

**RULE 26(a) EXPERT DISCLOSURE OF
MANUEL D. ROMERO
[PRELIMINARY REPORT]**

I. NAME AND ADDRESS OF EXPERT

Manuel D. Romero
1607 Ben San Ave.
Belen, New Mexico 87002

II. INTRODUCTION

I have been retained by Plaintiff's Counsel in the case of Rudy Lujan vs. Corrections Corporation of America (CCA) et al., Plaintiff's Counsel requested that I review documents and other evidence produced for this case and provide my opinion, as a corrections expert, as to the merits of Plaintiff's claims – and more specifically:

1. What reasonable steps could Corrections Corporation of America (CCA) have taken to prevent the July 20, 2004 Crowley County Corrections Facility riot?
2. What reasonable steps could CCA have taken to prevent the disturbance from becoming a riot?
3. What reasonable steps could CCA have taken to prevent the assault and injuries sustained by Rudy Lujan during the riot?
4. Were any of the Defendants were deliberately indifferent to Rudy Lujan's safety, welfare and need for protection?
5. Does any of the Defendant's conduct in the failure to prevent the riot constitute deliberate indifference to the health, safety and protection of the inmates, including Rudy Lujan?

I had previously rendered a report concerning the Crowley County Correctional Facility on July 18, 2005 that Corrections Corporation of America was negligent and

their negligence was a cause of the riot. I also indicated that CCA was negligent in not controlling the disturbance before it became a widespread riot.

III. PROFESSIONAL QUALIFICATIONS

I have attached as Exhibit A a copy of my Curriculum Vitae. The following is a brief summary of my education and experience in the criminal justice field. I possess an Associates Degree in Correctional Studies and a Bachelor of Arts in Criminal Justice from the University of New Mexico in Albuquerque, New Mexico. I have been working in the criminal justice field for twenty-five years. I have substantial hands-on experience as a correctional administrator and a jail and prison auditor. I commenced my career in the corrections field as a correctional officer and progressed through the ranks to the level of Deputy Secretary of Operations with the New Mexico Corrections Department. I also served as a deputy court monitor in the United States District of Puerto Rico. I have intimate knowledge and experience in prison operations, administration and programs. I serve as a consultant to the Special Litigation Section of the Civil Rights Division and the United States Marshals Service both of the United States Department of Justice. My work with the Civil Rights Division involves inspections related to the Civil Rights of Institutionalized Persons Act 42U.S.C.S1997 (“CRIPA”) primarily in the area of staff and inmate safety and security matters. My work with the United States Marshals Service has been in connection with conducting facility operational assessments. I have inspected a total of seven (7) facilities (some of which have several sub units) for these two entities and have inspected some of those facilities several times.

I also served as an expert in conducting conditions of confinement reviews for Pricewaterhouse Coopers (currently IBM Global Services Business Unit). These reviews

were pursuant to contracts with the United States Department of Justice concerning non-federal facilities that housed United States Marshals Service and Immigration and Naturalization detainees. The conditions of confinement reviews included several core detention standards for jails. I participated in conducting approximately nineteen (19) conditions of confinement reviews of jails across America. I was also an active participant in the revision of the Conditions of Confinement Review Standards with a final presentation made to the Office of the Federal Detention Trustee and the U.S. Marshal's Service in Washington, D.C.

Currently, I continue to work as a corrections consultant and am the President of Manuel D. Romero Inc., located in the town of Belen, in the State of New Mexico.

IV. TESTIMONY AT TRIAL, DEPOSITIONS AND AFFIDAVITS

A listing of the cases I have been involved in may be found at pages 15 - 18 of my Curriculum Vitae, attached hereto as Exhibit A.

V. COMPENSATION

My fee for this case is \$200.00 per hour for document review, report writing and facility visits. My fee for testimony at trial or depositions is \$300 per hour. In addition to these fees is reimbursement for reasonable expenses.

VI. PUBLICATIONS

Contributor, Correctional Health Care: Guidelines for the Management of an Adequate Delivery System (2001)

Contributor, Guidelines for the Development of a Security Program, Second Edition, American Correctional Association (1997)

VII. INFORMATION AND DATA CONSIDERED IN FORMING OPINIONS

The materials I reviewed and analyzed in preparation for this report consisted of the following, but not necessarily limited to:

