

The Local Government LIABILITY BEAT



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USE OF RESTRAINT CHAIRS

By Jack Ryan, Attorney, Legal & Liability Risk Management Institute

A number of lawsuits leading to jury findings as well as settlements with respect to the use of restraint chairs in jails have occurred over the last 15 years. Many of these cases involve arguments that the chairs were used in a manner that were contrary to the manufacturer's warnings or that the subjects were not properly monitored during the restraint.

Manufacturers of these chairs include numerous warnings to include some of the following:¹

- Use of chair without reading and understanding instructions can lead to serious injury or death. (Anyone using chair should read manufacturer's instructions.)
- Never use restraint chair for punishment.
- Insure that restraints do not cut off circulation.
- Do not strap around head, neck, or chest.
- Caution, violent behavior may mask dangerous medical conditions. Detainees must be monitored continuously and provided medical treatment if needed.
- Caution: Handcuffs and leg irons must be removed as soon as possible to prevent injury.
- Caution: Belts and straps may need to be loosened to insure adequate blood flow.
- The Safety Restraint Chair must always be used in the upright position; leaving the chair on its side or back may cause injury or death to the detainee.
- Detainees should not be left in the Safety Restraint Chair for more than two hours. This time limit was established to allow for the detainee to calm

down or sober up, and if needed it allows for the handlers to seek medical or psychological help for the detainee. This two-hour time limit may be extended, but only under direct medical supervision (Doctor/Nurse). This extended time period must not exceed eight hours and range of motion exercises must be performed regularly. Therefore we do not recommend anyone be left in the Safety Restraint Chair for more than ten hours total.

It should be noted that like any other law enforcement tool, use of the restraint chair in a manner that is inconsistent with the manufacturer's warnings will be used by a person bringing a lawsuit to show that the actions of the officers and the jail were improper.

According to a 2016 article published in *Prison Legal News*:

Studies indicate that restraint chairs increase the risk of pulmonary embolism, or potentially fatal blood clots, especially when "physical trauma is followed by immobility." Force is often used to



place uncooperative or mentally ill prisoners in restraint chairs, where they are then unable to move. Further, the instructions provided by the companies that manufacture the chairs caution against restraining anyone for more than two hours, yet alone people in need of treatment for medical or mental health conditions, injuries, or drug or alcohol withdrawal.²

Prison Legal News cited a number of cases and listed the costs to the jails/health vendors, and even punitive damages to be paid by individual correctional officers in one of the cases.

Greer v. County of Beaufort

Year: 2011
Cite: U.S.D.C. (D.SC), Case No. 9:09-cv-03057-RMG
Level: District Court
Conclusion: Settlement
Damages: 284,500
Injunction Status: N/A

Norman v. Untig

Year: 2011
Cite: U.S.D.C. (D.NJ), Case No. 2:11-cv-00700-SDW-MCA
Conclusion: Settlement
Damages: 55,000
Injunction Status: N/A

Waddell v. York County Detention Center

Year: 2010
Cite: U.S.D.C. (D.SC), Case No. 0:08-cv-03552-RBH-PJG
Level: District Court
Conclusion: Settlement
Damages: 930,000
Injunction Status: N/A

Sutton v. Coweta County

Year: 2010
Cite: U.S.D.C. (N.D.Ga.), Case No. 3:10-cv-00011-JTC
Level: District Court
Conclusion: Settlement
Damages: 525,000
Injunction Status: N/A

Slater v. Scott County

Year: 2010
Cite: U.S.D.C. (D.Iowa), Case No. 3:07-cv-00125-JAJ-TJS
Level: District Court
Conclusion: Bench Verdict
Damages: 42,000
Injunction Status: N/A

It should be noted that some of the cited cases did not involve deaths.

The review of some court decisions is important with respect to the conduct of correctional officers being criticized.

In *Smith v. McNesby*,³ the United States District Court for the Northern District of Florida considered a case where a subject, Boggon, was brought to the Escambia County Jail based on minor charges. It was determined that Boggon was suffering from medical as well as mental health issues. Over several days, Boggon was placed into a restraint chair due to his behavior.

