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Whistle-blowing Doctor Shakes Up Nebraska DOC

By Dan Pens

under Harold Charke

I have a story to tell—about how a doctor can be used to kill patients. I will talk to anybody you want me to. I spent twelve years of my life, and these people push me around and turn me into something horrible. I am ashamed of what I have become, I really am... For the first time, I stood up and said, "I can't kill any more. Too much. These are human beings, for crying out loud."

— Dr. Faisal Ahmed interview with Nebraska Ombudsman's Office, September 15, 1998.

On September 10, 1998, Nebraska state prisoner Robert Zolper died of a heart attack—and needlessly so. According to Nebraska Department of Correctional Services (DOCS) doctor Faisal Ahmed, Zolper died because prison medical workers failed to perform cardiac life support. Equipment and supplies that could have been used to save Zolper's life were not even taken out of locked cabinets. By the time Dr. Ahmed was summoned to the scene, 20 minutes had elapsed and Zolper was by then essentially beyond saving.

Ahmed was suspended for his actions during Zolper's medical emergency. Supervisors criticized him for "speaking forcefully to medical staff" at the time of Zolper's heart attack. Eventually he was given disciplinary probation for "failing to maintain a positive working relationship" with other medical staff.

Zolper's death was the final straw, as far as Dr. Ahmed was concerned. Five days after the incident he went to the state Ombudsman's Office, an arm of the Legislature charged with investigating complaints against state agencies. The visit was described later in a report issued by the Ombudsman's Office.

"Dr. Ahmed's original visit with the Ombudsman's office led to an extensive series of interviews that covered a wide range of issues pertaining to the operation of the medical services system of the Department of Correctional Services," the report says. "Dr. Ahmed outlined and described numerous areas and cases in the functioning of that medical system, many of which were suggestive of a system that was indifferent, if not calloused, to the health, safety and lives of the patients whom the system was designed to serve... The

Ombudsman's Office quickly recognized the importance of the information Dr. Ahmed was providing in terms of the insights it offered into the workings of the Department's medical system."

Among the allegations raised by Dr. Ahmed were: inadequate diagnostic procedures for prisoners suffering chest pains; inadequate treatment of gastrointestinal bleeding; inadequate treatment of hepatitis C; failure to surgically repair hernias; inadequate use of anesthesia and pain medications; and inadequate equipment and supplies. Prompted by these allegations, the Ombudsman's Office launched a year-long investigation.

Dr. Ahmed is one of only two physicians employed by the state prison system. He is a resident alien from Pakistan who received his medical training in the U.S. and is authorized to remain in the country under a program that allows foreign doctors to continue to reside in the U.S. if they are working in an area (for example, prisons) where there is a special need for doctors.

Dr. Ahmed's supervisor is Dr. John Cherry, the Medical Director of the Nebraska prison system. The Ombudsman's Office made several attempts to interview Dr. Cherry, noting that he "would obviously be an important source of information relative to virtually all of the issues raised by Dr. Ahmed."

The initial interview was attempted June 17, 1999, but was quickly aborted when Dr. Cherry objected to some of the questions asked and stated that the interview was "more than [he] can handle emotionally." Further attempts at interviews were thwarted by Cherry and DOCS legal counsel.

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Whistle-blowing (cont.)

The Ombudsmen's Office "encountered a great deal of misdirection and difficulty in its repeated efforts to secure documentation... pertaining to Dr. Cherry's professional history," according to a report later issued by the Ombudsman's office. But the ombudsman was able to obtain a transcript of testimony Dr. Cherry offered under oath during an administrative hearing pertaining to allegations of retaliation against Dr. Ahmed. Excerpts from that testimony shed light on why Dr. Cherry may have been upset by questions pertaining to his background:

Q: You worked at Lincoln General [Hospital]. What did you do there?

A: Private practice general surgery.

Q: So you had your own private practice, but were - had hospital privileges at Lincoln General?

A: Yes.

Q: And at some point you stopped having privileges at Lincoln General, is that right?

A: Yes

Q: And why is it that you lost your privileges at Lincoln General?

A: There was concern over four patients of mine that died.

Q: All right. And the next job that you had after your private practice was at the Department of Corrections, right?

A: Correct.

