

Neither Fair Nor Impartial

An Investigation into the Iowa Department of Corrections'
Sanctions Against an Inmate



Iowa Office of Ombudsman

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TABLE OF CONTENTS

PREFACE.....	iii
OVERVIEW OF OMBUDSMAN’S INVESTIGATION	1
Complaint.....	1
Investigation.....	1
Challenge to Ombudsman’s Authority.....	2
Background on Inmate Discipline.....	3
FINDINGS OF FACT.....	6
The Incident.....	6
The Investigation.....	10
The Alleged Violations	11
The Hearing.....	12
The Appeal	13
Ombudsman’s Preliminary Review	14
A More Expansive Review	15
A New Wrinkle	16
The Revised Decision.....	17
A Request for Reconsideration	18
A New Revelation.....	18
DOC Explains Its Actions.....	21
The Supreme Court Weighs In.....	28
Policy Revisions Since the Linderman Investigation.....	28
ANALYSIS and CONCLUSIONS	29
The Earned Time Sanction: Which Scenario to Believe?.....	29
The Disciplinary Detention Sanction: Did the Punishment Fit the Act?	31
Are DOC’s Administrative Law Judges Truly Independent?.....	32
Do DOC Inmates Receive Adequate Notice of Rule Violations?.....	33
What Remedies have the Courts Ordered in Mishandled Disciplinary Cases?	36
Conclusions	37
RECOMMENDATIONS	38
APPENDIX A.....	40

APPENDIX B	41
APPENDIX C	42
APPENDIX D.....	44
APPENDIX E	45
DOC DIRECTOR JOHN BALDWIN’S REPLY.....	47
FORMER DOC ALJ DEB EDWARDS’ REPLY	55
OMBUDSMAN COMMENT.....	57

PREFACE

The Office of Ombudsman (Ombudsman) is an independent and impartial agency in the legislative branch of Iowa state government which investigates complaints against most Iowa state and local government agencies. The governor, legislators, and judges and their staffs fall outside the Ombudsman's jurisdiction. The Ombudsman's powers and duties are defined in Iowa Code chapter 2C.

The Ombudsman can investigate to determine whether an agency's action is unlawful, contrary to policy, unreasonable, unfair, oppressive, or otherwise objectionable. The Ombudsman may make recommendations to the agency and other appropriate officials to correct a problem or to improve government policies, practices, or procedures. If the Ombudsman determines that a public official has acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman may refer the matter to the appropriate authorities.

If the Ombudsman decides to publish a report of the investigative findings, conclusions, and recommendations, and the report is critical of the agency, the agency is given an opportunity to reply to the report, and the unedited reply is attached to the report.

OVERVIEW OF OMBUDSMAN'S INVESTIGATION

Complaint

On May 9, 2008, we received a letter of complaint from Randy Linderman, an inmate at Fort Dodge Correctional Facility (FDCF). Linderman's primary allegation was that he was disciplined too harshly after a confrontation with an FDCF correctional officer (CO). Twenty-two days after Linderman engaged in a heated, close-quarters argument with CO David Diemer, Administrative Law Judge (ALJ) Deborah Edwards held a hearing and found Linderman guilty of breaking three prison rules, including assault. Edwards sanctioned Linderman to 180 days of disciplinary detention and imposed a loss of 180 days of earned time. In his letter to us, Linderman denied assaulting CO Diemer and argued that these sanctions were far in excess of the norm in Iowa Department of Corrections' (DOC) prisons.

After we made initial inquiries with ALJ Edwards, reviewed pertinent records, and discussed the matter with FDCF Warden Cornell Smith and DOC General Counsel Michael Savala, we issued a notice of investigation to DOC Director John Baldwin on August 29, 2008. Linderman alleged that Edwards' decision in the disciplinary case was unreasonable and unfair. We also later considered whether Edwards and Smith, in his review of Linderman's appeal, had acted contrary to law or DOC policy.

Investigation

To investigate Linderman's complaint, we reviewed all of the prison records pertaining to his specific disciplinary case, which included a report, an investigation summary, witness statements, video recordings, an initial hearing decision, a revised hearing decision, Linderman's appeal, and an appeal decision.

In order to compare the sanctions in Linderman's case to similar cases, we requested and received a report from DOC outlining every disciplinary case over a three-year period in three medium security prisons where an inmate was found guilty of assaulting a staff member. We then reviewed the particulars of each of those disciplinary cases.

For further comparison, we also reviewed select disciplinary hearing decisions where prison ALJs decided, based on the specific facts of the cases, to impose greater sanctions against inmates than the norm.

We reviewed DOC policies pertaining to discipline. We also reviewed state and federal case law dealing with the proper disposition of disciplinary matters, and we interviewed a legal expert in the corrections field.

We reviewed emails among FDCF and DOC officials dealing with the Linderman case.

Lastly, we interviewed Warden Smith, DOC General Counsel Michael Savala, and ALJ Edwards under oath.

Challenge to Ombudsman's Authority

Early in our investigation, we had two fairly short telephone interviews and an email exchange with ALJ Edwards. Later, we received information from Warden Smith that contradicted information we had received from Edwards. To work through the contradictions, on August 29, 2008, we requested sworn interviews of Edwards and Smith. We initially received a favorable response from Director Baldwin. But on September 26, 2008, DOC's legal representative, Assistant Iowa Attorney General William Hill, informed us that DOC believed the Ombudsman lacked the authority to conduct a sworn interview of ALJ Edwards.

We attempted to complete our investigation without ALJ Edwards' testimony and proceeded with a sworn interview of Warden Smith, and later, DOC General Counsel Michael Savala. After Smith and Savala were unable to answer key questions in the case, we again requested a sworn interview with Edwards on April 10, 2009. After more discussion, Baldwin told us on August 19, 2009, that he would allow us to interview Edwards, but not under oath. Director Baldwin accused our investigator of being "confrontational" and "intimidating" in his interviews of Smith and Savala, and said he would not allow the same to occur with Edwards. We disagreed with Baldwin's characterizations and insisted that the interview be conducted under oath. We were unable to agree on terms with DOC.

We responded by issuing a subpoena for Edwards' sworn testimony on February 5, 2010, and again on May 17, 2010. After Hill stated his intention to object to the subpoena and instruct Edwards not to submit to the sworn interview, we filed a lawsuit against DOC on October 22, 2010, to ask a judge to enforce the subpoena.

DOC argued that Edwards and its other ALJs who preside over inmate disciplinary hearings have a "mental-process" privilege that immunizes them from answering direct questions about the reasoning behind their decisions.¹ The Iowa Supreme Court had never before recognized the privilege for DOC's ALJs, who are not part of the judiciary and are not subject to the same laws and ethical standards as most state ALJs.

We argued that ALJs were not judges in the strict sense, and that Iowa Code § 2C.9(5) gives the Ombudsman the express authority to "compel *any person* to appear [and] give sworn testimony ... relevant to a matter under inquiry." (Emphasis added.) If we could not interview Edwards under oath, we argued, that would undermine our statutory mission as the state's watchdog to scrutinize and evaluate the administrative actions of Iowa's government agencies.

On August 3, 2011, Polk County District Court Judge Joel Novak sided with our arguments and ordered Edwards to answer our questions under oath. DOC appealed the decision to the Iowa Supreme Court.

On December 14, 2012, the Supreme Court issued its decision. For the first time, the Court recognized that ALJs like Edwards do enjoy a qualified mental-process privilege that generally

¹ The mental-process privilege is a longstanding common-law privilege for judges to protect their thought processes and uncommunicated motivations so they may reach decisions free from external or political pressures.

protects them from direct questioning. However, because our investigation showed “strong evidence” of “improper conduct” by Edwards and Warden Smith, and because we could not understand the basis of Edwards’ decision through other means, the Court ruled that we had overcome the privilege and could ask Edwards questions under oath.

After more than four years of delay, we interviewed Edwards on March 25, 2013, about her thought processes in Linderman’s disciplinary case.

Background on Inmate Discipline

Inmates of DOC’s nine prisons are governed by policies and institutional rule books that explain prison protocols, behavioral expectations, inmates’ rights and privileges, and grievance procedures. At the time of the writing of this report, there are 43 specific “major” rules that all DOC inmates are instructed not to violate. All of the major rules are defined and classified as “A,” “B,” “C,” or “D” violations, with “A” being the most serious. Some rules can be classified in multiple ways, depending on the particulars and the seriousness of the violation. How a violation is classified impacts the extent of sanctions that can be imposed on an inmate.

The two most punitive ways inmates are sanctioned in the Iowa prison system are through the imposition of disciplinary detention (DD) and the loss of earned time (ET). Disciplinary detention, also sometimes known as solitary confinement, is a form of housing that secludes an inmate in a cell by himself, with minimal time outside the cell and very limited privileges.² Earned time is a credit toward an inmate’s prison sentence that most inmates can accrue for good behavior. Iowa’s earned-time law gives these inmates 1.2 days of additional credit for every day they serve in prison.³ When an inmate loses earned time through a disciplinary hearing, it pushes the inmate’s discharge date further into the future and can extend their time in prison.

Lesser sanctions such as financial reimbursement, a temporary loss of privileges, or cell restrictions can also be levied as punishment in disciplinary hearings.

DOC’s current disciplinary policies arose from a series of important federal and state court decisions beginning in the mid-1970s. The most important of those decisions, *Wolff v. McDonnell*,⁴ held that inmates are entitled by the 14th Amendment to some due-process rights if officials seek to place the inmates in solitary confinement or extend their time in prison through disciplinary actions. The *Wolff* decision held that such inmates are entitled to: 1) receive a written notice of the alleged rule violations; 2) a hearing where they may present evidence; 3) an impartial decision-maker (such as an administrative law judge); and 4) a written explanation of the final judgment and sanction. Those core legal requirements are generally embodied in Iowa

² Inmates in DD are allowed outside their cell one hour a day, five times a week, for exercise. They also are allowed out three times a week to shower.

³ Earned time does not reduce the sentences of prisoners with life sentences, and has limited impact for inmates with mandatory minimum sentences. See Iowa Code § 903A.2.

⁴ 418 U.S. 539 (1974).

law⁵ and in more detail in DOC's disciplinary policies, which have grown from 43 pages at the time of Linderman's case to 71 pages today.⁶

Both Iowa law and DOC policy state that prison disciplinary rules should seek to ensure that "disciplinary procedures are fair," that "sanctions are not capricious or retaliatory," and that inmate behavior should be controlled "in an impartial and consistent manner."⁷ The law also directs DOC to define offenses and potential penalties "in order to give fair warning of prohibited conduct."

A prison employee who wants to hold an inmate accountable for violating a rule must write a disciplinary notice that informs the inmate which rules he or she is accused of breaking, along with a narrative that includes the time, place, and manner of the violation. A prison investigator follows up to see how the inmate will plead to the charges, and whether he or she has any statements to make about the specific accusations against them. The inmate may request witnesses in his or her defense or assistance from staff if he or she has difficulty understanding the nature of the charges and proceedings. Inmates are not entitled to attorneys in disciplinary hearings.

The disciplinary notice, supporting evidence, and a written account of the inmate's statements and requests are forwarded to an ALJ. Unlike most state agencies that utilize ALJs from outside their offices, DOC employs its own ALJs to oversee prison disciplinary cases. ALJs are typically based in specific prisons throughout the state. Their supervisor is DOC's general counsel in Des Moines.

DOC employs five full-time ALJs and sometimes uses other staff to hold disciplinary hearings, in person or via closed-circuit cameras. Although all of DOC's full-time ALJs are currently licensed attorneys, that is not required by law, nor was this the case at the time of Linderman's hearing in 2008. ALJ Edwards, who oversaw Linderman's hearing, had more than 30 years of experience in several DOC prisons as a correctional officer, supervisor, and ALJ, but was not an attorney.

The standard of proof in disciplinary cases against Iowa's prison inmates is very low. Unlike in criminal proceedings, where a defendant must be found guilty "beyond a reasonable doubt," DOC disciplinary hearings can result in the guilt of an inmate based on "some evidence."

⁵ See Iowa Code §§ 904.505 and 903A.1, 3, and 4.

⁶ See DOC Policies IO-RD-01, 02, and 03. Similar policies govern discipline in DOC's work-release facilities, where offenders are afforded more rights and freedom of movement than in prison. Disciplinary hearings in work release are overseen by residential officers—not administrative law judges (ALJs). Residential officers are not extensively trained in disciplinary matters and, in our experience, sometimes lack an appreciation for the due-process procedures regularly practiced by ALJs. Residential officers are not empowered to impose ET sanctions that would require the due-process procedures set forth by the *Wolff* decision. However, residential officers' written decisions are automatically referred to ALJs who may separately impose ET sanctions. Residential officers' written decisions often serve as the basis for DOC administrators to transfer work-release residents back to prison without a hearing or review by an ALJ.

⁷ Warden Cornell Smith made a similar pledge in FDCF's 2007 inmate rulebook: "We hope that you will find the treatment here to be impartial, fair, and humane."

Theoretically speaking, this means an inmate can be found guilty of a rule violation even if the majority of the evidence points to his innocence.⁸ Not all states follow this standard of proof.⁹ The ALJ, in most cases, holds a hearing in the inmate's presence, within several days or sometimes weeks after the report is written. The ALJ may ask the inmate questions during the hearing and must allow the inmate to present his side. If the ALJ believes the report is deficient in some way, he or she may ask the author or investigators to correct the problems before proceeding with the hearing.

After considering the inmate's comments, the evidence, and any aggravating or mitigating factors, the ALJ must issue a written decision that specifies which rules have been violated (if any), the basis for the findings, the specific discipline to be imposed, and the basis for the sanctions.

As part of the ALJ's considerations, he or she must also determine the classifications of the violations. Sanctions issued must be within the range prescribed by policy, and "in proportion to the seriousness of the infractions involved." DOC policy allows ALJs to "aggravate" the classification of a rule violation by one step in "more serious" cases, so long as the reasons for the aggravation are stated in the decision. Potential reasons for aggravating a rule violation are: history of violence; use of a weapon; severity of injury; significant impact to institutional operations; repeat infractions; and premeditation.

Disciplinary hearings are not electronically recorded and no verbatim records of the dialogue in the hearings are created.

Inmates are allowed to appeal ALJs' decisions to the prison warden or the warden's designee. Upon the warden's review, "[i]f procedures have not been followed or there is insufficient evidence in the record to support the ALJ's findings," DOC policy allows the warden to reduce or dismiss any of the ALJ's findings or sanctions, order a new hearing, or remand a case to the ALJ for further investigation or consideration. A warden may not increase sanctions issued by the ALJ. Wardens are authorized to revisit disciplinary decisions at any time.

Separately from the process for major reports, prison staff is authorized to write "minor" reports, which carry lesser sanctions that may be imposed without a disciplinary hearing or review by an ALJ. Minor reports cannot result in a loss of earned time (ET) or disciplinary detention (DD).

