

Evaluation of 3rd Shift Cell Extraction of November 9, 1998

by Patrick T. Maher, D.Crim

The following review is based solely upon the videotape of the above referenced series of cell extractions and a brief discussion with Mr. John Hagar, Esq. Without reviewing policies and training lesson plans, as well as being able to discuss certain issues with staff, the following comments are limited in scope.

My overall opinion is that there is lack of tactical procedure as evidenced by the following:

- Staff do not have any type of protective gear, and gas masks were obtained for only some of the staff to protect them from the gas.
- In the first extraction, it appears as though decisions as to tactical operations were made just before the decision to effect an entry was made.
- There does not appear to have been any procedure to allow for a cool down period between the orders to submit to handcuffing and the use of the chemical agent.
- While there were demands for the inmates to submit to restraints, there was no warning prior to the use of the chemical agent. Such warning may have been effective in obtaining submission prior to the need to use the agent if inmates knew that non-compliance was going to result in the application of a chemical agent.
- After the dispersal of the chemical agent, insufficient time was given in most cases for the chemical agent to take effect.
- It is not entirely clear, but it appears that the chemical agent being used was teargas (CN). Tear gas is not the best agent of choice in a housing unit and it is to be used, then all staff should have proper breathing apparatus. If alternatives, in particular oleoresin capsicum, is not a standard part of the arsenal, than consideration to the use of such alternatives should be given. If it is, then there should be an evaluation of why it was not used.
- The agent was administered in an excessive quantity in the first extraction. The agent was dispersed for nearly a steady 8 seconds with only a brief pause.

In addition to the general issues that applied to some or all of the extractions, the third extraction bears certain additional comment:

- Some unidentified person is heard to yell "Throw that stinger on his ass.. This is repeated. Such type of comments are not only indicative of a lack of tactical preparation, but is also indicative of undisciplined personnel.
- A pole appears to be shoved forcefully through the food port. I am not sure of the purpose, but it is tactically unsound and potentially dangerous to inmates and staff.
- A broom is also shoved through the food port several times, and someone can be heard three times to say "Hit him again. This is indicative of both poor tactics and undisciplined personnel.
- A non-correctional officer (wearing a red plaid shirt) is in the middle of correctional staff and finally enters the cell. He may have used a chemical agent on an inmate. If he did so, he may have committed a criminal assault since it does not appear that an agent was necessary at that point in time. Also, depending on the nature of the agent and state

statutes, he may not be authorized to possess or use the agent.

In summary, this incident was tactically incorrect and either policies and procedures to direct staff in these types of incidents are inadequate or there were violations of those policies and procedures. In addition, the individual who entered into the cell extraction who is not a correctional officer may be criminally liable for his actions.

A handwritten signature in black ink, appearing to read "Patrick T. Maher", written in a cursive style. The signature is positioned above a horizontal line.

Patrick T. Maher, D. Crim.

January 11, 1999