Investigative Report

STATE OF IOWA
CITIZENS' AIDE/OMBUDSMAN

INVESTIGATION OF SCOTT COUNTY JAIL'S USE OF FORCE

TO: Dennis Conrad
Scott County Sheriff

FROM: William P. Angrick II
Citizens' Aide/Ombudsman

RE: Case File 0600421

Issued: June 27, 2007

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Role of the Ombudsman

The Office of Citizens' Aide Ombudsman (Ombudsman) is an independent and impartial agency within the legislative branch of Iowa state government. Its powers and duties are stated in Iowa Code chapter 2C.

The Ombudsman investigates complaints about Iowa state and local government agencies. The investigation can determine whether agency action is contrary to law, rule, or policy, or is unreasonable, unfair, inconsistent, oppressive, in error or otherwise objectionable. After completing an investigation, the Ombudsman may issue a report to the agency stating the findings, conclusions, and any recommendations for improving agency laws, policies or practices. The agency may reply to the report, but shall reply if requested by the Ombudsman. If the Ombudsman decides to publish a report that criticizes the agency, the Ombudsman will include in the report any unedited reply by or on behalf of the agency.

Complaint Investigated

On January 30, 2006, the Ombudsman received a complaint regarding Lillian Slater's treatment by the Scott County Jail. The complaint was assigned to Assistant Ombudsman, Barbara Van Allen. For reference purposes in this report, actions taken by Ms. Van Allen will be ascribed to the Ombudsman.

Ms. Slater alleged that the jail staff failed to provide adequate medical assessment and treatment for her medical condition on January 26, 2006. According to Ms. Slater, she repeatedly reported to the jail staff that she was suffering from an acute sickle cell pain episode and that she needed to be taken to the emergency room. Ms. Slater believed the jail staff showed deliberate indifference to her condition and medical needs. This was demonstrated by refusing her medical care and calling an ambulance to transport her to the hospital only after her initial court appearance and release from jail.

In addition, Ms. Slater alleged that while in the jail's custody for nine (9) hours, the jail staff used excessive force by keeping her longer than necessary in a restraint chair, with her hands cuffed behind her back. The use of the restraint chair and the type of cuffing used caused considerable pain and increased sickle cell complications.

The purpose of this investigation was to determine whether the jail staff's treatment of Ms. Slater was unlawful, contrary to policy, unreasonable, unfair, oppressive, or otherwise objectionable.

Background

Ms. Slater was arrested by the Bettendorf Police Department on January 25, 2006 and transferred to the Scott County Jail at approximately 11:30 p.m. The Scott County Detention Center's morning report indicates Ms. Slater had been placed in a restraint chair by 12:15 a.m. for her safety. The application of protective restraints document stated "new arrest Slater was placed on the bench waiting to be booked in and started to yell. Then laid on the floor refusing to answer any questions and stay on the bench." Ms. Slater is further described as trying to hurt herself by banging her head on a brick wall and not listening to anything jail staff asked her to do. After being placed in cuffs and shackles, she was placed in hard restraint / handcuffs (doublelocked) behind the back when placed in the restraint chair. [*All dates in this report are in 2006 unless otherwise noted]*

Health care notes entered at midnight describe Ms. Slater as "on floor rocking back and forth yelling I have sickle cell and I need my f****** meds." It was also noted that she made a request to see a doctor.

The exact time Ms. Slater spent in the restraint chair, while in the jail's custody for nine (9) hours, is not well documented. No removal is documented in the morning report. The application of protective restraints indicates a removal was done at 2:00 a.m. The morning report and application of protective restraints document indicates Ms. Slater was placed in the restraint chair again at 3:21 a.m. and not removed again until 8:22 a.m. for her video court appearance. Ms. Slater spent a minimum of seven (7) hours in the restraint chair, five (5) of those hours consecutively.

Analysis and Conclusions

Sickle Cell Disease

According to the Sickle Cell Information Center by the Georgia Comprehensive Sickle Cell Center at Grady Health System, Atlanta, Georgia, "pain is one of the most common and distressing symptoms that sickle cell patients have." Sickle cell disease, also known as sickle cell anemia, is a hereditary problem that causes a type of faulty hemoglobin in red blood cells. Hemoglobin carries oxygen in the blood. The disease causes some red blood cells to be sickle-shaped. As a result, this can stop or slow blood flow to parts of the body, causing less oxygen to reach these areas. Someone with sickle cell disease would be experiencing pain when the red blood cells are not able to carry oxygen to tissues. Pain can begin suddenly and last several hours to several days. The pain can be throbbing, sharp, dull or stabbing. Pain medications are recommended for treatment. Both prescribed (opiates) and over- the- counter medications (acetaminophen, ibuprofen or aspirin) are recognized appropriate for acute pain management. There is no cure for this disease.

Severe pain is the most common of the sickle cell disease emergencies (acute sickle cell crises). According to an article by author John R. Krimm, Associate Professor, Department of Emergency Medicine, Albert Einstein University, four patterns of an acute sickle cell crisis are now recognizable. They are as follows:

- Bone crisis: An acute or sudden pain in a bone can occur, usually in an arm or leg. The area may be tender.
- Acute chest syndrome: Sudden acute chest pain with coughing up of blood can occur. Low-grade fevers can be present. The person is usually short of breath. If a cough is present, it often is nonproductive.
- Abdominal crisis: The pain associated with the abdominal crisis of sickle cell disease is constant and sudden. It becomes unrelenting. The pain may or may not be localized to any one area of the abdomen.
- Joint crisis: Acute and painful joint crisis may develop without a significant traumatic history. Its focus is either a single joint or in multiple joints. Often the connecting bony parts of the joint are painful. Range of motion is often restricted because of pain.