⁸ *Practical Guide to Inmate Discipline*, William C. Collins, Civic Research Institute, 1997. Collins also argues that the federal courts have not universally sanctioned the "some evidence" standard in prison disciplinary cases, as some prison systems and state courts (including the Iowa Supreme Court) have. He points out that the standard of proof in most administrative hearings is "a preponderance of the evidence" and argues this should also be the case in prison. *Correctional Law Reporter*, "How Much Evidence Proves Guilt in an Inmate Disciplinary Hearing?" June/July 2010. The U.S. Supreme Court recently suggested the same when it said: "[W]e have utilized the 'some evidence' standard as a standard of review, not as a standard of proof." *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

⁹ Minnesota's and Vermont's supreme courts have directly challenged the Iowa courts' adoption of the "some evidence" standard. See *Carrillo v. Fabian*, 701 N.W.2d 763 (Mn. 2005) and *LaFaso v. Patrissi*, 633 A.2d 695 (Vt. 1993). Said the Minnesota Supreme Court in *Carrillo*: "The 'some evidence' standard sends the message to prison inmates as well as society at large that once an individual is convicted of a crime, he is presumed guilty of every subsequent allegation. This message runs contrary to fundamental principles of criminal law in the United States."

In 2012, more than 12,300 disciplinary hearings were held in Iowa's nine prisons—about 34 reports per day, statewide, or one and-a-half reports per year for every DOC inmate. Assaults on staff make up a very small percentage of the hearings. In 2012, 65 inmates were found guilty of assaulting staff.¹⁰

FINDINGS OF FACT

The Incident

Early on the morning of April 2, 2008,¹¹ a correctional officer (CO) named David Diemer was making early-morning rounds in a locked housing unit of the Fort Dodge Correctional Facility (FDCF) when he thought he smelled smoke. At the time, FDCF prohibited smoking in the unit and was in the process of phasing out all smoking at the institution. CO Diemer tried to investigate the source of the smoke and came to a two-man cell where inmate Randy Linderman was housed. Linderman, who worked in the prison as a painter and plumber, had been moved to the unit a day earlier, after he had argued with a unit manager over his pay. The move resulted in a reduction of Linderman's prison privileges. Linderman admitted to us and prison officials that he was still angry about the pay issue when Diemer came to his cell.

Diemer searched Linderman's cell and, according to a major report he later wrote on the incident, he found tobacco and an altered battery.¹² CO Diemer said he wrote Linderman a minor report for the contraband and slipped the report into Linderman's cell. Linderman reportedly refused to sign the minor report and threw it out of the slot on his cell door. CO Diemer claimed that Linderman said Diemer "had no right" to write him up.¹³

Minutes later, Linderman and a handful of other inmates in the unit left their cells for breakfast. After the inmates picked up breakfast trays from a serverly adjacent to the housing unit, they walked back to a common area outside their cells and sat down to eat at a series of four-man tables. A video recording (see video still below) shows CO Diemer leaning on a handrail at the far end of the common area as inmates began filing in.¹⁴

¹⁰ These totals were derived from a report we ran through DOC's inmate records database, called the Iowa Corrections Offender Network (ICON).

¹¹ All dates in this section are from 2008 unless expressly noted.

¹² Batteries are sometimes used in prison to make sparks to light cigarettes.

¹³ Diemer's minor report was not included as an exhibit in Linderman's major report, and could not be found by FDCF officials when we requested it. The minor report was presumed by Warden Smith to have been thrown away after Diemer decided to instead write a major report against Linderman. The major report did not cite any rule violations in connection with Linderman's alleged possession of tobacco and a battery, and neither item was kept as evidence. A report from a prison captain suggested that CO Diemer did not actually find tobacco in Linderman's possession. Warden Smith expressed a similar belief to us.

¹⁴ The videos we reviewed from prison surveillance cameras were fairly grainy and did not include audio.



Correctional Officer David Diemer, center top, leans on a handrail while he awaits the arrival of inmates for breakfast. The inmates on the right are walking toward an adjacent servery to pick up their breakfast trays before returning to the tables to eat.

Linderman was the second inmate to arrive with his meal. As Linderman set his tray on a table where another inmate was eating, Diemer moved closer and took position along a wall just a few steps from Linderman's table. Two more inmates took seats at Linderman's table, and other inmates followed to nearby tables.

A little more than two minutes passed before Linderman sprang from his stool and took five quick steps toward CO Diemer. Although both available video angles are partially obscured, it is evident that Linderman got face-to-face with Diemer. Diemer's report does not explain what caused Linderman to charge him. Witnesses said Linderman called Diemer a "m-----f----r punk-ass bitch." Linderman then turned away from Diemer and began walking toward his cell. Diemer followed immediately behind. Linderman, seeing Diemer behind him, stopped, spun, and took two steps back toward Diemer, leaning into the officer as he shouted at him. Diemer recoiled slightly, and the two men appeared to bump chests (see video still below). No fewer than six inmates (five pictured) had a clear, close, unobstructed view of the incident.



Inmate Randy Linderman, at far right, appears to bump Correctional Officer David Diemer while yelling at him. This was the first of two apparent contacts Linderman made with Diemer that formed the basis of a disciplinary report for assault.

The argument was loud enough to get the attention of two inmate workers at the opposite end of the unit who turned their heads to watch. An officer in the adjacent servery also heard the commotion and shut the servery door.

Linderman and Diemer separated briefly, but Linderman again stepped close to Diemer, this time without making contact.

After a few more words were spoken, Diemer began to walk away from Linderman, toward Linderman's cell. Linderman followed Diemer closely for several steps, then leaned into Diemer, appearing to make contact with the officer a second time (see video still below).



Inmate Randy Linderman, at center right, leans into Correctional Officer David Diemer and appears to bump him. This was the second of two apparent contacts Linderman made with Diemer that formed the basis of a disciplinary report for assault.

More words were exchanged before the two walked to the far end of the unit, near Linderman's cell. At this point, a second correctional officer who had been present during the entire episode, David Thoel, moved into Diemer's position along the wall to monitor the situation. Several of the inmates continued to watch, but none made any move to participate (see video still below). Neither Thoel nor any other officers attempted to intervene.



Inmate Randy Linderman and Correctional Officer David Diemer, upper right, exchange words outside Linderman's cell. Correctional Officer David Thoel, lower right, monitors the confrontation while inmates continue eating their breakfast.

Linderman broke contact with Diemer and, for most of the next two minutes, paced around the unit with his hands in his pockets, stopping briefly at one point to sit at his table. COs Diemer and Thoel watched him carefully from a distance until backup officers arrived. Linderman was then handcuffed without resistance and taken away.

CO Diemer reported no injuries in the incident. He said in his report that Linderman had bumped him twice.

The Investigation

FDCF Captain Mel Brown interviewed Linderman minutes after the incident. Linderman told Brown that he had charged Diemer because Diemer had repeatedly called him a "liar" after Linderman sat down to breakfast. Diemer's purported remarks came in apparent response to Linderman's earlier claim that he had had no tobacco in his cell. Linderman told Brown that, after he first confronted Diemer, he began to walk away when Diemer again called him a "liar." Linderman said this prompted him to return to the argument. Linderman denied making any contact with Diemer in his interview with Captain Brown.

While Linderman awaited his disciplinary hearing from a more secure housing unit, written statements from staff and inmates were taken.

CO Thoel, the second officer working in the unit during breakfast, said Linderman ignored his order to sit down and “continued to hit Diemer in the chest with his chest.” Thoel said Linderman had called Diemer “a f---ing punk bitch” and asked Diemer, “What are you going to do about it?”¹⁵ Thoel, like Diemer, did not explain what caused Linderman to get up from his breakfast and charge Diemer, although Thoel had been standing right next to Linderman’s table when the dispute arose. One inmate witness said Linderman and Thoel were talking just before the incident began.

CO Rickie Graves, who witnessed the end of the confrontation on camera from a control room, said he saw Linderman pursue Diemer but noted that Linderman “did not raise his hands up at the officer.”

Inmates who gave statements confirmed Diemer’s allegation that Linderman had called him a “punk-ass bitch.” However, two inmates independently said that Diemer had first provoked Linderman by repeatedly calling Linderman a “liar” and a “f---ing liar.” One of those inmates said he heard Diemer direct the “liar” remark at Linderman *before* the inmates left their cells for breakfast.

There was no indication in FDCF’s disciplinary file that prison investigators had asked COs Diemer and Thoel whether Diemer had called Linderman a “liar.” Nor did investigators attempt to ask the two officers what had caused Linderman to confront Diemer so angrily.

The Alleged Violations

In his disciplinary notice, CO Diemer accused Linderman of committing five rule infractions:

- Assault
- Threats/intimidation
- Disobeying a lawful order/direction
- Being out of place of assignment
- Verbal abuse

Diemer’s superior reviewed the report and approved it. It was served on Linderman on April 10, eight days after the incident.

The most serious of these alleged violations, assault, was then defined in DOC policy as follows:

An offender commits assault when the offender intentionally causes or threatens to cause injury to another person or applies any physical force or offensive

¹⁵ Linderman also admitted these allegations in a letter to us.

substance (i.e. feces, urine, saliva, mucous) or any other item against any person regardless of whether injury occurs.

...

Class “A” if weapon or potentially infectious bodily fluids, secretions, tissue, or excrement have been used; Class “B” for all other violations.

The second charge against Linderman, threats/intimidation, is considered a Class B violation if it involves the use of a weapon or a threat to kill; otherwise, it is considered a Class C violation.

Being out of place of assignment can be a Class C or Class B violation. The remaining violations alleged against Linderman were defined as Class C violations.

Diemer’s report, like all Department of Corrections (DOC) disciplinary reports, did not indicate whether Linderman’s alleged rule violations were Class A, B, or C violations. That would be determined later by the administrative law judge (ALJ). Maximum allowable penalties under the three classifications vary considerably. The DOC policy in place at the time of the Linderman report set the following parameters on disciplinary sanctions:

- **Class C violation** – maximum sanction of loss of 30 days of earned time (ET) and 30 days of disciplinary detention (DD).
- **Class B violation** – maximum sanction of loss of 90 days of ET and 90 days of DD. If the violation includes “serious or dangerous violence,” DD can be raised to a maximum of 180 days.¹⁶
- **Class A violation** – maximum sanction of loss of 365 days of ET and 180 days of DD. If the violation includes “serious or dangerous violence,” DD can be raised to a maximum of 365 days.

DOC sanctions within a single report usually run concurrently with one another, not consecutively, meaning the most serious violation usually determines the ultimate length of the sanction.¹⁷

The Hearing

ALJ Deborah Edwards held a hearing to consider Diemer’s report and the supporting evidence against Linderman on April 24. According to Edwards’ written decision¹⁸, Linderman admitted responsibility during the hearing and pleaded guilty to the rule violations.¹⁹

¹⁶ DOC policy defines “serious or dangerous violence” as follows: “includes killing, forced sexual penetration, assault, kidnapping, rioting, arson, or the attempt to do any of those actions.”

¹⁷ Current DOC policy allows ALJs to impose consecutive DD or loss of ET sanctions for different rule violations. However, we have rarely seen them do so in a single report.

¹⁸ See Appendix A, Hearing Decision (April 24, 2008).

Edwards found that Linderman had been “verbally disruptive” and had assaulted Diemer with his body “several times.” These actions, she wrote, “placed a staff member at risk, disrupted the normal operation [of the unit] and [Linderman] failed to follow any directives given him by that staff member until other staff arrived on the scene.”

Edwards found Linderman guilty of three of the five charged violations: assault, threats/intimidation, and verbal abuse. Edwards classified all three offenses as Class B violations, and she sanctioned Linderman to 180 days of DD and loss of 180 days of ET. Edwards wrote that the sanction “reflects the severity of the offense and is appropriate to the nature of the offense.”²⁰

In reaching her decision, Edwards wrote that she had reviewed staff statements, witness statements, and video, as well as Linderman’s statements. Edwards did not elaborate on what Linderman said during the hearing other than he admitted he had been “angry.”

Edwards’ decision made no mention of the statements of the two inmate witnesses who claimed CO Diemer had provoked Linderman by calling him a “liar.”

The Appeal

The day after the hearing, Linderman appealed ALJ Edwards’ decision to FDCF Warden Cornell Smith.²¹ In his three-page appeal, Linderman said CO Diemer had called him a liar “many times” after Diemer failed to find any tobacco in his cell:

I got in Diemer’s face because he would not stop calling me [a] liar [sic]. This all would not have happened if c/o Diemer was not verbal[ly] abusive to me over and over.

Linderman argued to Warden Smith that his actions did not constitute an assault because his arms were at his side during the confrontation and the officer was unhurt. Linderman further argued that 180 days of DD was “way too much time,” given his past observations:

Inmates that put other inmates in the hospital don’t even get that much. I only seen 180 for kill[ings] or stabbings or beat[ings] ... and I’ve done time since 1983.

Warden Smith denied Linderman’s appeal and expressed support in his written response for ALJ Edwards’ DD sanction.

¹⁹ Linderman denied to us and Warden Smith that he had pleaded guilty to the assault violation. He said he pleaded guilty only to threats/intimidation and verbal abuse.

²⁰ This was a standard phrase that Edwards used in every one of her hearing decisions we reviewed.

²¹ Smith left FDCF in 2010 and is now warden at the North Central Correctional Facility, a minimum-security prison in Rockwell City.

“Mr. Linderman,” Smith wrote, “you do understand the way you handle[d] the situation has resulted in the sanction imposed. ... The issue is we have a ‘Zero Tolerance’ for threatening behavior towards staff at anytime.”

Smith’s response did not address Linderman’s accusation that CO Diemer had provoked him.

Ombudsman’s Preliminary Review

We received Linderman’s letter of complaint about Edwards’ sanctions on May 9, 2008. Linderman’s arguments were similar to those he posed in his appeal to Warden Smith. His primary concern was the number of days he was ordered to serve in DD.

We quickly ascertained that Linderman’s DD sentence of 180 days was the maximum-allowable DD sentence for a Class B violation, and could only be imposed if Linderman’s actions amounted to “serious or dangerous violence.” Otherwise, Linderman’s maximum DD sentence should have been 90 days.

We did not have immediate access to surveillance video of the incident, but we did have CO Diemer’s report, ALJ Edwards’ decision, and Warden Smith’s appeal response.²² While Edwards’ decision specified that Linderman had “assaulted the officer with his body several times,” no injuries were mentioned in either Edwards’ decision or Diemer’s report. It appeared on paper that the contact Linderman made with CO Diemer might have been incidental to the verbal dispute. This made us question whether Linderman’s actions actually amounted to “serious or dangerous violence.”

At the time of our review of the Linderman case, we also were reviewing a different assault case at the Iowa State Penitentiary (ISP) where an inmate had received only 90 days of DD and loss of 90 days of ET for breaking an officer’s nose with a punch. The injuries suffered by the ISP officer put him out of work for five weeks.²³

Sensing that Linderman might have a legitimate complaint about an excessive DD sanction, we called ALJ Edwards on May 12 to get further insights on her decision. She was cooperative and forthright during our initial conversation.

Edwards told us it was her belief that Linderman’s assault on CO Diemer was “intentional, not incidental.” She recalled that Linderman had bumped Diemer a total of three times in a running argument that he had opportunities to walk away from. She did not seem to put any stock in Linderman’s claim that Diemer had started the dispute with name-calling. Even if Diemer had provoked the assault, she told us, Linderman’s actions were “totally inappropriate” because they happened in the presence of other inmates who could have decided to join the fray.