1. Colorado Department of Corrections After Action Report, Inmate Riot: Crowley County Correctional Facility, July 20, 2004, report dated October 1, 2004
2. American Correctional Standards for Adult Correctional Facilities, 3rd and 4th Editions and 2004 Standards Supplement
3. Report of The State Auditor – Private Prisons Department of Corrections – Performance Audit April 2005
4. Deposition and deposition outline of Jamie Munoz, taken 6/26/06
5. Deposition and deposition outline of James I. Hale, taken 6/27/06
6. Deposition and deposition outline of Valerie L. Arguello, taken 6/27/06
7. Deposition and deposition outline of Edward R. Fish, taken 6/28/06
8. Deposition and deposition outline of Wanona Wike, taken 6/27/06
9. Deposition and deposition outline of Raymond Romero, taken 6/26/06
10. Deposition and deposition outline of Robert J. Griffith, taken 6/27/06
11. Deposition and deposition outline of Judy Brizendine, taken 6/28/06
12. Deposition and deposition outline of Misty Stewart, taken 8/17/06
13. Deposition and deposition outline of Richard Selman, taken 8/17/06
14. Deposition and deposition outline of Brent Crouse, taken 8/16/06
15. Deposition and deposition outline of Danny Chavez, taken 8/18/06
16. Deposition and deposition outline of Rudy Lujan, taken 8/15/06
17. Deposition and deposition outline of Richard Bachicha, taken 8/17/06
18. Deposition and deposition outline of Chad Kastelic, taken 8/17/06
19. Deposition and deposition outline of Virginia Lewis, taken 8/17/06

20. Exhibits 1 through 52, with the exception of Exhibit 50
21. The Shift Supervisor's Daily Report for the day shift on 7/20/04, and bate stamped CCA-LUJAN 000468-69
22. Private Prison Monitoring Unit (PPMU) memorandum written on 8/12/04 from the Colorado Department of Corrections Inspector General's report of the Crowley County Correctional Facility Riot, CI #04-000898, and bate stamped 002278-80
23. Preliminary Incident/Situation Notification Report from Exhibit FF of the Colorado Department of Corrections Inspector General's report of the Crowley County Correctional Facility Riot, and bate stamped 002029-31
24. Report of Plaintiff's Expert, Manuel D. Romero dated July 18, 2005 regarding the Crowley County Correctional Facility

INTRODUCTION

Rudy Lujan was an inmate incarcerated at the Crowley County Correctional Facility (CCCF) on or about July 20, 2004. Rudy Lujan arrived at CCCF in early March 2004. Rudy Lujan is a Colorado state inmate who was serving his sentence at CCCF. CCCF is a private correctional facility under contract with Crowley County pursuant to a contract entered into between Crowley County and the State of Colorado for the use of and benefit of the Colorado Department of Corrections. CCCF is owned and operated by Corrections Corporation of America (CCA) a for-profit private corporation.

During Rudy Lujan's history of incarceration, he has been a gang member; however, at some point disassociated himself from gang membership. Almost immediately upon his arrival to CCCF, Rudy Lujan started experiencing problems with other inmates. Rudy Lujan alleges in his complaint that he was harassed, threatened, and assaulted by other inmates on several occasions while incarcerated at CCCF. Rudy Lujan alleges, among many other allegations, that he sought help from various CCA officials

for a safe environment but it was not provided. On July 20, 2004, CCF experienced a major riot that resulted in serious injury to several inmates, including Rudy Lujan and substantial property damage to the facility. During the riot, Rudy Lujan was targeted by other inmates and was severely beaten. Rioting inmates were able to gain access to his living unit due to a variety of operational breakdowns before the riot and during the riot. This report will address five (5) opinions regarding Rudy Lujan's Complaint, as follows.

OPINIONS

1. Reasonable steps CCA could have taken to prevent the riot.

CCA could have taken a number of reasonable steps to prevent the July 20, 2004 riot. Among some of the more obvious steps are to have been proactive (the CCA management) in better preparing for the arrival of inmates from other states. This would have included measures such as ensuring that there were no disparities or minimal disparities among the Wyoming, Washington and Colorado inmates who were housed at CCCF, in terms of services provided. The facility, although under a different private operator, had previously experienced a riot in the facility and CCA management could have learned or gleaned operational insight as to causation factors of that riot.

CCA could have ensured and enforced that Canteen Corporation (the facility food services vendor) was operating the kitchen at an acceptable level of operation. Evidence in this case suggests that there were problems with food services such as: having too many menu substitutions, poor menu planning, complaints and criticisms by staff and inmates about food quality and quantity. More notable in this area is the lack of evidence that CCA did anything to address the alleged issues and concerns, thus, inmates became frustrated.