Emergency hospital care is recommended by Dr. Krimm when there is uncontrollable pain even with the use of narcotics, continued loss of fluid (vomiting), uncontrollable fever, chest pain or shortness of breath, severe abdominal pain.

References

1. The International Association of Sickle Cell Nurses and Physician Assistants is an organization of heath care providers involved in improving the care of the sickle cell patient. For further information contact: IASCNPA, Box 3939, Duke University Medical Center, Durham, N.C. 27710. http://www.scinfo.org/prod05.htm
2. eMedicine Health, Emergency Care & Consumer Health *Sickle Cell Crisis Overview* Author: John R Krimm, DO, FAAEM, Associate Professor, Department of Emergency Medicine, Albert Einstein University. Retrieved June 14, 2006, from http://www.emedicinehealth.com/sickle_cell_crisis/page13_em.htm.

Medical Assessment and Treatment by Jail Staff

To assess Ms. Slater's complaints, the Ombudsman reviewed Iowa's "Jail Standards," which are in rules promulgated by the Iowa Department of Corrections (DOC) that apply to all jail facilities in Iowa. The Ombudsman spoke to Ms. Oostenryk, Risk Manager for Scott County, who provided the requested documentation, including, the jail's morning report, dated January 26, application of protective restraints for inmate Slater, incident reports, commitment summary report, prisoner intake sheet, support service memo, correctional health medical file, restraint chair policy and a one (1) hour DVD labeled "booking chairing," dated January 26. The Ombudsman obtained from the restraint chair manufacturer, AEDEC International, Inc., their operational instructions for law enforcement and photographs of the restraint equipment. *[Appendix A]*

The correctional health medical file indicates on January 25, in booking, a nurse inquired about Ms. Slater's medical history and treating physician. Ms. Slater's pharmacy was called to verify her medications. The health care notes, entered at midnight on January 25 by the nurse, states that she was "called to booking re: an inmate with sickle cell." The nurse described Ms. Slater as "on the floor rocking back and forth" and "minimally cooperative." She was reported to be yelling that she had sickle cell and needed medications and a doctor. Ms. Slater was removed from the booking area and taken to the carpeted video court room.

The nurse telephoned their physician and medication orders were received to provide Ms. Slater 100 mg. tablet PO Q6hours of Tramadol HCL (generic for the listed Ultram on the doctor's orders). However, the Ombudsman is concerned that the health care notes did not document the following information in relation to the initial physician consultation:

(1) what information the nurse provided to the physician about Ms. Slater's medical history, verified medications or her condition.
(2) their discussion about any possible emergency medical care plans or needs.
(3) evidence that the nurse checked Ms. Slater's pain intensity or vital signs, including her temperature for a fever. If Ms. Slater had both severe pain and a fever, her condition could have required the attention of a physician immediately.

Ms. Slater initially refused the pain medication prescribed for her. She can be heard on the "booking chairing" DVD saying that she was unfamiliar with the drug prescribed and concerned about the consequences of taking an unknown medication. The health care notes indicate Ms. Slater was told "this is what Dr. ordered to treat your pain." Given Ms. Slater's medical condition and prescribed pain medications her treating physician had her taking for pain management, it appears reasonable that she would have some hesitation and basic questions about an unknown medication being prescribed for her.

There is no account of the nurse or jail staff providing Ms. Slater with any substantive information about the unfamiliar medication or why the doctor prescribed this medication instead of the known prescribed medications. The American Corrections Association (ACA) standards requires that inmates are to be afforded the same level of consent as in any community medical facility for the specific type of treatment involved. [*Guidelines for the Development of Policies and Procedures: Adult Local Detention Facilities,* American Corrections Association, March 1992]. While the Scott County Jail is not required to satisfy the ACA standards, medical services staff should have provided Ms. Slater more information about the prescribed medication and explained why she could not have her own medications brought to the jail. See *White v. Napoleon*, 897 F.2d 103 (3d Cir. 1990), holding "prisoners have a right to such information as is reasonably necessary to make an informed decision to accept or reject proposed treatment…" The right to medical information, including mental health related information has also been recognized in the Ninth Circuit. Also, the National Commission on Correctional Health Care has taken the position that there is a "need for informed consent, which includes material facts as to the nature, consequences, and risks of proposed treatment, alternatives, and risks, if the treatment is not undertaken." [*Inmates' Right to Refuse*

Treatment Requires Information on Treatment, Correctional Law Reporter, Volume XVIII No.3, October /November 2006].

The Ombudsman is also concerned that the nurse did not further consult with the physician about the use of the restraint chair and hard restraints on Ms. Slater, who was claiming to be in pain from an acute sickle cell crisis. Following Ms. Slater's initial placement in the restraint chair, she was not examined by a nurse again until 8:10 a.m. or eight hours later.

After the initial telephone call for physician orders, there is no account a nurse or jail staff seeking a second physician consultation. This is concerning because the morning report at 8:22 a.m. states: "Inmate in a lot of pain due to sickle cell." According to jail documents, at the time of Ms. Slater's release, at 9:16 a.m. on January 26, she indicated to the nurse that she could not walk. At Ms. Slater's request, an ambulance was called and she was taken to a local hospital emergency room.

It must also be noted that the subsequent nursing notes indicate Ms. Slater was asked "why she refused all attempts for pain medication through the night…." This question implies facts that are in conflict with the "booking chairing" DVD. Ms. Slater can be seen accepting her pain medications from the jail staff approximately one hour after she is placed in the restraint chair.