²² See Appendix B, Disciplinary Appeal Response – Warden.

²³ DOC Disciplinary Number 20041009732. We also became aware of an inmate at FDCF who assaulted staff repeatedly in 2007. Within three months’ time, the inmate received 15 DD/60 ET for kneeling an officer in a groin (DOC Disciplinary Number 20071009214) and 90 DD/90 ET for putting a counselor in a headlock and bringing him to the floor during a class (DOC Disciplinary Number 20071013961).

Edwards acknowledged that she had little precedent to rely upon in deciding Linderman's sanctions because most assaults she had observed as an ALJ were either overt or incidental. Linderman's assault on CO Diemer, she agreed, was something in between.

At the beginning and at the end of our conversation, we asked Edwards to clarify how she had intended to classify the assault. Both times, she said she considered the assault a Class B violation. We asked her whether she felt she could have aggravated the sanction to a Class A violation. "I could have, but I didn't," she replied.

A More Expansive Review

Despite Edwards' explanation, we were not initially convinced that Linderman's assault merited the maximum allowable DD sanction. To get further context of sanctions issued in other inmate assaults, we asked DOC to provide us with a list of every inmate who had been found guilty of assaulting a prison employee in three of Iowa's medium-security prisons between May 2005 and May 2008. On May 30, 2008, we received a list of 35 such inmates. We reviewed the hearing decisions in each of the assaults. With that data, we created a report.

The report revealed how many times each prison's ALJs had issued DD sanctions in excess of 90 days for assaults on staff:

- Mount Pleasant Correctional Facility: 0
- Newton Correctional Facility: 1
- Fort Dodge Correctional Facility: 9

Not only were Edwards' assault sanctions typically tougher than those of her counterparts, but she was much more likely to aggravate the classifications of the violations. Generally speaking, we did not find that assaults at FDCF had been appreciably more violent than in other prisons. Where inmates kicked, punched, and elbowed staff, other ALJs typically classified the assaults as Class B violations and did not aggravate them.

In scrutinizing ALJ Edwards' past cases, we found that Linderman's actions seemed less serious than those of six other inmates who received similar DD sanctions. We also found that Linderman's loss of ET sanction of 180 days was higher than most:

- Inmate 1 – Threw feces and urine onto a passing officer, some of which struck the guard's chin. Class A offense. **180 days of DD, loss of 90 days of ET.**
- Inmate 2 – Threw urine into an officer's chest and face. Inmate noted as habitually disruptive. Class A offense. **180 days of DD, loss of 30 days of ET.**
- Inmate 3 – Spat into an officer's face after he was ordered to remove ice from his drinking glass. Class B offense. **180 days of DD, loss of 90 days of ET.**
- Inmate 4 – Threw urine onto a random officer who was delivering a book. Aggravated from Class B to Class A offense. **180 days of DD, loss of 180 days of ET.**
- Inmate 5 – Jumped onto the back of an officer while trying to punch an inmate that the officer was restraining. Class B offense. **180 days of DD, loss of 30 days of ET.**

- Inmate 6 – Spit into an officer’s face after being ordered to hang up his coat. Inmate had an infectious disease. Aggravated from Class B to Class A offense. **140 days of DD, loss of 365 days of ET.**

In light of the sanctions she had issued in prior decisions, we called Edwards for a second time, on June 3, and asked her: “From an ALJ’s standpoint, which type of assault do you view as more serious: An assault where an inmate makes non-harmful but potentially inciteful contact with a staff member, or an incident where an inmate throws urine or feces or spit into a staff member’s face?”

Her response was immediate: In her opinion, an assault involving urine, feces, or spit was a more serious type of assault, namely because of the risk of the spread of disease. Her response was consistent with DOC policy, which defines an assault with bodily fluids as a Class A violation, while other assaults where weapons are not used are considered Class B violations.

Linderman did not assault CO Diemer with bodily fluids. Nor did Linderman injure or lay his hands on CO Diemer. For those reasons, we asked Edwards to consider whether her DD sanction against Linderman was too harsh. We offered her a copy of our report, which she considered. But she ultimately stood by her decision.

We decided to discuss Linderman’s DD sanction with Warden Smith.

A New Wrinkle

As we were drafting a detailed email to Warden Smith of our findings on Linderman’s DD sanction, we realized that Edwards’ 180-day loss of ET sanction against Linderman exceeded the amount allowed by DOC policy. At the time, DOC policy dictated that the maximum loss of ET sanction for a Class B offense was 90 days.

On June 12, we asked Warden Smith to consider: 1) whether Linderman’s DD sanction was excessive and should be reduced based on the particulars and our survey of sanctions in other assault cases, and 2) reducing Linderman’s ET sanction by at least 90 days, based on the maximum sanction allowed by policy. We also pointed out that Linderman’s secondary violations (threats/intimidation and verbal abuse) were incorrectly classified in the decision as Class B violations rather than Class C violations.²⁴

Smith responded within an hour and a half. The following email exchange took place:

Smith: ... I am not willing to modify the imposed sanctions related to his disciplinary sanctions. I consider any threatening or assault behavior toward staff has [sic] a very serious matter, therefore I am not willing to modify sanctions.

²⁴ We also asked Warden Smith to consider paying Linderman \$21 for prison work he had performed without pay. Smith agreed. This part of Linderman’s complaint is not pertinent to the subject of this report.

Ombudsman: ... DOC policy appears to show that the maximum allowable loss of earned time for this violation was 90 days. Linderman was given 180 days. Am I misreading the policy?

Twenty minutes later, we received this reply from Warden Smith:

Smith: I spoke with the ALJ and the Class B offense was in error. She will be complete [sic] the correction to a Class A Offense related to ET loss. The hearing will stand and the offender will be sent a modification [sic] copy of hearing decision.

We followed up later that day with a phone call to Warden Smith to make sure we understood his explanation. Smith explained that ALJ Edwards “admit[ted] she made an error” in her original decision when she classified the assault violation as a Class B. He said she had intended to aggravate the assault to a Class A violation. He did not explain her reasons for wanting to aggravate the violation, but he gave the impression that this decision was hers—not his.

The Revised Decision

Forty minutes after we received Warden Smith’s last explanation on the Linderman disciplinary matter, ALJ Edwards added three sentences to her original hearing decision.²⁵ Edwards wrote that she was “modifying an error” and was classifying the assault as a Class A violation “to reflect the seriousness of the violation at this time.” She wrote that a copy of the revised decision would be shared with Linderman.

Lastly, she wrote that Linderman’s “behavior was consistent with the DOC policy IO RD-01(II)(a)(P)(b).” We found that no such policy exists.

ALJ Edwards’ revision of her hearing decision concerned us for a number of reasons. First, it contradicted her earlier statements to us that she intended for the assault to be a Class B sanction and did not intend to aggravate the violation. Second, if she did intend now to aggravate the assault violation, why did she not specify her reasons in the amended hearing decision, as DOC policy requires? And why was the term “aggravate” not specifically used in the decision?

We also questioned whether it was proper or legal for Edwards to simply amend her prior classification determinations, after the fact, in order to justify what had been an excessive sanction under DOC policy.

The contradictions between Edwards’ and Smith’s explanations, and the quick and questionable revision of the hearing decision, made us suspect that Warden Smith might have pressured the ALJ to arrive at a certain result in the case. This possibility was most concerning to us because Iowa law requires prison ALJs to be independent, and because wardens are supposed to serve as a check on ALJs’ judgments and mistakes.

²⁵ See Appendix C, Hearing Decision (Revised, June 12, 2008).

A Request for Reconsideration

We requested a meeting with Edwards' superior, DOC General Counsel Michael Savala, to share our growing list of concerns and to ask him to intercede. Savala oversees DOC's disciplinary policy and the prisons' ALJs. We met on June 20, presented the facts in the case, and provided Savala with a copy of our three-year survey on inmate assault sanctions. He said he would consider our concerns and get back to us.

On July 31, Savala sent us a brief email response in which he essentially reiterated the language of ALJ Edwards' decision and Warden Smith's appeal decision. It did not appear that Savala had considered our specific policy concerns about Edwards' revised decision. We again asked him to do so.

In the meantime, we unsuccessfully requested the intervention of Warden Jerry Burt of the Anamosa State Penitentiary, where Linderman had been transferred and was serving his DD time, and Assistant Deputy Director Sheryl Lockwood, who oversaw the prisons in eastern Iowa. Burt deferred to Smith, and Lockwood deferred to Savala.

Savala issued a lengthier response to our concerns on August 15. He began by detailing all the crimes Linderman had committed outside prison, the most recent of which had occurred eight years earlier. He concluded with an opinion that DOC's disciplinary policy "was followed properly" by ALJ Edwards and that her reasons for aggravating the assault sanction were "properly delineated." In response to our observation that Linderman's sanctions for bumping an officer were tougher than those of most inmates who threw bodily fluids on officers, Savala said that disciplinary sanctions need not always be the same. He said the Attorney General's office concurred with his opinions on the matter.

Savala's response, and those of other DOC officials, ensured that Linderman would serve out the entirety of his DD sanction.

A New Revelation

Dissatisfied with the responses we received from upper DOC management, we decided to open a full investigation into the Linderman case. We issued a formal notice of investigation to DOC Director Baldwin on August 29. As part of our broader investigation, we requested copies of all electronic communications among DOC officials involved in the Linderman case.

Among the emails we received from DOC was this one written by Warden Smith to ALJ Edwards, eight days before Linderman's hearing.²⁶ Smith told us he wrote the email after he had viewed video of Linderman's confrontation with CO Diemer, but before he had seen all of the investigative documentation, including the witness statements:

²⁶ See Appendix D.

From: Smith, Cornell [DOC]
Sent: Wednesday, April 16, 2008 4:32 PM
To: Edwards, Deb [DOC]
Subject: RE: Linderman

Hello Deb:

Please exercise sanctions to fit situation. (180 to 365)

Cornell R. Smith
Warden
Fort Dodge Correctional Facility
1550 "L" Street
Fort Dodge, Iowa 50501

This email confirmed our suspicions that the Warden had weighed in with the ALJ before she had fully considered the Linderman assault case. It also showed that Edwards' sanctions against Linderman fell within the range of Smith's email suggestion. In our minds, the email raised significant questions about the integrity of Edwards' decision, and about FDCF's commitment to the independent and impartial disciplinary process mandated by DOC policies and by state and federal law.

Smith acknowledged that the parenthetical in his email pertained to DD time, but he downplayed its inclusion in the email. The main purpose of his email, he later told us during a sworn interview, was to alert Edwards that it was time to proceed with Linderman's disciplinary hearing because the prison's request for criminal charges had been declined.²⁷

Ombudsman: You were doing more than a heads up. You were saying, "I recommend this DD range," too.

Smith: It says "situation" – "fit the situation." Can you read that? "Warden wants you to go 180 to 365." Of course you can. I'm not going to dispute that. It's there. But did I go in there and say, "I really need it to be this?" No, I didn't. It's open to interpretation.

Ombudsman: ... If I'm to write a note to the ALJ saying, "Exercise sanctions to fit situation," I wouldn't use 180 to 365. I'd have used zero to 180, or 90 to 180, maybe. ... Because a normal assault under this scenario gets a max of 180, not a max of 365. Did you intend to send that message, to aggravate?

Smith: No, I sent the message just like it says.

Ombudsman: Did you mean to send an implicit message that this needed to be aggravated beyond a regular assault?

²⁷ Smith told us several times in our sworn interview that the Webster County Attorney's office had declined the prison's request to prosecute Linderman criminally for his assault of CO Diemer. The County Attorney's office, however, told us that it had never been asked to consider prosecuting Linderman.

Smith: No. I can't tell you how Deb took that. Deb is in my facility. "Warden, what does this note mean? What do you want me to do?" – I didn't get that phone call.

During our interview, Smith could not explain how the definition of a Class A assault differed from a Class B assault. He did know, however, that the DD range he suggested to Edwards fell within the range of a Class A rule violation.

"One hundred eighty days in DD doesn't take the act away," he said, "but it sends a very swift message to the offender that we're not going to tolerate that kind of behavior at all no matter who is receiving it."

Smith went on to say that there was "nothing I've done here that I feel was out of the lines of the bounds of my role or my authority. ... I'm not going to be sitting in a public place and telling the public that I failed to protect a staff member. My actions, I felt, were appropriate."

Ombudsman: Do you think ALJ Edwards felt any obligation or pressure to decide this case in a certain way given the email you sent her?

Smith: I would hope not.

What actual effect the Warden's email had on Edwards could only be answered by Edwards. But it would be more than four and a half years before we could ask Edwards this question. That's because DOC Director John Baldwin and Assistant Attorney General William Hill refused to allow Edwards to explain herself to us under oath.

In the alternative to an interview with ALJ Edwards, we held separate sworn interviews with Warden Smith and General Counsel Savala.²⁸ When those interviews failed to provide us with all of the answers necessary to complete our investigation, we renewed our request in 2009 for a sworn interview with ALJ Edwards. DOC Director John Baldwin again refused.

"In short," Baldwin wrote us on October 1, 2009, "you have had your opportunity to ask her questions and we will not let you again try in hopes of intimidating her into providing a different answer as was the case with Michael Savala and Warden Cornell Smith."

In a November 24, 2009, letter, Baldwin defended the disciplinary actions against Linderman and falsely claimed that ALJ Edwards had repeatedly assured us she was not pressured by Warden Smith.²⁹

Ultimately, Edwards was compelled to answer our questions by order of the Iowa Supreme Court, after she had retired from DOC. Unfortunately, Edwards' eventual answers to this question, and others, only clouded the issues.

²⁸ We interviewed Warden Smith under oath on October 24, 2008. We interviewed Savala under oath on March 13, 2009, in the presence of DOC's attorney, Assistant Attorney General William Hill.

²⁹ In truth, to that point, we had never asked Edwards about Smith's email. After we first learned of the email, DOC began blocking our efforts to interview her about it. See Baldwin's letter in Appendix E.

DOC Explains Its Actions

“I never had a conversation with Cornell about Linderman’s case.”

That was the surprising statement we received from ALJ Edwards, under oath, when we started to ask what caused her to amend Linderman’s original hearing decision.³⁰ The statement was surprising because we knew that Edwards replied to the Warden’s email in which he had suggested sanctions against Linderman. Edwards even asked Smith to call her about the Linderman case:

From:	Edwards, Deb [DOC]
Sent:	Thursday, April 17, 2008 7:43 AM
To:	Smith, Cornell [DOC]
Subject:	RE: Linderman

The report will be continued for a statement from Capt. Brown. Call me.

Edwards’ claim that she never spoke to Warden Smith about the Linderman case also contradicted what Smith had told us in his sworn interview. According to Smith, after we emailed him on June 12 to ask him to correct Edwards’ excessive ET sanction, he suggested to Edwards that she consult with Savala and/or Assistant Attorney General Hill on the matter. He did not recall whether his suggestion was made by email or in person.³¹

Smith and Savala each testified that Edwards separately told them she had erred in classifying Linderman’s assault as a Class B violation and would fix her mistake by amending her decision.

Edwards, however, told us that she amended her hearing decision based solely on *our* feedback and without consulting *anyone* from DOC.