The evidence in this case also suggests that salaries of CCA correctional officers was inferior to that of the Colorado Department of Corrections. The entry level for CCA correctional officers is \$23,000 per year and for Colorado Department of Corrections correctional officers annual pay starts at \$35,000. This disparity in salary contributes to a high turnover rate and the inability of CCA to attract and maintain quality employees. Also, it contributes to having a large number of inexperienced correctional officers force at the facility. Inferior security staffing levels at CCCF were identified by Colorado Department of Corrections officials in the course of their investigation of the July 20, 2004 Crowley prison riot and in the Report of The State Auditor – Private Prisons Department of Corrections – Performance Audit April 2005.

The “warning signs” of inmate unrest and a possible disturbance were abundantly made by staff and inmates to CCA management weeks prior to the riot and on the day of the riot and no proactive measures were taken to deal with them by CCA management. Complaints or concerns expressed by CCA line staff and inmates was ignored and dismissed as rumors by CCA managers. If CCA management would have taken these warning signs more seriously and investigated them they could have reduced inmate tension and frustration.

The Colorado State Auditor in the Performance Audit of April 2005 noted a litany of deficiencies with the private prison vendors, and in particular, referenced that the Colorado Department of Corrections was not fully staffed prior to the riot. In the same audit report, the State Auditor also found that the Crowley Facility showed an inmate to staff ratio of 4.2, the highest among four other private prisons in the state of Colorado. In terms of security staffing, the records reflect that there were eight (8) correctional officers

present during the riot who were new hires and were undergoing on-the-job training and thirty-three (33) officers working in security and housing unit posts. I also noted a glaring example of a correctional officer who was assigned to work in the segregation unit during the evening of the riot. This correctional officer had no former law enforcement or corrections related background prior to his employment on July 27, 2003 at CCCF as a correctional officer. This officer was apparently working in the high security segregation unit with an experience level of only two (2) to three (3) months when he was initially assigned and with about eight (8) months total experience on the day of the riot. Typically, in a well functioning correctional facility, correctional officers assigned to high security areas of the facility have substantial experience in corrections and in facility operations. CCA management could have insured that there were ample and experienced security staff at the facility during the ramp up process of increasing it's inmate population.

CCA was not adequately prepared in terms of emergency preparedness. Emergency drills were rarely conducted; therefore, how could they reasonably expect for line staff and middle managers to react in an emergency situation? Security and civilian staff need to be continuously drilled on emergency preparedness procedures. Security staff and civilian staff as well as inmates must have a reasonable expectation of what to do in an emergency situation. Emergency drills also help a facility identify weak areas in the security program of the facility and to be better prepared. For example, I noted several security breakdowns attributed in large part to a lack of emergency preparedness by CCA management, such as not having enough flex cuffs to handle the large inmate population, indecisiveness by security supervisors in handling the disturbance at the

onset, not having an adequate internal response team on hand in terms of numbers and training, among many others as reported in the After Action Report. CCA could have insisted that they not accept any more inmates until such time as they were reasonably prepared in terms of emergency preparedness. The area of emergency preparedness is paramount to any successful security response and CCA was severely dysfunctional in this area of operation. The Warden and other facility security supervisors could have ensured that their emergency plans were in place, workable, and that sufficient resources were available to effect the emergency plans.

Other reasonable steps CCA could have taken to prevent the riot was to have dealt with and provided corrective action plans to the litany of operational and administrative concerns the Colorado Department of Corrections had expressed during the months leading up to the riot, as noted on pages fifteen (15) and sixteen (16) of the After Action Report.

2. Reasonable steps CCA could have taken to prevent the disturbance from becoming a riot.

Certainly, CCA could have been better prepared to prevent the disturbance from becoming a riot if they would have had additional staff on duty on the evening of the riot, especially in light of the warning signs. Also, there was a slow response by CCA to realize that the grouping of inmates was a sign of problems to come, but failed to take prompt action.

The lack of fencing and controlled movement of inmates contributed to allowing the inmates to take control of the facility rather quickly. If CCA had a controlled inmate movement plan in place and proper fencing to separate large numbers of inmates, they could have better contained the disturbance and prevented it from becoming a riot.

The lack of the security supervisors and the administration to address the inmates concerns and grievances in a prompt manner was a major factor in the disturbance escalating to a riot. There was already a high level of tension among the inmates prior to the disturbance which should have been addressed by CCA officials.

Given the warning signs of an impending disturbance or security problems, CCA should have taken measures to limit the numbers of inmates who could be out of their housing units at any given time. This would have limited the number of inmates who were outside their living areas when the disturbance started.

The slow response by all available CCA security staff and their internal response team lead to giving the riotous inmates the upper hand and enabled them to take control of the facility. This was largely due to the apparent indecisiveness by the on-site security supervisors.

