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Seth Kershner

Via email to 

Re: Use of Force Incidents Involving OC Spray

Dear Mr. Kershner:

I couldn't let go unanswered your invitation to comment on your statement that "those outside of the correctional world may be left scratching their heads" about "heavily restrained inmate(s) who **are allowed** to hit themselves in the head over and over." The comments that follow are not those of Sheriff Cahillane: they are my own. But my observations and perspectives are born of a good deal of experience in the trenches of use of force litigation in both federal and state courts. For some 35 years I have had the honor to represent the men and women who wear the uniform of the Hampshire Sherriff's Office. Theirs is a thankless and dangerous job. Every day they put on that uniform and step inside the wire they may be subjected to verbal abuse, threats or violence. Indeed, their loved ones have no guarantees that they will come home in one piece. But under these harsh circumstances officers have acted, with rare exception, in a manner that does credit to the uniforms that they wear. They have discharged their duties with professionalism, courage and restraint to protect inmates, staff and the public from harm. The incidents which occurred on February 8 and September 11, 2018 are no exception.

I preface my comments by taking issue your underlying premise that the officers "allowed (inmates) to hit themselves in the head over and over." Being a writer I can only assume that you use words with knowledge of their meaning and with the intent to communicate a message. As I am sure you know the verb "allow" means to permit someone to do something. So your question really is this: why did officers permit inmates to repeatedly slam their heads against walls. This question is offensive, disingenuous and unsupported by the reports that you have reviewed. My concerns are heightened by your selection of the two incidents involving use of force out of the many that you examined. Why the focus on these two incidents? Is it because they were the only two in which inmates succeeded in banging their heads? Notwithstanding the curious phrasing of your question and suspect selection of incidents it is my hope that you are concerned with objective investigative reporting rather than the perpetuation of a preordained narrative in the furtherance of a political or philosophical agenda? I do know that our officers acted with professionalism and restraint to control violent inmates only after repeated efforts to de-escalate

failed. They acted because they were required to act. And as a direct result of their swift intervention they were able to prevent greater self-inflicted harm. They acted in this manner not just in these two incidents that you have selected for examination but in all of cases where they were required to use force.

INCIDENT OF FEBRUARY 8, 2018

On February 8, 2018 officers responded to an inmate who was “attempting to tear his stool of his institutional desk and... slamming it against the wall causing a disturbance...” “This officer informed (the inmate) that he needed to stop trying to destroy state property and causing a disturbance in the unit, to which he replied “fuck you come spray me.” (The inmate) continued these actions after attempting to verbally resolve the situation officers then approached the inmate’s cell “and instructed that (Inmate _____) to lie down in the center of his cell, place his hands behind his back and cross his legs...” When the inmate initially complied the officers entered the cell and instructed the inmate to “not move or OC spray would be used.” The inmate ignored these instructions “lifted up his head to the left and made a motion attempting to get off the ground”. OC spray was then deployed. The inmate was cuffed, removed from his cell and afforded the opportunity to shower. While the inmate remained uncooperative while he was escorted by two officers in handcuffs to the sally port, he did not strike his head. He was then placed in a holding cell to be afforded the opportunity to cool down. “(Inmate _____) then was placed in cell #1 of the sally port to be given a chance to calm down before taking a shower.” It was only after the inmate gave his assurances to officers that he would cooperate with the showering process that he was escorted to the shower. The inmate “then agreed to take a shower and cooperate with staff present.” He was taken to the shower without incident. The officers placed their hands on the inmate who was still handcuffed to stabilize him and prevent an accidental fall. During the process of showering the agent off his face and eyes the inmate suddenly and without warning banged his head several times against the side wall. This came as a surprise to the officers as the inmate had been allowed to cool down in a cell and promised to cooperate in the showering process. The inmate’s movements of his head were rapid, repetitive and violent. It took no more than a second or two before the officers were able to prevent further self-inflicted harm.

On February 26, 2019 I personally interviewed both officers involved in this incident and inspected the shower where the inmate sustained a self-inflicted small cut to his forehead. Based upon this investigation I can confirm the following:

1. The officers were forced to operate within very cramped quarters of the shower;
2. The shower in question is exceedingly narrow measuring 2’8” in width;
3. While inmate was showering his head was approximately a 1 foot away from the wall;
4. The head movements of the inmate were sudden, repetitive and violent;
5. The head banging took no more than a second or two;
6. The officers intervened to prevent further injuries within a matter of seconds;
7. Officers maintained a grip on the inmate primarily to prevent an accidental fall as opposed to a sudden and violent act of self-harm;

8. The actions of the inmate were a surprise to the officers who had reason to believe they were then dealing with an inmate who had cooled off and indeed promised to cooperate in the showering process.
9. The inmate “sustained a small laceration to his forehead during the after- care process.”
10. The small cut did not require stitching or any further medical care.