Ombudsman: So the warden didn’t ask you to change or amend your decision?

Edwards: No.

Ombudsman: Mike Savala didn’t ask you to amend or change your decision?

Edwards: No.

Ombudsman: John Baldwin didn’t ask you?

Edwards: No.

...

Ombudsman: Did you consult with anyone before doing that?

Edwards: You. You.

...

³⁰ We interviewed ALJ Edwards under oath on March 25, 2013, in the presence of DOC’s attorney, Assistant Attorney General William Hill.

³¹ We saw no such email among a group of emails we received from Warden Smith in response our request for all emails relevant to the Linderman case.

Ombudsman: So what you're telling me is that the additional language you added to the hearing decision, you did on your own, without input from anybody [in DOC]?

Edwards: Right. To let you know that I made the changes.

But we never voiced any concerns to Edwards about Linderman's ET sanction being excessive for a Class B violation; we only discussed this with Smith and Savala. In other words, Edwards only could have known about our concern with the ET sanction through other DOC officials.

It would not be the only time that Edwards' explanations conflicted with those of other DOC officials. Several of our most important questions about the Linderman case led to dubious or contradictory answers from Edwards, Smith, and Savala:

Did ALJ Edwards intend to aggravate?

As previously stated, Edwards' original decision classified Linderman's assault as a Class B violation.

However, Warden Smith and General Counsel Savala each testified that ALJ Edwards told them after our inquiries that she had intended to aggravate Linderman's assault to a Class A violation. This was contrary to what Edwards originally told us, that she did not intend to aggravate the violation.

DOC policy allows ALJs to aggravate the classification of a rule violation in "more serious" cases—and thus increase the upper range of sanctions—provided the ALJ explains the reasons for the aggravation.

Savala argued vigorously that Edwards' intention to aggravate was obvious to him, even in Edwards' *original* decision, which never used any form of the term "aggravate."

Ombudsman: Looking at the [original] hearing decision itself, how would you know there was an aggravating factor?

Savala: Well, I can't speak for [Edwards]. What I'm telling you as I'm reading this, as their supervisor, you know, this is the language on the paper and this is what I would see as aggravating conduct.

Ombudsman: Isn't it the norm for ALJs, when they see aggravating conduct, to specifically and explicitly say so in the decision?

We cited four examples to Savala of other recent disciplinary decisions where ALJs had used some form of the term "aggravate" to support their decisions and sanctions. We later found that Edwards herself had used some form of the word "aggravate" in four of the hearing decisions in our three-year survey of assault cases. Savala conceded that many DOC ALJs use the term "aggravate" when aggravating a sanction, but he insisted that practice was not necessary.

Ombudsman: Can you be certain, Michael, can you be certain that [Edwards], in fact, did intend to aggravate this case?

Savala: Yes.

Ombudsman: From the outset? You can be certain?

Savala: I can verify it after I spoke with her and she said, “Yeah, this is what I intended, I intended to aggravate it.” It was a clerical error on her part, and she corrected it.

Subsequently, Edwards *denied* in her sworn testimony that she had *ever* intended to aggravate Linderman’s assault violation. Rather, she told us that she had meant for the assault offense to be a Class A violation all along.

Ombudsman: Let me ask you this. Let me try and be crystal clear. Was it your belief, upon re-reviewing your initial decision, that the assault was incorrectly classified as a “B?”

Edwards: Right.

Ombudsman: So you believed, right out of the chute, it should have been a Class A?

Edwards: Yes.

...

Ombudsman: OK, so you did not intend to aggravate this particular classification? What you actually wanted to do was declare it an “A” from the get-go?

Edwards: Right. And just make sure that he got the full amount.

What made Linderman’s assault so serious?

We asked ALJ Edwards what basis she had to classify Linderman’s assault a Class A violation. “Whether any injuries were incurred or not,” she said, “it was very intense and it was very serious and it was very disruptive to the operation of the institution, and we [had] been dealing with so many fights and assaults.”³²

Warden Smith, believing that Edwards had aggravated Linderman’s assault violation, defended her decision simply because the victim was a correctional officer.

Ombudsman: By that logic, though, wouldn’t every single assault on a staff member automatically be aggravated?

Smith: ... I’m not the ALJ. I’m not going to answer from an ALJ perspective. From my perspective in this case only, in this case, what crossed the line for me is that he chest bumped a staff member twice.

Ombudsman: OK. Both chest bumps are aggravating factors? Not [just] the second? Both of them?

Smith: Any act of touching a staff member in an aggressive fashion.

DOC policy does not prescribe different penalties for assaults based on the identity of the victim.

³² Edwards repeatedly stated during our sworn interview that Linderman had bumped CO Diemer three times, but we saw only two probable bumps on video. Diemer stated in his report that Linderman had bumped him twice.

Nor is Edwards' rationale for classifying the assault a Class A violation supportable by DOC policy. The policy considers an assault a Class A offense only "if [a] weapon or potentially infectious bodily fluids, secretions, tissue, or excrement have been used." Savala agreed that "none of that applied" to Linderman's assault case, and that the maximum ET sanction for Linderman's original Class B offense was at that time 90 days.

Ombudsman: [Edwards'] original decision says this is a Class B and it says that the earned time sanction is 180 days.

Savala: OK.

Ombudsman: Would you agree that this is not in conformance with DOC policy?

Savala: Yeah, because the Class B does not allow the 180.

Savala told us in an email that the Attorney General believed ALJ Edwards had adequately cured her classification error when she revised her original hearing decision to a Class A violation. But Savala's defense of Edwards' revision was based on his belief that Edwards had intended to aggravate the assault from a Class B violation—which Edwards repeatedly denied to us.

During our interview with Edwards, we pointed out to her that DOC policy considers an assault to be a Class A offense only if weapons or bodily fluids are used. Edwards defended her Class A classification with this explanation of Linderman's actions:

"His body is a weapon."

We could not find one instance in our survey of 35 assault-against-staff hearings where any ALJ, including Edwards, had classified an assault a Class A offense without the use of a weapon or bodily fluids. In every case where an inmate had used their body by kicking, punching, or elbowing a staff member, or throwing something at them, the ALJ treated the assault as a Class B violation. In addition, none of those assaults was explicitly considered "serious or dangerous violence" by the ALJs, which would have justified DD sanctions of more than 90 days.

Edwards never said during our sworn interview that Linderman's chest bumps were more serious than the actions of other inmates who threw their bodily fluids onto the faces or bodies of officers. On the contrary, when we asked her in 2008 which type of assault was more serious, she immediately responded that an assault with bodily fluids was more serious because of the disease risks.

When we asked the same question of Savala and Smith, neither one would choose.

Ombudsman: Is it more serious to throw urine into the face of an officer than to bump an officer during an argument?

Savala: I don't think there's a distinction. An assault is an assault.

Ombudsman: Do you think a correctional officer who has urine thrown on his face thinks that's more serious than getting bumped?

Smith: I think you would have to get a correctional officer in here to get that perspective.

What role did CO Diemer's actions have on Edwards' decision?

As previously stated, DOC's disciplinary policy at the time of the Linderman hearing required ALJs to consider both aggravating *and mitigating* factors in making their decisions.

When we asked Edwards, Smith, and Savala whether there were any mitigating factors in the Linderman case, each said they couldn't recall any. This was despite the fact that two witness statements in the file supported Linderman's claim that CO Diemer had provoked Linderman by repeatedly calling him a liar in front of other inmates and an officer.

Edwards said Linderman never raised this defense during his disciplinary hearing. Her recollection is impossible to verify since hearings are not recorded and Edwards' written account of Linderman's statements was not exhaustive. However, Edwards did recall that Linderman had requested statements from several inmate witnesses. Further, she wrote in her decision that "the offender's witness statements were reviewed by this ALJ." Edwards said in her sworn interview that she could not recall reading or considering the witness statements.

When we asked Edwards about the potential value of the witness statements in her considerations, she responded by questioning the reliability of the witnesses. "I don't know if [Linderman] coerced them, you know what I'm saying?" She conceded that she had "no idea" what prompted Linderman to spring from his breakfast and rush CO Diemer.

Edwards added that she did not think it was up to her to consider Linderman's claims against CO Diemer. "That would be security's responsibility to check in and see if that officer was acting appropriately," she said. "That's not my job."

We asked Warden Smith why it appeared that no prison investigators had looked into the inmates' claims that CO Diemer had precipitated Linderman's actions.

Smith: Why would I question staff on that? His statement was provided to the administrative law judge of what happened.

Ombudsman: To your knowledge, did anyone look into the allegation that Diemer provoked Linderman?

Smith: We did not question Mr. Diemer and say, "What did you do to cause him to behave in that fashion?" ... Has he ever had an encounter of this nature before? No. Has he ever had any performance issues? Nothing is in his personnel file that would lead us to believe that [he'd] done something to cross that line.

Ombudsman: If you had any evidence that any correctional officer at Fort Dodge repeatedly called an inmate a "liar" and a "f---ing liar," what would you think of that behavior?

Smith: Unacceptable.

Prior to the assault, Linderman had received four major reports over the previous three years. Three of the reports were written after Linderman attempted to purchase or trade personal

property with other inmates; one was for yelling at staff after he failed to get an orderly job he had applied for.

Edwards told us that the assault was “out of character” for Linderman. But she was silent on whether his relatively scant behavioral history was a mitigating factor in her decision.

What influence did the Warden’s suggested sanctions have on ALJ Edwards?

Edwards acknowledged receiving Smith’s suggested sanction of 180 to 365 days DD when we showed her a copy of his email. She said she did not recall that the email had suggested a specific penalty. Nor did she recall that the email had been sent *before* Linderman’s hearing. Although she admitted discomfort with the email, she insisted that the decision in the Linderman case was her own.

Edwards: [Warden Smith] can ask whatever he wants. I’m still independently making the decisions. ...

Ombudsman: Does it make you uncomfortable when you get a message from the warden asking you to do a certain thing?

Edwards: It makes me uncomfortable when anybody questions my decisions. It makes me uncomfortable, yes. ... It’s really hard. I can’t go to the warden and say, “Will you just leave me the heck alone?” You can’t, you know, you still have to be [respectful of the] chain of command.

Edwards, who worked as an ALJ for 12 years, said this was the only instance where Warden Smith had ever sent her such an email.³³ Edwards said it was commonplace, though, for her to receive input from prison staff—“officers, wardens, treatment staff, anybody”—both before and after disciplinary hearings.

Edwards: They just tell me what they think and [they] think I should be on board. I should think like them.

...

Ombudsman: And did I understand you earlier to [say] that, generally, their opinion is, you weren’t hard enough on an offender?

Edwards: Yeah, that’s been the same thing.

...

Ombudsman: Now, is that something that the other ALJs also had dealt with?

Edwards: I think anybody that’s working in corrections has dealt with it in one form or another, and not just an ALJ. I think that’s just the nature of the beast.

We asked Edwards’ supervisor, Savala, whether prison staffs’ overtures to ALJs bothered him, since law and policy requires ALJs to be independent and impartial.

³³ Smith, on the other hand, said he asked Edwards “a lot of times ... to ratchet” up sanctions as a general deterrent when inmate misbehavior was on the rise.

“I encourage the ALJs to keep an open-door policy if staff want to come in and talk about a report,” he said. “Staff need to understand the process and the flow of these disciplinary systems and why particular sanctions were given out. It just adds to a better environment if there’s a better understanding at that institution of the discipline process.”

Savala said in his testimony that it made little difference to him whether ALJs’ conversations with staff took place before or after disciplinary hearings.

Most ALJs in Iowa are discouraged from openly discussing a case prior to a decision, outside the presence of the affected parties. Such “ex parte” communications are generally seen as improper because they give an appearance that the ALJ might be biased or favored toward one party. One common remedy for ALJs to restore fairness when they take part in ex parte communications is to recuse (remove) themselves from the case. Iowa Code § 17A.17 requires state ALJs to disclose any ex parte communications to all the parties involved and to memorialize the contacts in writing to foster fairness and transparency. DOC’s ALJs are exempt from this section of the Code. Nevertheless, other federal and state laws stemming from the *Wolff* court decision require ALJs to be impartial in their consideration of inmate disciplinary cases.

Savala said he was unaware at the time of our interview that Warden Smith had emailed ALJ Edwards with a suggested sanction prior to Linderman’s disciplinary hearing. Edwards apparently had not informed Savala of this fact. Nonetheless, Savala said he was not troubled by the revelation.

Ombudsman: [H]ow fair can the disciplinary process really be if the person who is going to hear an appeal in this particular disciplinary hearing is asking the ALJ to sentence that inmate to a certain period of time before the hearing has even taken place?

Savala: I don’t think that influences the fairness of the hearing. Again, I mean, I tell the ALJ I don’t care who you get input from. It could be the director. You know, you’re there to make a decision—[an] independent decision—based on the facts that you have in front of you.

Ombudsman: So you don’t think that the ALJ would feel pressured in this situation given the fact that she’s just received an approach from the guy who heads up the facility where she works?

Savala: No. And the reason for that is that’s why they report to me. ... Do I have concerns on that? No.

Edwards said in her sworn interview that when she was an ALJ, she reported not only to Savala, but also to Warden Smith, the deputy warden, and DOC Director John Baldwin. Separately, in a September 12, 2008, email she wrote to Savala about our inquiries, Edwards identified Warden Smith as one of her “immediate bosses.”

In contrast, when we asked Savala in his sworn interview what working relationship DOC’s ALJs had with the wardens where they worked, he replied: “None.”

Ombudsman: Can you see any way by which an ALJ might believe that they are accountable to a warden of the institution where they work?

Savala: No.

The Supreme Court Weighs In

Although the Iowa Supreme Court has not ruled directly on the appropriateness of Linderman's sanctions, the justices were asked in our lawsuit against DOC to consider the propriety of prison officials' actions in the disciplinary case. That question was a critical element in the Court's decision whether to allow us to interview Edwards under oath.

In granting our request, the Court majority was not as favorable in its opinion of Edwards' actions as Savala and Baldwin were. Specifically, the Court said that Edwards and Warden Smith had committed "improper conduct" based on its review of undisputed evidence submitted by our office and DOC. The Court noted several specific concerns about Edwards' actions:

1. Her original ET sanction against Linderman was twice the amount allowed by DOC policy, and was consistent with Smith's suggested sanctions.
2. Linderman's assault could not be considered a Class A offense under DOC policy because no weapon or bodily fluids were used.
3. No aggravating factors were specifically cited in Edwards' decision that would justify her 180 ET sanction against Linderman.
4. Edwards upgraded the classification of Linderman's offense after our investigation began, without clarifying why or explicitly using the word "aggravated," as she did in other decisions.

The Court's decision also diverged from the claims of DOC officials who said the Warden's email to the ALJ was harmless. Quoting from a different court case on a similar subject, the Court suggested that Smith's email had "the appearance of fundamental unfairness." The Court further stated that:

We cannot condone such ex parte communications from a warden to the IDOC ALJ, whose independence is statutorily mandated, particularly when the warden himself is to hear the inmate's appeal. ... The facial impropriety of the warden's email to Edwards is all the more troubling because he is statutorily prohibited from increasing sanctions on appeal.³⁴

DOC never revisited Linderman's ET sanction before he discharged his sentence. Linderman was released from prison on September 12, 2014.

