taught by local law enforcement officials who are experts on the subject. The course includes such things on how properly to use pepper spray and how afterwards to "de-contaminate" the sprayed resident. Part of the training includes staff themselves being sprayed; this is very

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important because it gives staff first-hand experience in the effectiveness of the spray, and helps them to empathize with a person who has been sprayed.

The new policy makes clear that only trained staff are allowed to use pepper spray (Att. B at 4). The annual training now will be expanded to cover six specific components (Att. B at 7).

6. De-escalation Skills. One of plaintiffs' main complaints is that staff lacks verbal de-escalation skills to avoid the need to spray. In response, under the new policy, such training is made part of the annual pepper spray training (Att B. at 7). An outside expert will be hired to make the presentation. An emphasis on de-escalation skills was not lacking in the past, however. First, staff must have a college degree in a social science or criminology field, and are hired in part on the basis of their ability to effectively communicate. Staff must attend the week-long Criminal Justice Training Academy, where the curriculum includes communication skills and techniques on verbally defusing dangerous situations. They also must complete day-long Nonviolent Crisis Intervention (CPI) training, which is a nationally-recognized program (Att. C).

Lastly, in staff meetings and in informal discussion between staff, there is an ongoing effort to improve abilities to communicate both with residents generally and with certain residents in particular. Establishing rapport with residents is a primary goal of every counselor. Residents daily receive input

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from counselors on the need to resolve their problems without resorting to violent or threatening behavior. Indeed, staff continually calm angry residents without even threatening use of pepper spray. This is proven by the fact only six percent of our residents are sprayed, and very few of them are sprayed more than once. It also is proven by the fact that in cases where I have approved the use of pepper spray, two-thirds of the time staff has successfully resolved the problem without having to use spray. I think the record shows that staff in fact is very adept at defusing angry residents, many of whom have a demonstrated propensity towards violence.

7. Spray Concentration. Formerly, staff used either a 5% or a 10% spray concentration. Plaintiffs object that there is no criteria for whether the 5% or 10% spray concentration is used in a particular situation. According to the literature, a single application of the 10% is not stronger, or at least not perceptibly stronger, than the 5%. Neverthless, I now have directed that only the 5% be used by staff. This policy will remain in effect unless it is later shown that the 5% is not effective in bringing the resident under control, in which case the policy will be re-examined.

8. Mental Health Services. Plaintiffs complain that mental health services are not available to alleviate the need to use pepper spray. This simply is not true.

When a resident enters Green Hill, he spends 60 days in an "intake" unit during which he receives a complete assessment.

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This assessment includes psychological testing, and a psychological evaluation which is reviewed by a staff psychologist. Each resident is assigned a counselor. At least one formal one-hour counseling session is held each week, and the counselor has daily contact with the resident. The counselor is required to address any mental health concerns, personal problems, and day-to-day living difficulties of the resident. A counselor generally has only four residents on his or her caseload. Also available at Green Hill is a contracted psychiatrist, who administers medication and consults with residents who are experiencing mental health problems,

Green Hill offers a variety of programs to enhance the mental health of residents (Att. D at 6-19). For example, residents are required to participate in group therapy for such things as positive alternatives, anger management, and victim awareness. There are special groups for sex offenders and for residents with drug and alcohol problems. Green Hill uses state-of-the art "biofeedback" technology, which measures the bodily responses of residents to help them alter their responses in a socially-desirable direction. Green Hill also has the "Help-Stress" computer-assisted counseling program.

Furthermore, prior to this lawsuit being filed, I instituted plans for a new day treatment mental health unit at Green Hill. Staffed by three of our best counselors, this unit will provide intensive treatment for 15 to 20 residents with the most serious mental health problems for eight hours each day during the week.

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Operated out of the hospital building, this unit should be operational in December.

Plaintiffs complain that mental health services are not available before and after the use of pepper spray. When staff is considering the need to use pepper spray, they must make every attempt to talk the resident out of his threatening behavior. Clearly, at that point, the focus must be on alleviating an immediate security crisis, and not on dealing with long-term mental health issues. If pepper spray is used, staff is trained to assist the resident in a caring manner. The incident then is taken up the next day in counseling. The counselor reviews with the resident what caused the incident and ways to control his behavior in the future. The counseling is "offense specific"; that is, the pepper spray incident is reviewed in context of the behavior that caused the resident to be committed to Green Hill in the first place. The behavior generally stems from a lack of impulse control, which is the root problem to be addressed.

9. Behavior Control at Green Hill. Plaintiffs imply that use of pepper spray is the primary method of controlling and punishing residents. This is simply not the case.