The DOC has promulgated rules found in the Iowa Administrative Code that apply to all jail facilities in Iowa. Rule 201—50.15 states:

> **201—50.15(356,356A) Medical services.** The jail administrator shall establish a written policy and procedure to ensure that prisoners have the opportunity to receive necessary medical attention for the prisoners' objectively serious medical and dental needs which are known to the jail staff. **A serious medical need is one that has been diagnosed by a physician as requiring treatment or is one that is so obvious that even a lay person would easily recognize the necessity for a physician's attention**. (emphasis added). The plan shall include a procedure for emergency care. Responsibility for the costs of medical services and products remains that of the prisoner. However, no prisoner will be denied necessary medical services, dental service, medicine or prostheses because of a lack of ability to pay. Medical and dental prostheses shall be provided only for the serious medical needs of the prisoner, as determined by a licensed health care professional. Cosmetic or elective procedures need not be provided.
> **50.15(1)** *Medical resources.* Each jail shall have a designated licensed physician, licensed osteopathic physician or medical resource, such as a hospital or clinic staffed by licensed physicians or licensed osteopathic physicians, designated for the medical supervision, care and treatment of prisoners as deemed necessary and appropriate. **Medical resources shall be available on a 24-hour basis.** (emphasis added).

The preliminary medical staff/nurse at the Scott County Jail did take a number of appropriate actions. A medical history was done at booking, which included asking Ms. Slater about her medical condition, allergies, prescribed medications and her treating physician's name. A pharmacy was called to verify Ms. Slater's prescribed medication. A physician was consulted. Orders were received and implemented for medication. Medical records were maintained to document that Ms. Slater received medical care and that the nurse had monitored the initial placement and restraint settings.

Nevertheless, based on the Ombudsman's review of the factual circumstances and the DOC rule, it is believed that Ms. Slater's condition could qualify as a serious medical need pursuant to the above cited rule and may have required more physician attention. As such, it is undetermined whether the Scott County Jail provided adequate medical assessment and treatment for Ms. Slater's medical condition on January 26. The Ombudsman believes reasonable minds could look at the same evidence and reach different determinations about this issue. In part, the Ombudsman found the medical documentation insufficient to reach any other determination without the assistance of a medical expert. The Ombudsman felt certain additional action could have been taken by the medical staff to assess and treat her condition and the medical records maintained could be improved to provide more substantive information on an inmate's condition. Especially when the situation requires a physician to be contacted for orders.

The Iowa Nurses' Association (INA) takes the position that medical documentation should be "timely, objective and defensive to avoid facing a lawsuit or licensing board disciplinary action." The type of charting and protocols to use can be dependent on the setting which the practice takes place. However, there are key elements recognized by professional standards for nurses, such as, charting clinically significant changes in the patient's condition. To do this, the patient's baseline from which the changes may be measured would be required. The INA states a nurse should "record the facts of what you see, hear, smell, and touch, in an objective manner as possible. Record the information timely. Chart chronologically. Use flow sheets to record routine cares. Be sure to include time/date in your documentation of medical visits. Consultations and discussions about concerns with medical orders and directions." [Iowa Nurses Association. *Defensive Documentation and the Law: Iowa Department of Corrections.* Retrieved December 26, 2006, from http://www.iowanurses.org/defense.htm]

The Ombudsman does not substantiate, however, the complaint that the medical and jail staff showed deliberate indifference to Ms. Slater's condition and medical needs. In reaching this conclusion, a wide variety of additional medical information was reviewed on the topics of sickle cell, sickle cell crisis, sickle cell symptoms, sickle cell crisis treatment and medications. The Ombudsman also reviewed Ms. Slater's historical medical records and the treatment records following her release from the Scott County Jail.

For Ms. Slater to succeed on her claim that the jail was deliberately indifferent, she will need to show "(1) she suffered from a serious medical condition, (2) the jail staff knew of the condition, and (3) the jail staff deliberately disregarded the condition." *Kitchen v.*

Miller, 343 F. Supp.2d 820, 823 (E.D.Mo. 2004). Also see, *Dulany v. Carnahan*, 132 F.3d 1234, 1239 (8th Cir.1997) holding that "to show deliberate indifference, a prisoner must demonstrate that he suffered objectively serious medical needs, and the officials actually knew of but deliberately disregarded those needs."

Use of Excessive Force by Jail Staff

Restraint Chair Time

DOC rule 201—50.13(2) requires the following:

> **201—50.13 (2)** *Security and control.* The jail administrator shall develop and implement written policies and procedures for the jail which provide for the control of prisoners and for the safety of the public and the jail staff. The policy and procedures shall include:
>
> *f. Restraint devices.* The jail administrator shall have a written policy on restraint devices. Restraint devices shall not be applied as punishment. Restraint devices shall be used only when a prisoner is a threat to self or others or jeopardizes jail security. There shall be defined circumstances under which supervisory approval is needed prior to application of restraints. **Restraint devices shall not be applied for more time than is necessary to alleviate the condition requiring the use of the restraint device**. While restrained, prisoners shall be either clothed or covered in a manner that maximizes prisoner privacy…[emphasis added]

The Scott County Sheriff's Office Restraint Chair Policy (Policy) states:

> Under no circumstance will restraints be left in place for more than four (4) hours without authorization form the Corrections Division Captain. Such authorization will be documented by the duty supervisor on the Application of Protective Restraints form to include date and time.

The AEDEC International, Inc. operational warning for law enforcement states:

> In most circumstances, the prisoner should not be retained in the chair for over a four-hour period. If it becomes necessary to restrain the prisoner for a longer period of time, approval from the watch commander should be obtained with the appropriate medical staff review…If it becomes necessary to hold the prisoner handcuffed to the rear in the chair for an extended period of time (excess of an hour), the prisoner should be released from the metal cuffs and re-cuffed to each side of the chair with the optional soft restraints provided by AEDEC…It is recommended that the optional PRO-STRAINT lower back support be used when the prisoner is soft cuffed to the sides of the chair for a period of more than three hours.

The documents provided for my review did not indicate a Corrections Division Captain authorized Ms. Slater to be left in restraints for more than four (4) hours. The application of protective restraints indicated Ms. Slater was in the restraint chair from 12:15 a.m. to 2:00 a.m. and again at 3:21 a.m. to 8:22 a.m. In total, Ms. Slater was in a restraint chair a minimum of seven (7) of the nine (9) hours she was held in jail.