Policy Revisions Since the Linderman Investigation

DOC officials made several key changes to their disciplinary policy since our investigation into the Linderman case began. Among them:

³⁴ *Office of Citizens' Aide/Ombudsman v. Edwards*, 825 N.W.2d 8, 21 (Iowa 2012)

- The maximum loss-of-ET sanction for Class B offenses was increased from 90 days to 180 days.
- ALJs are no longer required to specify mitigating circumstances in their hearing decisions.
- Wardens' required review of all disciplinary decisions, regardless of whether appeals had been filed, was eliminated.

Savala, who oversees DOC's disciplinary policy, acknowledged that our scrutiny of the Linderman case led to the first policy change. He said the change was needed to better reflect proportionality between classes. Had this revised policy been in place at the time of the Linderman hearing, his sanction of a loss of 180 of ET would not have required ALJ Edwards to elevate or aggravate his assault violation to a Class A offense.

ANALYSIS and CONCLUSIONS

The Earned Time Sanction: Which Scenario to Believe?

There has never been any question in our minds that inmate Randy Linderman committed an assault when he charged and bumped Correctional Officer (CO) David Diemer. Our investigation focused on whether prison decision-makers had fully considered the circumstances of the assault and punished Linderman fairly, within the limits of Department of Corrections (DOC) policy.

Based on the evidence we reviewed—and accounting for the conflicting testimonies of Edwards, Warden Smith, and General Counsel Savala—we determined that one of three possible scenarios unfolded to explain how Edwards imposed sanctions on Linderman:

Scenario 1: *Edwards initially intended to aggravate Linderman's assault from a Class B to a Class A violation, as allowed by DOC policy for "more serious" violations. Edwards erred in her original decision when she failed to expressly aggravate the violation, and she later revised her decision to reflect her actual thought process.*

Edwards told us repeatedly—twice in our first conversation and years later in sworn testimony—that she did *not* intend to aggravate Linderman's assault violation. When we asked her in 2008 whether she thought she *could* have aggravated the assault to a Class A violation, she replied, "I could have, but I didn't." Her statements on all three occasions were unequivocal. Smith and Savala, on the other hand, both testified that Edwards told them she *had* intended to aggravate; but there is no known written record to corroborate their claims. Neither Edwards' original decision nor her revised decision revealed any hint that she wanted to aggravate the violation. No form of the word "aggravate" appeared in either of Edwards' decisions, although Edwards and other DOC administrative law judges (ALJs) routinely used the word in several other disciplinary cases we reviewed. Nor was the basis for any purported aggravation explained in Edwards' decision, as DOC policy requires.

The evidence does not support a claim that Edwards had always intended to aggravate the assault violation.

Scenario 2: *Edwards initially intended to classify Linderman’s assault as a Class A violation, as allowed by DOC policy when a weapon or bodily fluids are used. She erred in her original decision when she classified the assault as a Class B violation, and she later revised her decision to reflect her actual thought process. She had no intention to aggravate the rule violation.*

Edwards asserted late in our investigation that she had meant to classify Linderman’s assault as a Class A violation all along. She said that she had erred in her original decision when she called the assault a Class B violation. When we asked her how she could properly call the assault a Class A violation without the use of a weapon or bodily fluids, she replied that Linderman used his *body* as a weapon. This was a novel explanation that clashed with the past practices of DOC’s ALJs—neither Edwards nor any other ALJ at three medium-security prisons ever made a finding that a bodily assault was a Class A violation in the three years of assault-on-staff cases we reviewed. Edwards’ supervisor, General Counsel Savala, acknowledged that the facts in the Linderman case made the assault a Class B violation on its face because no weapons or bodily fluids were used.

The Iowa Supreme Court also noted, in its decision on our lawsuit against DOC, that no weapon had been used by Linderman in his assault.

We do not believe Edwards ever truly considered Linderman’s chest a weapon in the assault. Any such interpretation of DOC policy cannot be supported by past practices or Iowa law.

Scenario 3: *Edwards initially intended to classify Linderman’s assault as a Class B violation, and she did not intend to aggravate the classification. However, the sanctions she imposed were incompatible with the Class B classification. After the Ombudsman reported the discrepancy to DOC, Edwards upgraded the assault to a Class A violation rather than reducing the sanction to correspond with a Class B violation.*

Edwards was an experienced ALJ and a former prison supervisor who knew how to properly classify rule violations and issue sanctions accordingly. It was clear from our review of Edwards’ work that she was consistently competent. She claimed her decision in the Linderman case was her own. Yet she also acknowledged that receiving suggestions from Warden Smith—a person she described as one of her supervisors—put her in a difficult position. “I can’t go to the warden and say, ‘Will you just leave me the heck alone?’” she told us.

The discrepancy between Edwards’ classification and her sanction in Linderman’s assault was uncharacteristic. We believe she issued a sanction outside the bounds of a Class B violation because she thought the Warden had asked her to. The fact that Edwards upgraded the assault classification to justify her earned time (ET) sanction, then cited a policy in her amended decision that did not exist, tells us that she felt pressured and hurried to follow the Warden’s wishes, even if the sanction defied DOC policy and good reason. Edwards denied that she was influenced by the Warden’s email, but the preponderance of evidence says otherwise.

We believe the more severe ET sanctions were proposed, and imposed, because Warden Smith and ALJ Edwards were focused on giving Linderman what Smith thought he deserved. Smith’s

stated intention to send Linderman “a swift message” and Edwards’ explanation of her decision brings us to this conclusion.

Edwards: I wanted him to have the maximum, so I had to make it an “A.” Do you understand that?

...

Ombudsman: The sanction was the important part?

Edwards: Right.

Ombudsman: That was the priority?

Edwards: Yes.

Ombudsman: And you thought his action was worth 180 days’ ET regardless of how you classified it?

Edwards: Right.

Edwards’ explanation illustrates a backward approach to a proper disciplinary process. The elements of a rule violation should dictate the punishment; not vice versa.

All of this leads us to support the third scenario: that Edwards purposefully—and correctly—classified Linderman’s assault in her original decision as a Class B violation, without any intention to aggravate it.

The Disciplinary Detention Sanction: Did the Punishment Fit the Act?

The excess in Edwards’ 180-day disciplinary detention (DD) sanction was initially less obvious than that of the ET sanction, but upon close review, equally troubling.

According to DOC’s own policies, the penalty Edwards imposed upon Linderman was the absolute maximum allowable for the Class B classification she initially assigned to the offense. Linderman could have fared no worse if he had broken CO Diemer’s ribs with a kick or drawn blood with a punch to the face. Indeed, some inmates who committed injurious assaults were penalized just the same as, or more leniently than, Linderman. So were those who, by DOC’s own rules, committed more serious assaults by spitting on officers or hurling bodily fluids at them.

Edwards’ DD sanction against Linderman was not merely a variance from the norm—it was clearly disproportionate. The penalty did not comport with the promise of fairness and consistency that DOC’s policies and the law provide. Nor did it account for the cause of Linderman’s outburst.

Edwards’ sanction also disregarded important mitigating factors which are required to be considered under DOC policy—namely, that three witnesses said Linderman was provoked by the officer he assaulted. In fact, no one at the Fort Dodge Correctional Facility (FDCF) adequately investigated claims that CO Diemer directed insults at Linderman before the assault.

Are DOC's Administrative Law Judges Truly Independent?

Although inmates are not legally entitled to the same protections in disciplinary hearings that citizens receive in criminal court, Iowa's prison officials are required by state and federal law to follow certain due-process procedures when they take actions that could lengthen an inmate's time in prison. One of the core principles of due process is the promise of an impartial fact-finder—someone who represents neither the government nor the individual, and who will make decisions objectively and fairly in light of the evidence presented. Under this system, ALJs should not act as prosecutors, or feel beholden to prison officials who seek to punish inmates.³⁵ Nor should wardens have input on how an inmate should be sanctioned.

DOC's general counsel, Savala, said he sees no problems with a disciplinary system where prison officials who accuse inmates of wrongdoing are free to tell the fact finder, in private, how they think the case should be decided. He assures us that this free flow of internal communication poses no risk of bias against inmates because he has instructed DOC's ALJs to remain objective.

Edwards asserted that she was able to disregard staff overtures, but she admitted in her interview with us that such approaches were frustratingly common.

Ombudsman: Do you think it's improper for DOC staff to try to tell you how to decide a case before that case has been decided?

Edwards: They know it's improper. I don't need to tell them that. I mean, everybody has their opinion. As long as I don't follow their opinion and I still make an independent decision based on the facts and I am very consistent in my job, it doesn't matter what they say.

There is no reason why DOC's ALJs should be placed in such a precarious position. ALJs should be able to think through cases clearly and decide them freely, without concern for how their decisions will affect staff or their own comfort and safety. If prison staff thinks there are special factors an ALJ should consider, we believe that can be conveyed in the reports they write—without the need for ex parte (private) communications.

We believe that Savala's open-door policy between prison staff and ALJs is naïve and self-serving, and has great potential to undermine legal protections that ensure inmates get a fair shake in the disciplinary process. ALJs could easily feel obligated, pressured, or threatened to side with prison workers who approach them. There is a very good reason why ALJs in other state agencies are legally prohibited from participating in such communications.

³⁵ Using impartial fact-finders in prison disciplinary hearings has been required by the courts since the U.S. Supreme Court decided *Wolff v. McDonnell* in 1974. This requirement has been noted by the Iowa Supreme Court numerous times since and has been applied to other administrative settings. “[T]he primary purpose of separating prosecutorial from adjudicative functions is to screen the decisionmaker from those who have a ‘will to win’—‘a psychological commitment to achieving a particular result because of involvement on the agency’s team.’” *Botsko v. Davenport Civil Rights Com’n*, 774 N.W.2d 841, 849 (Iowa 2009)

The Iowa Supreme Court expressed similar sentiments when it noted the “facial impropriety” of Warden Smith’s email to ALJ Edwards.³⁶ It was not the first time Iowa’s appeals courts have admonished DOC’s wardens for discussing disciplinary cases privately with fact-finders before a decision was reached.³⁷

Smith’s email did not merely create an appearance of impropriety; in our view, it created a substantive violation of Linderman’s due-process right to an independent fact finder. Smith furthered his misconduct when, without reservation, he fielded and responded to Linderman’s appeal of Edwards’ sanctions—sanctions that he himself had suggested.

Smith’s actions reveal a lack of respect for, and understanding of, DOC policies that are meant to protect inmates from unfair and arbitrary decision-making. The promise Smith made in FDCF’s inmate handbook to treat inmates impartially and fairly was, in Linderman’s case, an empty one.

So long as DOC’s administrators and employees are allowed to communicate privately with ALJs on pending disciplinary cases, its ALJs are not truly independent, as state and federal law require. As a result, DOC inmates’ legal right to fair disciplinary hearings has been and continues to be compromised.

Do DOC Inmates Receive Adequate Notice of Rule Violations?

Prison officials’ varying justifications for Linderman’s sanctions raised additional questions and concerns for us. How is it possible, we wondered, that ALJ Edwards can give one reason for her decision while her supervisor gives another? Why is the rationale for her sanctions not obvious in her written decision? How could Edwards’ supervisor testify that Edwards intended to aggravate Linderman’s assault violation while the record clearly showed she did not? How could Edwards claim that Linderman’s assault was a Class A violation all along when none of the documentation hints at any such thing? Shouldn’t the prison’s specific allegations against Linderman have been evident from the beginning?

DOC’s differing explanations were possible because DOC decides the classifications of inmates’ rule violations *at the end* of the disciplinary process. This is markedly different from the process used in criminal court, where defendants are informed in advance of the class and degree of the offense they are accused of violating.

This peculiarity in DOC practices even seemed to escape the notice of the person responsible for the prisons’ disciplinary policies, General Counsel Savala.

Ombudsman: Do you know, in the typical DOC disciplinary process, *when* an inmate is informed of the classification of the violation he is charged with?

Savala: Typically in the notice that they receive.

³⁶ *Office of Citizens’ Aide/Ombudsman v. Edwards*, 825 N.W.2d 8, 23 (Iowa 2012).

³⁷ The Iowa Court of Appeals ordered a new disciplinary hearing for an inmate in 1991 after a warden had privately provided information about the inmate to a member of the disciplinary committee. *Bradham v. State*, 476 N.W.2d 369 (Iowa 1991).

Ombudsman: In the notice that precedes the hearing?

Savala: Uh-huh.³⁸

At the time Linderman received notice of his disciplinary report, he was accused of “assault.” He was not told whether he was accused of a conventional Class B assault—“applying force against any person”—or a Class A assault, where such force involved a weapon or bodily fluids. Without this information, Linderman was left to guess which type of assault he was accused of committing. The difference in penalties between the two was significant: up to 90 additional days of DD and the loss of 275 days of ET.

Of course, it would have been reasonable for Linderman to conclude he was facing a Class B assault, since no weapon or bodily fluids were used. But ALJ Edwards ultimately determined that Linderman had committed a Class A assault. She defended her decision by explaining to us that Linderman’s use of his body as a weapon made it a Class A assault. But the report Linderman received before his disciplinary hearing made no reference to a “weapon” of any sort. Nor does DOC policy suggest that an inmate’s body qualifies as a weapon. Even Edwards’ revised hearing decision failed to explain how she concluded that Linderman’s assault was a Class A violation.

In our opinion, DOC’s after-the-fact classification practice presents several serious systemic problems. First, it denies inmates the opportunity to know precisely what they are accused of so they may understand the gravity of the situation and be prepared to defend against the allegations. Second, it vests ALJs with the power to make charging decisions when their authority should be limited to deciding whether violations alleged by prison staff actually occurred. Third, it leaves the process open to abuses like those we have seen in the Linderman case.

The U.S. Supreme Court has held, since its decision in *Wolff v. McDonnell* in 1974, that prison officials must provide inmates with advance written notice of any alleged rule violations that could cause the inmates to lose earned time. A written notice provided before a disciplinary hearing ensures that accused inmates can “marshal the facts and prepare a defense” against prison officials’ allegations.³⁹

We are unaware of any published court decisions that apply *Wolff*’s notice requirement to DOC’s current practice of classifying rule violations at the end of the disciplinary process. However, the Iowa Supreme Court has cited *Wolff*’s notice requirement as a basis to reverse disciplinary decisions where prison officials failed to say up front how they believed an inmate’s actions constituted a specific rule violation.

In 1996, the Court considered the case of inmate James Love, who argued that his violation of a minor rule (possessing another inmate’s property) had been unfairly treated as a major rule violation (disobeying a lawful order). The Court determined that prison officials were authorized

³⁸ Savala later reversed himself on this question after we explained that disciplinary notices do *not* in fact indicate the classification of rule violations: “OK, so yeah, maybe I’m corrected then.”