Q: And when you lost your privileges at Lincoln General, did you cease your private practice?

A: Yes.

There were other instances of attempts by the DOC to interfere with the ombudsman's investigation. In response to a request for copies of nurses' telephone logs for the years 1994 through 1999, the Ombudsman's Office was advised that all the logs for 1994 through 1998 had been destroyed. When asked why those records had been destroyed (a "probable violation" of the State Records Management Act, according to the Ombudsman's Office), the DOC asserted that the logs in question were not official state records but the "personal property" of the nurses.

In November 1999 the Ombudsman's Office released its 114 page report (with several hundred pages of additional exhibits and attachments) describing a prison health care

system so inadequate that "in many instances it fails to meet the agency's fundamental obligation to provide for the medical needs of its inmate population."

"I think it can be said that this report is extremely critical of the Department of Correction's medical services to inmates," State Ombudsman Marshall Lux told the *Lincoln Journal Star* after the report's release. "The problems that are there are systemic, and they've been growing in recent years."

The report gave multiple examples of what it depicted as departmental bungling or indifference to ill prisoners (many of whose names are concealed in the report). Among the examples given is the following:

Mr. G: While sitting in a chair inside the state penitentiary hospital about 8 P.M. May 9, 1999, Mr. G slumped and began breathing heavily. A short time later, at age 40, he was pronounced dead at a Lincoln hospital.

According to the report, a nurse at the prison could have used a simplified defibrillator on Mr. G but had not been trained to use the machine, which had been in the prison infirmary for months, if not years. "This is analogous to having a lifeguard at the beach who has not yet been trained to swim," the report said.

Mr. L: Just before his 1998 incarceration at the state penitentiary, Mr. L was hit by a car and sustained serious injuries and required pins in his pelvis and a hand. Mr. L was in continual pain and asked the medical director, Dr. Cherry, to remove the pins.

In early April, a local orthopedist examined Mr. L and said the pelvic pins should be removed in three weeks. Mr. L told investigators he saw Dr. Cherry and a maintenance worker in a hallway examining an old hammer drill. Cherry approached Mr. L and told him he was going to use the drill to remove the pins. He also told the prisoner he would not be given anything for the pain because the procedure "would not take too long."

The prisoner refused to allow Cherry to remove the pins, the report indicated. Ombudsman Lux noted that the prisoner's story was corroborated by an April 29, 1998 physician's order signed by Cherry that stated: "Please obtain drill and wrench from maintenance."

"In summary," the report said, "we have found the agency's medical department to be understaffed, inadequately trained, poorly organized and badly led."

In every aspect, the prison health delivery system was found wanting, Lux told the *Journal Star*. But the key to the myriad concerns raised in the report, he continued, was the DOC's strong interest in reducing the cost of medical services. "It's all about money," he said.

The DOCS Planning Research and Accreditation Manager, Steve King, said the department has a medical budget of \$8 million that has increased by 4.25 percent on average for each of the past six years. However, the ombudsman's report notes that spending per prisoner declined 8 percent in the two years beginning July 1, 1996, compared with the average of the five previous years.

Harold Clarke, director of the DOCS, disputed the ombudsman report's overall findings. "Who are their experts?" he said. "My experts are the medical professionals that work with inmates. It's easy to sit back and be a quarterback after the fact. My position is, when an offender is ill, he will receive appropriate treatment."

Clarke disputed any suggestion that the DOC placed greater emphasis on saving money than on the health care of prisoners. "Money has not been a problem for us. The Legislature, the governor have been very generous," he told the *Journal Star*. "If we need extra money, we can get it."

Two weeks after the Ombudsman's Office released its report, the governor appointed an independent task force to evaluate the prison health care system. The task force, composed of medical professionals from across Nebraska and headed by retired Nebraska Supreme Court Chief Justice William Hastings, spent about six months reviewing records before releasing its findings.

One former nurse, Arlene Trainor, told the task force that she quit after being ostracized for questioning medical practices at the state penitentiary.

"The nurses were hateful and vindictive to the inmates," said Trainor, who worked as a registered nurse for the prison system from 1981 to 1995. "A mean-spiritedness started to permeate the department."

Former prisoner Larry Christenson told the task force that he nearly died because prison medical staff told him little about his diabetes.