Green Hill operates on the "Today-Tomorrow" program under which each resident has a individualized behavior contract, spelling out expectations for the resident. These include such things as attending school, keeping the room clean, participating in groups, and having positive peer and staff interactions. Each day the resident receives points for meeting expectations. With

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points the resident advances in "levels"; that is, he moves to a living situation with greater privileges, such as television and movies, phone calls, extra recreation, weight-lifting, later bedtimes, and employment opportunity. The highest level is the "honor program" where residents have the opportunity for off-campus activity and for eventual transfer to a group home in the community (Att. D at 8-9). The goal of the "Today-Tomorrow" program is providing daily incentives for residents to obey the rules and to participate in programs, which are the keys to rehabilitation. The program is effective because good behavior is encouraged and reinforced by continually rewarding it. This is especially important for the many Green Hill residents who are serving long sentences and need short-term incentives for good behavior. Granting privileges is the centerpiece of Green Hill's strategy to control the behavior of residents.

In addition, a misbehaving resident may be confined in their room for up to one hour, or beyond one hour after an administrative review for up to five hours. The theory of room confinement is to sanction misbehavior, and in some cases to remove temporarily a disruptive resident from the general population. All confinement is in a resident's own room, as there are no "isolation" cells at Green Hill.

Residents who continually misbehave may be assigned to one of two cottages designated as "intensive management units" (IMU) (Att. D at 10-11). In these units, residents when not in school or at recreation are involved in special programming. The staff

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ratio is higher. The idea is not to "punish" the resident, but rather to provide a more structured program that hopefully will change his behavior and attitudes, so that he can return to the general population.

The fact is that many residents enter Green Hill with a propensity towards violence. They often are angry and accustomed to resisting and lashing out at authority. Staff are frequently confronted by angry residents who would rather not do what they are asked. Almost all situations are resolved through discussion and through sanctions such as room confinement or taking away privileges. The need to use pepper spray to maintain security actually is very infrequent. Our objective always is to avoid the need to use pepper spray.

10. Hostile Environment. Plaintiffs assert that the use of pepper spray creates a violent and non-therapeutic environment. I disagree.

In the perfect world, of course, taking physical control of residents would not be necessary because they would do what is asked of them and would never become threatening. In the real world, however, this unfortunately is not the case. Thus, an institution has the choice of either overtaking the resident with physical force or by using a substance like pepper spray.

The most destructive features of an institution can be the threat of physical injury. It promotes an "us verses them" mentality which is very counter-productive to rehabilitation. It causes "burn-out" which leads to undesirable high turnover of

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staff. An actual injury destroys staff morale, and may excite further dangerous behavior by residents. By greatly reducing the risk of injury, pepper spray has helped in creating a more positive environment at Green Hill.

Using physical force that involves violent bodily contact, moreover, breeds extreme hostility between the combatants. Spraying, by comparison, is less personalized, and therefore less likely to engender hostility. Being sprayed, unlike being physically subdued, does not result is a resident's "loss of face". Very few residents are sprayed more than once. This shows that spraying, rather than breeding violence, actually causes residents to behave better; we simply are not reinforcing pathologies. While spray is used only to maintain security, a by-product is that the threat of spray re-enforces the notion that residents must comply with the structure and rules at Green Hill. For many residents, this is the first time in their lives living under those expectations. Learning to comply with rules is a critical component of rehabilitation, because that, of course, is what society demands.

Finally, there simply is no evidence supporting plaintiffs' contention that spraying has produced a more hostile environment at Green Hill. In fact, since 1990 when spray was introduced, assaults are down. Many more residents are behaving to the point they can be returned to the community to serve out their sentences. We have expanded our programming (Att. D), and have instituted new opportunities to work outside the institution.

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Green Hill's environment in the last four years, in my opinion, has become decidedly more positive, even though society is sending us generally more hardened offenders.

11. Previous Sprays. The policy is for all pepper spray incidents to be video-taped. The reason for this requirement is that the camera inhibits acting-out behavior by residents, and thereby decreases the need to spray. It also provides a means to review the conduct of staff to assure that spraying in carried out in accordance with policy.

Plaintiffs' experts reviewed 27 tapes, and concluded that in most of the cases use of pepper spray was not necessary. I do not agree. Since plaintiffs' experts have worked very little inside a facility housing violent juvenile offenders, I suspect they may not fully appreciate the security needs of an institution like Green Hill. In addition, many tapes do not show all events leading up to the spraying, and so the conclusions of plaintiffs' experts may not be based on full information. Finally, as stated above, many times, just before a spraying, residents cease their threatening behavior, and assume a defensive posture. This may lead plaintiffs' experts wrongfully to conclude that spray is not needed because the resident no longer is a threat.

