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Large Jail Network Proceedings

Meeting Proceedings

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NIC
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Proceedings of the Large Jail Network Meeting
Aurora, Colorado
March 29–31, 2009

U.S. Department of Justice
National Institute of Corrections

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April 17, 2009

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INTRODUCTION

ABOUT THE LARGE JAIL NETWORK

The National Institute of Corrections (NIC) established the Large Jail Network (LJN) in 1989 as a connection point for administrators of jails and jail systems housing 1,000 or more inmates. The network was launched with 67 member agencies and convened at its first meeting in 1990. NIC publishes the *LJN Exchange* journal and hosts a private online presence for the network.

The contact for further information about the Large Jail Network is Mike Jackson, Correctional Program Specialist, NIC Jails Division, Washington, D.C., (800) 995-6423, ext. 69565, or mpjackson@bop.gov.

PURPOSE

> The NIC Jails Division networks' mission is to promote and provide a vehicle for the free and open exchange of ideas and information and innovation among network members. In addition, NIC networks reinforce the assumption that knowledge can be transferred from one jurisdiction or agency to another, and this knowledge can serve as a stimulus for the development of effective approaches to address similar problems or opportunities.
>
> Our belief is that, collectively, network members are likely to have developed successful strategies for meeting challenges that arise. As a group, network members are an available resource to each other. The network provides a systematic way for information to be shared, which not only benefits the network member, but also those they serve and represent – the local government, state, community, staff, and inmate.

LJN goals are:

- To explore issues facing jail systems from the perspective of network members with administrative responsibility.
- To discuss strategies and resources for dealing successfully with these issues.
- To discuss potential methods by which NIC can facilitate the development of programs or the transfer of existing knowledge or technology.
- To develop and improve communication among network members.
- To seek new and creative ways to identify and meet the needs of network members.

ABOUT THIS MEETING

The March 2009 meeting had 48 LJN member agency staff in attendance.

The meeting began with an informal dinner on Sunday, March 29, with participant and guest introductions. Two days of presentations and discussion followed.

Guests and speakers at the meeting included:

- Judith Sands and Monty Zimmerman, U.S. Immigration and Customs Enforcement, Secure Communities Program.
- Jeanne Nollman, DSD Discourse.
- Alexander Lee, TGI Justice Project, San Francisco, California.
- Donald L. Leach II, presenter and consultant, Lexington, Kentucky.
- Gwyn Smith-Ingley, Executive Director, American Jail Association, Hagerstown, Maryland.
- James Gondles, Executive Director, American Correctional Association, Alexandria, Virginia.
- Mark Flowers, Director, Standards and Accreditation, American Correctional Association, Alexandria, Virginia.
- Connie Clem, meeting recorder, Clem Information Strategies, Longmont, Colorado.

The agenda for the meeting is provided in Appendix A.

A list of LJN members in attendance and meeting guests appears in Appendix B.

An index of past topics covered at LJN meetings is provided in Appendix C.

LJN ONLINE

NIC provides a private web site for the LJN, where members can access presentation files from this and earlier LJN meetings as well as share other materials throughout the year. A member forum facilitates a day-to-day dialogue on issues facing large jails and strategies for responding to them. Current and prospective members can access the site at http://community.nicic.org/forums.

MEETING TAKE-AWAYS IN BRIEF

Illegal Aliens

p. 4 A partnership with U.S. Immigration and Customs Enforcement (ICE) has reduced the "revolving door" effect in Tulsa County, Oklahoma, cutting jail beds and bringing other benefits.

p. 6 ICE's expanding Secure Communities initiative helps counties identify dangerous criminal illegal aliens, without the commitments of the 287(g) program.

Staff Discipline

p. 9 Correctional officers and staff need to know the boss is committed to ethics and honesty. Middle managers' direct involvement is essential for keeping accountability alive throughout the organization.

Prison Rape Elimination Act

p. 12 Proposed standards from the National Prison Rape Elimination Commission are making their way to the U.S. Attorney General. Implementation costs and the challenges of bridging theory to current professional practice pose questions.

Intersex and Transgender Inmates

p. 17 Decisions on managing intersex and transgendered inmates begin at intake. Terms and definitions, medical facts, and psychological and sociological insights are available to help agencies formulate workable policies and practices.

Strip Searches

p. 28 A recent circuit court decision changes the legal landscape on strip searches and may be grounds for an eventual case before the Supreme Court. Developments were also reviewed on the allowability of searching inmates who are returning to the jail after court appearances and before discharge.

Religious Observance

p. 30 Decisions on religious diets and other forms of observance affirm that jails should reasonably accommodate the conscience of the adherent, rather than rules defined by authorities within a faith tradition. Jails must have solid grounds for any restrictions they impose on religious observance, and the restrictions may not place a substantial burden on the inmate's practice of the faith. Inmates' sincerity in adopting a faith may be considered.

PROGRAM SESSION: ILLEGAL ALIEN PROGRAMS

Part 1. Criminal Aliens and ICE

Presenter: Tim Albin, Chief Deputy, Tulsa County Sheriff's Office, Oklahoma

Tim Albin shared his experiences in the evolution of immigration control efforts in Oklahoma over the past several years. Back when this was handled by the Immigration and Naturalization Service (INS), there were two INS staff covering the State of Oklahoma. Because the laws were so intricate, the answers to every question were "Yes, unless . . ." or "No, but . . ." Making things run more smoothly has been a long process requiring effort from the Tulsa County Sheriff and the newer federal agency, U.S. Immigration and Customs Enforcement (ICE).

Tulsa County has been a partner in ICE's 287(g) program since 2007. In this program, deputies are trained to conduct identity investigations and to process criminal alien detainers. Jail enforcement officers prepare case paperwork for handoff to ICE after disposition of charges. Several staff have received the 5 weeks of intensive training provided by ICE. ICE's operations include three stand-alone operations: detention removal, investigations, and fugitive operations. The jail is primarily involved in just the first element.

The jail's primary goal in this area is to reduce the number of criminal aliens in the county. As illegal immigration increased, it affected the local quality of life in terms of increasing numbers of uninsured drivers, increased identity theft, and more DUIs as well as more property and personal crimes. Oklahoma has been experiencing large numbers of aliens crossing state lines.

Now, the jail looks at potential alienage for everyone who is booked. The booking process includes redundancies, making it more likely that indicators will be caught. As a result, the jail has identified some dangerous criminals.

Jails need to understand immigration and removal law, because many immigration attorneys don't understand it. For example, it is possible to do an ICE hold on a detainee even if he or she has a green card. Detainees can be considered a flight risk for bonding purposes. The ICE hold goes with the inmate to state prison if he or she is convicted, and the inmate is transferred to ICE custody after all charges have been released.

Identification is the essential element. Data systems in use include IDENT for biometrics, the ENFORCE administrative case management system, and others. Some alien detainees are released on bond. Others are released and deported voluntarily. Some countries must give permission for the person to be returned, and others need travel documents to be created, which can take awhile.

Recognizing the potential for the program to be misunderstood in the community, Albin's team went out to educate the public before the program started. They spoke at churches and other public venues to explain that the criminal alien program was not about racial profiling or workplace roundups

of illegal workers. It was clear that both ends of the community's political spectrum have their own agenda and were sharing misinformation that the jail hoped to offset.

In Tulsa County, 85% to 90% of criminal aliens are Hispanic, but they have come to the U.S. from many different countries, not just Mexico. Aliens from Mexico are not a specific target of the agency's efforts. The program is not driven by racial bias—it's about the proximity of the border. The county has identified aliens from all over the world.

Albin recommended that jails keep statistics on the offenses that bring aliens to the jail. This helps to demonstrate that many of these people are being arrested for the same offenses as any citizen, such as invalid identification, DUI, traffic offenses, or driving without insurance. These may seem like minor issues, but together they add up, to the detriment of quality of life in the community. Another segment of the alien detainee population is charged with crimes involving violence, drugs, and other priority offenses.

The jail itself does not deport anyone; it simply turns them over to ICE for further determination. Not everyone who is referred to ICE is deported. An administrative law judge may release a detainee on bond, let him or her resume studies on a student visa, or make other determinations.

Very few people who have been identified as aliens have come back to jail. This has resulted in the jail's average daily population (ADP) dropping by 100 to 150 inmates since the ICE partnership work became a focus. Whereas aliens used to be arrested, enter the jail, and bond out over and over, sometimes under different names, now they come in, undergo the ICE process and get a reliable identification, and come back less.

