

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

KENNETH HARRIS,

Plaintiff,

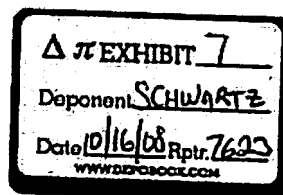
v.

Case No. 07-C-678

GREGORY GRAMS, et al.,

Defendants.

REPORT OF PLAINTIFF'S EXPERT
JEFFREY A. SCHWARTZ, Ph. D.



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Kenneth Harris versus Gregory Grams et. al.

August 27, 2008

Introduction and Background

My name is Jeffrey A. Schwartz and my office is at 1610 La Pradera Drive in Campbell, California. I am the president of LETRA, Inc., a small criminal justice training and consulting organization that has had offices in the San Francisco Bay area since its incorporation in June, 1972. I have worked full time with law enforcement and correctional agencies across the United States and Canada for approximately 35 years, both as LETRA's president and as a private consultant. The largest proportion of my work for the last 20 years has been with prisons or jails. A copy of my resume is attached to this report as Appendix A.

I have served as an expert witness on law enforcement and corrections issues for approximately 15 years. In the last few years, expert witness work has constituted perhaps 10%-20% of my total professional time. I charge \$250 per hour for consultation, document review and other preparation activities and \$350 per hour for actual testimony at trial or in deposition. A copy of cases I have worked on as an expert witness is attached to this report as Appendix B.

On June 30, 2008 I was contacted by phone about the possibility of serving as an expert witness in this action by Carlos Pabellon, an attorney representing the plaintiff, Kenneth Harris. Mr. Pabellon sent me a few documents to review initially as it is my practice to look at the fact situation in enough detail to determine if I will accept the case. I signed an expert and confidentiality agreement on August 1, 2008. Mr. Pabellon subsequently requested a written report of my professional opinions about the case.

Preparation

A. Prior to preparing this report, I have reviewed the following documents from this case:

1. Expert & Confidentiality Agreement, 2 pgs.
2. Position Description, for Kally Ryan, Officer 1, Position # 700088A, 6 pgs.
3. Organizational Chart – no title
4. Reclassification Request/Report for Kally Ryan
5. Memo from H. Ezalarab 10/24/97
6. Transfer form "Dept. of Employment Relations" for Kally Ryan 2/6/96
7. Personnel Turnaround Document
8. Letter from Warden Endicott 1/26/96
9. Position Description, for Kally Ryan, Officer 1, Position # 312063, 6 pgs.

10. Organizational Chart – Columbia Correctional Institution, Security Section Staff
11. Employee Statement of Knowledge Executive Directive #42A, 10/24/06
12. Memo from Mari Brown – 9/18/06
13. Vehicle Use Agreement – 4/7/05
14. Employee Statement of Acknowledgement Regarding Protected Health Information 3/17/05
15. Memo from Mari Brown 10/12/04
16. Employee Statement of Acknowledgement Regarding Fraternalization 9/7/04
17. Employee Statement of Acknowledgement Regarding DOC Information Technology – 7/31/03
18. Employee Acknowledgement of Excc. Directives 16; 42, 42A – 11/23/01
19. Memo from Mari Brown – 11/28/00
20. Memo from Mari Brown – 3/17/00
21. Memo from Lt. Jelinek – 8/16/99
22. Veteran's New Hire Form – 2/5/99
23. Employee Statement of Acknowledgement Regarding DOC Arrest and Conviction Policy – 7/16/98
24. Certificate of Apprenticeship docs, 3 pgs – 10/26/97
25. Memo from Mari Brown – 3/5/98
26. Letter from Warden – 4/29/97
27. Qualification Inquiry Form re: Gun Control Act – 3/10/97
28. Letter from Warden Endicott – 1/28/97
29. Memo from Mari Brown – 11/7/96
30. Letter from Warden Endicott – 6/4/96
31. Letter from Capt Trattles – 3/18/96
32. Employee Acknowledgement Regarding DOC Fraternalization Policy 2/6/96
33. Employee Statement of Acknowledgement Regarding DOC Drug & Alcohol Policy – 2/6/96
34. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 2/21/08
35. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 1/23/07
36. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 1/23/06
37. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 3/25/05
38. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 3/5/04
39. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 2/6/03
40. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 2/6/02
41. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 4/2/01
42. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 3/29/00
43. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 4/20/99

44. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 2/10/98
45. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 1/30/97
46. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 7/15/96
47. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 5/1/96
48. Performance Planning & Development Report – Kally Ryan – 2 pgs, 2nd pg dated 3/19/96
49. Reallocation & Contract Increase – Kally Ryan – 5/21/00
50. Personnel Turnaround Document – K. Ryan – 2/7/96
51. Deduction Auth. Report – K. Ryan – 11/1/9
52. Employee Time Sheet – K. Ryan – 1/6/96
53. Conflict of Interest Form – K. Ryan – 10/31/95
54. Memo from Gary Fergot – 11/24/95
55. Performance Planning & Development Form – Kally Ryan – 2 pgs, 2nd pg dated 12/1/95
56. Letter of Hire – Kally Ryan, 2 pgs – 8/28/95
57. Dept. of Employee Relations form, Pamela Brandon – 9/29/95
58. List of items in Employee Packet – 10/27/95
59. Interface Agency, Personnel Turnaround Doc
60. Acknowledgement/Agreement CTC Stds – K. Ryan, 10/16/95
61. Employee Statement on Having Read Work Rules – K. Ryan – 10/20/95
62. Medical Emergency Procedure 4/11/05, 5 pgs
63. Medical Emergency Communication Procedure 5/1/02, 3 pgs
64. Incident Report 4/16/05, 30 pgs
65. Letter to Judge Daniel George 9/23/05, 2 pgs
66. Incident Report (exhibit 22), 4 pgs
67. Incident Report (exhibit 21), 6/8/04, 7 pgs
68. Letter to Judge Daniel George 9/6/05, 2 pgs
69. Certification and Decision, 2/25/08, 27 pgs
70. Letter to Suzanne Ward 10/14/05, 2 pgs
71. Hearing Transcript, Suzanne Ward vs. State of Wisconsin 9/26/06, 39 pgs
72. Court Order, 3/14/06
73. Letter from Sue Ward, 5/24/05
74. Conversation notes, 5/24/05
75. Pkg. of Post Orders for various posts at Columbia Correctional Institution, most dated Feb or March '07 or '08, some dates redacted, 74 pgs.
76. Offender Movement History – Kettle Moraine Correctional Institution 5/15/08
77. Columbia Correctional Institution, Post orders 2/26/07, 11 pgs.
78. Incident Report, Sgt. Hinickle, 4/17/05, 3 pgs
79. Memo to Capt. J. Nickel, 6/6/05, 2 pgs.
80. Incident Report, Sgt. Hinickle, 8/22/05, 3 pgs.
81. Declarations of Dennis Pringle, Doug Landis, Shawn Pierce, Cordell Carter, Kevin Evans, and Michael Farrell, 7/05, 9 pgs.
82. Declaration of Dujuan Walker 8/6/07, 2 pgs