³⁹ *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974).

by DOC policy to elevate minor rule violations to majors if “adequate reasons” such as severe or repeat infractions existed. However, the Court said those reasons must be included “both *in [DOC’s] disciplinary notice* and in [the] disciplinary decision itself.” (Emphasis added.) The Court threw out DOC’s finding against Love because prison officials failed to specify their reasons for considering his infraction a major rule violation, either in their notice or their decision.⁴⁰

The Court also ordered the dismissal of a similar rule violation against inmate Ernest Harper in 1990. The Court concluded that the evidence presented in Harper’s disciplinary report suggested only a minor rule violation—not the major rule violation he was eventually found guilty of. If the prison’s decision was allowed to stand, the Court said, the prison would have

unfettered discretion to charge a more serious offense when only a minor offense has been committed. At their whim, they could turn even the most insignificant infraction into a serious violation. That would make a sham of the present classification . . . Fairness and justice dictate against such a result.⁴¹

Although DOC’s disciplinary procedures were somewhat different in the Harper and Love cases than they are today, we believe the same principles outlined by the Court in those decisions apply to DOC’s current classification practices.⁴²

Prison officials elevated Harper’s and Love’s “minor” rule violations to more serious “major” rule violations; but because the officials failed to state in advance their reasons for doing so, both cases were dismissed by the courts. Prison officials also elevated or aggravated Linderman’s “Class B” rule violation to a “Class A” rule violation, and likewise, they failed to state in advance their reasons for doing so.

FDCF officials certainly had the ability to elevate Linderman’s Class B violation to a Class A violation, but that should only be done if “adequate reasons” for the upgrade were spelled out in their disciplinary notice, and in Edwards’ decision. None of the reasons listed in DOC policy to justify an aggravation of a rule violation—history of violence, use of a weapon, repeat infractions, or significant impact to institutional operations, for example—were spelled out in Linderman’s disciplinary notice. FDCF’s disciplinary notice did not say that Linderman had used a weapon in his assault of an officer, and this omission left Linderman with no reason to argue against it. In the parlance of the *Wolff* decision, Linderman was unable to “marshal the facts” and “prepare a defense” when FDCF failed to specify how and why it believed Linderman had committed a Class A assault.

We believe the failure of DOC to classify rule violations in inmates’ disciplinary *notices* gives prison officials “unfettered discretion” to impose significant sanctions without affording inmates the chance to argue against them.

⁴⁰ *Love v. State*, 551 N.W.2d 66 (Iowa 1996).

⁴¹ *Harper v. State*, 463 N.W.2d 418, 421 (Iowa 1990).

⁴² Disciplinary rules were formerly classified only as “minor” or “major” violations; there were no differing classes of violations within the “major” category.

What Remedies have the Courts Ordered in Mishandled Disciplinary Cases?

In deciding what recommendations should arise from our conclusions on Linderman’s sanctions, we looked to the courts to see how they have settled similar controversies.

Courts throughout the country typically order one of two remedies when inmates prove their hearings were faulty: 1) a remand for a new disciplinary hearing, or 2) expungement of the case. Iowa courts have often—but not always—ordered expungement if prison officials failed to rectify any “substantial” and “prejudicial” due-process violations before they reached the courts.⁴³

In a 1990 case, the Iowa Supreme Court ordered the dismissal of a major rule violation against inmate Ernest Harper after it decided that prison officials had trumped up charges against him. Harper had been found guilty of a major rule violation—disobeying a lawful order—even though he committed only a minor rule violation—jiggering (exchanging items between cells). The prison argued that Harper had disobeyed a lawful order when he jiggered, but the Court rejected that argument as an improper application of its disciplinary policy. If the original decision was allowed to stand, the Court said, the prison “could turn even the most insignificant infraction into a serious violation.”⁴⁴

In 1991, the Iowa Court of Appeals ordered a new disciplinary hearing for inmate Kurtis Bradham after learning that a warden had privately provided information about Bradham to a member of the disciplinary committee. The inmate was accused of making a false statement to another inmate about his interactions with the warden. The information provided by the warden was used against the inmate as evidence. The Court said prison officials’ behind-the-scenes actions compromised “the fundamental fairness of the hearing.”⁴⁵

Later in 1991, inmate John Hrbek appealed to the Iowa Supreme Court after he was found guilty of using a prison typewriter for personal legal work. The prison did not allow Hrbek to present a defense during his disciplinary hearing, and the Court said the misstep had a direct effect on “the integrity of the adjudication of [Hrbek’s] guilt or innocence.” The Court refused to remand the case for a new hearing because the prison had not corrected its actions during Hrbek’s internal appeals process. “It is well settled that minimum requirements of procedural due process must be observed before good-time earned by an inmate can be forfeited,” the Court said.⁴⁶

⁴³ *Benadum v. Scurr*, 320 N.W.2d 578, 580 (Iowa 1982) and *Kelly v. Nix*, 329 N.W.2d 287, 293 (Iowa 1983). Court-ordered expungement of faulty disciplinary hearings may have been unique to Iowa State Penitentiary (ISP). ISP adopted a rule requiring expungement of mishandled disciplinary cases as part of a federal consent decree issued in 1974. The decree was mandated following a spate of lawsuits against the prison for overuse of disciplinary detention, among other things. The Iowa Supreme Court has noted that ISP’s “expungement rule” exceeded the minimum requirements of due process required by the Constitution. Nevertheless, the rule formed the basis for the Iowa courts’ expungement of several problematic disciplinary decisions. The federal consent decree at ISP was terminated in 1998. The expungement rule no longer exists at ISP, although wardens throughout DOC still can—and sometimes do—dismiss disciplinary cases when they discover procedural problems.

⁴⁴ *Harper v. State*, 463 N.W.2d 418, 421 (Iowa 1990).

⁴⁵ *Bradham v. State*, 476 N.W.2d 369 (Iowa 1991).

⁴⁶ *Hrbek v. State*, 478 N.W.2d 617 (Iowa 1991).

We found several more cases after the Hrbek decision where the courts expunged flawed disciplinary decisions from inmates' records.

Iowa's courts also have ordered reductions in disciplinary sanctions when they were shown to be excessive:

- A Jones County District Court judge determined in 1995 that a 1,000-day loss of good time was too much for an inmate at Anamosa State Penitentiary who had stolen three blank checks from a prison activities office and a coupon book from the commissary. "Although theft is of course extremely serious," the judge wrote, "these thefts simply do not rise to the level of offenses serious enough to warrant such drastic sanctions." The inmate's sanctions were cut by more than half.⁴⁷
- In 1998, the Iowa Court of Appeals considered the disciplinary case of Jeff Goodwin, who had been given 30 days of DD and 270 days in lockup for telephoning a female correctional officer, although it could not be proven that he had made sexual remarks to her. The Court of Appeals, citing the ALJ's blunt suspicions that sexual comments had been made, noted that the sanction was far in excess of normal for misusing a telephone and called the ALJ's sentence "an abuse of discretion." The Court remanded the case and ordered a correction of the ALJ's sentence.⁴⁸

Some of Iowa's prison administrators have followed procedures similar to the courts when they find that an ALJ's sanctions are inconsistent with the rule violation:

- In 2009, John Fayram, warden at the Anamosa State Penitentiary, reduced an ALJ's sanction against an inmate for fighting from 60 DD/46 ET to 30 DD/16 ET because the sanctions went beyond what DOC policy allowed. Fayram did not ask the ALJ to justify the sanction. Instead, he reduced the sanction because "the decision did not indicate that the violation was aggravated to a class B."⁴⁹
- Something similar happened at Iowa State Penitentiary in 2008 when then-Deputy Warden Bill Sperflage noted that an ALJ had ordered an inmate to a 30-day cell confinement, although DOC policy limited such confinement to 21 days. Sperflage also did not ask the ALJ to correct the decision, but simply reduced sanctions based on the record.⁵⁰

Conclusions

Although the evidence presented in Linderman's disciplinary hearing supported a guilty finding, we conclude that Warden Smith and ALJ Edwards violated due process and DOC policies in

⁴⁷ *Sanford v. Manternach, et al*, nos. CL 859-1094, CL 860-1094 (Iowa Dist. Ct. 1999).

⁴⁸ *Goodwin v. State*, 585 N.W.2d 749 (Iowa Ct. App. 1998).

⁴⁹ DOC Disciplinary Number 20091009400.

⁵⁰ DOC Disciplinary Number 20081018077.

their sanctioning of Linderman. We believe that each of the violations was substantial and prejudicial.

First, we find that Edwards intended for Linderman's assault to be a Class B violation at the time she found him guilty of the offense. The facts support that it should have remained a Class B violation. When Edwards later upgraded the offense to a Class A violation, she failed to explain how and why the assault was worthy of such treatment, as DOC policy requires. For these reasons, we conclude that Edwards' sanction of a loss of 180 days of earned time was improper and more than 90 days too excessive under DOC policy and the facts of the case.

Second, we find that Edwards' imposition of 180 days of disciplinary detention was disproportionate to the offense and inconsistent with sanctions in other cases involving assaults on staff. Further, Edwards' failure to consider as a mitigating factor three witness accounts claiming that CO Diemer provoked the assault was contrary to DOC policy. For these reasons, we conclude that Edwards' sanction of 180 days of disciplinary detention was more than 90 days too excessive and was unfair.

Third, we find that Warden Smith engaged in an improper ex parte communication when he suggested that Edwards impose a specific penalty against Linderman. Smith's email intruded upon the independence of the ALJ and impinged on Edwards' fair consideration of appropriate sanctions. In addition, General Counsel Savala's encouragement and acceptance of such communications undermines the precepts of fairness long required by the courts in disciplinary hearings.

Fourth, Warden Smith inappropriately ruled on Linderman's appeal after he had already prejudged the case, and without considering all of the evidence.

Finally, it is our opinion that, because inmates have a liberty interest in losing earned time, DOC's standard practice of deciding rule classifications at the end of the disciplinary process, rather than the beginning, is contrary to law and unfair. As such, it should be corrected throughout all DOC prisons. Apart from this legal position, we believe it is a best practice to inform inmates in advance which classifications of rules they are accused of violating.

RECOMMENDATIONS

Despite our efforts to outline these problems and the Iowa Supreme Court's supportive commentary on the case, DOC officials did not acknowledge nor correct FDCF's missteps before Linderman had served all of his sanctions and was released from prison. Since it not feasible to recommend that Linderman's disciplinary action be remanded for rehearing by an ALJ, the following action is recommended to resolve Linderman's case:

1. DOC should retroactively dismiss and expunge Linderman's disciplinary case.

The following systemic recommendations are made to address weaknesses we identified in DOC practices and policies:

2. DOC should consider a statewide reinstatement of the rule once used at Iowa State Penitentiary that required expungement of inmate disciplinary reports when substantial due-process violations are discovered after the exhaustion of the institutional appeals process. This would ensure that inmates receive fair hearings, and would serve as an incentive for staff to respect prison disciplinary policies and the law.
3. DOC should remind its wardens and ALJs that, under DOC policies, a substantive procedural error in a disciplinary hearing can only be corrected through formal processes such as dismissal, a new hearing, or a remand to the ALJ. DOC should not allow its wardens and ALJs to correct substantive procedural errors only on paper, as occurred in the Linderman case.
4. DOC should direct its ALJs to consider staff misconduct a potential mitigating factor in inmate disciplinary hearings when the staff misconduct gives rise to an inmate's violation of prison rules.
5. DOC should make clear to its prison administrators that they must investigate any potentially legitimate reports of staff misconduct, separately from any disciplinary hearings related to the alleged misconduct.
6. DOC should adopt a written policy affirming, as General Counsel Michael Savala testified, that its ALJs are accountable only to DOC's general counsel, and are not subordinate or accountable to the prison administrators where they work. This point should also be clarified in DOC's official job descriptions for ALJs.
7. DOC should adopt a written policy that prohibits all prison staff members and DOC administrators (excepting the general counsel) from engaging in ex parte communications with ALJs regarding evidence and sanctions under consideration. This policy would ensure that disciplinary decisions are truly independent and are not improperly influenced.
8. DOC should adopt a written policy requiring its ALJs, when they receive any pre-hearing ex parte communications, to: 1) recuse themselves from deciding the disciplinary case, or 2) disclose the communications to the inmate at the hearing and note the communication in the final hearing decision. This policy would ensure that DOC maintains the independence and impartiality of its ALJs as other state agencies do, pursuant to Iowa Code § 17A.17.
9. DOC should revise its disciplinary policy to require staff to specify, in disciplinary notices, which classifications of rule violations are being alleged, rather than leaving that determination to an ALJ following the disciplinary hearing. This policy revision should also require staff, rather than ALJs, to propose aggravations of rule classifications in disciplinary notices, subject to review by the ALJs as part of their decisions. These changes in disciplinary procedures would prevent inmate uncertainty about potential sanctions, remove charging decisions from the hands of ALJs, and ensure that inmates receive full notice of alleged rule violations and their potential penalties as required by *Wolff v. McDonell* and *Love v. State*.

APPENDIX A

Hearing Decision

Fort Dodge Correctional Facility

Offender 0800122 Linderman, Randy Louis
Region Fort Dodge Correctional Facility
Facility Fort Dodge Correctional Facility
Hearing Number H275581
Disciplinary Number(s) 20081005121
Decision Date 04/24/2008 2:55:00 PM
Decision Guilty
Continued
Rules Cited 14, 2, 23, 25, 26
Rules Violated 14, 2, 26
Offense Class B, B, B
Findings of Fact This ALJ has reviewed this report and is finding the offender Linderman # 0800122 guilty of rule violations # 02 Assault, # 14 Threats/Intimidation, and # 26 Verbal Abuse, because on 04/02/08 at approximately 0645 hours the offender was observed being verbally disruptive and physically inappropriate with C/O Diemer to the point that the offender assaulted the officer with his body several times on Boone in the common area. The offender pled guilty to the violation during this hearing admitting that he was angry at the time of the violation. This hearing was rescheduled by this ALJ and continued on 04/17/08 for request for more information and a witness statement at the request of the offender. The offender stated that Miranda Warning had been read to him by CSII Holder. The offender was also informed that possible prosecution may occur by this ALJ.

Evidence Relied Upon The report of C/O Deimer, video of incident, the statements of all staff involved, the offender's written defense/comments and the offender's witness statements were reviewed by this ALJ. The offender violated FDCF rules and DOC policies. The offender's behavior placed a staff member safety at risk, disrupted the normal operation of Boone and failed to follow any directives given him by that staff member until other staff arrived on the scene and moved him to A building.

Sanctions

Sanction	Value	Suspended	Length	Suspended Amount	Note
DD	180	No			Give the offender 17 days towards his DD time
ET	180	No			

Disposition This sanction reflects the severity of the offense and is appropriate to the nature of the offense. Give the offender 17 days towards his DDD time with 163 days left to complete. This ALJ is also recommending that the classification committee review the offender for a possible transfer to a more secure environment.

Appeal Form Given **Right to appeal within 24 hours of this hearing.**
Yes

Administrative Law Judge

APPENDIX B

Disciplinary Appeal Response - Warden

Offender 0800122 Linderman, Randy Louis
Response Date 04/28/2008
Hearing Number H275581
Disciplinary Number(s) 20081005121

Hearing Date 04/24/2008 2:26:00 PM

In your appeal you state:

- Deny the violations
- Disagree with the decision
- Request a lighter penalty

After a review of your claim and all other information involved:

Affirm Decision

Comments

Mr. Linderman, I have reviewed your appeal and claim you did not assault or verbally abuse C/O Diemer and request a lighter sanction. The issue is your behavior was in fact verbally inappropriate and threatening toward a C/O Diemer. There is sufficient evidence to find you guilty of violation. Mr. Linderman, you do understand the way you handle the situation has resulted in the sanction imposed. Therefore, your appeal is denied and sanction shall be imposed has wrote: (180DD (17days credit) and 180ET)

The issue is we have a "Zero Tolerance" for threatening behavior towards staff at anytime. We will also be put a transfer into maximum custody upon completion of county attorney review for prosecution.