Albin's agency views its ICE partnership as very beneficial. The agency has learned a great deal about gang issues in its multi-state region, drug interdiction, and other areas of expertise. It also receives significant funding for housing ICE inmates.

Discussion

Mitch Lucas (Charleston County, South Carolina) asked if Tulsa County engages in contracts with other counties to handle aliens. Albin replied that they do not, but they try to offer help when asked by giving presentations or referring other counties directly to ICE.

Contact information: Tim Albin is Chief Deputy, Tulsa County Sheriff's Office, Tulsa, Oklahoma. He can be reached at (918) 596-4507 or talbin@tcso.org.

Part 2. ICE Secure Communities Program

Presenter: Monty Zimmerman, Secure Communities Program, U.S. Immigration and Customs Enforcement, Washington, D.C.

Monty Zimmerman described Secure Communities as a parallel program that dovetails with the 287(g) initiative, also managed by U.S. Immigration and Customs Enforcement (ICE). One division of ICE focuses on local coordination to ensure that if a jurisdiction implements either of these programs, the left and right hands know what the other is doing.

Secure Communities was initially launched in 2008 at a handful of Phase 1 sites and is currently active or expanding in more than 50 locations. Examples include the unified justice system in Rhode Island; the City and County of Denver; Gwinnet County, Georgia; Atlantic County, New Jersey; King County, Washington; Montgomery County, Maryland; Palm Beach and Miami-Dade Counties in Florida; Imperial, San Bernardino, San Diego, and Los Angeles Counties in California; Travis and Bexar Counties in Texas; and Tulsa County, Oklahoma.

Secure Communities is based on three areas of processing of aliens: identification of criminal aliens, prioritization of ICE resources to remove dangerous criminal aliens, and technological transformation of the criminal alien enforcement process to achieve lasting results.

Detainee identification includes an integrated scan and records check to validate any previous ICE or other law enforcement encounter, using biometric data.

- A match exists if there is an immigration record somewhere for the detainee. ICE is currently fingerprinting all persons entering the U.S., including green card holders, intended immigrants, and other visitors who do not intend to immigrate. Print data go to the FBI wants and warrants database and the terrorist identity database, which is updated every 24 hours. (A backlog of out-of-date wants and warrants is being cleaned up this year.) For detainees who are identified this way, the local ICE office determines whether to issue an immigration detainer on the person. Factors can include whether the person has previously been identified for removal or has been removed and returned to the U.S.

- If no match is made, it does not guarantee the detainee is not here illegally. Many people get into the U.S. without being fingerprinted—for example, those who make a successful covert border crossing.

The Secure Communities Program model uses data to support its priority of focusing on dangerous offenders, essentially a narrow segment of the illegal immigrant population. It does not attempt to broadly cover aliens detained on all types of charges.

Goals include providing 24/7 response to detainers, removing aliens convicted of five core violent felonies or drug crimes with a sentence of 1 year or longer, and removing aliens whose crimes have a connection with terrorism. The program expects that by the end of 2009, it will have placed holds on approximately 40,000 detainees who are violent offenders with an immigration nexus.

Secure Communities is aiming for an effective middle ground on releasing or deporting illegal aliens. Its intent is not to deport law-abiding working persons. As of March 22, the program had reviewed more than 170,000 sets of prints. Matches were found for 19,495 individuals. The process identified 1,436 Level 1 criminals and more than 17,000 lesser criminals. An additional 734 individuals were found to be foreign-born U.S. citizens who therefore exited SCP's sphere of concern.

Communications is a major aim for Secure Communities, to ensure that law enforcement, judges, and prosecutors understand the program's role and the type of criminal alien it targets. For Secure Communities to be able to intervene with a deportation, it is imperative that states continue to move cases forward on a violent or personal offense charge that qualifies for Level 1 attention. Offenders need to progress through the entire legal process. If a person is prosecuted at a lesser charge, he or she may fall below the Level 1 threshold for Secure Communities attention, and ICE will not be able to remove that offender from the U.S.

On a procedural level, Secure Communities is moving away from permitting voluntary returns, because the process doesn't document the person with a removal order that will show up in the legal record if the person is arrested again. If there's a felony conviction, the person gets an administrative order and is permanently banned from returning to the U.S. If these people come back, they face a 20-year prison sentence.

Tim Ryan (Miami-Dade County, Florida) agreed that prosecutors need to understand how to manage the plea process for these detainees such that they will be eligible for removal. It can be important to bring felony charges against serious offenders to create the ability to keep them from returning legally to the U.S.

A case study illustrates some of the follow-through required to keep U.S. borders secured against known criminals. A criminal alien was identified by Criminal Alien Program (CAP) agents in Denver, but his legal defense denied he was the person in question. ICE was able to prove through photographs, prints, and signatures that he was the correct person. The legal team then claimed he had never been successfully deported, in response to which ICE had to demonstrate, step by step, the process through which they had in fact removed him from the U.S. The defendant received a 15-year prison sentence on the charge of illegal reentry into this country, which may be proving to be an inhibitor for other criminal aliens who are thinking about returning illegally.

A number of other initiatives are under way to end the "catch and release" mode of operation. Proceedings are being expedited; consulate relations are being maintained; and foreign nations are doing due diligence to make sure they're not facilitating illegal operations. Detainees are undergoing interviews on geography and events that can help validate or disprove their claimed countries of origin.

Discussion

Tim Albin (Tulsa County, Oklahoma) noted that his staff review all detainees for potential criminal alien status. His staff have gotten good at noticing small inconsistencies that signal a deception. For example, a detainee may say he was born in Memphis but he has a California series Social Security number. Or a detainee may say he was "born in Memphis, Kentucky."

Participants discussed described how ICE programs are changing the way things are done in detention. Officers perform immigration-related tasks as the need arises over the course of their shift.

Agency resources are being shifted into creation of task forces that work immigration laws on the street. The 287(g) program has jail and task force elements. SCP is putting all its current focus onto the jails.

In Phase 2 of SCP's deployment, there will be an added focus on the U.S.'s southwest border. ICE is planning to hire 5,500 additional staff within the next year as the SCP program expands. The goal is a 24/7 ICE response to place a detainer.

In many locations, citizens are concerned about breaking up families and are pressuring the jail not to cooperate with ICE. Where jails are being confronted with this problem, regional ICE offices rather than jails should be responding.

Art Wallenstein said that Montgomery County, Maryland, is considered a sanctuary area for immigration. However, a recent murder triggered a reevaluation of sanctuary when drug or violent crimes are involved. His agency faxes a daily list to the local ICE office of detainees who were born outside the U.S.

Presenter information: Monty Zimmerman and the Secure Communities Program can be contacted at Secure.Communities@dhs.gov or (202) 732-3900.

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PROGRAM SESSION: PROACTIVE DISCIPLINE, PART 2

Making Your Staff Work for You

Jim Coleman, Shelby County Corrections, Memphis, Tennessee, and Tim Ryan, Miami-Dade County, Florida

This session continued a presentation begun at the LJN meeting in September 2008. Tim Ryan introduced the session by saying he's been worrying about staff, not inmates, ever since he moved into jail management.

Defining Expectations

Meeting participants viewed a taped message from Ryan that is viewed by all officer trainees in Miami-Dade County and focuses on professional standards. It sets the tone for expectations in the agency by stating, for example, that integrity is an officers' most essential asset. In the video, Ryan acknowledges that his message is primarily directed at only a few staff; the vast majority can already be counted on to behave ethically and properly.

Ryan uses the video to identify the consequences of several types of behavior, known as "the terminators," that can get staff disciplined or removed from the job:

- Lack of truthfulness and integrity, including the failure to disclose inappropriate actions of other staff.
- Use of illegal drugs.
- Discrimination on the basis of race, ethnicity, age, etc.
- Sexual harassment.
- Acceptance of gratuities or similar actions that could create the appearance of a conflict of interest.
- Retaliation.
- Fraternization.

After Ryan's new officers view the video, there still may be violations, but the agency's response won't be a surprise. Staff sign a statement that they have viewed the video, and if their later behavior warrants discipline, the agency can take the statement into arbitration.

Agencies that are considering implementing a similar program in unionized areas should involve union officials to gain their support. It can be helpful to present the change as simply a revisiting of where the agency has been and where it wants to go.

Shaping Culture

Jim Coleman discussed some methods for shaping the agency's culture. One example is his plan for developing new sergeants. He does not promote people to be sergeants; instead he promotes them to be trained for potential selection as sergeants. Those accepted into the agency's 6-month first-line supervisors training program receive a 5% salary increase. Some staff who were sergeants when he came to Shelby County and did not support his efforts to change the agency culture have since retired or been demoted.