INCIDENT OF SEPTEMBER 11, 2018

At about 8:20 on the night of September 11, 2018 Sgt. _____ reported to the SMU in response to an inmate disturbance. “Inmate _____ had blocked the window to his cell door and refused to move the item away.” The inmate was ordered by officers to remove the blockage on two separate occasions. The inmate refused both orders. When the officers opened the cell door the inmate’s “mattress fell to the floor outside of the cell”: it was being used as to barricade the door. The inmate was “standing in the middle of his cell stating that he was, ‘sick of this bullshit, I want to get the fuck out here.’ Due to his aggressive behavior, refusal of orders, and blocking the window of his cell” the sergeant obtained permission from the shift supervisor to access OC spray and use it if necessary. When the officers informed the inmate that they were going to take the covering from the window and the mattress out of his cell that he was using as a barricade the inmate stated “ ‘Just come in the cell, you guys want to fuck with me, I’m going to fuck with you.’ Inmate _____ was ordered multiple times to turn and face the back of his cell and kneel down on the floor so wrist restraints could be applied. _____ refused all orders, and took an aggressive stance in his cell by blading his body and clenching his fists. (Inmate _____) was again ordered to turn and face the back of his cell in place his hands behind his back or OC would be introduced.” When the inmate still refused “one-half second burst of OC was introduced to his facial area. (Inmate _____) immediately ran to his cell door and attempt to get at the officers present.” The cell door was then closed to allow the OC to take effect. “After a few moments Inmate _____ began to comply with orders of the cell door could be opened and wrist restraints could be applied.” After the wrist restraints were applied firmly but not to block circulation the reporting officer took control of his right arm and wrist and escorted him out of the block down to the Administrative Segregation Unit. **“On the landing between the upper and lower stairs _____ made a sudden movement to his right and attempted to hit his head on the wall. He struck the wall twice with the right side of his head before I and another officer were able to guide him away from the wall to prevent injury.** Once in the ASU the officers offered the inmate the opportunity to shower. He stated, ‘no fuck that that’s just going to make it worse. I don’t want to shower.’ After the inmate was placed in a cell the officer informed him that he would remove the wrist restraints if he didn’t attempt to hurt himself or staff. (Inmate _____) replied, ‘I don’t fucking care. I am going to act up every single day until I get shipped out of here. This jail sucks. I want to leave.’” (*emphasis added*) The officers remained in the cell “and attempted to de-escalate the situation”. The officers finally were able to calm him down and removed the handcuffs. Pursuant to policy the inmate was examined by medical staff approximately a one half hour after the incident. The RN who performed this evaluation noted: “patient alert and oriented x3, denies shortness of

breath and easily breathes and speaks, color/movements/sensation noted to all extremities.” The RN noted in the comment section of her report: “patient denies any issues/injuries at this time and offers no complaints other than burning in his eyes.”

While being escorted down a set of stairs a violent and highly agitated inmate “made a sudden movement to his right” and managed to bang his head twice against the wall “before (officers) were able to guide him away from the wall to prevent injury.” The officers were able to intervene so quickly that the inmate sustained no injuries whatsoever. But you insist that this is a “head scratcher” to your readership. What in particular do you find so difficult to understand? Under these circumstances is it reasonable to assume that other officers could have done better?

You have noted “remarkable similarit(ies)” in both incidents: both “describe inmates subjected to cell extractions being placed in restraints and escorted to the sally port.” But these incidents share more than that in common. Both involve the following common factors: Inmates engaged in violent, destructive or disruptive conduct which required officer intervention: officers repeated attempts to de-escalate the situations fell on deaf ears; officers repeated orders for inmates to desist were met with refusals; officers requested and received from the Officer in Charge authorization to access and use if necessary OC spray; officers had to remove inmates from their cells; officers entered the cells and ordered inmates to assume a passive positions by kneeling or lying down, and placing their hands behind their backs so that handcuffs could be applied; in response inmates threated officers by words and/or sudden movements; officers warned that OC spray would be used if inmates did not comply; OC spray was used only after inmates refused to comply or made a sudden threatening movement; inmates were handcuffed in a manner which was tight but which did not impede circulation and taken to the sally port; inmates were afforded the opportunity to shower their faces; inmates managed to bang their heads against walls by sudden, violent movements in rapid succession; officers acted immediately to prevent any or further self-inflicted injuries; inmates was seen by medical staff for checkup immediately after the incident; the incidents were duly reported in accordance with Sherriff’s Office Policy and Procedures.

In all of the use of force incidents that you examined OC spray was used by officers to control threatening and violent inmates. Neither officers nor inmate sustained a single injury as a result of the use of this spray. The sole injury consisted of a small cut to an inmate’s forehead, an injury that was not caused directly by the use of OC spray but rather was a self-inflicted cut that occurred in the shower well after the spray was used, a cut so minor as to require no medical treatment of any kind. I ask you this: how many injuries would officers and inmates have sustained in the same scenarios absent use of this tool? How many injuries would officers and inmates have sustained if officers had to physically wrestle with and perhaps use batons on violent and noncompliant inmates in order to apply handcuffs? I would suggest to you that the likely toll of injuries would far eclipse a small self-inflicted cut to an inmate's forehead. OC spray is surely unpleasant to inmate and officers alike but it has proven to be an invaluable tool to our correctional officers enabling them to control violent inmates without causing lasting harm. The proof is in the pudding.

I would ask that you be fair in the presentation of my opinions and print this letter in its entirety as opposed to publishing out of context snippets.

Very truly yours,

Charles M. Maguire

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