The court looked at each of multiple placements in the restraint chair, and while determining that some of these placements were appropriate, many were not.

In this case, the court must consider at what point the continued use of the restraint chair, in light of Boggon's obvious symptoms of severe mental illness and recurring episodes of violence and unruliness, constituted a malicious and sadistic use of force – because it is “physically barbarous” or involves “the imposition of pain totally without pen[o]logical justification” – rather than a good faith effort to maintain discipline. Of particular relevance to that inquiry in this case is whether efforts were made by the defendants “to temper the severity of a forceful response.”

Under Whitlock's supervision, Boggon was kept in the restraint chair from 7:00 p.m. on August 25th until 6:00 a.m. on August 26th, or approximately eleven hours. Additionally, B. Whitlock had to have been aware that by 6:00 a.m. on the 26th Boggon had been confined in the chair virtually nonstop since approximately 9:00 a.m. the previous day – a total of approximately twenty-one hours. Also, since August 23rd, which was just three days prior, Boggon had spent a total of approximately thirty-seven hours in the restraint chair. Boggon's mental state and uncontrolled behavior were well documented in his records. During the time he oversaw Boggon's confinement in the chair on August 26th, B. Whitlock certainly was aware that Boggon appeared to be suffering from mental illness and that his fractious conduct had resulted in his being placed in the restraint chair repeatedly. B. Whitlock also had to have known that, while use of the chair temporarily prevented Boggon from harming himself or others, his agitated and sometimes violent behavior persisted unabated and uncontrolled. In this case, an obviously mentally disturbed Boggon was restrained some twenty-one hours with B. Whitlock's knowledge or under his direct supervision. The court notes that there is nothing in the record to indicate that during that time B. Whitlock made any effort

“to temper the severity” of this extended use of force, such as attempting to release Boggon from the chair rather than allowing him to remain continuously confined. Nor did B. Whitlock seek out any alternative control techniques during the majority of the time he supervised Boggon’s restraint in the chair: it was not until after 6:30 a.m. on August 26th that L. Whitlock sought and received authorization to administer the agitation protocol. The court concludes that a jury question exists with respect to whether, under these specific circumstances, B. Whitlock’s allowing the prolonged use of the restraint chair constituted a good faith effort to maintain discipline or whether it constituted a malicious and sadistic use of force because it was “physically barbarous” or involved “the imposition of pain totally without pen[o]logical justification.” See *Evans*, 908 F.2d at 803. Because a jury should determine whether B. Whitlock violated Boggon’s right to be free of the use of excessive force by confining him in the restraint chair on August 25th-26, 2005, the motion for summary judgment on Count IV is denied.

Thus, the length of time, proper monitoring by medical, and the subject’s condition can impact the propriety of the use of the restraint chair and may impact liability.

In *Bell v. Kane County*, Illinois, the Federal District Court for the Northern District of Illinois considered

the circumstances of the restraint of Bell.⁴ The court detailed the facts as follows:

Bell was an inmate in the Kane County Jail from November 3, 2011 to July 10, 2012. He suffers from asthma. During the relevant time period, Ducay served as a Sergeant of the Housing Unit Dayshift and Campbell was a corrections officer in the Jail. Jail policy dictates that inmates are assigned a colored status: green, yellow, or red, which corresponds to his or her level of privileges. On November 23, 2011, the Jail’s policy required the removal of mattresses from inmates on red status during daytime hours and mattresses were to be returned in the evening. That day, Bell was on red status.

At around 7 a.m. on November 23, 2011, Ducay and Campbell reported to Bell’s cell in response to a report that Bell was not complying with orders. When they entered Bell’s cell, Ducay and Campbell observed that Bell was alone and wearing a towel over his face because he knew that he could be sprayed with Oleoresin Capsicum spray (commonly called pepper spray). Ducay saw that Bell was holding a pencil and the parties dispute whether Bell was also holding his property bag. Ducay learned from Campbell and other corrections officers that Bell had been ordered to give up the mattress and Bell had been initially resistant to complying. (Bell dropped the pencil as ordered. Ducay asked Bell to cuff up and when Bell resisted, Ducay warned him that he would be sprayed with O.C. spray. Bell placed his hands through the feed slot in the cell door and officers handcuffed him. Campbell along with Officers Holloway and Jackson escorted Bell out of his cell.