In subsequent requests for document to Ms. Oostenryk, the jail was unable to provide verification that the jail staff had complied with the above Iowa law or internal restraint chair policy. The Ombudsman was informed that there was no additional evidence, including pictures, videotapes or DVDs, to confirm Ms. Slater's total time placed in the restraint chair or that her condition required the use of restraint devices for more than six hours.

After reviewing all the collected information, the Ombudsman concludes the jail staff's treatment of Ms. Slater in the restraint chair was contrary to law and inconsistent with jail policy and the manufacturer's operational warning. The Ombudsman substantiated her complaint that the jail staff used excessive force by keeping her longer than necessary in a restraint chair, with her hands cuffed behind her back.

Handcuffs (doublelocked) Behind the Back / Hard Restraint

Scott County's policy regarding the use of the restraint chair requires handcuffs (doublelocked) behind the back and shackles (doublelocked) to be applied to the inmate before placing the inmate into the restraint chair. The policy also states:

> It is desirable to place the inmate's hand in the soft restraints immediately, but if not possible, the inmate should be left handcuffed behind the back while in the chair. At 15 minute intervals the handcuffs must be checked.
>
> Once the inmate is non-combative, remove the handcuffs and secure the wrists into the soft side restraints using the follow method as a guideline….

According to Ms. Slater, she was held in hard restraints / handcuffs (doublelocked) behind the back when placed in the restraint chair. She also alleged she was left alone for long periods of time and not allowed to use the toilet, forcing her to urinate in the restraint chair.

The typed application of protective restraints indicates hard restraints were applied. The one (1) hour DVD showed only the use of hard restraints. The Ombudsman noted a handwritten and initialed comment on the typed application. Following the initialed comment the handwritten words "SOFT RESTRAINTS" appear. There is no indication when these words were added to the Application or by whom. Health care notes prepared on January 25 indicated the use of hard restraints were used and checked.

After reviewing the one (1) hour "booking chairing" DVD, dated January 26, the Ombudsman determined that the jail staff's treatment of Ms. Slater was contrary to law

and inconsistent with jail policy. The Ombudsman observed no attempt to place Ms. Slater in soft restraints at any time. Upon placing Ms. Slater into the chair, she can be heard asking the jail staff to not cuff her hands behind her back because she has sickle cell. This request is often repeated over the next hour.

After placing Ms. Slater in the restraint chair, her handcuffs were checked only once during the hour. The DVD shows there was a problem with the right shoulder/arm restraint staying locked into place on Ms. Slater. Jail staff attempted to lock this restraint into place again 30 minutes after placing her in the restraint chair. While in the room her handcuffs were checked at this time.

After being in the restraint chair for fifty-four (54) minutes, one hand was uncuffed for medication for less than three minutes. Despite Ms. Slater's compliance with taking the prescribed medications and non-combative demeanor at the time, a less restrictive manner of restraint was not used.

No other documentation was provided to verify if or when the supervisory staff inspected Ms. Slater's restraints when placed in the restraint chair. The health care notes provided indicate only one restraint check by a nurse was done at midnight on January 25.

The Ombudsman substantiates Ms. Slater's complaint that the use of the restraint chair and the type of cuffing used caused considerable pain and exacerbated her sickle cell symptoms.

Recommendations

Based on the findings and conclusions of the Ombudsman, the following recommendations are made:

1. Review and modify Scott County written policy on the use of the jail's restraint chair to address the issues identified in this report. In addition, the policy should incorporate other best practices. The new policy should:

    - Whenever doing so does not jeopardize staff safety, an inmate should be warned in advance before the staff uses force as described in the Scott County Sheriff's Office Restraint Chair Policy.

    - Whenever practical, staff of the same gender will be involved in use of force applications, so that at least one employee of the same gender is present to observe the incident.

    - Establish procedures which include staff training and annual review of the policy and restraint applications for staff likely to be involved in use of force incidents.

- Give an offender the opportunity to be released from the restraints in order to eat and to use the toilet.

- If a physician has been consulted on an inmate's medical condition prior to the use of force applications, determine if the physician should also be consulted about the use of force applications and how long the medical staff should monitor the condition of the inmate to ensure no conflict with the inmate's medical condition, doctor's orders and use of force application.

- Have improved documentation for the assessments made on type of restraints used, when restraints are checked, removed or changed, the decision to use restraints for more than four (4) hours, and the Corrections Division Captain's authorizations.

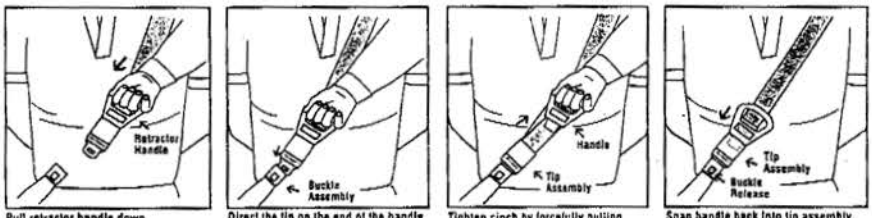
- Develop improved safeguards against accusations of improper use of force, including videotaping or making a DVD of the entire use-of-force incident. Clear guidance should be provided to jail staff to ensure they know who makes the decision to videotape, who checks the equipment to ensure it is operating properly, how often recording checks are made and how long tapes or DVDs are stored.

2. Review policies to ensure jail staff is provided with instructions for securing medical services in the event of a medical emergency, consistent with community standards of health care, on a 24 hour basis. There should be no reluctance to refer an inmate with a suspected serious medical need to a physician, regardless of the time they come into the jail's custody.