Whether to use spray is a difficult judgment call which depends on the circumstances of a particular case. With two exceptions, past sprays, in my opinion, were based are a reasonable believe they were needed to maintain security. In two cases, residents improperly were sprayed while handcuffed; this is

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contrary to policy, and should never happen because a handcuffed resident can be controlled without the need to use pepper spray. In one of these cases, the offending staff was demoted and then retired two months later. In the other case, the offending staff was reprimanded. It is my firm policy to take disciplinary action against any staff who violate the policy. At a recent training, the associate superintendent reviewed the new policy line-by-line with staff, and there was an opportunity for discussion. Staff, therefore, is aware of the new requirements, and there is no excuse for not following them.

Plaintiffs submit declarations from seven residents giving their versions of being sprayed. Except for the one involving Cyrus Plush, I located the incident reports (Att. E). Except in the case of Jeremy Bakke, staff was reasonably justified in using pepper spray. As noted above, since Mr. Bakke was handcuffed, his spraying was not justified, and the staff was reprimanded for his actions.

12. Post-Spray Practices. The practice is to get a resident to the shower within five or ten minutes of being sprayed. In some cases, it takes longer because something unusual has happened scene requiring staff to remain at the scene, or because the resident is agitated and cannot be safely transported. The practice is to guide the resident along as he walks to the shower to offer him comfort and to prevent him from falling. I am aware of only one case where a resident fell while going to the shower.

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In that case, the resident fell when he tried to skip down two stairs. He was immediately helped up. No injury was reported.

During a spray, uninvolved residents are sent to their rooms so they are not impacted by the spray. Following a spray, the impacted area is "de-contaminated" by turning on the exhaust fans to draw out the air, or by opening the windows. If the spray occurs in a room, the bedding in changed. Generally, an odor completely dissipates within not more than 30 minutes.

13. Sprays Under New Policy. The new policy was adopted on October 1, 1994. Since that date, there have been two incidents, involving a total of three residents, when pepper spray was used.

a. First Incident. The first incident occured November 13 on Joshua Howell. It started about 9:50 p.m. in Poplar Cottage (IMU) when Howell received a "time-out" for banging on the office window, and calling a staff "cocksucker". Staff tried talking to Howell, but he refused either to talk or to go to his room. Instead, he began lining up chairs against the two doors leading out to the floor in a barricade fashion. Staff removed the chairs, and Howell ran into the restroom. Security was called. When security arrived, Howell and two other residents (Kevin Moore and Brian Emmons) were in the restroom, refusing to leave. The restroom was being flooded with five or six inches of water that had begun running under the door. Howell was located by security standing on top of the commode, flooding the floor by pushing down excessively on the commode handle. When staff attempted to escort the residents to their room, they refused to go. Emmons

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had to be pulled out and taken to the ground. Moore followed him out. Howell also refused to go to his room. He started swinging at staff, and picked up a chair in the dayroom and tried to throw it. Staff eventually cornered Howell, and tried unsuccessfully to handcuff him. He eventually was pulled into his room. While this was happening, Emmons also started fighting with staff with use of a plexiglass shield that staff had dropped and he had picked up. Moore also started swinging at staff. Staff eventually moved the three residents to their rooms.

Prior to that point, staff had not requested from me authorization to spray. Staff had responded to the incident thinking Howell could be controlled without pepper spray. When they did respond, the sitation quickly got out of control.

At 10:30 p.m. Moore again was let out of his room to use the restroom, but instead of using the restroom, he started drawing graffiti on the walls, and running to the rooms of other residents. He eventually ran to Howell's door, and refused to leave. Security again had to be called. At that point, I was called, and authorized the use of spray on the acting-out residents based on the current situation and on the earlier assaults. Staff did not use spray on Moore because they were able to escort him was escorted back to his room. In his room, he started banging and yelling. When warned he might be sprayed, he stopped.

Howell, however, continued to furiously pound and kick his door. He too was warned that he would be pepper sprayed if he

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continued doing so. When he chose to continue, he was sprayed. This spray had little effect on him because his had wrapped his face in bedding. When about one minute later he resumed his pounding, he was again sprayed.