Ducay ordered that Bell be placed in a restraint chair, although the parties dispute whether Bell was noncompliant up to this point. Bell did not want to go into the restraint chair and began resisting. Campbell, Ducay, and the other officers forced Bell into the restraint chair, at which time Campbell was on top of Bell and Bell struck him in the torso. The parties dispute whether Campbell fell on top of Bell to keep him from striking others. The parties additionally dispute whether Bell threw elbow and knee strikes before he was in the chair, was grasping something above his head, defending himself in response to the officers’ actions, and if his hands were going toward an officer’s face. Based on Ducay’s order, Officer Robinson used O.C.



spray to subdue Bell; the parties dispute whether O.C. spray was necessary to subdue Bell. After Robinson sprayed Bell, the officers secured Bell in the restraint chair. Bell asked for an inhaler, but the parties disagree about whether he asked for it multiple times. While the officers tried to secure him and after he was secured in the restraint chair, Bell threatened the officers with violence. Robinson placed a spit shield on Bell's face according to Ducay's order. A spit shield allows air to come in and out and traps spit projected by the person wearing it. Ducay claims that after Bell was secured in the restraint chair he saw a pencil between Bell's legs, but Bell argues that he dropped all items including the pencil before exiting his cell.

Ducay then called medical personnel to the scene to tend to Bell. Bell spoke with the medical personnel while in the restraint chair. An officer stated "inhaler" while medical staff was present. The officers placed Bell in the restraint chair in his cell. Officer Bommelman videotaped the officers' interaction with Bell up to this point. Campbell and Ducay had no further interactions with Bell that day. The parties dispute whether the O.C. spray was removed from Bell's face by towels five minutes after he was placed back in his cell and also whether it was removed at all. Campbell and Ducay have no medical training, but the parties dispute whether they knew that Bell had asthma. They disagree about whether Ducay knew that Bell had requested his inhaler during the altercation. The parties further dispute whether Campbell and Ducay observed that Bell was having difficulty breathing or an asthma attack. Bell had previously had an asthma attack while at the Jail, but the parties disagree as to whether corrections officers or medical staff had provided him an inhaler during his asthma attacks before. In his prior asthma attacks, Bell claims that he could only talk in short spans while Campbell and Ducay assert that he could not yell or talk. Bell was criminally charged and convicted for battering Campbell and assaulting Ducay during the November 23, 2011 altercation.

Campbell and Ducay contend that Jackson checked on Bell at approximately 8:20 a.m. and observed that he was not having any medical issues. They also claim that at 9:33 a.m., Jackson put Bell back in the restraint chair after Bell had unsecured the restraints. (Each corrections officer in the Jail has a chip that they carry on

a fob, which the officers call a "pipe." When an officer places the pipe on an area of the door an electronic record of when the officer entered the door and which officer entered is created. If an officer does not connect his personal chip to his pipe, the pipe records will reflect that someone entered the cell but will not state who.) Pl. Resp. C. ¶47; Pl According to Campbell and Ducay, the pipe record indicates that Officer Mann checked Bell's cell at 7:12 a.m., 7:24 a.m., 7:37 a.m., 8:04 a.m., 8:19 a.m., 8:29 a.m., 8:56 a.m., 9:08 a.m., 9:21 a.m., 9:34 a.m., and 9:51 a.m. At approximately 9:54 a.m. Bell was moved to another cell. Campbell and Ducay claim that the pipe record reports that Officer Mann check Bell in the second cell at 9:49 a.m. Bell was subsequently moved again to a cell in the Intake/Release area. Campbell and Ducay cite to the pipe records in asserting that an unknown officer checked the cell in the Intake/Release area where Bell was located at 10:50 a.m., 11:19 a.m., 11:47 a.m., 12:15 a.m., 12:43 a.m., 1:12 p.m., 1:40 p.m., 2:08 p.m., 2:36 p.m., 3:05 p.m., 3:33 p.m., 4:01 p.m., 4:27 p.m., 5:03 p.m., 5:31 p.m., 5:59 p.m., 6:28 p.m., 6:56 p.m., 7:24 p.m., 7:51 p.m., 8:20 p.m., 8:48 p.m., and 9:16 p.m.