3. Have the jail physician review Ms. Slater's correctional health medical records for the sheriff, jail administrator and risk manager to determine if they satisfy the existing standards established for clinical recordkeeping. Develop and improve consultative records, examination forms, progress notes and summaries to safeguard against accusations of improper medical assessment and treatment.

MANUFACTURER'S WARNING 2/1

OFFICERS SHOULD BE INSTRUCTED HOW TO PROPERLY OPERATE THE PRO-STRAINT®CHAIR PRIOR TO USING IT.



Pull retractor handle down and around the prisoner.

Direct the tip on the end of the handle into the buckle assembly and click.

Tighten cinch by forcefully pulling retractor handle from tip assembly.

Snap handle back into tip assembly. (To release press buckle release.)

The "D" ring handle must be pulled straight back from its retainer to make the cinching mechanism function properly. Do not jerk handles outward as it may cause damage to the retainer.

STATEMENT OF PURPOSE

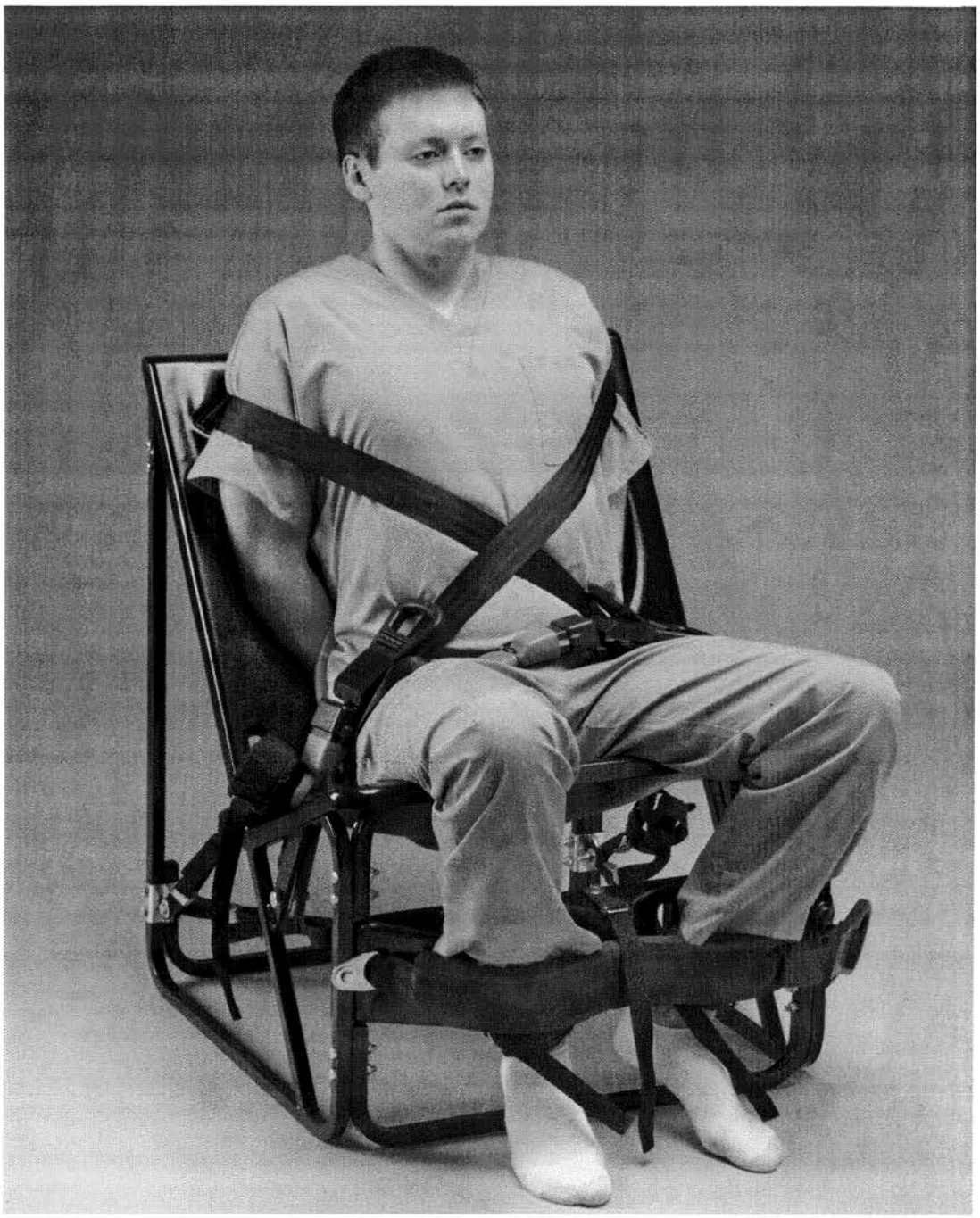
The purpose of the PRO-STRAINT® Violent Prisoner Chair is to provide law enforcement and correctional officers with the safest, most humane, and least psychologically traumatizing system for restraining violent, out-of-control prisoners. It is meant to be employed as a humane and comfortable restraint when it is suspected that a prisoner might do harm to himself/herself or fellow prisoners or guards. It may be used in either a conventional or safety cell. It is an especially useful tool for restraining drug or alcohol-affected prisoners when special precautions are needed to assure that the prisoner's airway is cleared. The prisoner's torso is held upright to prevent choking on his own expectorate. The chair may be used in less secure areas to enhance constant observation or a despondent prisoner. The chair is not meant to be an instrument of punishment and should not be used as such.