The decision of the on-site Captain for officers to abandon the housing unit control centers allowed rioting inmates quick access to housing units and to inmates they targeted for assaults. The control centers of housing units are generally more difficult to penetrate than other areas of the facility. Also, CCA could have had limited numbers of chemical agents to disperse through port holes into the various housing unit pods and underneath the housing unit control centers. Astonishingly, the segregation unit control center was abandoned and there were still two (2) correctional officers in the unit who had to hide in a cell to avoid the riotous inmates. CCA should have known that the housing unit emergency hatches could not be secured once they were open, which allowed rioting inmates access to the roofs, causing further damage and allowed the riotous inmates better observation of staff and inmate locations during the riot. This

deficiency could probably have been detected had CCA conducted frequent emergency drills.

CCA could have also ensured that inmate records containing information about inmates was placed in an inaccessible location to inmates in the facility. Rioting inmates targeted the files of inmates to help them identify other inmates they wanted to cause harm to, such as sex offenders and informants or perceived informants.

3. CCA could have taken a number of reasonable steps to prevent the assault and injuries sustained by Rudy Lujan during the riot.

During the riot on July 20, 2004, the decision was made by the on-site supervisor for security staff to abandon their posts and retreat to the administrative area of the facility. This left all of the inmates completely unsupervised and left them to their own devices. Unfortunately, the ground work had already been laid out for some time prior to the riot with the breakdown of the security, staffing and administrative systems that are designed to help prevent and deal effectively with disturbances and other types of emergencies.

As a result of breakdowns in security, staffing and administration, it contributed to allowing inmates to take the facility over and seriously injure Rudy Lujan and others and caused substantial property damage to the facility.

The problems associated with the July 20, 2004 riot are not limited to actions or inactions taken on that fateful evening, but rather a cumulative and predictable series of facility breakdowns in security, staffing and administration. Some of the reasonable steps CCA could have taken to prevent the assault and injuries sustained by Rudy Lujan and others are: slow down the pace of ramping up the facility with out-of-state inmates - especially in light of having many new correctional officers and inadequate staffing

levels; take action regarding inmate and staff concerns about warnings of an impending disturbance; proactively investigate inmate grievances regarding disparity of treatment among out-of-state and Colorado inmates; address food service complaints of which Colorado Department of Corrections officials found to be of “very poor quality and distasteful”; the use of force incident involving inmate Graham earlier in the day on July 20, 2004, “could have been handled differently had adequate staff had been on hand to deal with Graham when it first started”; a more prompt response by security staff to secure the facility when the disturbance first started; better leadership was needed at the onset of the disturbance; the apparent decision by the CCA Sort Team Commander to “stand down” and waiting for the Colorado Department of Corrections to respond allowed the rioting inmates more time to create havoc and mayhem and CCA could have ensured that they had adequately trained, experienced and ample numbers of SORT team members available to handle a major emergency.

4. Defendants acted deliberately indifferent to Rudy Lujan’s safety, welfare and need for protection.

Rudy Lujan was a known gang member to CCA staff although he had, at some point, separated from the GKI gang. Rudy Lujan’s gang affiliation and subsequent departure from it was known to CCA staff. Rudy Lujan was moved several times to different housing areas as a result of having problems with other inmates. CCA staff knew that Rudy Lujan had sustained injury at least on one occasion and informed the CCA Facility Investigator in 2004, of having problems with other inmates and being assaulted in his cell. Astonishingly, it seems to be the practice of CCA staff not to allow an inmate a transfer out of the facility unless the inmate, who is potentially being victimized, names his assailants. Also, an inmate apparently has to tell a staff member

that he is in fear of being killed before being placed in segregation and an investigation initiated. Based upon the fact that Rudy Lujan was experiencing problems at CCCF with other inmates, had sustained injury on at least one other occasion and reportedly been assaulted several other times, this should have been the basis for conducting a thorough investigation to see what was happening. Rudy Lujan could have been moved, involuntarily, into a segregated status for his own protection and the Colorado DOC informed about it in order to ensure his safety. It is obvious, by what transpired on the evening of July 20, 2004 that Rudy Lujan was specifically sought out and brutalized by other inmates.

5. Deliberate indifferent to the health, safety and protection of the inmates, including Rudy Lujan.

Lastly, it is my opinion, based on the foregoing, that the Defendants conduct in the failure to prevent the riot constitutes deliberate indifference to the health, safety and protection of the inmates, including Rudy Lujan. This opinion is based on the totality of evidence I have received in this case and on my experience as a corrections expert.

This report may be supplemented as additional information is received and reviewed.

Respectfully submitted, this
2nd day of November 2006

Manuel D. Romero