Coleman noted that 10% of the jail's problems take 90% of the leadership's time. The key is to support the 90% of the staff who are performing well and help them to hold the other 10% accountable.

Rather than knuckling under to staff who attempt to manipulate the system, jail leaders and staff should make them so uncomfortable they don't want to stay. A case in point is a woman who became known as the queen of on-the-job injury. Her saga included a claimed spider bite during her shift that she did not report to her supervisor, a demand for a more comfortable chair once she was back on the job, and an injury sustained in falling out of a chair. Coleman successfully intervened by charging her with conduct unbecoming an officer. His view is that some employees don't want to work, and that anyone who does not want to work in his jail will not be forced to do so.

Coleman stated that a jail's staff know who poses a discipline problem, and the jail administrator should let them help deal with the problem. Sergeants and new supervisors need to understand what is negotiable and what is not, and that the jail administrator will back them up.

Unions typically can't or won't do anything about disciplinary problems, Coleman observed. He wrote a piece for the union newsletter that asked, is it the intention of the union to fight for people who abuse the system?

It is imperative to have good paperwork on disciplinary matters. A record of counseling is not considered disciplinary in nature, but jails should keep this information in the employee's record because it can establish the first line of evidence. In his agency, people who are disciplined can make a direct, voluntary appeal to the jail director, but fewer staff have been doing so because the agency's case is so solid. Those who want to take the matter further can appeal the sanction to the county.

Ultimately, discipline is about supporting the good people and creating a deterrent to inappropriate behavior. The rest of the staff are watching.

Discussion

A female correctional officer who was terminated after a road rage incident took her appeal to a handful of different panels and review venues, including a state senator. Every time questions were raised, the facts sustained the jail's action.

One jail reviewed its data and found a staff member who missed 400 days of work over 4 years. This raises the issue of supervision. It's important to train supervisors on their responsibility for observing what's going on in terms of attendance and other indicators, such as overtime.

In many jails, the role of sergeants and captains is not covered in training. There may not even be a clear job description of responsibilities including supervision and ensuring accountability among subordinates. Specific roles will be different in a direct supervision jail. One participant said that if he

has to jump over the supervisor to address an attendance issue, that supervisor is going to be let go. Supervisors must be held responsible for enforcing rules.

Participants observed that as soon as some staff complete their probationary period, they learn to subvert the system. Suddenly, for example, they have allergies that prevent them from making it to work. One response is to put them back on 90-day probationary status, if abuse is suspected. Participants agreed that the probationary period is there for a reason, and problem staff should be terminated if necessary rather than coddled along.

Mitch Lucas (Charleston County, South Carolina) noted that some supervisors avoid a direct, personal confrontation when there is a problem. Rather than telling one staff member not to wear Bermuda shorts again, the supervisor writes a general memo to the whole staff. It's better to be direct.

Jail leaders need to allow the chain of command to function, or they're doing the job their supervisors should be handling. This includes requiring supervisors to review leave data for flags and responding. A focus on absenteeism is key to understanding overtime.

Looking at absenteeism may result in more internal affairs investigations. Tim Ryan (Miami-Dade County, Florida) found that a fair number of staff have been arrested on charges of drunk driving, domestic violence, or driving with a suspended license. This may have implications with officers' ability to carry a weapon, and ongoing checks with the personnel department may be advised to be sure that employment rules are not being changed without notice to the jail.

Art Wallenstein (Montgomery County, Maryland) agreed that in focusing on absenteeism, the jail administrator can let the data do the talking. The louder the union yells, the clearer it is that the data are helping the agency get at the root of the problem.

Absenteeism can also be an issue with supervisory staff. Jim Coleman (Shelby County, Tennessee) requires his supervisors to meet a minimum number of annual days worked in order to remain a supervisor. Those who don't meet the minimum are advised that they need to improve to retain their rank.

Participants raised issues related to personal and family medical leave. Unscheduled leave time language in agency policy should be written to avoid a slant toward medical and family leave. Supervisors who have an ongoing health issue can be allowed to temporarily turn in their stripes and return to their former rank when their health improves. Home visits can be used to confirm illness. Supervisors need to notice when a physician is writing bogus statements of illness or disability. When a staff member is away from work claiming a flare-up of an old knee injury, for example, the jail can require the staff member to provide a doctor's approval that they're ready for duty rather than assume the flare-up was real.

Accountability, consistency, and having a process and procedure in place for discipline make it an effective management and training tool. Labor, internal affairs, and other stakeholders need to know the disciplinary process. The better the jail does its discipline, the better its employees will become.

Presenter information: Jim Coleman is Chief Jailer, Shelby County Sheriff's Office, Memphis, Tennessee. He can be reached at (901) 545-2414 or james.coleman@shelby-sheriff.org. Tim Ryan is Director of the Miami-Dade County Corrections and Rehabilitation Department, Miami, Florida. He can be reached at (786) 263-6010 or timryan@miamidade.gov.

PROGRAM SESSION: PREA UPDATE

What's New with PREA?

Presenter: Don Leach, Lexington, Kentucky, Consultant.

Don Leach opened the discussion by stating that no major actions are immediately forthcoming with respect to the Prison Rape Elimination Act (PREA). The revised draft standards will be submitted shortly to the U.S. Attorney General, who is charged with reviewing them over the course of the year ahead. Meanwhile, the National Prison Rape Elimination Commission (NPREC) is scheduled to be disbanded 60 days after the standards' submission to the Attorney General.

Though corrections professionals, including LJN members, have shared concerns about the first draft of the standards, it is understood that no substantial changes to the draft standards are likely. The standards, the discussion, and the compliance checklist sections were to be integrated. An NPREC member stated to Leach that the intent of PREA was not to set up legal liability for jails, but that noncompliance could be viewed as failure to protect inmates.

Participants discussed several specific concerns with the draft standards.

- The PREA commission did not define thresholds that would constitute acceptable levels of compliance with the standards.
- It is not clear how a jail's inability to meet individual items on the standards checklist will be handled, or who will interpret the documentation to decide whether a jail is to be considered in compliance.
- It is unclear how implementation of the standards may proceed, given that the PREA legislation specifies that implementation should impose no significant costs on agencies.
- The incongruity of certain recommendations against current professional practice and case law continues to be a cause for concern. For example, women officers commonly manage male inmates, per equal employment case law. Male correctional officers already do not "supervise" women taking showers. Cross-gender searching already is clearly addressed in law and agency policy and practice.

The PREA commission chair sent a letter to the LJN membership, the text of which was read to meeting attendees and is reproduced here:

> March 2009
>
> Dear Members of the NIC Large Jail Network,
>
> Greetings on behalf of the National Prison Rape Elimination Commission. As you gather for your meeting in Colorado, I write to provide an update on the Commission's progress and plans for the promulgation of our recommended standards and final report on sexual violence in America's correctional and detention facilities. We are pleased to report significant progress towards what we believe will be excellent results from the work of the Commission and the many individuals and groups that have contributed to this process.
>
> As you all know, the Commission is nearing the end of its process to prepare recommended standards and a final report on the elimination of sexual assault in detention facilities. In doing so, we have engaged in a thorough and transparent process to evaluate the causes and impacts of sexual abuse of individuals in confinement and to identify the best strategies for preventing abuse and improving responsive efforts.
>
> Beginning in early 2007, we established expert committees comprising diverse stakeholders from the justice, health care, research, and advocacy communities to guide the development of the draft standards. The draft standards released by the Commission for public comment would not have been developed without their support and commitment to the goals of PREA.
>
> In May and June of 2008, the Commission completed the first full drafts of standards for Adult Prisons and Jails, for facilities holding immigration detainees, for Lockup facilities, for Juvenile facilities, and for Community Corrections facilities. Although we were not obligated to solicit public comment of these initial drafts, we felt strongly that creating an opportunity for public comment during the finalization of these standards would significantly strengthen the standards that we will ultimately recommend to Congress, the Attorney General, and the President; and would improve their likely effectiveness and feasibility. With these considerations in mind, we made all the draft standards available for public comment over the summer last year.
>
> Over the course of the public comment period, we received written comments from more than 225 individuals and organizations, including corrections officials and staff, survivors who had been sexually assaulted while in detention, advocates, academics, current and former inmates, professional correctional membership organizations, the Federal Bureau of Prisons, and many more. In response to the individual and organizational feedback, we have spent an enormous amount of time reflecting on feedback and incorporating it, resulting in significant changes to the initial draft standards. Not only have significant substantive changes been made to the content of the standards, but the number of the standards has been refined, and improvements have been made to the format to improve clarity about what is required by the standard and what is commentary.