Appeal Staff Cornell Smith - Warden

APPENDIX C

Hearing Decision

Fort Dodge Correctional Facility

Offender 0800122 Linderman, Randy Louis
Region Fort Dodge Correctional Facility
Facility Fort Dodge Correctional Facility
Hearing Number H275581
Disciplinary Number(s) 20081005121
Decision Date 04/24/2008 2:55:00 PM
Decision Guilty
Continued
Rules Cited 14, 2, 23, 25, 26
Rules Violated 14, 2, 26
Offense Class B, A, B
Findings of Fact This ALJ has reviewed this report and is finding the offender Linderman # 0800122 guilty of rule violations # 02 Assault, # 14 Threats/Intimidation, and # 26 Verbal Abuse, because on 04/02/08 at approximately 0645 hours the offender was observed being verbally disruptive and physically inappropriate with C/O Diemer to the point that the offender assaulted the officer with his body several times on Boone in the common area. The offender pled guilty to the violation during this hearing admitting that he was angry at the time of the violation. This hearing was rescheduled by this ALJ and continued on 04/17/08 for request for more information and a witness statement at the request of the offender. The offender stated that Miranda Warning had been read to him by CSII Holder. The offender was also informed that possible prosecution may occur by this ALJ.

Evidence Relied Upon The report of C/O Deimer, video of incident, the statements of all staff involved, the offender's written defense/comments and the offender's witness statements were reviewed by this ALJ. The offender violated FDCF rules and DOC policies. The offender's behavior placed a staff member safety at risk, disrupted the normal operation of Boone and failed to follow any directives given him by that staff member until other staff arrived on the scene and moved him to A building.

Sanctions

Sanction	Value	Suspended	Suspended Amount		Note
			Length	Suspended	
DD	180.00	No			Give the offender 17 days towards his DD time
ET	180.00	No			

Disposition This sanction reflects the severity of the offense and is appropriate to the nature of the offense. Give the offender 17 days towards his DD time with 163 days left to complete. This ALJ is also recommending that the classification committee review the offender for a possible transfer to a more secure environment. This ALJ is modifying an error that occurred when submitting this report hearing, the class offense of the assault is a (A) violation and is being modified to reflect the seriousness of the violation at this time. A copy is being forwarded to the offender at ASP and to the Warden here at FDCF. The offender's behavior was consistent with the DOC policy IO RD-01 (II) (a) (P) (b).
Right to appeal within 24 hours of this hearing.

Appeal Form Given Yes

Deborah D. Edwards
Administrative Law Judge

APPENDIX D

From: Smith, Cornell [DOC]
Sent: Wednesday, April 16, 2008 4:32 PM
To: Edwards, Deb [DOC]
Subject: RE: Linderman

Hello Deb:

Please exercise sanctions to fit situation. (180 to 365)

Cornell R. Smith
Warden
Fort Dodge Correctional Facility
1550 "L" Street
Fort Dodge, Iowa 50501
(515)574-4711 (direct)
(515)574-4707 (Fax)
www.doc.state.ia.us

From: Wagers, Leslie [DOC]
Sent: Wednesday, April 16, 2008 4:17 PM
To: Smith, Cornell [DOC]; Edwards, Deb [DOC]
Subject: Linderman

His report was served today.
FYI

Leslie M Wagers

Major

Fort Dodge Correctional Facility
1550 L Street
Fort Dodge, Iowa 50501
515-574-4763 fax: 515-574-4752
Leslie.Wagers@iowa.gov

Our Mission is to Protect the Public, the Employees, and the Offenders

Iowa DOC Website - www.doc.state.ia.us

Iowa Results Website - www.resultsiowa.org

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APPENDIX E



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF CORRECTIONS
JOHN R. BALDWIN, DIRECTOR

November 24, 2009

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

Re: Offender Randy Linderman Investigation for Assaulting a Correctional Officer

Dear Mr. Angrick:

I am in receipt of your recent letter requesting to once again interview Administrative Law Judge Deb Edwards relative to the offender Randy Linderman Investigation you are conducting for an assault that occurred by offender Linderman against a correctional officer at the Fort Dodge Correctional Facility.

With the present discipline rule violation at issue, Offender Linderman went up to Fort Dodge Correctional Facility Correctional Officer (CO) Diemer in a threatening manner and bumped chests with CO Diemer three different times. CO Diemer ordered offender Linderman to desist from this activity, yet the offender continued to come back around the living unit in an aggressive manner and bump chests with CO Diemer. This behavior occurred in a living unit that was housing 86 offenders, right before a meal was being served.

The ALJ found the offender guilty of assault and imposed a sanction of 180 days of DD and 180 days loss of ET. You have taken issue with the ALJ's sanction and you have requested offender Linderman's DD be reduced from 180 days to 90-120 days and his ET reduced from 180 days to 90 days.

The DOC mission is to *advance successful offender reentry to protect the public, staff and offenders from victimization*. Implicit in this mission statement is our duty to maintain institutional security, order and tranquility. We cannot allow offenders to bump chests with our correctional staff in front of other offenders without addressing the conduct with a disciplinary sanction that will deter future conduct by offender Linderman and other offenders.

The DOC discipline policy was followed properly by ALJ Deb Edwards. She made an initial error on the class determination and later amended it to reflect a Class A offense. This was done on June 12, 2008 and a copy was given to offender Linderman. In terms of aggravating the assault charge, those reasons are properly delineated in the Findings of Fact in the Hearing

The mission of the Iowa Department of Corrections is:
To Advance Successful Offender Reentry to Protect the Public, Staff, and Offenders from Victimization.

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www.doc.state.ia.us

Decision, which describe the assaultive conduct. I took the liberty of contacting our Attorney General's Office for guidance and they concur that all DOC Discipline Policy and Procedures were correctly followed by ALJ Edwards.

In terms of sanctioning conducted by ALJ's, the Attorney General's Office advises there is no requirement that an ALJ always give out the same sanction. This issue has been previously litigated and decided upon by Iowa Courts:

- 1) Inmate did not have a right to lesser sanctions that may have been applied if the disciplinary hearing was held at a different institution. *Kistner v. State*, 547 N.W. 2d 6, 7 (Iowa 1996).
- 2) There are no statutory or DOC guidelines which require uniformity in disciplinary sanctions among the different institutions. *Mahan v. State*, 541 N.W. 2d 918, 921 (Iowa Ct. App. 1995).
- 3) "Mode of punishment" means the type of punishment authorized by the institution's rules and does not require that sanctions be the same at both institutions. *Jones v. State*, 545 N.W. 2d 313, 315 (Iowa 1996).

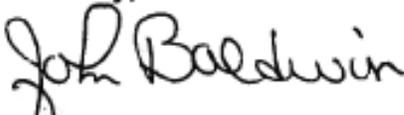
ALJ's, much like a District Court judge, needs the flexibility to decide each case on its own merits. This is why we have indeterminate sentencing provisions in Iowa.

In terms of your request to once again interview ALJ Deb Edwards, I am resisting because your staff have repeatedly discussed this issue with ALJ Edwards on the telephone and by e-mail correspondence. Time and again Ms. Edwards has communicated to your staff that no one influenced her decision as an independent Administrative Law Judge contained in Iowa Code §903A.3.

I agree with your position that it is ill-advised for our agencies to engage in a legal battle, particularly in a time of a severe budget crisis. Our DOC agency has the potential to lose over 550 FTE positions, should a layoff scenario present itself in the near future.

Thank you for your understanding.

Sincerely,



John R. Baldwin
Director

cc: William Hill, Assistant Attorney General
Deb Edwards, Administrative Law Judge

DOC DIRECTOR JOHN BALDWIN'S REPLY



STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF CORRECTIONS
JOHN BALDWIN, DIRECTOR

January 21, 2015

Ruth Cooperrider
Ombudsman
Ola Babcock Miller Building
1112 East Grand Avenue
Des Moines, Iowa 50319

Re: Ombudsman's Investigative Report on former inmate Randy Linderman

Dear Ms. Cooperrider:

Thank you for passing along a copy of your investigative report for review and comment by the Department of Corrections (DOC).

Pursuant to Iowa Code §2C.15, the DOC offers the following comments, which are to be attached to your final report unedited:

The Report is Factually Inaccurate and Based on Opinion.

The DOC does not agree with your summary of the complaint in which your office describes inmate Linderman as having "engaged in a heated, close-quarters argument with CO David Diemer." What transpired was inmate Linderman approached CO Diemer in a threatening manner, yelling at him, and assaulted him by bumping chests with the correctional officer three different times all which is captured on video.

Offender Linderman was told by correctional officers to desist from this type of assaultive behavior, yet he continued to come back around the living unit at the Fort Dodge Correctional Facility and again yelled at and assaulted the officer by bumping chests with him. Please keep in mind this assaultive behavior occurred in a living unit that was housing 86 inmates right before a meal was being served and disrupted the safety, security, and tranquil operation of the Fort Dodge Correctional facility.

The ALJ found the offender guilty of assault and imposed a sanction of 180 days of DD and 180 days loss of ET. Your office has taken issue with the ALJ's sanction and assistant Ombudsman, Mr. Bert Dalmer, requested offender Linderman's DD be reduced from 180 days to 90-120 days and his ET reduced from 180 days to 90 days.

The DOC mission is to *advance successful offender reentry to protect the public, staff and offenders from victimization*. Implicit in this mission statement is our duty to

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To advance successful offender reentry to protect the public, staff and offenders from victimization.

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www.doc.state.ia.us

maintain institutional security, order and tranquility. We cannot allow offenders to bump chests with our correctional staff in front of other offenders without addressing the conduct with a disciplinary sanction that will deter future conduct by offender Linderman and other offenders.

The DOC discipline policy was followed properly by ALJ Deb Edwards. She made an initial error on the class determination and later amended it to reflect a Class A offense. This was done on June 12, 2008 and a copy was given to offender Linderman. In terms of aggravating the assault charge, those reasons were properly delineated in the *Findings of Fact* in the Hearing Decision, which describe the assaultive conduct. I had taken the liberty of contacting our Attorney General's Office for guidance and they concurred that all DOC Discipline Policy and Procedures were correctly followed by ALJ Edwards. Inmate Linderman pleaded guilty to assaulting the correctional officer at the prison discipline hearing. I would also note that inmate Linderman did not appeal his revised Discipline Hearing Decision that he received at the Anamosa State Penitentiary.

Examples of opinions, not supported by evidence:

As one example on page 23, your office states that Director Baldwin "defended the disciplinary actions against Linderman and falsely claimed that ALJ Edwards had repeatedly assured us she was not pressured by Warden Smith."

On page 35, your office states "We believe Savala's open-door policy between prison staff and ALJ's is naïve and self-serving...."

The DOC is perplexed about these statements, and others made throughout the report, that are not based on fact and appear to be a personal attack.

The DOC feels your report appears to be contrary to the statement you make on page 3 that your office is "an independent and impartial agency."

In an unprecedented move by State of Iowa Ombudsman Ruth Cooperrider and Assistant Ombudsman Bert Dalmer, you contacted ALJ Deb Edwards by telephone who felt harassed by your office. Both Ms. Cooperrider and Mr. Dalmer were saying that Director Baldwin could not direct the attorney general's office to be present with Deb Edwards during a scheduled Ombudsman Office interview with her. Ms. Cooperrider and Mr. Dalmer keep telling ALJ Deb Edwards she did not need to bring anyone with her to their questioning. ALJ Deb Edwards was shocked by this tactic and tenor of the telephone call, and she felt overwhelmingly harassed by the Ombudsman Office. See attached e-mail dated September 12, 2008 from Deb Edwards. This appears contrary to Iowa Code §2C.21, which says a person called to questioning by the Ombudsman "*shall also be entitled to be accompanied and advised by counsel while being questioned.*"

Assistant Ombudsman Mr. Bert Dalmer contacted several different employees of the Department of Corrections requesting they change the

discipline sanction against offender Randy Linderman for assaulting a correctional officer. The DOC is troubled by the concept of “forum-shopping” that Mr. Dalmer engaged in by repeatedly not telling DOC staff that he had previously contacted other DOC staff who would not change the discipline sanction imposed against inmate Randy Linderman.

Ms. Ruth Cooperrider has acknowledged the personal attacks that assistant Ombudsman Mr. Bert Dalmer engaged in. See the attached November 22, 2013 e-mail to DOC from Ruth Cooperrider stating, “Nevertheless, I told Bert that, had I reviewed his last email to you, I would not have allowed it to be sent as written, because of some of his tone and choice of words.”

As recently as January 9, 2015 assistant Ombudsman Mr. Bert Dalmer again engaged in personal attacks on DOC staff. See the attached January 9, 2015 email from DOC staff raising concerns with the conduct of Mr. Bert Dalmer. Again, this conduct is contrary to the Ombudsman statutory mandated duty to conduct investigations in a fair and objective manner. Per State of Iowa Ombudsman Ruth Cooperrider’s November 22, 2013 email, *“My expectation is for staff to be respectful and professional, even if an agency is not persuaded to our viewpoint or ultimately disagrees with it.”*

Ombudsman Recommendations and Response from DOC

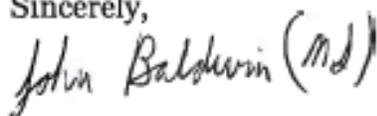
1. Inmate Randy Linderman assaulted a correctional officer and his discipline will not be dismissed or expunged. The DOC has a statutory duty to ensure the safety, security and tranquil operations of Iowa prisons. If inmate Linderman felt otherwise, inmate Linderman could have exercised his constitutional right of access to the courts by filing a post-conviction relief action, but he chose not to exercise this right.
2. The DOC disagrees with your characterization that substantial due process violations occurred in this matter. I had taken the liberty of contacting our Attorney General’s Office for guidance and they concurred that all DOC Discipline Policy and Procedures were correctly followed.
3. The DOC disagrees with your characterization. Inmate Linderman received a copy of the amended Hearing Decision from ALJ Edwards and he never appealed the discipline sanction. This is also reinforced by inmate Linderman showing up at the discipline hearing and admitting guilt.
4. The DOC disagrees with your characterization that staff misconduct occurred in this matter. Our professional staff were performing their duties in ensuring the safety, security and tranquility of the prison and simply cannot let go unaddressed the actions of inmate Linderman forcibly assaulting our staff. Of concern to the DOC is the fact the Ombudsman Office never took the time to review the video footage of this incident until several months had elapsed. It’s one thing for the Ombudsman Office to sit in Des Moines and pass judgment on the professional, dedicated staff of the DOC and quite another thing to assess all the documentation and video available to you before issuing a report.
5. DOC already has policies in place requiring prison administrators to investigate staff misconduct.