83. Transcript of Hearing in John Doe investigation, in re: Kenneth Harris, filed 4/6/06, 58 pgs.
84. Log (unit log?) 4/11/05, 34 pgs.
85. Certification Request, Linda Kinkel, 4/22/91, 2 pgs.
86. Memo to Gerald Berge, 4/22/91, 1 pg.
87. Memo to Gerald Berge, 4/9/91, 1 pg.
88. Letter to Linda Kinkel, 4/16/91, 1 pg.
89. Letter to Linda Kinkel, 4/9/91, 1 pg.
90. Surplus Code Request, Linda Kinkel, 4/17/91
91. Certification Request, Linda Kinkel, 11/17/89, 1 pg.
92. Letter to Linda Kinkel, 11/13/89, 1 pg.
93. Reclassification Request, Linda Kinkel, 5/23/88, 1 pg.
94. Letter to Linda Kinkel, 7/31/86
95. Certification Request, Linda Kinkel, 8/5/86, 1 pg.
96. Position Transaction, 8/1/86, 1 pg.
97. Position Description, Linda Kinkel 4/11/91, 7 pgs.
98. Position Description, Linda Kinkel 4/11/91, 7 pgs.
99. Position Description, Linda Kinkel 10/18/89, 7 pgs.
100. Position Description, Linda Kinkel 7/1/86, 6 pgs.
101. Additional Personnel Records, Linda Hinickle, 93 pgs
102. Letter from Carlos Pabellon 8/8/08, 2 pgs.
103. Enclosure letter from Carlos Pabellon
104. Notice of Offender placed in temporary lockup, Kenneth Harris, 8/22/05
105. ICE receipt complaint #CCI-2005-24650, 8/10/05, 1 pg.
106. ICE Rejection 8/10/05
107. Reviewing authority's receipt of rejection appeal, K. Harris 8/29/05
108. Reviewing authority's decision on complaint rejection 8/31/05
109. Offender complaint from K. Harris, 8/5/05, 2 pgs.
110. Note from K. Harris 8/9/05
111. Offender complaint, K. Harris, 8/14/05
112. Request for review of rejected complaint, K. Harris, 8/20/05
113. ICE receipt of complaint, K. Harris, 8/8/05
114. ICE report on complaint, K. Harris, 8/16/05
115. Reviewer's decision, K. Harris, 8/22/05
116. CCE receipt of complaint, K. Harris, 8/25/05
117. CCE report of complaint, K. Harris, 8/25/05
118. OOS report of complaint, K. Harris, 8/25/05, 1 pg.
119. "Notice" from K. Harris, 8/5/05
120. Request for corrections complaint examiner review, K. Harris, 8/25/05, 2 pgs.
121. ICE receipt of complaint, K. Harris, 8/25/05
122. ICE Rejection, K. Harris, 8/26/05
123. Reviewing Authority's receipt of rejection appeal, K. Harris, 8/31/05
124. Reviewing Authority's decision on complaint rejection, K. Harris, 8/31/05
125. Offender Complaint, K. Harris, 8/24/05
126. Notice of Offender placed in temporary lockup, K. Harris, 8/22/05
127. Request for Review of a Rejected Complaint, K. Harris, 8/29/05
128. Note to Warden Grams from K. Harris, 8/29/05
129. ICE receipt of complaint, K. Harris, 8/25/05

130. ICE Report of complaint, K Harris, 8/25/05
131. Reviewer's Decision, K Harris, 8/31/05
132. CCE Receipt of complaint, 9/06/05
133. CCE Report of complaint, 9/7/05
134. OOS report of complaint, 9/9/05
135. Offender complaint, K Harris, 8/23/05
136. Letter from Mary Leiser, 8/23/05
137. Request for Corrections Complaint Examiner Review, 9/6/05
138. ICE receipt of complaint, 9/6/05
139. ICE report of complaint, 10/5/05
140. Reviewer's Decision, 10/14/0
141. Offender Complaint, K Harris, 8/29/05
142. Request for Corrections Complaint Examiner Review, 10/18/05, 2 pgs.
143. Reviewing authority's decision on complaint rejection, 9/23/05
144. Offender complaint, K Harris, 9/6/05
145. Notice of Submission of Grievance and Waiver of Rights, K Harris, 9/6/05
146. Request for Review of Rejected Complaint, 9/9/05
147. ICE Rejection of complaint, 9/8/05
148. Reviewing authority's receipt of rejection appeal, 9/14/05
149. Fox Lake Correctional Inst. Advocate Report, 9/3/03, 3 pgs.
150. Wisconsin Administrative Code (pg 62, DOC 303), 1 pg.
151. Fox Lake Correctional Inst. Advocate Report (handwritten), 8/26/03, 5 pgs.
152. ICE receipt of complaint, 9/19/05
153. ICE rejection of complaint, 9/20/05
154. Reviewing authority's receipt of rejection appeal 9/23/05
155. Reviewing authority's decision on complaint rejection 9/23/05
156. Offender complaint, 9/16/05, 2 pgs.
157. Memo to Burt Tammings, 9/20/05
158. Request for review of rejected complaint, 9/21/05
159. ICE receipt of complaint, 9/19/05
160. ICE rejection of complaint 9/19/05
161. Reviewing authority's receipt of rejection appeal 9/23/05
162. Reviewing authority's decision 9/23/05
163. Offender complaint 9/16/05
164. Letter to Warden Grams, 9/16/05, 2 pgs.
165. Request for review of rejected complaint 9/21/05
166. ICE receipt of complaint 9/7/05
167. stapled pkt, 1st pg is ICE Receipt of complaint CCI-2005-26082, 8/25/05, 11 pgs.
168. stapled pkt, 1st pg is ICE Receipt of complaint CCI-2005-24650, 8/10/05, 16 pgs.
169. stapled pkt, 1st pg is ICE Receipt of complaint CCI-2005-26096, 8/25/05, 10 pgs.
170. stapled pkt, 1st pg is ICE Receipt of complaint CCI-2005-28560, 9/19/05, 9 pgs.
171. stapled pkt, 1st pg is ICE Receipt of complaint CCI-2005-27218, 9/6/05, 12 pgs.
172. stapled pkt, 1st pg is ICE Receipt of complaint CCI-2005-28564, 9/19/05, 9 pgs.
173. stapled pkt, 1st pg ICE Receipt of complaint CCI-2006-31522, 10/23/06, 11 pgs.
174. stapled pkt, 1st pg is ICE Receipt of complaint CCI-2005-21483, 7/12/05, 7 pgs.
175. ICRS docs, beginning 7/11/05, 7 pgs.
176. Offender complaint from K Harris, w/attached witness declarations, 7/11/05, 10 pgs.