We were very pleased at the breadth and thoughtfulness of the many comments we received. We recognize the importance of contributions from the field and from others whom our standards will impact. Your feedback helped us to identify potential obstacles to the implementation of these standards, as well as recommendations about how to achieve our statutory mandate – the elimination of sexual abuse – in the most efficient and manageable way. We believe this feedback has strengthened and improved the final standards we will recommend, and will help us to reach our goal of eliminating sexual abuse in detention facilities and improving prison safety.

Another aspect of the public comment period and information-gathering process was our Standards Implementation Needs Assessment (SINA) project. The SINA process was created to provide feedback on the standards through a series of "case studies" at particular facilities. Over forty facilities from around the country applied to participate in the SINA process; the Commission selected eleven sites that reflected ranges in capacity, populations, and geographic settings and that included jails, prisons, men's facilities, women's facilities, community corrections facilities, and juvenile facilities. Each site visit took place over one and a half days, and included a facility tour and five structured interviews: one with the Warden or Superintendent; and the others with small groups discussing general issues, training, medical/mental health, and investigations. With the exception of the meeting with the Warden or Superintendent, interviews involved a variety of staff with experience relevant to the particular interview topic. When possible, we also spoke with inmates detained in the facilities. While we recognize that the SINA project was not a true "field test," the specific practical advice and feedback received through this process supplemented and supported the written comments received during the public comment period in what we found to be an extremely useful and constructive manner.

Feedback provided during the public comment period, including information gathered through the SINA, has been thoroughly reviewed by staff and by each Commissioner to guide the further revision, and ultimately the finalization, of the draft standards; and will also contribute to our final accompanying report. In addition to the standards, the final report will contain recommendations about how to prevent and respond to detention facility sexual abuse and make prevention a top priority in every correctional and detention facility and system in the nation.

The Commission's final report and recommended standards will be provided to Congress in June of this year. The Commission itself sunsets 60 days after the submission of our work, but the real work of implementation begins then. Within a year of receiving the final report and recommended standards from the Commission, the Attorney General is required by the PREA statute to consider our recommended standards and to promulgate national standards for the detection, prevention, reduction, and punishment of detention facility sexual abuse.

The finalized standards issued by the Attorney General will apply to the federal Bureau of Prisons immediately upon issuance. States will receive notification of the new standards from the Attorney General, and will have a year from the time of that notification to adopt and comply with them or risk losing five percent of any federal grant funds provided for prison purposes. Additionally, the statute directs that any organizations that accredit Federal, State, local, or private prisons, jails, or other penal facilities adopt accreditation standards for the detection, prevention, reduction, and punishment of sexual abuse in detention facilities that are consistent with the national standards. For the purposes of clarification, the term "prison" is defined broadly to include any facility run by "a Federal,

> State, or local government, whether administered by such government or by a private organization on behalf of such government," including local jails, police lockups, and any juvenile facility.
>
> As Commissioners, we fully recognize that we are all part of a long and ongoing process to improve the safety and security of those working or living within our nation's correctional and detention facilities. The Commission has had the privilege and responsibility of playing a key role as directed by Congress; however, the work to eliminate sexual assault in our detention and correctional facilities is something that began before the life of this Commission, and will continue long afterwards, with the Attorney General, Congress, and all of you. Again, my fellow Commissioners and I thank you for your interest and attention to these important issues, and for your continued tireless work towards achieving the goals of the Prison Rape Elimination Act. We look forward to the release of our recommended national standards and accompanying report that will move our nation towards ending sexual abuse in our correctional and detention facilities.
>
> Sincerely,
>
> Judge Reggie B. Walton, Chairman, National Prison Rape Elimination Commission

Discussion

LJN participants consider that the standards development process has not been transparent. No one from a jails background was invited to participate in discussions around the standards' formulation or was able to attend commission meetings. The public comment period lasted only 30 days. The commission did not share the review comments it received from the field. Offers of assistance in adjusting the language to better reflect jail practices were rebuffed. There is no known example of any change in the draft standards that is the result of comments from jail leaders.

Gwyn Smith-Ingley (American Jail Association) described conversations with NPREC in which she pointed out the field's mistrust of the process and its perception that its voice has not been heard. Smith-Ingley noted that the commission should set the record straight if some members are commenting on the standards from their own personal perspective, to make it clear that such comments do not represent the commission's official position.

A participant noted that the commission said data from "transfer sites" may not be appropriate for examination against PREA standards, because the inmates' length of stay is so short. This raises the question of whether jails might be considered "transfer sites" on the basis of their daily flow of inmates in and out of custody. Operations in prisons are very different.

The Bureau of Prisons, under Director Harley Lappin, has prepared an implementation study that will be reviewed by the Attorney General. The cost projections are expected to be illuminating.

It was suggested that there are three courses for future developments as PREA matters proceed.

- The Attorney General may take no action on the proposed standards, on the basis of the complexity and expense of implementation, particularly as they would affect small jails.

- The Attorney General may selectively support implementation of standards that are judged to be the essentials that can reasonably be accommodated. As one example, the segments on cross-gender supervision pose serious problems.

- The Attorney General may elect to implement all the standards without consideration of their impact in terms of operations and the cost burden.

If the standards go forward as written, participants agreed, they will provide further grounds for legal action against jails, based on nebulous perceptions. Granted, there is some incidence of sexual misconduct and sexual assault in U.S. correctional facilities, but it is not true that nobody is safe in custody. PREA suggests that no single inmate and officer can be alone under any circumstance without an assumption of sexual violation taking place. The draft PREA standards reflected a pervasive lack of understanding of how jails operate, a blanket distrust of jail personnel, and a disregard of legal precedents in terms of staff duties, inmate safety and security practices, etc.

The group reviewed findings and recommendations from PREA incidence studies. PREA research identified characteristics that describe likely victims and perpetrators of inmate-on-inmate violence, and characteristics that describe inmates and staff involved in staff-on-inmate sexual victimization. Research also identified the characteristics of agencies and facilities with high and low incidence. An extensive list of best practices covers the areas of staff and inmate training, classification, surveillance, reporting, investigation, prosecution, and relevant policy and practices.

As a result of PREA, there is greatly increased awareness of inmate safety issues and a better body of data on the incidence of sexual victimization in corrections and detention. PREA-funded research showed that incidence was nowhere near the 13% that was predicted at the outset.

Jim Gondles (American Correctional Association) noted that jail practitioners should appreciate the professional contributions made by site review panel member Gwen Chunn, Bureau of Justice Statistics director Allen Beck, and BOP director Harley Lappin.

Participants discussed the possible future influence of professional associations, including the National Sheriffs' Association, the American Jail Association, the American Correctional Association, and others, in making heard the perspectives and concerns of the professional corrections community.

Contact information: Don Leach is a consultant based in Lexington, Kentucky. He can be reached at (859) 552-4286 or donald.leach@insightbb.com.

PROGRAM SESSION: INTERSEX AND TRANSGENDER ISSUES

Part 1. Gender and Sexuality in the Jail

Presenter/Moderator: Don Leach, Lexington, Kentucky, Consultant.

Don Leach introduced the session and speakers. Leach said that agencies commonly deny that sexual behavior exists in jails, but the reality is that consensual sex is taking place and the potential exists for sexual exploitation. The jail is responsible for ensuring the safety of all inmates.

For most inmates, management on the basis of sexual identity is simple. Men are housed with men and women with women, unless there is a need for another response, such as protective custody. People whose sexual and gender identity is less clear pose unique problems for the jail. This session is intended to provide facts and details for development of informed policy and practice for safely and respectfully managing people who, for physical and/or gender identity reasons, do not fit the standard binary categories of male and female.

A person's sexual identity is based on three elements: physiognomy, sexual orientation or preference, and gender identity.

- Physiognomy refers to the physical anatomy of the person. Most commonly, a person is either a man or a woman, but the answer is not always so simple.
- Sexual orientation refers to the romantic and physical attraction a person may feel toward men, women, or both sexes.
- Gender identity refers to a person's mental image of what sex he or she is. Gender identity does not always match a person's physiognomy.

This session presented information on two populations that present specific challenges to detention and corrections agencies: intersex persons, and transgender persons.