6. General Counsel Michael Savala is responsible for the supervision, hiring, performance evaluations, and approving vacation/sick leave for the administrative law judges. Michael Savala is also the responsible DOC staff person for the DOC *Major Discipline Report Procedures* policy.
7. The DOC disagrees with this recommendation as it is overbroad. The DOC position is that ALJ's are independent hearings officers and make the final decision on disciplinary rule infractions. See Iowa Code §903A.1, which says "the director of the Iowa Department of Corrections shall appoint independent administrative law judges..."
8. The DOC disagrees with this recommendation as it is overbroad. The DOC position is that ALJ's are independent hearings officers and make the final decision on disciplinary rule infractions. Prison discipline hearings are not subject to Iowa Code §17A.
9. The Discipline Notice provides the required due process in advising the offender of what rule or rules they violated. I had taken the liberty of contacting our Attorney General's Office for guidance and they concurred that all DOC Discipline Policy and Procedures were correctly followed and in accordance with due process.

I have also taken the liberty of attaching a letter from Deborah Edwards and request that it be included as part of the DOC response, unedited per Iowa Code §2C.15.

I respectfully end with DOC quoting an e-mail from assistant Ombudsman Mr. Bert Dalmer dated June 5, 2008 to ALJ Deb Edwards, which says "*I certainly would not question your finding of assault or your decision to penalize Linderman harshly, given the facts of the case. As you know, I also am not questioning his transfer or the warden's decision to keep him in restraints.*"

Sincerely,



John Baldwin
Director

----- Original Message -----

From: Edwards, Deb [DOC]

To: Savala, Michael [DOC]

Sent: Fri Sep 12 13:43:13 2008

Subject: RE: Randy Linderman

On 09/12/08 at approximately 12:15pm I had a conversation with Bert Dalmer and Ruth Coppenrider from the Ombudsman office regarding the Lindeman, case. I was told by Ms Coppenrider that the Director could not advise Counsel for me for this interview that they wanted to conduct with me. That it is not his decision, that Counsel was not needed, when I questioned that statement, I was told I could bring who I wanted. I then explained to them that I felt uncomfortable and harassed by their office about this case and I did not have anything I wanted to say without consulting with my immediate bosses Warden Smith, The director Baldwin or Michael Savala.

Mr.... Dalmer stated to me that this was not a personal attack, or legal matter, that he just needed to ask me questions in person, in order to close out his case on Lindeman, because there was questions that he preferred I answer in person and there was information that I possibly could provide that they could not get answered during his original investigation. I told Mr.... Dalmer that I was honest in his 1st questioning and I had provided him with a he information pertaining to that case in our 1st conversation. He agreed and stated that he felt that I was honest at that time, but still felt the need to see me in person.

I told him I was confused about his request. I informed Mr... Dalmer and Ms. Coppenrider, that I would check with my supervisors before setting any type of appointment with them, and if I was to do the interview I wanted my immediate Boss Michael Savala present. Mr. Dalmer then asked Ms. Coppenrider if that was allowed since I did not need an attorney present and she replied "She can have whomever she wants". I then informed both parties that I was not aware of their correspondence with Mr.... Baldwin or anyone from DOC, and what that correspondence may have reflected. Ms. Coppenrider reiterated that Mr... Baldwin could not direct who could be present during their meeting with me unless I requested such. I then told both parties, that I would not set up an appointment with their office until I consulted with my boss and ended the conversation. .

Savala, Michael [DOC]

From: Cooperrider, Ruth [LEGIS] <Ruth.Cooperrider@legis.iowa.gov>
Sent: Friday, November 22, 2013 3:49 PM
To: Savala, Michael [DOC]
Cc: Baldwin, John [DOC]
Subject: RE: question on rule violations

Dear Michael:

I have discussed your concerns with Bert. He explained his frustration in not being to address this issue more systemically, even though the complainant's problem was resolved. Nevertheless, I told Bert that, had I reviewed his last email to you, I would not have allowed it to be sent as written, because of some of his tone and choice of words. My expectation is for staff to be respectful and professional, even if an agency is not persuaded to our viewpoint or ultimately disagrees with it.

I do want you to know I have an interest in reviewing this issue in general, not necessarily from the standpoint of what is legal or contrary to law, but if there is a valid concern for which there may be a reasonable fix that does no harm. I hope you are open to further conversation with me after I complete my review.

Sincerely,
Ruth

From: Savala, Michael [DOC] [mailto:Michael.Savala@iowa.gov]
Sent: Wednesday, November 20, 2013 1:34 PM
To: Cooperrider, Ruth [LEGIS]
Subject: FW: question on rule violations

Hello Ruth,

Hope all is well with you. John indicated his time was taken up with issues related to Eleena yesterday, so he wasn't able to pass along this e-mail I had received from Bert Dalmer. The e-mail speaks for itself and hope you can discuss the unprofessional and demeaning tone with Bert Dalmer. I never received any kind of apology from him, particularly since he included Warden John Fayram. I continued working on this case with Bert Dalmer until resolution.

Thanks much.

~Michael

From: Dalmer, Bert [LEGIS] [mailto:Bert.Dalmer@legis.iowa.gov]
Sent: Thursday, September 19, 2013 4:35 PM

To: Savala, Michael [DOC]
Cc: Fayram, John [DOC]
Subject: RE: question on rule violations

You know, I get the distinct impression that the basis of our recommendations means nothing to you. If we recommend it, you're determined to find a justification to reject it – regardless of any reason or logic we exercise. I don't believe you recognize or respect the impartial role our office plays to try to improve the way the government operates. When we deliver a recommendation such as this, we don't do so flippantly, nor as the representative of the inmate; we do so in good conscience, as an objective third-party observer, after significant research and consideration. But I don't think you see it that way. I think you see us a hindrance and a bother. And that's offensive to me as an ombudsman and as a citizen of this state.

Yes, I have argued that your sanctions should be fair and reasonably consistent. But so do your own policies: "The objectives of the IDOC's disciplinary policy are ... to ensure that sanctions are imposed in a fair and consistent manner..."

Your ALJs are patently not District Court judges -- and the Iowa Supreme Court said so, throughout the Linderman case. "Edwards ... is employed by IDOC, a state agency, not the judicial branch. She falls outside the exclusion for 'judges' in section 2C.1(2)(a)." That means your ALJs still fall within our oversight.

"Improper conduct" was the phrase the Supreme Court used to describe the actions of your ALJ and the warden in the Linderman case. The court listed five specific instances of it. I asked you personally to remedy most of these five acts well before we went to court. You declined, you said, because you and the AG determined that everything in the case was handled just fine. You were wrong. Apparently, the Supreme Court's commentary in the Linderman case hasn't caused you to view our office and its work any differently.

The fact that a disciplinary report distinctly says an inmate is guilty of killing, even though no one died, doesn't bother you.

The fact that thousands of dollars of a worker inmate's earnings went to DOC and state coffers instead of the support of the inmate's child doesn't bother you.

Frankly, it makes me ask why we bother trying to convince you of anything. Your lack of good faith in dealing with our careful observations and recommendations is stunning.

Thanks for the note. I'm not at all surprised by the response.

From: Savala, Michael [DOC] [<mailto:Michael.Savala@iowa.gov>]
Sent: Thursday, September 19, 2013 2:30 PM
To: Dalmer, Bert [LEGIS]
Cc: Fayram, John [DOC]
Subject: RE: question on rule violations

Hi Bert,

As you know under the Code of Iowa, the ALJ's are independent and use their judicial discretion on how to formulate their rulings. While you may feel one ALJ's ruling is more clearer than the others, I am not going to get into the business of telling an ALJ that their rulings are "stylistically" not in agreement with how the Ombudsman Office would like their rulings to read. This is much the same as you trying to go down to the Polk County Courthouse and tell the judges you do not agree with how they are stylistically framing their rulings and that all judges should be using the exact same language that you (the Ombudsman Office) feel they should be incorporating.

From: Mays, John [DOC]
Sent: Friday, January 09, 2015 4:10 PM
To: Dursky, Jill [DOC]
Subject: Ombudsman Bert Dalmer

Jill,

Not sure what Ombudsman Dalmer expected to accomplish with his line of questions to Officer Heather Berry (reference Offender Peel #1140225 discipline report #20141009687). Per the officer, Dalmer was at first cordial keeping the conversation professional while seeming to be fixated on the fact that she is a new employee. Dalmer asked the same questions numerous times although she answered the questions clearly. She was re-directed to answer them again and again. I overheard him ask her who directed her to write a report on Offender Peel #1140225. Not that it makes a difference if she decided to write the report or was directed to do so by a supervisor.

Both the officer and I were disturbed by the fact that he asked her the same leading question yet used several word plays such as the following: "who directed you, who persuaded you, who encouraged you to write a report?" At one point, I overheard Dalmer tell Officer Berry that he felt she was being evasive. Officer Berry felt very uncomfortable as if she had done something procedurally wrong.

Bottom line, the ALJ found this offender guilty of engaging a female officer in an inappropriate conversation about her personal life & the offender appealed this to the Warden who affirmed the guilty disposition.

It appeared to me that this interview was more of an interrogation. It appeared that he was trying to lay guilt on our employee versus reviewing a legitimate claim by an inmate.

FORMER DOC ALJ DEB EDWARDS' REPLY

January 16, 2015

Ombudsman's Office
Attention: Ruth Cooperrider
1112 E. Grand Avenue
Des Moines, Iowa 50319

Dear Mr. Dalmer:

It is unfortunate I am spending my retirement responding to your investigative report when most retiree's are enjoying their lives. It is imperative that you understand the malicious slander I have been subjected to not to mention the public scrutiny based on your misinterpretation of the facts.

I would like to respond to your accusation that I was persuaded and intimidated by institutional staff and management when I made a disciplinary decision as the Administrative Law Judge at the Fort Dodge Correctional Facility in 2008. Nothing could be farther from the truth, in fact, Warden Smith did send me an email on 4-16-08 at approximately 4:32pm after my shift ended for the day. As indicated to you during your initial inquiry, I responded to Warden Smith the following day by informing him the report would be continued pending a statement from the Captain.

In response to your accusation that no decision had been made at that time, the reality is the report was remanded in order to receive a statement from the Captain to obtain additional investigative material for the report.

Further, upon calling the offender in for his hearing, and after reading the report, the offender requested witness statements from other offenders which were not previously named in the investigation. Once those statements were obtained by the Investigator I discovered new evidence, a video, which had not been introduced in the previous hearing process. At said time I explained this to the offender and further explained I considered giving him 90 days earned time loss, however, in light of new evidence, changed the decision to aggravate the violation due to mitigating circumstances. The offender said he understood why it was aggravated and admitted he was out of line in his actions.

In response to the accusation I changed the offense class based on the Warden's influence, please understand I never spoke with the Warden and feel this was purely speculation on your behalf. I did however, make a mistake when delivering the rules, of which I admitted and once I realized I was at fault, I corrected the mistake. You inquired about whether or not I wanted to aggravate the assault sanction which I replied no initially, but after reviewing the video and in light of the new evidence obtained in the investigation, I made a conscious decision to change rule violation #2 (Assault) from a B offense to an A offense, even though I originally didn't record it as such. Please note, although the Officer was not seriously injured, this did not in any way excuse the offenders behavior.

In response to the accusation I falsified information, and referred to a non existing policy, I assure you the policy you have quoted over and over does exist. Policy IO-RD-01 Section II-A is the policy I referred to in this hearing.

I am deeply appalled at the manner in which you have continued to imply I misrepresented myself and changed my decision allegedly based on persuasion of the Warden. You have disregarded the facts I presented even after I was able to explain my decision was simply based on the video being introduced as new evidence. Further, at no time did you bother to acknowledge I informed you of the video both via our conversation or my deposition, which is absolutely concerning. It is unclear as to why you have chosen to prolong a six year old investigation even the offender himself has not chosen to pursue. The harassing manner in which you have relentlessly pursued this has been disheartening and discriminatory.

I feel you have disingenuously presented facts and have made false statements in an attempt to defame my character as a professional. After 33 years of dedication to the Department of Corrections, with a solid reputation as an ALJ, I certainly deserve more from my retirement than spending time defending your irresponsible quest to make a name for yourself.

In conclusion, I would ask you to revisit the facts in a fair and impartial light, view the ICON report as was presented to you in 2008, and forward the deposition which I never received during this process. Please note this is our last correspondence without my private Attorney who will be in touch should this matter continue to impose on my much deserved retirement.

Respectfully Submitted,

Deborah D. Edwards

cc: Ruth Cooperrider
John Baldwin

OMBUDSMAN COMMENT

In their written responses to our report, DOC Director John Baldwin (who retired on January 29, 2015) and former ALJ Deborah Edwards accused us of misrepresenting the facts and engaging in harassment or “personal attacks” against them. They did not adequately address many of the key findings and conclusions in our report, including the following:

- No one in DOC investigated multiple witness accounts that a correctional officer provoked inmate Randy Linderman before Linderman bumped chests with the officer.
- Warden Cornell Smith engaged in ex parte communication when he suggested to ALJ Edwards how she should decide Linderman’s case before either had considered all the evidence. Smith then fielded and rejected Linderman’s appeal. The Iowa Supreme Court said Smith’s and ALJ Edwards’ actions amounted to “improper conduct.”
- The earned-time sanction imposed against Linderman for assault was twice the maximum allowed by DOC policy; the disciplinary detention was the absolute maximum. The officer suffered no injuries. DOC policy requires ALJs to issue sanctions “in proportion to the seriousness of the infractions.” After we pointed out the disparities, ALJ Edwards revised the decision and justified the sanctions by reasoning that Linderman used “a weapon” when he bumped chests with the officer. Her explanation contradicted that given by her superior, General Counsel Michael Savala.
- Inmates receive no advance warning of the specific class of offense they are accused of violating, leaving it up to the ALJ to decide. Federal and state courts have said for decades that prison officials must give inmates advance notice of alleged rule violations.

Edwards’ claim that we “misinterpreted” certain facts is not supported by the evidence provided by DOC. Edwards says she decided not to “aggravate” the classification of Linderman’s assault violation until after she first spoke with us and reviewed the video. But our first conversation with Edwards happened three weeks after she wrote her hearing decision, which clearly states that she had reviewed the video. Furthermore, although Edwards claims she told Linderman she was aggravating the violation, she did not use the word “aggravate” as she had done in past decisions, and she did not identify any aggravating factors as required under DOC policy.

Contrary to Baldwin’s implications, we did not tell Edwards she should submit to an interview without an attorney. We told her that the decision to bring an attorney was hers—not Baldwin’s. This reflects our longstanding policy to protect government employees who wish to share information with us, free from potential pressure or threat of retaliation from their superiors.

We are concerned that Baldwin and Edwards saw our investigation as a personal attack. Agency officials should not take offense when we diligently seek answers to our questions and share our opinions or offer constructive feedback, in the performance of our statutory duty.

Most concerning was Baldwin’s rejection, without analysis or explanation, of our systemic recommendations, which are aimed to improve DOC procedures and practices to avert problems we identified in the report. Rather than being responsive to these recommendations, Baldwin continued to defend and justify the sanctions the DOC gave to Linderman. We remain hopeful that DOC’s current leadership will reconsider these recommendations in their handling of inmate disciplinary cases.