177. Appeal of Adjustment Committee decision, 7/4/05
178. Adult conduct report, 4/29/05, 2 pgs.
179. Disciplinary Hearing, 4/29/05, 2pgs.
180. Record of Witness testimony, Charles Cleveland, Dennis Pringle, Michael Vctor 4/29/05, 10 pgs.
181. Letter to Mary Leiser 4/24/05
182. Memo from J. Nickel 4/25/05
183. Memo to CCI Sec. Dir. & Mary Leiser 4/22/05
184. Letter and statement to Mary Leiser, 4/6/05, 11 pgs.
185. Memo from Mary Leiser 4/26/05
186. Memo to CCI Sec. Dir. and Mary Leiser, 4/22/05
187. Offender's request for attendance of witness, 4/21/05, 2 pgs.
188. Notice of Major Disciplinary Hearing Rights, 4/18/05, 2 pgs.
189. Request for corrections complaint examiner review 7/25/05, 4 pgs.
190. Progress notes "A" through "K" 4/7/05, 11 pgs.
191. Physician's Orders "L" and "M" 4/16-25/05, 2 pgs.
192. Sworn Declaration of Michael Farrell "O" 7/19/05
193. Affidavit of William Harris 7/17/05, 2 pgs.
194. stapled pkt, 1" pg is ICE Receipt of complaint CCI-2005-14303, 5/5/05, 8 pgs.
195. stapled pkt, 1" pg is ICE Receipt of complaint CCI-2005-13992, 5/3/05, 27 pgs.
196. stapled pkt, 1" pg is ICE Receipt of complaint CCI-2005-12505, 4/19/05, 19 pgs.
197. stapled pkt, 1" pg is ICE Receipt of complaint CCI-2005-12346, 4/18/05, 10 pgs.
198. stapled pkt, 1" pg is ICE Receipt of complaint CCI-2005-13992, 5/3/05, 26 pgs.
199. stapled pkt, 1" pg is ICE Receipt of complaint CCI-2005-12505, 4/19/05, 18 pgs.
200. stapled pkt, 1" pg is ICE Receipt of complaint CCI-2005-12346, 4/18/05, 7 pgs.
201. Record of witness testimony, Dennis Pringle, Charles Cleveland, 4/29/05, 8 pgs.
202. Affidavit of Michael Vctor, 4/24/05, 2pgs
203. Letter to CCI Sec. Dir. and Mary Leiser, 4/22/05
204. Offender's request for attendance of witness 4/21/05, 2 pgs.
205. stapled pkt, 1" pg is Incident Report, 4/29/05, 26 pgs.
206. stapled pkt, 1" pg is ICE Receipt of complaint CCI-2005-12505, 4/19/05, 22 pgs.
207. Emergency Room Report, Kenneth Harris, 4/15/05, 2 pgs.
208. Divine Savior Emergency Dept. MD chart, 4/15/05
209. Emerg. Dept. discharge instructions, 4/15/05
210. Divine Savior Healthcare record of admission, 4/15/05
211. Emerg. Dept. nurse chart, 4/15/05
212. Divine Savior Healthcare lab work, cardiac strip, etc., 4/15/05, 4 pgs.
213. Offsite service request and report, 4/15/05
214. Patient medication profile, 12/9/04 – 7/12/05
215. Consent for treatment unsigned, 4/17/05
216. Record of admission, 4/17/05
217. Emergency dept. MD chart, 4/17/05
218. Emergency dept. discharge insgtructions, 4/17/05
219. Emergency room report, 4/17/05, 2 pgs.
220. ED nurse chart, 4/17/95
221. lab work, 4/17/05, 2 pgs.
222. DOC temporary release 4/17/05
223. Patient medication profile, 12/9/04 – 4/20/05