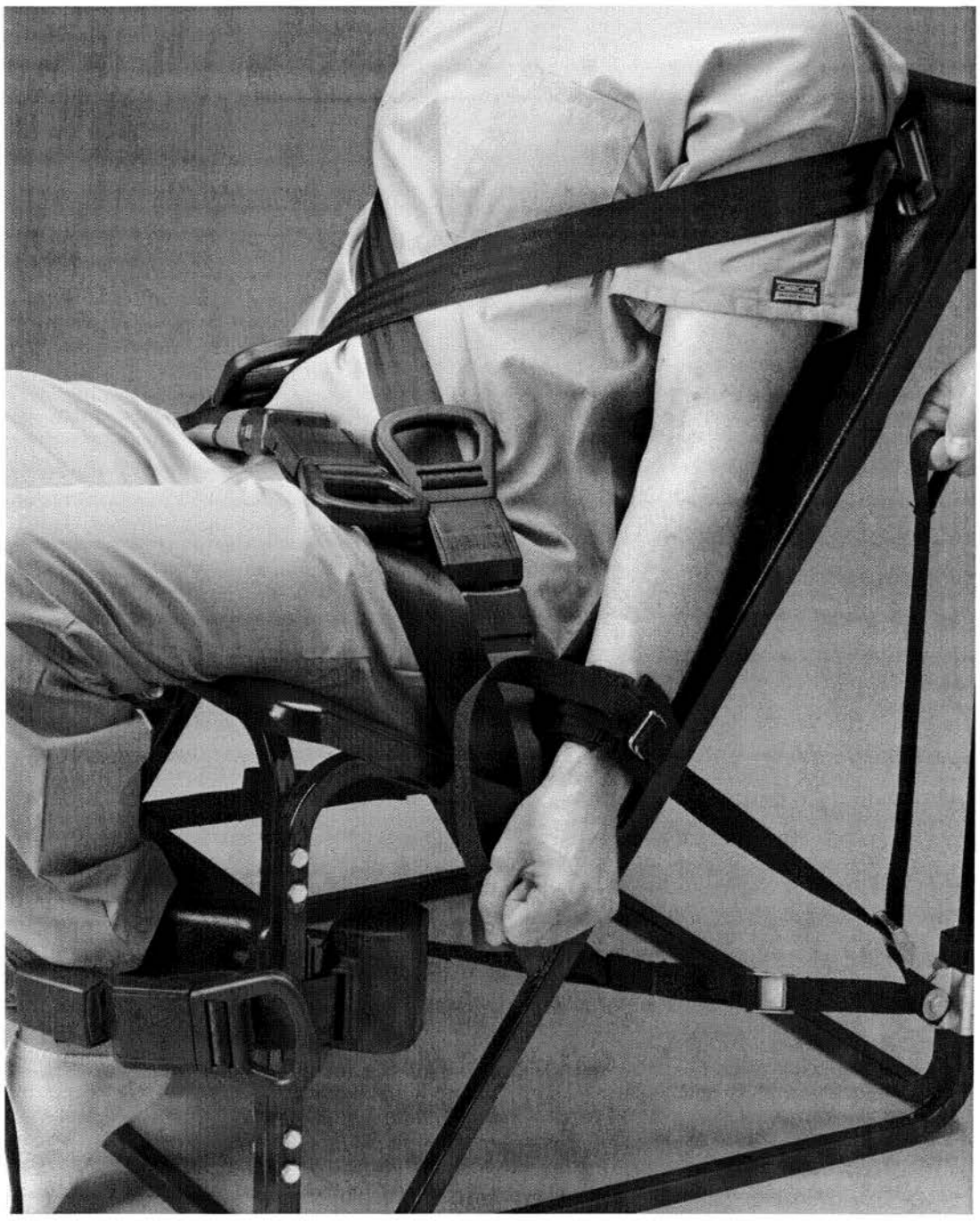
IMPORTANT

The prisoner may be restraint in the chair in two different positions: one, with the prisoner handcuffed to the rear: and two, with the prisoner soft cuffed to the sides of the chair. While the prisoner is handcuffed behind the back with conventional metal handcuffs, customary precautions should be taken to make certain the prisoner does not incur injury due to impaired circulation and excessive pressure to the wrists from overly tight handcuffs. Extra precautions should be taken to assure proper circulation when restraining an obese person. In additions to checking circulation in the arms and legs, look for signs of reduced circulation under the knee where the chair meets the leg. To equalize the pressure between the buttocks and legs for prisoners with shorter legs that do not reach the floor, slightly elevate the heel of foot of the prisoner from the floor with a AEDEC foot elevator (RC1530) or other non-lethal attached platform. In most circumstances, the prisoner should not be retained in the chair for over a four-hour period. If it becomes necessary to restrain the prisoner for a longer period of time, approval from the watch commander should be obtained with the appropriate medical staff review. The prisoner should be monitored at regular intervals, consistent with departmental restraint policy. Standard operating procedures on the use of the chair be specific agencies can be obtained from the factory upon request. They are meant to be examples. Please adapt your SOPs to the specific laws and court edicts in your respective state. If it becomes necessary to hold the prisoner handcuffed to the rear in the chair for an extended period of time (excess of an hour), the prisoner should be released from the metal cuffs and re-cuffed to each side of the chair with the optional soft restraints provided by AEDEC. Appropriate restraints by other manufacturers may also be used. It is recommended that the optional PRO-STRAINT lower back support be used when the prisoner is soft cuffed to the sides of the chair for a period of more than three hours. To prevent tunneling, always keep the lap belt tight.

CLEANING AND REPAIR

To clean the seat use mild soap and water. Pledge works well if a high luster is desired. Do not use abrasives on the surface. Should a crack develop in the seat: 1) drill a small hole at the ends of the crack to prevent it form continuing. 2) remove seat and laminate the under side with 1/8" ABS patch covering at least an inch on either side of the crack. Use Methyl Ethyl Keytone or Methyl Chloride as the bonding solvent.