- **Intersex persons** are born with atypical physical characteristics because of genetic and/or developmental disorders. Their condition may result in evidently normal external sexual characteristics, clearly non-standard characteristics, or anything in between. Some intersex persons reach adulthood without a diagnosis of their condition. Others who have more obvious physical differences may be subject to harassment or unwanted attention. Some were subjected to surgery at a young age in an attempt to assign a clear physical gender, with complex and unintended psychological results. Much "common knowledge" about the range of intersex conditions is incorrect. Jail medical staff should be knowledgeable about the hormone treatments and other medical interventions that may be necessary for intersex persons entering the jail.

- **Transgender persons** are born physically normal with a male or female physiognomy, but their gender identity does not match their external anatomy. Transgender persons may be attracted to men, women, or both. Some transgender persons pursue gender reassignment surgery to create the physical characteristics that correspond with their internal experience of their gender identity. People entering the jail who are in the process of gender reassignment need continued hormone treatments and may also require other special management.

Part 2. Intersex in the Jail

Presenter: Jeanne Nollman, DSD Discourse

Ms. Nollman spoke to the group as a representative of DSD Discourse, an organization that provides advocacy and support of persons born with an intersex condition and their families. "DSD" is an acronym for "disorders of sex development." Jeanne is an intersex person. She feels herself to be and lives as a woman but has both an X and a Y chromosome, which makes her genetically a male. Jeanne is married to a man and has two adopted children. Most people in her community are unaware of her intersex condition.

Ms. Nollman believes it is important to educate people about intersex conditions. Her own experience in dealing with the medical profession was very difficult. She was unable to obtain her medical records for many years or to gain clear information about a diagnosis. Medical practices have changed and are continuing to change. It has also become easier to find others with similar conditions for support and information-sharing. Stigmatizing labels such as "hermaphrodite" and "pseudo-hermaphrodite" are no longer in use.

Defining Intersex

Being intersex is a medical condition. Contrary to popular imagination, intersex people are never born with a full set of functional male and female sex organs. Some, but not all, intersex people have ambiguous external genitalia. An intersex condition can manifest in various ways along a continuum of male to female characteristics in the genitalia and reproductive system. Intersex people may have ovaries or testes, undifferentiated gonadal "streak" tissue, or a combination.

Intersex conditions begin during fetal development. All human embryos begin as female until about 7 weeks after conception, when the presence of the Y chromosome triggers the production of hormones that steer the fetus to develop as a boy. If something interferes with the ability of the hormones to affect development, an intersex condition results. Genetic females can also be affected by an intersex condition. Overall, intersex conditions affect about one birth in 2,000.

Past medical practice was to intervene with surgery, hormonal treatments, behavioral coaching, and/or counseling to "normalize" a child as one gender or the other. This practice was intended to help the parents as much as the children, but the unintended consequences for these children were unfortunate and often tragic. The medical model assumed that all people grow up to be heterosexual, and the development of sexual and gender identity was not well understood. Many intersex persons

who were subjected to gender reassignment later experienced severe problems with sexual identity, depression, and quality of life.

Being intersex is portrayed negatively in the media. The 2008 Universal Studios movie, Baby Mama, refers to being intersex as the worst thing that could happen to a child. An episode of the House cable television program on the Fox Broadcasting network features a teen girl who is found to be a chromosomal male under dramatic and unsympathetic circumstances.

There are about 50 individual medical diagnoses that create an intersex condition, including these examples:

- **Congenital adrenal hyperplasia.** In this condition, a female fetus has normal chromosomes, but the adrenal glands produce extra testosterone, resulting in a masculinization of the fetus. Thus, a woman may have an enlarged clitoris and/or other male characteristics.

- **Hypospadias** – In this condition, the opening of penis can be anywhere on the penile shaft and there may be other problems involving the testes. In less severe stages, surgeons can repair the penile opening, and the person can urinate and reproduce normally. In more severe cases, reconstruction may be quite difficult, and surgery is not always successful. A jail inmate with this condition may be harassed if he needs to sit down to urinate. Recurrent infections may require medical care.

- **Micropenis**. In this condition, the penis is very small as a result of pituitary function.

- **Androgen insensitivity syndrome**. In this condition, the genetically male fetus produces testosterone, but there are no receptors. Physical signals may include trapped or partially trapped testes, underdeveloped nipples, and sparse pubic hair. The person appears female but does not begin menstruating at puberty. Because testosterone converts spontaneously into estrogen, breasts develop.

- **5-alpha reductase deficiency**. People with this condition have normal chromosomes. The children are born with no visible testes and are raised as girls, but at puberty the testes descend.

- **Klinefelter syndrome**. This condition affects men who have an extra X chromosome, which inhibits normal testosterone production.

Issues in the Jail

Jails can counteract social bias and misunderstanding to manage intersex inmates appropriately and professionally and to provide appropriate medical and mental health care. Policy and training help to create a better understanding that benefits not only affected inmates but also any jail staff who may have an intersex condition within their families.

Jail operations include several areas where attention can be directed to ensure a professional and sensitive response to intersex inmates.

- Placement—It is advisable to make the housing assignment decision based on gender identity rather than anatomy. Also, it's a truism that women inmates tend to be less cruel and intolerant than men. On this basis, housing intersex inmates in a women's unit may often be the better choice.

- Medical care—Intersex persons are usually sterile. Their gonads often are not functional, and/or they lack other anatomy necessary for reproduction. Some intersex conditions carry with them a higher risk for osteoporosis, cancer, and other diseases. Hormone replacement therapy should be continued while recipients are in jail.

- Searches—Strip searches and changing clothes in a group space can expose an intersex person to unwanted attention and harassment. Jails should be sensitive to this. In addition, when there are difficulties determining the gender of an intersex person at intake, jails should avoid any sensationalism or intrusion by a "hot dog" officer. The person should be treated with respect and if necessary held in a safe and secure location until qualified staff are available to conduct an interview and medical examination.

- Harassment—Intersex persons may realistically fear potential harassment from staff and other inmates. The jail should provide training for its staff, house and program the inmate appropriately, and ensure that harassment by inmates is not tolerated.

- Humiliation—Intersex people have experienced a range of difficulties in life before they arrive at a jail. It is important that jail staff be sensitive to these experiences and not repeat them. Intersex people should be treated with respect and honesty.

- Lack of privacy—Living conditions in the jail, including open showers, may be difficult for intersex persons by opening them to harassment or unwanted attention.

- Respectful communications—Providing information to staff on intersex terminology can help create an appropriate atmosphere in the jail. Medical staff, in particular, need to understand the background of the intersex condition.

- History of appropriateness of surgery—Some physicians believe that the risk of cancer is notably higher among intersex persons. This is not generally true. Cases should be evaluated on an individual basis.

- Sexuality—The question of whether intersex people tend to be gay is under debate and is complicated by issues of physical/external anatomy, hormonal factors, sexual orientation, and internally felt gender identity. For example, a female police officer in Atlanta who was living as a lesbian learned that she was actually intersex and a genetic male. Some advocate for the recognition of a third sex or of a continuum of sexual identity that is less reliant on an either-or framework.

Recommendations for Jails

Specific suggestions for jails include:

- Medical care—Medical staff should have training on intersex conditions and treatment so the agency will be prepared in the event that intersex detainees arrive at the jail.

- Mental health care—Mental health staff should be prepared to provide specialized counseling for intersex detainees or to have access to expertise in this area. Intersex persons have high rates of suicide and depression. They often have been unable to experience real intimacy with family, friends, and lovers. Intersex persons may be afraid to reveal their condition to others. Many have been traumatized over the course of their lives by surgery, exams, photos, and insensitive doctors, which can be difficult to overcome.

- Training—Staff should be trained in policy and procedure for classification, assessment, and inmate management.

Presenter information: Jeanne Nollman is an intersex person and lecturer on intersex issues. She can be reached at Jeanne@dsddiscourse.com. For more information, resources, and links, see the web sites, http://dsddiscourse.com and http://dsdguidelines.org.

Part 3. Gender and Sexuality in the Jail, continued

Presenter: Don Leach, Lexington, Kentucky, Consultant

Intersex Scenarios

Don Leach discussed some scenarios that can take place in a jail, which illustrate the challenges jail staff may experience in managing intersex inmates.

- The women's housing unit reports that a man has been assigned to the unit. After getting the detainee's consent for an examination, medical staff determine that her extremely large clitoris has been mistaken for a penis.