224. Offsite Service request and report, 4/17/05
225. Radiology report, 4/20/05, 2 pgs.
226. Progress notes, 4/16/05, 3 pgs.
227. Physician's orders, 4/16/05, 3 pgs.
228. Health service request, 8/25/05
229. Medical release authorization (not dated, perhaps 1" pg of a 2-pg doc)
230. Health service request, 7/20/05
231. Health service request, 7/19/05
232. Health service request, 7/26/05
233. Progress notes, 4/7/05, 7 pgs.
234. Physician's orders, 4/16/05, 2 pgs.
235. Modified diet orders, 4/8,19,20/05, 3 pgs.
236. Progress notes, 4/22/05, 3 pgs.
237. Physician's orders, 4/20/05, 3 pgs.
238. Letter to Anne Semrow, 8/7/05, 2 pgs.
239. Emergency Dept. discharge instructions, 4/17/05, 5 pgs.
240. Radiology report, 4/15/05
241. Emerg. dept. MD chart, 4/15/05
242. ED nurse chart, 4/15/05
243. Memo to Harris from Warden Grams, 4/9/05
244. Memo from Grams, 4/19/05
245. Memo from Grams, 4/21/05
246. Memo from Grams, 4/25/05
247. Memo from Harris to Grams, 4/23/05, 2 pgs.
248. Memo from Grams, 5/5/05
249. Appeal of Adjustment Committee or Hearing Officer's Decision, 5/4/05
250. Memo from Grams, 5/9/05
251. Appeal of Adjustment Committee or Hearing Officer's Decision, 4/29/05
252. Letter to Grams 5/7/05
253. Memo from Grams, 6/14/05
254. Letter to Grams, date obscured, stamped received 6/13/05, 3 pgs.
255. Letter to Grams, 8/7/05
256. Memo from Grams, 8/10/05
257. Letter to Grams, 8/7/05, 3 pgs.
258. Interview/information request, 8/9/05, 2 pgs.
259. Complaint summary report, 7/11/05, 2 pgs.
260. Memo from Grams, 8/12/05
261. Letter to Grams, 8/11/05, 2 pgs.
262. Memo from Grams, 9/9/05
263. Letter to Grams, 9/9/05
264. Memo from Grams, 9/20/05
265. Letter to Grams, 9/16/05, 2 pgs.
266. Offender Complaint, 9/16/05, 2 pgs.
267. Letter to Grams, 9/18/05, 3 pgs.
268. Letter to Jeffrey Schwarz from Carlos Pabellon, 8/12/08, 1 p.g
269. Supplemental Report and attachments from Detective Sgt. Linda Shawback, 6/6/08, 37 pgs
270. Received August 21, 2008, by email;: Psychological report, 6/22/98, 20 pgs.

- 271. Letter to Judge Wimmer from Dr. Fostal 09/12/95, 6 pgs.
- 272. History and treatment summary, 08/93, 8 pgs
- 273. Psychological Services, clinical contact, from 3/14/05 to 04/01/08, 18 pgs.
- 274. DOC chapter on discipline 12/06, 17 pgs.
- 275. Conduct record from 05/9/96 to 11/29/06, 2 pgs.
- 276. Letter Sue Ward from Gregory Grams 10/14/05, 2 pgs.
- 277. Transcript of hearing: Ward Winsconsin DOC 09/26/06, 233 pgs.
- 278. Court order in Kenneth Harris, John Doe perceding 03/14/06, 1 pg.
- 279. Memo Ann from Sue Ward 05/24/05, 1 pg.
- 280. Transcript of conversation 05/24/05, 1 pg.
- 281. WI DOC Chapter 303: December, 2006, 17pgs.
- 282. Disciplinary record, Kenneth Harris 2 pgs.
- 283. WI DOC Chapter 303: Appendix December, 2006, 12 pgs.
- 284. Psychological Services clinical notes 03/05 – 04/2008, 18 pgs.
- 285. Psychological Report: Kenneth Harris 06/22/98, 20 pgs.
- 286. Report to Judge Wimmer 09/12/95, 6 pgs.
- 287. History and treatment summary 08/19/93, 9 pgs.

B. In part, this report also relies on information I received during a phone interview with Sue Ward, R.N., on August 21, 2008. I have not conducted a site visit and I have not reviewed any physical experience in this case. I am not a medical expert and I have not attempted to form opinions about medical treatment issues in this case. Depositions have not yet been taken in this case and I reserve the right to add to or change this report if additional relevant information becomes available to me after the date of this report.

Fact Situation

A. Below are the salient facts in this case as I understand them from the record to date, as it is early in the discovery phase of this litigation.

B. At the time of the initial incident in this case, Kenneth Harris was a 53 year old male inmate at the Columbia Correctional Institution CCI and in the Wisconsin Department of Corrections (WI DOC). Mr. Harris had been incarcerated since 1994 on charges of burglary. He had other, prior convictions and incarcerations. Mr. Harris also had a long history of serious mental health problems with a diagnosis of [REDACTED] at a Veterans Administration hospital in 1998. In the seventeen or eighteen years after that he was also variously diagnosed as [REDACTED]. Strong psychoactive medications were frequently prescribed for Mr. Harris including Lithium and Mellaril. Mr. Harris has at times suffered from hallucinations and has also had times when he reported blackouts and suicidal ideas. He had a dysfunctional childhood characterized by severe neglect and abuse and his record indicates that when he has not been incarcerated he sometimes has been involved with street drugs. In early to mid 2005, Mr. Harris was attending individual psychotherapy sessions with a psychologist, Janet Woods; her therapy notes after individual therapy sessions with Mr. Harris on March 28 and April 11, 2005, described him as "a mild mannered litigious male".

By April 15, 2005, Mr. Harris had been seriously ill for a few months with acute abdominal pain and bleeding from internal hemorrhoids as two of the most frequent symptoms. His ailment had not been diagnosed beyond the hemorrhoids but he had been seen frequently by the Health Services Unit (HSU) at CCI and had been sent to the hospital and or emergency room in the community on a few occasions.

On April 15, 2005, Mr. Harris had a particularly bad episode in which he had a large amount of rectal bleeding and was also vomiting blood. He was taken to the emergency room and later sent back to the institution. The physician at the hospital prescribed injections of Toradol for pain every six hours as needed, and Tylenol with codeine (Tylenol #3) also for pain every six hours as needed. The physician also scheduled an ultrasound on April 20, 2005, to check for gallbladder disease. Mr. Harris was returned to CCI and on April 15 and 16 and in the early morning hours of April 17, he requested and received Tylenol #3 orally and injections of Toradol for his abdominal pain. On April 16 and in the early morning hours of April 17, Mr. Harris reported acute abdominal pain to security staff and they contacted the on call nurse, Ms. Mulchow, who twice came from home to the institution in order to administer a Toradol injection to Mr. Harris.

At some time before 7 a.m. on April 17, Mr. Harris approached officer Ryan to ask for pain medication. A disagreement or confrontation ensued. Mr. Harris subsequently spoke with Sergeant Hinickle, who was in the officer station ("bubble") on the unit. Mr. Harris contends he asked the officer and the Sergeant to contact HSU and that he needed a Toradol injection, that he could not take Tylenol #3 because it was only four hours since his last dose and that he was in acute pain. Both staff members contend that he showed no signs of distress and that he argued about when he would get his Tylenol 3 but never asked for Toradol or for either staff to contact HSU.