WILLIAM E. DAVIS
COUNTY ATTORNEY
Scott County Courthouse
400 West Fourth Street
Davenport, Iowa 52801-1187
Telephone: (563) 326-8600
Facsimile Transmission (563) 326-8763
tpriester@scottcountyiowa.com
WEB SITE - www.scottcountyiowa.com

Theodore J. Priester, Assistant County Attorney (563) 326-8239

June 1, 2007

VIA FAX AND ORDINARY MAIL

William P. Angrick II
Citizen's Aide/Ombudsman
Ola Babcock Miller Building
1112 East Grand Avenue
Des Moines, Iowa 50319

Re: Lillian Slater Investigative Report

Dear Mr. Angrick:

Please be advised that I am an Assistant Scott County Attorney who has been assigned to the above referenced matter. I have conferred with Scott County's Risk Manager, Rhonda Oostenryk, concerning this matter and I have had an opportunity to review your Investigative Report along with other documentation from the Scott County Jail. My initial reaction to your office's Report was that it appeared to be premised largely on the allegations of Ms. Slater herself, with very little input from other persons, including the Jail personnel who may have had direct knowledge of the factual circumstances. The Report appears to presuppose the credibility of Ms. Slater without taking into full consideration the actual circumstances of her condition and aggressive behavior when she was booked into the Jail in the late evening of January 25, 2006. In the section of the Report referred to as "Background", it is surprising that there is no mention of her intoxication, which I would presume would be of great importance in not only determining the level of her credibility, but also the extent of her memory with regard to the factual circumstances occurring during the nine (9) hours of her incarceration. In the courtroom, intoxication is typically considered grounds for impeachment, and the fact that there is no mention of intoxication in the Report strongly suggests that undue weight has been given to Ms. Slater's "recollected" allegations.

I am also concerned that the Report contains only "text book" references to sickle cell disease, with no apparent direct consultation or input from a physician or other medical expert. The Jail physician, Scott C. Ludwig, M.D., was apparently not contacted during the course of the investigation which is also surprising given his critical role as the physician in charge of medical care at the Jail. After your Report was received, the Scott County Risk Manager, Rhonda Oostenryk, did contact Dr. Ludwig, and asked that he provide a written statement concerning Ms. Slater's condition, and I am enclosing herewith a letter from Dr. Ludwig dated May 15, 2007. Said letter takes issue with certain conclusions in the Report, and importantly, Dr. Ludwig

"completely disagree(s) and with any conclusion that Ms. Slater's condition required evaluation at the hospital or that she was in any significant danger from her sickle cell SC disease at the time of her incarceration". Said letter also states that "(T)he nurse had evaluated her condition and reported findings and behavior much more consistent with **intoxicated agitation** as opposed to a sickle cell pain crisis." Dr. Ludwig also reports that after Ms. Slater was released from incarceration the following morning, Ms. Slater asked to be taken to Genesis Medical Center where "there was no mention of a Sickle Cell crisis and she received no treatment for that complaint". Furthermore, Ms. Slater made statements at the hospital that she had been assaulted by correctional staff and failed to mention anything about her sickle cell condition. Her statements at the hospital clearly belie her complaints to your office that her sickle cell condition had been ignored by Jail staff. Additionally, Dr. Ludwig reports that x-rays were taken of her wrist and ribs with the diagnosis of soft tissue contusions which diagnosis would be consistent for a person who may have been acting with extreme agitation requiring the use of a restraint chair. Importantly, Dr. Ludwig explains that "(P)atients with sickle cell pain crisis remain **still** due to the fact that excessive movement worsens their pain". With Dr. Ludwig's letter, there are now three salient reasons to call into question Ms. Slater's credibility: the symptomology of sick cell illness, her intoxication, and of course, her obvious personal bias.

The foregoing discussion should not be taken as an outright rejection of the conclusions or recommendations in the Report pertaining to the restricted use of the restraint chair. As everyone is well aware, the restraint chair should only be used as a last resort for those inmates that are found to be physically aggressive and out-of-control, whereby its use is required to prevent injury to the inmate and to the jail staff. The "bullet-point" recommendations in the Report emphasizing restrictions on the use of the restraint chair in many respects already mirrors the policies that have been adopted and implemented in the Jail for many years. However, said recommendations serve as a strong reminder that Jail staff will need to engage in regular ongoing training regarding the use of the restraint chair, and any deviation from the strict policies and procedures regarding such use will not be tolerated. Sheriff Dennis Conard has acknowledged and agreed to abide by the recommendations in the Report in this respect. If the underlying purpose of the Report is to underscore the importance of following strict procedures with regard to the use restraint chair, such purpose has been fulfilled by the Sheriff's concurrence in the Report's recommendations. It is my understanding that the Jail Administrator, Major Tebbitts, has already implemented additional training pursuant to your Report.

In conclusion, Scott County takes exception to the complaints of Ms. Slater that her sickle cell condition had been ignored or otherwise inappropriately handled. It has not been disputed that Ms. Slater presented herself at the jail in a highly intoxicated and agitated state. It now appears that her complaint about her sickle cell condition may have been an exaggerated and opportunistic ruse to seek remedial action through your office. Ironically, had Ms. Slater not been placed in the restraint chair on the evening of January 25, 2006, she might have suffered more serious physical injuries to herself or others given her high level of intoxication and agitation. Scott County urges your office **not** to publish the Report. If you were to do so, your office would in effect amplify Ms. Slater's disputed allegations that even if proven, would not rise to the standard of "deliberate indifference" as your office has already acknowledged. Additionally, it is the County's position that the publication of the Report would serve no public purpose whatsoever. The Sheriff has accepted the recommendations of the Report and he

acknowledges that every effort will be made to follow the recommendations in the future. Scott County has always taken great pains to maintain the highest standards with regard to matters of jail administration. At this very moment, contractors are in the final stages of completion of a new Scott County Jail Facility pursuant to a ten-year long effort, two public referendums, and the expenditure of funds in excess of twenty-nine million dollars. Scott County understands well the importance of its public function in the building and maintaining of a state-of-jail facility for the safety and well-being of its citizens as well as the safety and well-being of the inmates.