At approximately 5:15 p.m., Sergeants Aguirre, Huston, and Montavon removed Bell from the restraint chair. (At that time, Bell was no longer a safety threat.) The parties dispute whether Aguirre had reason to contact the medical department when he removed Bell from the restraint chair. According to medical records, medical staff checked Bell while he was in the restraint chair at 7:00 a.m., 8:30 a.m., 9:30 a.m., 10:30 a.m., 11:30 a.m., 1:05 p.m., 2:05 p.m., 3:10 p.m., 4:10 p.m., and 5:00 p.m.

As with many of the restraint chair cases there are multiple issues raised in this case that include a pre-existing medical condition (asthma), some use of force (pepper-spray), and a spit-mask.

In reviewing the court denied the officers summary judgment and qualified immunity on their use of force, particularly using the pepper-spray and other force to get Bell into the restraint chair. The court noted that while the officers argued Bell was a threat, Bell indicated that he was compliant. When there is a disagreement of fact such as this, the court must deny summary judgment and qualified immunity and let a jury decide the fact dispute unless there is objective evidence, such as video, that proves that the inmate is not being truthful.

The court then turned to Bell's second claim which alleged that the officers were deliberately indifferent to his serious medical needs (having several asthma attacks) while he was restrained in the chair with a spit-mask on.

The court noted:

In this case, it is undisputed that Bell has asthma and that during the incident officers used force to secure Bell in the restraint chair when he resisted, sprayed him with O.C. spray, and placed a spit shield over his face. Furthermore, the parties agree that Bell said "inhaler" at least once after he was restrained and Bell had experienced asthma attacks before while housed in the Jail.

The court pointed out that one of the officers had indicated that Bell was decontaminated with respect to the pepper-spray within 10 minutes, while the other officer indicated that decontamination did not occur for two and a half hours.

Notwithstanding the subsequent checks by medical staff and other correction officers, the court found that there was sufficient evidence for a jury to find, based on the disputed facts, that the two correctional officers, Ducay and Campbell had been deliberately indifferent to Bell's serious medical needs.

Notable Points:

- **Always use restraint chair in a manner that is consistent with the manufacturer's instructions/manual.**
- **Get medical involved when a determination is made to use the restraint chair**

- **Medical monitoring of vital signs of subject.**
- **Constant monitoring of the individual restrained.**
- **Restraint should never go beyond 2 hours without medical approval and must not exceed maximum manufacturer warnings (see above 10 hours for safety restraint chair).**
- **Understand that restraint may mask medical and mental health issues, thus the need for constant monitoring and medical involvement.**
- **Never use restraint chair as punishment.**

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

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Endnotes

- i. See e.g. "Safety Restraint Chair Instructions," Safety Restraint Chair, Inc.
- ii. "Restraint Chair Deaths, Abuses Prompt Questions, Criticisms, and Lawsuits," *Prison Legal News*, October 14, 2016.
- iii. *Smith v. McNesby*, 2007 U.S. Dist. LEXIS 83520 * (N.D. Fla. Sept. 28, 2007).
- iv. *Bell v. Kane County Jail*, 2016 U.S. Dist. LEXIS 17750 * (N.D. Ill. Feb. 12, 2016).

ATTACKS AGAINST LAW ENFORCEMENT ON THE RISE IN 2016 – DO NOT BECOME COMPLACENT

By LGRMS Staff Members Julie Hyer, Natalie Sellers, and Dennis Watts

In 2016 we have witnessed an alarming increase in attacks on law enforcement. According to the National Law Enforcement Officers Memorial page, attacks on police officers have increased over 160 percent this year. The rise in such attacks is alarming and demonstrates the need for change in not only our training, but in the way law enforcement does its job. This year's politically-charged election and increase in extreme rhetoric by many makes it imperative that law enforcement maintains situational awareness.