Mr. Harris was ordered to go to his room and did go upstairs to the second tier but subsequently returned to the day room area and the argument or confrontation continued. Officer Ryan then pushed an alarm button that summoned the institution response team. Mr. Harris contends that was done immediately after he said he was going to file a grievance against the two staff members for denying him medical care but the two staff members contend the response team was summoned because Mr. Harris was aggressive and disruptive and specifically that Sergeant Hinickle feared for Officer Ryan's safety.

One of the officers on the response team stopped the team from immediately using physical control on Mr. Harris to get him into restraints. That officer told the team that Mr. Harris had been sick, looked to be in distress and needed to go to medical. They put Mr. Harris in a wheelchair and took him to HSU. HSU staff immediately sent Mr. Harris to the emergency room of the community hospital, where he received a Toradol shot for his pain.

When Mr. Harris was returned to the institution later that day he was immediately placed in temporary lock-up (TLU) pursuant to a disciplinary report written by Officer Ryan charging Mr. Harris with disobeying a direct order (to return to his room) and disruptive conduct.

Mr. Harris filed a grievance about the confrontation with Officer Ryan and Sergeant Hinickle and he subsequently filed a grievance about the disciplinary charges placed against him.

Mr. Harris filed a "John Doe" proceeding in the Columbia County Court contending that Corporal Ryan and Sergeant Hinickle were criminally culpable in denying him medical treatment. Nurse Sue Ward was subpoenaed to testify at that hearing and was also subpoenaed to produce documents from Mr. Harris' medical file. Nurse Ward asked several different staff members how to respond to the subpoena and specifically what she needed to do to comply with the request for bringing to Court or copying documents from Mr. Harris' medical file. One of the staff that Nurse Ward was directed to was the Warden's secretary and she told Nurse Ward she could copy documents from the file or take the whole file with her to Court and to essentially do whatever Nurse Ward thought was best. The detective Sergeant investigating Mr. Harris' original claim of denial of medical services told Nurse Ward that the subpoena was, in fact, valid.

Shortly before the John Doe hearing, Nurse Sue Ward was placed under investigation for inappropriately providing documents to inmate Harris, which constituted a violation of work rules, and for fraternization. The WI DOC Chief Legal Counsel wrote a letter to the Judge who was about to hear the John Doe case, with a copy to inmate Harris, informing the Judge that Nurse Ward was currently under investigation for fraternization.

The Judge in the John Doe hearing found in favor of Mr. Harris, noting that Officer Ryan and Sergeant Hinickle may have been guilty of criminal acts in denying medical care to Mr. Harris.

Nurse Sue Ward filed a "whistle blower" complaint for retaliation against the department and the Administrative Law Judge presiding over that hearing found in favor of Ms. Ward, establishing that the disciplinary action taken against her as of result of the investigation into fraternization and giving documents to an inmate, was unjustified and retaliatory. The Judge ordered the department to pay Nurse Ward's court costs and legal fees. Sue Ward left WI DOC, contending she did not feel comfortable or safe working there anymore.

Mr. Harris was also investigated for soliciting staff and was placed in temporary lock-up pending the outcome of the investigation. He was not formally charged but contends that his placement in TLU and the investigation were further evidence of retaliation for his grievances against staff and his bringing the John Doe action.

Mr. Harris also contends that he was trying to secure a job within the prison and there were occasions when he was the best qualified candidate and that the staff person in charge of the inmate job wanted to hire him but security managers or administrators overruled the recommendation and would not allow to him to have a job, also in retaliation for the same things. Mr. Harris filed a grievance about his denial of employment. The department rejected the grievance and contends that there was no retaliation.

Opinions and Analysis

A. Kenneth Harris was a high maintenance inmate who had frequent medical problems. Throughout the record in this case I found Mr. Harris to be an articulate and precise individual.

B. Correctional staff have a clear and fundamental duty to provide, facilitate and/or arrange medical services to inmates. WI DOC had appropriate policy, post orders and job descriptions in place specifying how security were to deal with inmate requests for medical assistance.

In Kally Ryan's personnel file, the job description for the officer 1 position, October 16, 1995, state, in revelant part at C.5., "Administer first aid and prescribed oral medication as directed by medical department". The same document, at A.3., states, "Pass criterion test on first aid and CPR".

Also from Kally Ryan's job description, March 12, 1993, for the officer position, at B.3.: "Make timely referrals directly or through the supervisor as appropriate, to medical or social services specialists". That same document states, at B.7., "Listen to inmate complaints, questions, comments and make appropriate referral when required".

In Sgt. Hinickle's file, the position description for Officer 3 (Sgt.), dated April 11, 1991 includes, at B.2. and B.3., respectively, "Look for medical and behavioral problems of residents for referral to specialists", and "Make referrals directly to Corrections medical or social services specialists."

The document on "Internal Management Procedures: Medical Emergency Communications and Response Standards, dated April 11, 2005, under "3. Responsibility of staff encountering a non-life threatening medical condition": "b. contact HSU, Shift Supervisor and/or Control".

Post orders require officers coming on duty to familiarize themselves with the unit log and to also learn about prior issues on the unit from the staff going off duty.

These policies, post orders and job descriptions are clear and appropriate. They require front line staff to listen to inmate requests, complaints and questions and make referrals for specialized services where appropriate and, specifically, to contact HSU, the Shift Supervisor and/or Control when there is a medical condition that is not an emergency.

C. In the several days prior to April 17, 2005, the CCI staff, both medical and security, were helpful and responsive to Mr. Harris's medical problems and pain. There is no indication in the record of confrontations with Mr. Harris or of concerns from staff that Mr. Harris was disingenuous in his reports of pain. Further, the record reflects that prior to April 17, it was obvious to correctional security staff on Mr. Harris' unit that he needed continuing medical care and they also knew he had prescriptions because of serious pain.

In the few months preceding April, 2005, Mr. Harris had frequent medical needs and frequent interaction with both security staff and medical staff around these medical issues.