Please contact me if you require any further information or input. Your consideration of the foregoing matters will be greatly appreciated.

Sincerely,

Theodore J. Priester
Assistant County Attorney

cc: Dennis Conard, Sheriff
Rhonda Oostenryk, Risk Manager

SCOTT C. LUDWIG MD

May 15, 2007

Rhonda Oostenryk, Risk Manager
Scott County
428 Western Avenue
Davenport, Iowa 52801

Dear Ms. Oostenryk;

This letter is in response to your inquiry regarding the care received by Lillian Slater during her stay at the Scott County Jail January 26, 2006. I have reviewed the Ombudsman report filed April 3, 2007 and the related documents for the Scott County Jail including written statements by the nursing personnel and correctional officers. Furthermore I must state that I am aware of Ms. Slater's medical condition and medical care provided to her as a result of the fact that I am employed as an emergency physician at Genesis Medical in Davenport Iowa where she has often received medical care, including the day after her incarceration.

I remember the contact made by the nurse the night Ms Slater was initially placed in custody. The nurse had evaluated her condition and reported findings and behavior much more consistent with intoxicated agitation as opposed to a sickle cell pain crisis. The inmates was physically and emotionally agitated, too uncooperative to obtain a complete set of vital signs, and clearly not in acute physical distress. Patients with sickle cell pain crisis remain still due to the fact that excessive movement worsens their pain. None the less I offered Ms. Slater the only pain medication available at the jail and instructed the nurse to make sure I was contacted it her physical condition deteriorated. My plan was to send her to the hospital if there were signs of problems. I received no further calls and apparently Ms. Slater finally settled down. I completely disagree with any conclusion that Ms. Slater's condition required evaluation at the hospital or that she was in any significant danger from her sickle cell SC disease at the time of her incarceration. I feel confident that the evaluation provided by the nurse on duty was adequate and accurate in giving me the information I need to make a decision regarding Ms. Slater's treatment. The contemporaneous nursing documentation could have been more substantial but subsequent documentation explains to my satisfaction what transpired.

The next morning upon her release Ms. Slater stated she had no transportation and asked jail staff to call an ambulance to give her a ride. She was taken to Genesis Medical Center where her chief complaint was that she was assaulted by correctional staff and injured as a result. There was no mention of a sickle cell crisis and she received no treatment for that complaint. X-rays were taken of her wrist and ribs with not bony injury identified and she was discharged from the emergency department after a brief stay with the diagnosis of soft tissue contusions.

My recommendations regarding this matter are to continue to pursue 24/7 nursing staff at the jail in order to provide round the clock nursing care and evaluation and to make further efforts to ensure that full and complete contemporaneous documentation of nursing evaluations and care are recorded. Unfortunately we have to routinely deal with belligerent and agitated inmates at the jail who in some cases also suffer from serious medical problems. It will always be a challenge to provide a safe and secure environment for them and to ensure they receive timely and proper medical care. We stand dedicated to maintaining that standard.

Sincerely,

Scott C. Ludwig MD FACEP

Ombudsman's Comments to Reply

Scott County's reply to this report is disappointing. In his letter on behalf of the Scott County Jail, Assistant County Attorney Theodore Priester attempts to put the focus on whether Ms. Slater actually had an acute crisis episode of her illness by raising an "intoxication" claim, rather than face up to the facts that in its application of the restraint chair, the Scott County Jail failed to follow its own policy and the manufacturer's recommendations. Restraint chairs can be effective tools for custodial authorities to use to control unruly persons, but their application must be humane, legal, medically appropriate, and within policies and guidelines. It is of significant concern to the Ombudsman when an authority like the Scott County Jail does not appear to accept its responsibilities in this regard. [Note: The Ombudsman has concerns about inappropriate use of restraint chairs and restraint boards and is currently investigating allegations of misapplication of restraint equipment by other entities.]

Scott County objects to the report's failure to mention Ms. Slater had intoxicated agitation as opposed to experiencing sickle cell crisis. The Ombudsman did not include this information in the report because it assumes facts not documented nor recorded by the Scott County Jail correctional or medical staff. There is no reference to Ms. Slater being intoxicated in any of the following documents: the jail's morning report, application of protective restraints for inmate Slater, incident reports, commitment summary report, prisoner intake sheet, support service memo, Ms. Slater's correctional health medical file, and the one (1) hour DVD labeled "booking chairing," dated January 26.

Assistant County Attorney Priester and Scott C. Ludwig, M.D., also asserted that Ms. Slater's reported medical crisis was not credible because after she was released from custody and went to Genesis Medical Center (Genesis), "there was not mention of a Sickle Cell Crisis and she received no treatment for that complaint."

Confidential emergency medical records from Genesis, authorized for release by Ms. Slater and reviewed by the Ombudsman, dated 1/26/2007, confirm her complaint to be Sickle Cell Crisis. Ms. Slater also reported to the emergency room medical staff that "she was put on jail last night and reportedly she went into a sickle cell that she had pain all over. She reportedly curled herself because og [*sic*] the pain and a jailer reportedly tried to straighten position by putting his knees on her thighs while she was handcuffed whith [*sic*] her hands behind her back".

Finally, Scott County suggests that the Ombudsman gave undue weight to Ms. Slater's "recollected" allegations. The Ombudsman summarized Ms. Slater's complaints but gave little mention or reliance to Ms. Slater's recollected testimony. The bulk of the information and evidence gathered and relied upon was from the jail's own records (referenced above). The Ombudsman also considered general medical information on Sickle Cell Disease and information about the restraint chair, including the operational instructions, from the chair manufacturer, AEDEC International, Inc.