- An inmate was in and out of jail over a period of several months or years and became familiar to the jail staff. They teased him about his small penis. In retrospect, it seems he was probably a micropenis case. The jail director and his staff were not aware and did not realize the humiliation they must have been inflicting.

Video segments illustrate some of the complexities inherent in intersex matters.

- The mother of an intersex baby recounted the stressfulness of the time immediately after birth. She was not allowed to see or hold her newborn. Her doctor provided no explanation of the medical causes and couldn't refer her to any sources of information. An endocrinologist led her to believe she should permit immediate surgery and guide her child toward a female identity. She was not told that an immediate decision was unnecessary and that the baby's health was not at stake.

- Interviews with intersex people made clear the emotional pain inflicted through misguided surgery and cover-ups of their conditions. It is better understood today that the burden of proof rests with those who propose surgery. Until fairly recently, arguments were still being made that it was best to lie to the parents of intersex babies rather than equipping them with information to support them in raising their children. Gender identity can't be known for some time; surgery can't be reversed; and surgery can damage the capacity for sexual response and intimate relationships at maturity. The better course of action is to delay any surgery until the person is old enough to make or participate in the decision. Many intersex persons choose to deny surgery altogether.

Jails sometimes assigned gay men to a separate unit, space permitting. Now gay men are usually mainstreamed unless they need protective custody. Separate housing has never been common for gay women.

The *diMarco* case is illuminating (*diMarco v. Wyoming Department of Corrections*, Feb 18, 2004 WL 307421, D. Wyoming). In this case, a woman inmate who was found to have a small penis was assigned to maximum security administrative segregation for the duration of her 14-month sentence, though she was classified at the lowest level of custody. She experienced "dungeon-like" housing conditions, severely limited human contact, and no program access. The court found the state in violation of her due process rights but denied the plaintiff's claim of cruel and unusual punishment.

Understanding Gender Identity

Gender identity refers to a person's internalized view of him- or herself as a man or woman. An individual's gender identity also can be undetermined or can be fluid, moving from maleness to femaleness and back over time. The basis for gender identity is not well understood. Culture is a factor.

Video segments illustrated some aspects of gender identity.

- A National Geographic Society feature explored how cultural norms and values can influence gender identity. In the Samoan culture, for example, society sanctions the raising of some boys as Fa'Afafine who behave as women and have relationships with men. If a family does not have enough daughters, they may raise a son as a woman to assume female roles, including housework.

- A Barbara Walters television program segment, "Born in the Wrong Body," explored gender identity disorder in children. Increasingly, society is recognizing that some children are born with a mismatch between their gender identity and their physical sex. When the situation is handled badly by parents and others, depression, violence, substance abuse, and suicide may later result. Allowing children to grow up in the gender of their choice is preferable.

Transgender people who experience intense and persistent psychological distress and disability may be diagnosed with gender identity disorder. People with gender identity disorder are more likely to pursue gender reassignment surgery. However, all do not pursue physical gender reassignment surgery. It is expensive, and the process is not covered by insurance. Many transgender people do not experience this level of distress and instead adjust to their own anatomy, romantic attractions, and gender identity.

Transgender terminology:

- Trans-man: a person who is born as a physical female and now lives as a man; also known by the acronym FTM (female to male).
- Trans-woman: a person who was born as a physical male and now lives as a woman; also known by the acronym MTF (male to female).

The group viewed more video segments that put a personal face on these experiences.

- A woman transitioning to life as a man said, "I wanted to look more like me, but I didn't know what that meant. On hormones, the physical changes started making sense."
- A trans-man in Oregon was profiled during his successful pregnancy, as he and his wife looked forward to the birth. The pregnancy was possible because he stopped taking his testosterone dosage.

Concerns in the Jail

Jails need to be prepared to respond to the needs of inmates who are transgendered and/or in the process of physically transitioning to the opposite sex by providing appropriate housing, safety, counseling, validation, and lifestyle support. The process of how the jail identifies the sex of inmates should be reviewed. The jail can ask detainees to identify their sex and also their gender identity. Jails should have a process in place for determining an inmate's sex when the situation is ambiguous.

In terms of housing decisions, jails should begin by defining their concerns and allow that to drive housing policy. Is the concern potential sexual assault, privacy, exposure of anatomy, or something else?

- Another video segment described the experiences of T. J. Parsell, who was sexually victimized as a young gay inmate in a Michigan correctional facility. By allowing himself to be "owned" by one man, he was protected from undergoing repeated gang rapes. He described jail staff as unsympathetic and unresponsive to his situation. Parsell later founded Stop Prison Rape, the organization that established the impetus for passage of the Prison Rape Elimination Act.
- In another video segment, a former inmate who was undergoing MTF gender reassignment related his experiences in an unsympathetic corrections agency. Corrections officials told

him they would not provide treatment and would be unable to protect him from other inmates. He was classified as a man, which denied his female identity and exposed him to greater risk of assault.

- A third video segment depicted the life of a MTF prison inmate in San Quentin who exemplified the pattern of cycling in and out of juvenile and adult confinement. She was housed in male general population.

Discussion

Participants observed that the point of jail decisions is to make the jail as safe as possible for residents. If transgender inmates are normalized on the basis of external anatomy, is that the safest placement?

Art Wallenstein (Montgomery County, Maryland) commented that an inmate may be sure about his or her gender identity, but s/he can't dictate decisions made at the jail level by people who are responsible for his or her safety. Don Leach replied that the key is having good classification and assessment practices. A new policy from the District of Columbia provides a good reference point.

Jails can examine their policies to remove unnecessary restrictions that affect transgender inmates. For instance, inmates should be able to purchase either men's or women's underwear in the commissary. Liability can be a factor: a male inmate with breast implants successfully sued a jail after he was prohibited from buying a bra and contracted mastitis.

Continuation of hormone therapy is also an important aspect to plan for in advance. A case in which a detainee with obsessive-compulsive disorder was denied access to his medications could set a precedent for similar issues based on gender identity disorder.

Resources

- Intersex Society of North America. http://www.isna.org/
- Sexual Identity. National Geographic Video. http://channel.nationalgeographic.com/channel/videos/feeds/cv-seo/People--Places/All-Videos/Sexual-Identity-1.html
- "Officer's sexuality no longer confusing." Tim Eberly. *Atlanta Journal-Constitution*, Sunday, August 31, 2008.
- *Fish: A Memoir of a Boy in a Man's Prison*. T. J. Parsell. De Capo Press, 2006.
- Gender Classification and Housing. Program Statement. District of Columbia Department of Corrections, February 20, 2009. http://doc.dc.gov/doc/frames.asp?doc=/doc/lib/doc/program_statements/4000/PS4020_3 GenderClassificationandHousing022009.pdf

Part 4. Transgender People in Jails: The Legal Obligations of Jailers and Local Governments

Presenter: Alex Lee, TGI Justice Project, San Francisco, California

The appropriate housing and management of transgender persons in detention and corrections is an emerging issue. Even in California, a state with a large population of transgender persons, the prison system doesn't yet have a policy on transgender inmates. There is not a substantive body of settled law. By being aware of areas for potential legal challenge, jail leaders can reduce an agency's risk of exposure.

Transgender people may be economically marginalized because of discrimination and harassment. Their economic vulnerability makes it more likely they'll have encounters with law enforcement and corrections. Jails may be able to play a role in intervening in the cycle through addiction treatment, job skills development, and other services.

The group viewed a video segment on "Trisha," who was a biracial pre-teen runaway. As a minor, he was arrested for homosexual prostitution and abused in jail by inmates and officers. Having no job skills and being addicted to drugs, he later cycled in and out of jail.

Trisha's story exemplifies several patterns affecting transgender people. The socioeconomic characteristics of transgender people include very high unemployment; one study found that 75% of transgender people do not have a full-time job. Significant numbers are fired, denied unemployment, harassed in the workplace, or denied a promotion as a result of their sexual identity. Poverty, homelessness, addiction, and criminal activity (such as sex work) are potential results. Those who are jailed commonly reenter the community to find no work, and they remain at risk. Most who become involved with the justice system do so for lower level offenses; they therefore interact with jails more so than prisons.

A 2001 study estimated that 1 in 500 people is a MTF transgender person; the number of FTM transgender persons is more difficult to estimate. It is likely that tens of thousands of transgender persons are in jail at any one time. The majority have not pursued sex reassignment surgery.