Then, in the several days preceding April 17, 2005 Mr. Harris' contacts with staff about his medical situation became very frequent. There is no indication in the unit log or in any of the medical notes that staff had confrontations with Mr. Harris about his requests or his medical situation. There is also no indication that Mr. Harris was dissatisfied with the response of security staff or of medical staff regarding his access to medical services or his treatment. To the contrary, except for the specific interactions with Officer Ryan and Sergeant Hinckle, the record reflects medical staff and security staff who were seriously concerned about Mr. Harris' condition and went out of their way to be responsive and helpful. Two incidents, in particular, stand out in this regard. When nurse Mulchow is contacted about Mr. Harris request for pain medication, she not only comes to the institution immediately, she also instructs the staff that if he needs further pain medication, she should be contacted at home and that she would come into the institution immediately to give him another injection. She asks that that be recorded so that all staff dealing with Mr. Harris are aware of it.

This second specific has to do with the response team. Response teams pride themselves on "backing up" living unit staff and when the living unit staff call a response team, the tendency is for the team to rush in and grab the inmate or inmates who are out of control or who need moving (unless the situation is a "cell extraction"). In this incident the team did not rush in a grab Mr. Harris but instead paused long enough to survey the situation and a team member recognized that Mr. Harris had been very sick and was then in medical distress. The response team changed its plan immediately and got Mr. Harris into a wheel chair and escorted him to HSU.

Prior to the April 17 incident, the record in this case with regard to Mr. Harris, is evidence the WI DOC policies and staff training about the duty of staff to provide medical care to inmates and the need for security staff to facilitate access to medical care, was having its desired effect with most staff.

D. It is well accepted in corrections nationally, in the state of Wisconsin and locally at CCI that security or custody staff cannot be the "gate keepers" for medical or mental health services.

The Federal Performance Based Detention Standards Review Book lists standards for federal adult correctional facilities. These standards mirror the American Correctional Association (ACA) Standards for adult institutions but in some cases go beyond those ACA standards. Standard B.5.1. states in part, "Ensure written policies and procedures exist for response to medical, mental, and dental health needs." Standard B.5.4. states, "There is a sufficient health training program for corrections and health care staff." Standard B.5.5. states, "Corrections staff facilitate detainee access to medical care." The state of WI Administrative code devotes Chapter 316 to medical and dental services for inmates and also covers aspects of inmate health services in other chapters, such as chapter 311, dealing with medical placement of inmates and medical exams for inmates. Section 316.03 is entitled, "Provision of Medical, Dental and Nursing Services". A specific annotated note in that section states, "DOC 316.03 provides that health services staff shall determine the level of access to medical, dental or nursing services and the need to provide medical, dental or nursing services on-site or off-site. DOC 316.03 recognizes the responsibility of the health services staff to make the determination." Local policies, job

descriptions and post orders at CCI comport to the State Administrative code and a relevant sample of those are cited in "B.", above.

It stands to reason that security and custody staff in correctional institutions do not have the medical or mental health expertise to diagnose. Thus, with regard to mental health issues, for example, the traditional message to front line correctional staff is, "treat every suicide threat and every mention of suicidal ideas as serious". It is recognized that individual staff members will have their own thoughts about which inmates are serious about suicide, which are simply seeking attention, etc., but even well intentioned staff may be wrong and those judgments must be left to staff with professional credentials and expertise in the area. Departments of corrections work to get staff to err in the direction of safety. Everyone can deal with referrals that turn out not to be serious but no one wants to see a situation in which an inmate complaint or request was ignored and turned into an inmate death.

E. Officer Ryan and Sergeant Hinickle each had years-long histories of poor communications with inmates, being overly rigid and or overly aggressive, being involved in unnecessary confrontations, not accepting supervision well and of failure to improve in these areas.

One of Officer Kally Ryan's first Performance Planning and Development Reports (Performance Appraisal) in the record is for the year ending February 1999. It is generally acceptable ("meets standards") but her Supervisor comments, "if there is one area in which she may continue to improve, it is that of interactions with inmates". There is also discussion about the Supervisor stating that Officer Ryan swears at inmates, which Officer Ryan denies, as she does the Supervisor's comment that she "goes off" on inmates. The following year her performance appraisal includes the comment, "interactions with inmates could improve". That appraisal also says, "...she could be more open to corrections and suggestions".

For the year ending February, 2002, Officer Ryan's Supervisor has written, among other remarks, "Officer is generally courteous and tactful, but times (sic) has failed to interact with others in this manner. Officer Ryan could do better at accepting directions from all Supervisors". The appraisal also includes, "at times, Officer Ryan needs to exhibit more patience with other staff and inmates". The following year her Supervisor comments that she can at times be stubborn and inflexible and needs to improve communication with non security staff. The following year (ending February, 2004) Officer Ryan's Supervisor comments, "Officer Ryan has had some issues regarding her behavior and language in the kitchen". The most recent performance appraisal in the record for Officer Ryan is for the period March 2007 to February 2008. That evaluation includes the statement from her supervisor, "Kally is generally courteous, but needs to remain calm and professional when upset." That same evaluation also includes the comment, "Officer Ryan, at times, lets her emotions get the best of her when she is in disagreement with others".

Sergeant Hinickle has a long record of performance appraisals that cite her lack of ability to accept criticism or supervisory input, her rigidity and her lack of communications skills. Her appraisal for the two year period ending November, 1994, included, "I have once

again received reports and comments from unit manager Mr. Huibregtse that he started to receive complaints again from inmates regarding her manner of supervision and interactions on the unit." Also, "She should seriously evaluate her personal style of supervision and methods of controlling inmates". For the year ending November, 1995, Sergeant Hinickle's evaluation included, "The area of improvement needed is the ability to project a positive image of her spoken and unspoken messages." The evaluation for the year November, 2001, included, "Sergeant Hinickle lacks empathy for inmates but does respond to their needs." That appraisal also stated, "She may be heavy handed at times in her approach but always gives it her best without compromise".