There are two types of attacks: traditional and spontaneous. The traditional ambush is premeditated, with intent to set the officer(s) up for an attack. In the

spontaneous ambush, there is little if any planning; the assailant decides on the spur of the moment to attack without any provocation and it will usually take the officer(s) by surprise.

The increase in such attacks has made law enforcement reexamine the topic of situational awareness. We were all taught and are familiar with the term. We encourage everyone that works in law enforcement to not only be familiar with your surroundings, but we must also begin to approach all calls for duty from the perspective that people don't always have our best interests at heart.

The monotony of thousands of calls being uneventful sets us up for a false sense of security that they will all

be without incident. This thought process can mean the difference between life and death. We can be lulled into a smugness that, because we drove ninety miles an hour to get to a call and nothing happened, we can drive that way to every call; because we got in a fight and conquered our opponent, we can conquer any opponent that comes our way. There is no mastery in law enforcement, because every day is different. Every call is different. We should not ignore the feeling that something bad is going to happen; trust your gut! As of today, something bad has happened 121 times this year: 121 is the number of your fellow officers who have lost their lives in line-of-duty deaths in 2016.

There are two great concepts that all law enforcement officers and their agencies should take to heart. The first has been around a while, “The Below 100” program. The goal of this program is to reduce line-of-duty deaths, nationwide, to below 100. Following the five tenets of Below 100 will also reduce line-of-duty injuries. An officer stands a better chance of survival by following the five Below 100 tenets.

- Wear Your Vest.
- Wear Your Belt.
- Watch Your Speed.
- WIN – What’s Important Now
- Remember: Complacency Kills!

Do not become complacent: Stay Aware and Stay Alive! If you do not have a Below 100 trainer in your agency, contact LGRMS and we will have one of our instructors contact you.

The second concept is from a book called *Left of Bang*. This book, written by former Marine officers Jason Riley and Patrick Van Horne (2014), is based on lessons learned from our armed forces’ decades-long war in Afghanistan and Iraq. The focus of the book is how to read human terrain through an increased understanding of human behavior across all cultural lines. The goal is to stop threats before they erupt.

The book’s title – *Left of Bang* – is a reference to the timeline of a deadly force incident. “Bang” is when shots are fired, the attack begins, or damage is done. On the

timeline moving left to right, “right of bang” is what happens after the fight begins. Worst case is you become a casualty. To get left of bang on the timeline, you need to be alert, ready, prepared, and able to respond before things go wrong. The authors maintain that by recognizing certain revealing characteristics, you can detect potential attackers in time to avoid or upset their violent intentions.

The authors have identified six domains that communicate current emotions and possibly future intentions.

- Kinesics: people’s conscious and subconscious body language.
- Biometrics: human beings’ uncontrollable and automatic biological responses to stress.
- Proxemics: the way subjects use the space around them and interact with surrounding people.
- Geographics: reading familiar and unfamiliar patterns of behavior within a given environment.
- Iconography: the expression of beliefs and affiliations through symbols.
- Atmospheric: the collective attitudes, moods, and behaviors present in a given situation or place.

The authors concede that perfect decisions are not always possible, but studies have shown that people can make very accurate intuitive judgements with just a little input.

The last part of the book is devoted to how you put it all together to make decisions and take action so that Bang never occurs.

For professional development, consider studying the book *Left of Bang*. If your agency has not had the Below 100 training, please consider adding it to your training program this coming year. Neither can hurt; both can only enhance your ability to perform your law enforcement mission and duty. To close, a quote from the 1980s iconic police show *Hill Street Blues*, given by SGT Phil Esterhaus each episode...

“Hey, let’s be careful out there.”





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This Month:

ATTACKS ON LAW ENFORCEMENT
RESTRAINT CHAIRS



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