"I committed a crime, but I don't remember the judge giving me a death sentence," he said. He testified that he only began to learn about his diabetes, and how to control it, after

he joined an education class run by a former DOC registered nurse.

That nurse, Donna Amedeo, told the task force how prison medical staff often exhibited contempt for their patients.

"I was told, 'Donna, don't you know who you're dealing with? These are robbers, murderers and thieves,'" she told the task force. "I was not very popular with the staff because I would encourage inmates to get medical treatment."

Cynthia Danielson testified that her fiancé broke a finger playing football at the Lincoln Correctional Center and endured weeks of pain before getting treatment. For three weeks, she said, all they gave him was an ice pack. The finger later required three surgeries to repair.

Virgil Jacobs, whose two sons are serving life sentences for murder, testified that prison medical staff view prisoners as less than human, sometimes with deadly consequences.

"I don't know why the state of Nebraska needs a death penalty when inmates are dying from lack of proper medical care faster than the state can execute them," he said.

DOC director Harold Clarke told the task force that Nebraska is one of just eight states to have had its entire prison system, including its health care, accredited by the American Correctional Association (ACA).

But State Senator Dwite A. Pedersen, vice chairman of the Legislature's Judiciary Committee, urged the task force to look closer at the ACA accreditation, noting that ACA auditors themselves are prison officials. He characterized the ACA audit as a "good old boy system."

"I am upset by the arrogance displayed by the Department [of Corrections]," Pedersen told the task force. "I hope and pray... your efforts will lead to real changes."

The Governor's task force issued its 36-page report June 27, 2000. The report concluded that the prison health care system had become so riddled with problems over the years that only sweeping reforms could fix the problem.

"The downward spiral accelerates until finally it becomes impossible to repair the system any longer, and major reforms in structure and approach become imperative," the report states. "We feel that the system of health care at the Department of Correctional Services has reached such a point."

Among the findings of the task force:

- The current prison medical system is focused more on administration than delivery of health services.
- The DOCS often lacks community-based procedures when attending to ill prisoners. On occasion, the result has been "disastrous, including the loss of life."
- Out-of-date drugs were stocked in some prison pharmacies.
- The department's "excessive concern" with prisoners who abuse pain medications has often resulted in prisoners with serious pain being denied medication.
- Low morale and indifference to patients by prison medical staff is a "problem" brought about, in part, by low pay and poor working conditions.
- The prison medical system "suffers an imbalance" that gives greater weight to cost control and security than quality health care.
- The condition of medical services raises concerns about the department's liability under the law.

Among the task force's recommendations for reforming the prison health care delivery system:

- Policies and practices for distributing pain medication must be consistent and humane.
- An independent body of medical professionals should be created to oversee the prison health care system.
- Standards of competency, performance and compliance with conventional medical protocols must be improved.
- The state should increase pay for prison medical staff in order to attract and retain competent personnel.
- The department needs to recruit a medical director who is willing and able to initiate change and who believes that "health care is a right, not a privilege."

Dr. Ahmed, whose allegations of substandard prison medical care led to the creation of the Governor's task force, filed a federal lawsuit against state prison officials in March 2000. Ahmed's suit alleges that officials suspended and contemplated firing him because he went outside the department with criticism of prison medical services.

"It's really centered around the First Amendment," Ahmed's lawyer, Eric B. Brown, told the *Journal Star*. "He should not be punished for speaking out on matters of public concern."

The suit contends that Ahmed was described as an exemplary employee until his superiors became aware in September 1998 that he reported his concerns to the Ombudsman's Office.

Ahmed was suspended three times and placed on disciplinary probation between September 1998 and November 1999. The lawsuit cites a highly critical December 14, 1998, memo from Dr. Cherry: "Dr. Ahmed has successfully alienated the entire nursing staff of the medical division and the physician assistants. I spend most of my time explaining his actions to patients, nurses, physician assistants, administrators, security and assistant ombudsman."

The Ombudsman's Office completed two separate retaliation investigations involving Dr. Ahmed and concluded in both that he was retaliated against. A separate hearing conducted by the State Personnel Board also concluded that Dr. Ahmed was a "whistleblower under the Government Effectiveness Act" and that he had been retaliated against by Dr. Cherry and other prison officials in violation of the Act.