For the year that included most of the events in this report, Sergeant Hinickle's evaluation was from December, 2004 to November, 2005. Her Supervisor stated, "There continue to be times when Sergeant Hinickle is very rigid and direct with her approach to others. Sergeant Hinickle should strive to be more low key and non-confrontational and work on de-escalation techniques."

The record is clear that the two staff assigned to Mr. Harris living unit the morning of April 17, 2005, each had long records of negative evaluation comments with regard to their general approach to inmates, their communications skills, their lack of de-escalation techniques, etc.

F. Officer Ryan and Sergeant Hinickle knew that Mr. Harris had been seriously ill a day and a half before, on April 15, and that he had a standing order for a pain medication.

According to Capt. Morgan's June 6 memo to Capt. Nichol, Officer Ryan told Capt. Morgan she knew Mr. Harris had been ill and Sgt. Hinickle indicated that she was aware Mr. Harris had prescribed pain medication. Mr. Harris clearly remembers repeatedly asking Officer Ryan and Sgt. Hinickle to contact HSU so he could have a shot of Toradol, and Officer Ryan telling him during the argument that he should, "Blow it out your ass." Officer Ryan does not deny that statement to Capt. Morgan but instead says she "doesn't recall" saying that to Mr. Harris. RN Sue Ward remembers getting a phone call from Officer Ryan later that day (April 17), in which Officer Ryan bragged to her that Mr. Harris had wanted to see Nurse Ward but that, "We told him to blow it out his ass". RN Sue Ward was sufficiently upset by that that she told a fellow nurse in HSU about Officer Ryan's comments immediately upon hanging up the phone.

There are a number of other reasons that Sgt. Hinickle and Officer Ryan knew that Mr. Harris was ill, required ongoing medical attention and was suffering from serious pain. The unit log reflected that Mr. Harris had been to the hospital and that Nurse Mulchow had come in from off duty to administer pain injections to Mr. Harris. His last injection had been on the shift immediately before their shift so the staff they were relieving were well aware of the unusual situation. It is also standard practice for unit staff to familiarize themselves with which inmates are on which medications, particularly because at CCI the security staff dispense most regular prescription medications, rather than the medical staff.

G. Officer Ryan and Sergeant Hinickle had first hand knowledge of Mr. Harris' need for pain medication and ongoing medical care. They each had a duty to provide Mr. Harris with that medical care, including arranging for him to get his prescribed Toradol injection and contacting HSU if there was any question about his immediate need for medical attention or his prescriptions. Officer Ryan and Sergeant Hinickle breached their duty to Mr. Harris by willfully refusing him medical attention and, worse, calling a response team to punish him for his medical problems. It was foreseeable by Officer Ryan and Sergeant Hinickle that their actions denying medical care to Mr. Harris would result in more pain for him and delay any medical contact for him.

Officer Ryan's and Sergeant Hinickle's actions violated department policy and their own post orders/job descriptions in failing to notify the Shift Supervisor, Control and/or HSU that Mr. Harris was requesting medical attention. Defendants had a duty to provide Mr. Harris with his prescribed medication and instead they needlessly caused him pain.

An inmate does not have to use the words "I want to go to HSU" in order for staff to regard it as a request for, or need for, medical attention.

The version of events provided by Officer Ryan and Sergeant Hinickle on the morning of April 17, 2005 does not square with what they said or demonstrated they knew on other occasions, is inconsistent with Mr. Harris' prior behavior and knowledge of his own situation and directly contradicted by Nurse Sue Ward, who had no motivation to discredit those two officers.

Mr. Harris was well aware of his prescriptions and had expressed that the Tylenol 3 was sometimes not effective for him for pain control. Mr. Harris had, on every other occasion after the Toradol was prescribed, asked for that and he had said that the Toradol was effective. All of that is consistent with Mr. Harris' version of events the morning of April 17. Officer Ryan and Sergeant Hinickle, however, describe Mr. Harris arguing exclusively about when he would receive his Tylenol 3, without ever mentioning HSU or the Toradol that he preferred for pain (and which he could have received because it had been six hours since his last injection).

Officer Ryan and Sergeant Hinickle also contradict themselves in various statements describing this incident about whether they knew Mr. Harris prior to this incident and whether Mr. Harris exhibited any signs of distress prior to the arrival of the response team.

Judge Daniel George heard the John Doe action filed by Mr. Harris. After taking testimony and receiving documents, Judge George ruled that there was probable cause for the investigation to proceed with the question of whether Officer Ryan and Sgt. Hinickle had criminally denied medical services to Mr. Harris.

H. Sergeant Hinckle's decision to call the response team was unnecessary, inappropriate and intended to punish Mr. Harris by subjecting him to staff use of force.

Mr. Harris was not physically threatening Officer Ryan and did not require a response team. If Mr. Harris had "charged down the corridor" toward Officer Ryan, as Sgt. Hinckle alleges, his disciplinary report would have included charges of threatening staff or assaultive behavior. It did not. Mr. Harris is described in the record in one place as a "mild mannered, litigious male inmate" and in another place as a "53 year old obese inmate". In the prior five years (prior to April, 2005) Mr. Harris had not received a single write-up (disciplinary report) for fighting or for any other kind of violent behavior.

The judgment and actions of the response team, stopping short of doing a "take down" of Mr. Harris and placing him in restraints, and instead recognizing his distress and getting him immediately to HSU in a wheelchair, was appropriate and positive performance. In those kinds of cases there is strong pressure on a response team to quickly become physical with an inmate if for no other reason than to "back up" the front line staff working on the floor and calling for the team.

I. The disciplinary report written by Officer Ryan against Mr. Harris was retaliatory and was also an attempt to deflect the focus from the actions of Officer Ryan and Sergeant Hinckle in denying Mr. Harris necessary medical assistance.

J. From the point in time when Mr. Harris was returned from the hospital on April 17, and placed in TLU, forward, what could have been a bad but relatively isolated incident of inappropriate and actionable staff behavior instead snowballed into an ever-widening circle of cover-up and retaliation.

K. The cumulative weight of various actions taken by CCI against Mr. Harris in August to October, 2005, constitutes a clear pattern of retaliation in response to his initiating the John Doe action.