Legal Obligations

Potential 8th Amendments claims against correctional agencies are based on an acknowledgement that transgender inmates are subject to additional safety risks in the jail. Trans-women (women with male anatomy) are 13 times more likely than other inmates to be assaulted in jail. Trans-men may be at risk for excessive use of force. Staff should refrain from showing bias through disrespectful language, which could be viewed as harassment. Lawsuits could focus on a demonstrated pattern of indifference, malicious and sadistic use of force by staff, staff sexual misconduct, or calculated harassment. Jails should not deny necessary medical care; non-provision of hormone therapy has been construed by the courts as a sufficiently serious injury. In some agencies, inmates are required to produce a prescription for their hormonal medications. (See *South v. Gomez*, a case from the Ninth circuit.)

Searches present particular concerns. A strip search solely to identify an inmate's gender could be considered harassment. Strip searches should be conducted on reasonable suspicion and should be reasonably performed, by appropriate staff, with appropriate privacy. For example, a strip search of a trans-woman should not be performed in the presence of other inmates and male staff.

Under the 14th amendment, jails need to consider how their regulations affect transgender inmates and what accommodations may be possible. Gender-specific grooming and dress rules are one example. A blanket policy of involuntary segregation reduces inmates' access to programs and services and should be avoided. As noted, the transgender population is already likely to experience difficulty getting and maintaining a self-supporting job, making access to programming especially important.

The *Giraldo* case in California provides an example. A trans-woman was overclassified and placed with a dangerous cellmate in male housing. She was repeatedly raped by her cellmate—even after she reported that she was being threatened and assaulted.

Recommendations

There are several things jails can do to make it easier for transgendered people to live according to their self-identified gender during their time in the jail, as well as to ensure safety and reduce legal risk.

- Agencies should review their policies and procedures and how they affect transgender people in their facilities.
- Agencies should work with the local transgender community to create better jail procedures and standards, then check how well they are working. People in the community want to help, so jails should be sure ask for their input.
- Agencies should train their staff, and keep training them.
- Agencies should review their classification systems to make sure they are housing people in the safest locations. If an inmate has been in the jail before, he or she can be asked what the earlier housing assignment was and how that worked out. It's advised that jails do a case by case analysis when people come in rather than attempting a rigid, one-size-fits-all solution.
- Agencies should avoid basing their inmate policies on gender, as in the example of permissible underwear purchases.

Resources

TGI Justice Project — http://www.tgijp.org

Sylvia Rivera Law Project — http://www.srlp.org/

Lambda Legal — http://www.lambdalegal.org/

Human Rights Watch — http://www.hrw.org/en/category/topic/lgbt-rights

ACLU LGBT Project — http://www.aclu.org/lgbt/index.html

National Center for Lesbian Rights — http://www.nclrights.org/

Gay and Lesbian Advocates and Defenders — http://www.glad.org/

Transformative Justice Project — http://tjlp.org/

Correctional Medical Consultation Network — http://familymedicine.medschool.ucsf.edu/cmcn/ ; Dr. Lori Kohler, Director

Presenter information: Alexander Lee is Legal Director at the TGI Justice Project in San Francisco, California. He can be reached at (415) 252-1444 or info@tgijp.org.

Session Summary

Don Leach recapped the key things jails can do to be ready for the arrival of transgender detainees. Jails should educate staff, including medical staff; adapt their classification processes to accommodate transgender or gender-ambiguous detainees; define terms in agency policy to clearly address transgender and intersex inmates; develop a gender validation process to ensure that inmates' claims are reliable, including medical assessments where necessary; and focus on case by case determination of how to proceed when classifying and housing transgender inmates.

Policies from two agencies are useful as examples.

- The San Diego County policy on searches is one that makes accommodations for and systematically validates gender identity. The aim is reducing the chances that the subject will feel sexually violated. Women officers conduct pat searches of inmates with a female gender identity. It's important to maintain documentation on the actions taken by staff. The case-by-case approach is best for confirming a detainee's status, because it's easy for staff to be initially confused about whether they're working with a transgender or an intersex person. Detainees may state that they're in one category when they're actually the other.

- Policy from the District of Columbia is also a good model. (See link on page 24.) It includes clear definitions that can be adapted by other agencies. Transgender and intersex inmates are initially housed in protective custody during assessment, then they are housed on the basis of gender and vulnerability. The jail has a communal protective custody unit that houses a mixed population. Continuation of hormone therapy is mandatory per case law; the D.C. policy will not only continue hormone therapy, but will also start it if an inmate wants to do so.

Change is coming. It is no longer true that anatomy necessarily defines gender. Jails that are aware of the issues surrounding intersex and transgender inmates will also train staff to remember that some intersex people may not know about their condition. Disclosing the information to an inmate will require sensitivity.

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PROGRAM SESSION: LEGAL ISSUES UPDATE

Legal Issues in Jails – 2009

Presenter: William C. Collins, Esq.

On the docket:

- PREA Standards
- Arrestee Strip Searches
- Religious Diets
- Supervision, Accountability, and Codes of Silence
- "Stump the Chump"

Collins opened the session with some thoughts about change, a theme in public discourse as a result of the 2008 presidential election. In the Obama administration, the U.S. Department of Justice (DOJ) may take a bigger role in civil rights action, for example, in areas such as police conduct. DOJ may initiate more CRIPA investigations (Civil Rights of Incarcerated Persons). Investigations may lead to a settlement agreement, similar to a court order, with a time frame for response and a monitoring process. If DOJ is not satisfied with efforts toward compliance, it can extend the settlement agreement period or activate the lawsuit.

Docket Item 1—PREA Standards

The Prison Rape Elimination Commission released its first draft of standards for review and comment, and is expected to submit the final standards to the U.S. Attorney General in early to mid 2009. The standards are then subject to a year of review by the Attorney General. The first draft was long and confusing, and it was not clear whether anyone involved in the standards' development asked whether they might work in the field. The jail administration perspective was missing.

Implementation could impose substantial costs on jails, though PREA's enabling legislation specifies that the standards cannot have this effect. This may be grounds for agencies to challenge the standards. It is also unclear what entity might provide inspections for compliance and evaluation. Also, state governors are directed to certify a state's "full compliance," but it is not clear how that would be defined and how regulation could be achieved with state and local governments. The threat of losing 5% of a state's federal grants for prison purposes may not motivate sheriffs to engage the issue, because these agencies typically do not receive significant federal grant money.

Some areas where the draft standards conflict with established correctional practice and case law include:

- No cross-gender observation of pat searches;
- Pat searches defined as staff sexual abuse;
- Limits to women's ability to work in male housing (EEO concerns);
- Post-booking strip searches must be "individualized"

If PREA is an unfunded mandate with an uncertain future, it at least represents a significant effort to raise the level of attention given to inmate safety. Incidence data resulting from PREA research are interesting even if not rock solid, and they do much to replace the anecdotal information that existed before. Jails should continue to address issues related to sex in the jail.

Mitch Lucas (Charleston County, South Carolina) observed that PREA could have the effect of leveraging prosecution of sexual predators in jails. Prosecutors have sometimes been reluctant to take on these cases.

Docket Item 2—Jail Strip Searches: Multiple Issues and Big News

Strip search case settlements have resulted in settlements totaling $119.5 million.

Issue 1: Arrestee strip searches

A ruling in the Eleventh Circuit has broken from decisions in other circuits that strip searches of arrestees are only permissible with reasonable suspicion (*Powell v. Barrett*, 2008 U.S. App. LEXIS 18907, 9/4/08). This decision may pave the way for the matter to go to the U.S. Supreme Court.

The 1979 *Bell v. Wolfish* decision found it permissible to conduct visual body cavity searches of inmates after contact visits. The Powell decision found it permissible to conduct strip searches of arrestees at booking, in a group shower setting.

Issue 2: Dischargee strip searches

At issue here is strip searching of inmates who return from court with a release order and are placed back in general population while their processing is completed. A similar situation would exist with, for example, inmates returning to the unit after an off-site medical care visit.

Strip searches under these circumstances have been found unconstitutional, but the *Powell* decision from 2007 is being reconsidered. The *Bullock* decision from 2008 and the *Craft* decision in 2006 are also relevant. In connection with the *Craft* case, inmates said they knew the jail was doing fewer strip searches of returning inmates, so it was worth the risk to attempt to introduce contraband.

Suggestions for jails are to document incidents of contraband found on returning inmates in particular groups (e.g., all people coming back from court, or people coming back to the jail to be

processed out). The tendency may be that contraband is more common among rehoused people as compared to those who are about to be released. Jails can also review their alternatives, such as placing these inmates in a holding area rather than returning them to general population housing units. Being prepared to justify the jail's practices is important. If strip searches act as a deterrent, that's a good argument.