Ahmed's federal lawsuit seeks unspecified compensatory and punitive damages to be determined in a jury trial, plus attorney fees.

Sources: *Lincoln Journal Star*, *Omaha World Herald*, Report of the Nebraska Ombudsman's Office

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Corcoran Show Trial Ends With Acquittals

by Dan Pens

The saga of Corcoran's infamous SHU shootings ended June 8, 2000 when a jury acquitted eight California prison guards of federal charges that they entertained themselves by staging gladiator-style fights among prisoners from rival gangs.

Between 1989 and 1994 seven unarmed prisoners were fatally shot by guards for fighting while confined in see tiny concrete exercise yards of Corcoran's Security Housing Unit (SHU). The killings were described to *PLN* by a Corcoran prisoner like "shooting fish in a barrel."

Federal charges against the eight Corcoran guards were brought when two of their colleagues blew the whistle to FBI officials after SHU prisoner Preston Tate was fatally shot on April 2, 1994.

The eight were indicted in February 1998 for conspiracy and for violating the civil rights of SHU prisoners by failing to keep them safe from harm. Combing through prison reports, the prosecutors alleged that 84 fights took place during the defendants' shift during one five and a half month period—300% more than in other Corcoran SHU units or on other shifts.

The prosecution focused on two of the fights. Corcoran Sgt. Truman Jennings and guards Timothy Dickerson, Michael Gibson and Raul Taveres were charged for staging a tag-team fight among three SHU prisoners on February 23, 1994.

Lt. Douglas Martin, Sgt. John Vaughn and guards Jerry Arvizu and Christopher Bethea were indicted for setting up the brawl that ended with Tate's death. It was a round from Bethea's 9mm rifle that struck Preston Tate in the head and killed him. Bethea said he was shooting to wound the other prisoner who was fighting with Tate.

SHU prisoner Anthony James, a key prosecution witness, testified that Bethea bragged moments before the fight broke out that it was "duck hunting season."

Preston Tate's death led to an \$825,000 settlement after his family filed a wrongful death suit in civil court. Media attention surrounding the Tate shooting prompted the California department of Corrections (CDC) to revise its policy on the use of deadly force. Besides the seven fatally shot, dozens of Corcoran SHU prisoners suffered non-fatal gunshot wounds between 1989 and 1994. Since the CDC revised its shooting policy not one Corcoran prisoner has been shot.

Defense lawyers successfully dployed the "Nuremberg defense," maintaining throughout the nine week trial that their clients did not set up any fights and were merely doing their jobs. They blamed the violence on an ill-conceived "integrated yard" policy, mandated by senior CDC officials, designed to force prisoners from rival gangs to exercise together.

Some observers believe the prosecution lost the case before the trial began when the seven man and five woman jury was impaneled. One male juror had applied to become a prison guard. The late husband of a female juror had been a Sergeant at a CDC prison. Another female juror worked for the Madera County jail system. And another is a Superior Court clerk.

Defense attorney Wayne Ordos told the *Sacramento Bee* that he was "ecstatic" with the makeup of the jury. Ordos, a former federal prosecutor, said that if he were prosecuting the case he would have eliminated several of the jurors with challenges. Assistant U.S. Attorney Jon Conklin, who headed up the four-member prosecution team, would not comment about the jury makeup.

The jury deliberated for less than six hours. As the verdicts were read by U.S. District Court Judge Anthony Ishii, some relatives of the guards broke into uncontrollable sobs. One defense attorney slammed his fist down on the table while another shouted, "All right!"

"They were able to figure out in five hours what the federal government couldn't figure out in six years," said, Christopher Bethea, the guard who fatally shot Preston Tate.

Juror Dorene Delt, an employee of the Madera County Jail, summed up the sentiments of her fellow jurors when she said the case lacked substance from the start.

"You've got to have some meat in the soup," Delt told the *San Francisco Chronicle*. "We could see from the beginning that there was no substance."

Another juror, Charlene Hefner, who is married to a retired California prison guard, said the government's case was "shallow."

Some of the defendants wept with relief and wiped tears from their eyes as the verdict was read. Later, they appeared giddy as they