The spraying was justified under the new policy. Howell's behavior in his cell was inciting four or five other residents to yell and bang in their cells. It is possible to kick open a door, in which case staff might have faced the same dangerous situation that had happened earlier in the evening. Moreover, in light of Howell's behavior earlier in the evening, staff would have been at risk if they had tried to move him. Finally, it was nearing midnight, and Howell's behavior was keeping the cottage in an uproar, was diverting limited nighttime staff from their regular duties, and was preventing other residents from sleeping on a school night when they had to get up early the next morning. This type of situation is intolerable, and cannot be allowed to continue indefinately. Prior to the spraying, Howell was given every opportunity to conform his behavior.

Furthermore, staff certainly would have been justified in using pepper spray on the three residents when they were in the flooded restroom. Their failure to use it necessitated a dangerous physical confrontation that easily could have resulted in injury. Fortunately, staff reported only soreness and bruises, and there were no serious injury to the residents. This incident demonstrates the type of situation in which pepper spray is a far better alternative than physical confrontation.

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b. Second Incident. The second incident occurred on November 17, 1994 on Jason Kennedy and Chris Walters. It started after bedtime, at 10:10 p.m., in Fir Cottage when security was called because three residents were pounding and banging on their doors. At 10:45 Kennedy was let out of his room to use the restroom. While out, he filled a water jug, and sprayed it over the office counter. He also turned over a chair in the dayroom, and with encouragement from another resident, attempted to throw it through the office window. He encouraged other residents to join him, and then ran to his room and closed the door. Kennedy and several other residents kept periodically pounding on their doors.

At 12:04 a.m. Walters was let out of his room to use the restroom. He refused to go back into his room. Staff attempted to talk him into going. This refusal continued for the next 90 minutes, during which time Walters paced the floor, and Kennedy and others kept periodically banging on their doors.

At 1:15 staff decided this situation could no longer continue. I was called, and authorized the use of pepper spray on both Kennedy and Walters. Warnings were given. At 1:30 staff confronted Kennedy. Residents began yelling encouragement for him not to go back to his room. Walters may have been influenced by this yelling not to return to his room. Walters did not return to his room, and told staff that they would have to physically take him. At that point, Walters was sprayed. Kennedy, meanwhile, continued banging on his door, and was getting at least three

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other residents to join in. After spraying Walters, staff entered Kennedy's room. He cursed and threatened them, at which point Kennedy also was sprayed. The cottage then became quiet.

I believe these sprays were justified. Between midnight and 1:45 Kennedy had refused instructions to return to his room. His actions resulted in a situation that caused other residents to bang their doors, making it impossible for other residents, as normal, to be let out of their room to use the restroom. When staff went to take him to his room, he refused to go voluntarily, and made comments indicating he would resist. This threat, coupled with the fact Kennedy was convicted of assault and recently had assaulted another resident, led staff reasonably to conclude that there would be a fight if they tried to apprehend him.

Kennedy, on the other hand, had been banging on his door for 90 minutes, and inciting others to do the same. He refused staff directives to stop. His pounding was keeping up the entire 16-member cottage on a school night. When staff entered his room, he cursed and threatened them. Earlier in the evening he had engaged in very threatening behavior.

The situation that night in Fir Cottage was unacceptable for institutional security, and could not be allowed to continue indefinately. I simply cannot tolerate a situation where a resident engages in threatening and non-compliant behavior that keeps an entire cottage awake and in turmoil in the middle of the night. Walters and Kennedy were given very ample opportunity to

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comply. Pepper spray absolutely was needed to restore security and to prevent injury.

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Moving a disruptive resident to a room away from other residents is not an option. First, a disruptive resident, like Kennedy, may be dangerous to move. Moreover, all rooms at Green Hill are in a cottage; there are no isolation rooms. Nor is creating isolation rooms an option. I believe such rooms are counter-therapeutic; the theory at Green Hill is to work with residents, not isolate them. Futhermore, moving any resident who acts out at night to isolation, would encourage some residents to act out just for the attention, and would burden the short-handed night-time staff. Finally, if we made going to isolation at night an option, there sometimes would not be enough rooms to handle the demand. In short, having isolation rooms is not an option, and residents must be expected to behave at night in their own rooms.

Conclusion. Based on the foregoing, it is my professional opinion that the use of pepper spray at Green Hill School, pursuant to the new policy, is necessary to prevent physical injuries and maintain security, is safe and humane, and enhances rather harms the rehabilitative environment by reducing the risk of injury.

I CERTIFY UNDER PENALTY OF PURJURY THAT I HAVE READ THE FOREGOING DECLARATION, AND TO THE BEST OF MY KNOWLEDGE IT IS TRUE AND CORRECT.

DATED this 21st day of November, 1994.

ROBERT WILLIAM, JR.

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