In August, 2005, Mr. Harris was denied a job as a Chaplain's clerk although he had a good reference from a Chaplain at another institution within WI DOC, he was the only applicant with Chaplain's clerk experience and the Chaplain wanted to hire him. Managers or administrators within institutional security denied the Chaplain's recommendation. During that same month, a utility job became available and Mr. Harris actually began to work on that job on a temporary basis but was removed by a security staff member, Sergeant Lapinski. Mr. Harris has written grievances claiming he was being prohibited from institutional jobs as part of a pattern of retaliation because he had initiated the John Doe action.

That same month, August, 2008, Mr. Harris requested refills of his prescriptions. The standard for answering refill requests is five days but two of Mr. Harris's requests were answered in ten days and the other took three weeks. Mr. Harris contends that he asked

earlier in August and got no response whatsoever to that request. Mr. Harris filed a grievance alleging the lack of response to his prescription refill request was retaliatory.

In the same August – September, 2005 time frame Mr. Harris was placed in TLU for soliciting staff. He was specifically accused of telling a staff member that Sergeant Hinickle was also Registered Nurse. It is not clear from the record whether that charge was formally investigated but what is clear is that if Mr. Harris said that to a staff member, it should have, at most, been considered a minor violation and not a cause for TLU. It is not uncommon for correctional officers to have other vocational experience or credentials and it is also common for this to be well known among staff and the inmate population. For example, some correctional officers are also ordained ministers. The officer herself or himself may mention that to one or more inmates or another staff may say something like “ Oh, I see you got the whole sermon. You knew that Miller was an ordained Minister, didn’t you?” Or an inmate might say to a staff member, “Did you know that Officer Brown used to work as a hair stylist? He still does some of that on the side.” While nothing is perfect, those kinds of comments would not raise eyebrows in the majority of prisons and jails in the United States. Those comments are very different than passing information about a staff member’s phone number, address, children or the like. It is generally recognized that once information is in the inmate population, it is impossible to control. When there is concern about private information being spread among inmates, the usual staff response is to try to find out how that information is getting to inmates.

L. This case is not about retaliation against RN Sue Ward. It is about denial of medical treatment and retaliation against Kenneth Harris. However, the retaliation against Sue Ward is part and parcel of the department reaction against Mr. Harris and its attempts to cover up any factors that might prove exculpatory to Mr. Harris.

M. CCI demonstrated its retaliatory motive toward Kenneth Harris when it retaliated against Sue Ward by investigating her for fraternization with an inmate and then publishing that charge against her, when there was no evidence or even suggestion that she had fraternized with any inmate in any way.

Not only was this charge leveled against RN Sue Ward in retaliation for her testimony at the John Doe hearing Mr. Harris initiated, the department’s Chief Legal Counsel Kevin Potter sent a letter to the Judge in the John Doe case and sent a copy of that letter to Mr. Harris.

RN Ward filed a complaint under the WI Whistleblower Protection Law claiming retaliation. In a Feb. 22, 2008 decision, the Administrative Law Judge (ALJ) found, by a preponderance of evidence, “DOC violated the Wisconsin Whistleblower Protection Law ... and by issuing a letter of reprimand (to Ms. Ward)” ...”. In her Memorandum Opinion on the case ALJ Cohn wrote, “First, the ALJ found Ward to be an extremely credible witness.” She also wrote, “(The ALJ) finds it highly unusual that DOC’s chief legal counsel would attempt to influence a judge’s assessment of a witness’ testimony prior to the hearing date by informing him that she was being investigated for fraternization, an

assertion that was not true." ... "The ALJ believes that Potter's letter itself borders on a threat of unlawful retaliation ..".

In the ALJ's Findings of Fact, ALJ Cohn states (P.13, No. 48): "Potter sent a copy of his letter to Judge George to Grams and to KH, therefore violating DOC's policy of keeping personnel matters confidential."

N. In spite of Mr. Harris' substantial and serious mental health history, he was lucid, articulate and intelligent throughout the events from early April, 2005, through October, 2005.

In mid April, 2005 Mr. Harris' therapist, Janet Woods, describes him as clear and logical. The clinical notes from Mrs. Woods on October 31, 2005, essentially at the end of the events summarized in this report, describe his mental status as alert, oriented and cooperative. His affect was appropriate to content and varied from anxiety to sadness to elation. No suicidal or homicidal ideation was expressed and she noted no [REDACTED]. [REDACTED] During the mid 2005, Mr. Harris reported increasing anxiety at times to his therapist and at one point some agitation in addition to the anxiety. Much of the anxiety was over concern with his medical condition and, when surgery seemed probable for an anal fistula, he taken to the emergency room with a panic attack. (The fistula improved and surgery was not needed). He regularly reported that he had [REDACTED].

The record demonstrates that Mr. Harris was knowledgeable and rational about his pain medication. At the end of the day, however, this case does not turn on whether Mr. Harris was a mental health inmate or on his psychological status. Whether Mr. Harris was a mental health inmate or not, if he was in pain and if he had valid prescriptions for pain medication, the responsibility and the duty of correctional security staff was to arrange for him to get his medication as prescribed.

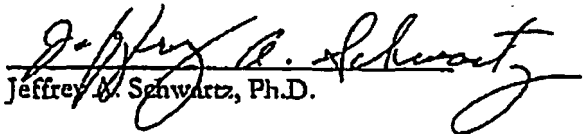
O. Conclusions:

- 1. Correctional staff have a duty to provide medical services to the inmates who are incarcerated in their care. Further, correctional staff may not act as gatekeepers for those medical services.**
- 2. Officer Ryan and Sgt. Hinickle knew of Mr. Harris' medical needs and knew he had pain medication prescribed.**
- 3. Officer Ryan and Sgt. Hinickle ignored Mr. Harris' medical needs, breaching their duty and actually exacerbated Mr. Harris' pain by calling a response team to punish him instead of contacting HSU. No legitimate correctional objective was served by delaying his pain medication and contravening his medically prescribed treatment regimen.**

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4. Officer Ryan, Sgt. Hinckle and the CCI Administration then attempted to cover up the willful denial of medical services to Mr. Harris by filing disciplinary charges against him and retaliated against Mr. Harris because he initiated a John Doe action in County Court.


Jeffrey A. Schwartz, Ph.D.

August 27, 2008