Definitions of strip searches are also important. In the *Florence* case in New Jersey (2009), the court disagreed with counties' terminology. (*Florence v. Board of Chosen Freeholders*, 2009 U.S. Dist. Lexis 7923, D. N.J. 2009).

Issue 3. Forced strip searches

In the *Mead* case in Michigan, a female arrestee successfully sued the jail because she was forcibly stripped of her clothing by male staff, after she was identified as a potential suicide risk and refused to change into a suicide gown. A video of the incident was made public, which showed multiple male officers removing the clothing from a distraught woman. The intrusion was described as "rape without penetration." Reviewing this incident against *Bell* standards shows several weaknesses in the jail's position. Jail staff said they offered the woman an opportunity to change her clothing in private, but she said they did not.

Other jails may be able to avoid a similar situation by considering their options, minimizing the drama, documenting their decisions and actions, and considering the perspective of the arrestee. Is it possible to provide a private location to change clothing, or to remove male officers from the area? If the detainee refuses to remove her clothing, can doing so be delayed or avoided? Can the use of the suicide gown be skipped in a particular instance?

Tim Ryan (Miami-Dade County, Florida) commented that after there is a lawsuit and settlement on strip searching, it is important to verify that new operational practices are being followed. He recommended that strip search protocols be addressed and reviewed at least every 6 months to keep the details clear to corporals, sergeants, and other supervisors. Agencies can have their risk management specialists talk with line supervisors. Keeping the issue visible is key: what is the jail doing, and why? Why is important that we follow policy?

Docket Item 3—Religious Diets

Regarding allowances for religious diets, the goal is to convince the court of the difficulty of changing course once the jail has started down a particular path. The basic premise of the law on religious practice in jails is threefold:

- Does the restriction impose a substantial burden on religious practice?
- Does the restriction further a compelling governmental interest?
- Is the restriction the least restrictive alternative available to the agency?

It is not permissible to restrict a religious practice in the jail on the grounds that the religious faith does not compel or require that practice. Instead, the personal beliefs and conscience of the person must be accommodated within reasonable limits. This extends not only to established religions but to beliefs that are not associated with an organized religion. (See *Koger*, 523 f.3d 789 OTO.)

However, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) does not prevent jails from taking into consideration the sincerity of the inmate's profession of religious observance. Also, a claim against the jail must prove that the limitations imposed by the jail have significantly hampered the inmate's religious practice. Some personally defined religious observances may be shown, especially when presented along with other factors, to reflect a lack of sincere belief.

Regarding religious diets in particular, the courts have tended to be very fact-focused. Decisions vary from court to court. Simple and economical food service is accepted as a compelling governmental interest, but some courts are skeptical. Jails are not on good footing if they overstate their reasons for denying an accommodation, e.g., if they suggest that allowing one higher-cost accommodation will lead to all the members of that religious group requesting the same accommodation. Seeking to avoid accommodations for one group on the grounds that other groups will pursue a similar accommodation has also been rejected. (*Wofford v. Williams*, 2008 U.S. Dist. LEXIS 63946 D. Or., 2008).

Documenting actual experience is more credible than speculating on possible outcomes. Arguments based on cost should be well reasoned, well documented, and detailed. The courts also tend to be willing to look at what other agencies are able to accommodate. If another agency chooses not to make the accommodation, they should be prepared to explain the decision.

Question: Mitch Lucas (Charleston County, South Carolina) asked if an accommodation is outside the normal scope of a religion's practices, can you get the inmate to pay for it?

Answer: On a diet matter, probably not, because diets are often central to religious observance. The answer could be yes, however, if it's a one-time cost.

Tim Ryan (Miami-Dade County, Florida) commented on the process of deciding what is a sincerely held religious belief. In his agency, a Baptist preacher did not support a Muslim inmate's belief and instead wanted to convert him. If chaplains are selected with care and trained on how to evaluate religious sincerity, it can keep the jail leadership from needing to help resolve these questions. It is important that chaplains have an ecumenical view, or that objective guidance be available in the form of institutional records, etc.

In some locations, jails are providing vegan meals to accommodate kosher and halal diets. This was upheld in a case in Florida.

A.T. Wall (Rhode Island Department of Corrections) commented that it is surprising that "mere bureaucrats" are allowed to evaluate religious sincerity. Yet courts do not typically involve themselves in questions about what is and is not a religion.

Question: Participants asked who should make a determination on religious sincerity—the jail director? An attorney or a counselor? A council with representatives of area faith communities?

Answer: The individual who interviews the inmate in such a situation needs a general understanding of faith. If the jail uses someone other than a chaplain in this role, it could be a religious leader or an instructor of religion. Ideally it should be someone with a broad perspective.

Docket Item 4—Supervision, Accountability, and Codes of Silence

The officer's "code of silence" is defined as:

> . . .an informal institutional or organizational culture that says members of the group will not inform on or give evidence or testimony against other members of the group, even though actions of the other members may involve breaches of policy or even the criminal law. (Brenda V. Smith and Jaime M. Yarussi, *Breaking the Code of Silence: Correctional Officers' Handbook on Identifying and Addressing Sexual Misconduct*, National Institute of Corrections, 2007, http://www.nicic.gov/library/02243.)

According to another study, *Police Code of Silence Facts Revealed*, the code of silence "breeds, supports and nourishes other forms of unethical actions." (http://www.AELE.org/loscode2000.html). It is virtually impossible for an agency to determine how extensively the code exists in its ranks. Whistleblowers commonly are not supported by their agencies. The code of silence typically conceals serious law enforcement misconduct for years before the corruption is revealed. The actions and attitudes of supervisors and leaders can have a major impact on the growth or control of a code of silence.

Collins gave some examples of situations where ethical standards can be secondary to fellow-feeling.

- An inmate assaults an officer. Do the agency's correctional officers believe they're entitled to beat the inmate? How about the sergeants and the lieutenants or captains? What is the view of management-level staff?

- A sergeant is regularly playing cards with an inmate. Another staff member reveals this and the sergeant is disciplined, but the reporting staff member is effectively run out of the jail with complicity of management. He later receives an award of $500,000 in damages (See *Brown v. Suffolk County*, 2005).

- Tacit acceptance by high-level administrators of excessive use of force led to a scathing report by a Special Master overseeing relief at Pelican Bay in California (*Madrid v. Gomez*).

Neal Trautman (http://www.ethicsinstitute.com) has prepared checklists for professionalism and ethics for staff in several areas, including top-level administration, recruitment, academy, field training officer programs, and internal accountability.

It's difficult to eradicate the code of silence. The cure may involve wrenching cultural change. Change may require waiting for substantive turnover of staff through resignations and retirements. Agencies can expect major active and passive resistance at all levels of the organization. Nevertheless, the effort is worth the benefits of a transparent, ethical, and professionally operated correctional facility or system.

Discussion

One jail had an instance of use of force in intake that was not documented. The inmate was treated for a broken nose at an area hospital. The sheriff's office learned of the incident and terminated the

officer, but he was reinstated by the civil service system. Eventually he was convicted of a misdemeanor and sentenced to serve jail time.

Particularly in regions that are heavily unionized, it can be difficult for the jail to deal with the issue effectively. In one New England state in the 1990s, the union's code of conduct stipulated that no officer would be permitted or required to give evidence about a fellow officer.

In another type of situation, a grievance may be raised, but the staff have said all the proper things on their paper reports. The jail leadership may consider forwarding the matter to Internal Affairs or another investigative process to resolve the conflict, or it may attempt to uncover more evidence. If this happens, the officers may feel the administration does not trust them and does not accept their word about what happened. It can be difficult to walk this line.

False reports are another way code of silence violations can manifest. For example, a jail may have an incident in which an inmate is injured though a control maneuver by staff, but the severity of the injury doesn't line up with the facts as reported. The jail may be facing possible federal prosecution or a civil rights investigation. In a situation of this type, staff may stick to their original story until presented with inconsistencies from other evidence. Agencies may agree not to prosecute staff who own up to the deception.

Docket Item 5—"Stump the Chump"

In this portion of the presentation, Collins answered questions submitted by meeting participants.

What are the penalties for a violation of the Health Insurance Portability and Accountability Act (HIPAA) privacy rules?

This is a threshold question in jails, particularly smaller jails. HIPAA is relevant if the entity engages in the electronic transfer of data, often relevant in billing for services. HIPAA does not prohibit nurses, for example, from sharing medical information with wardens and custodial staff.

The first element to review is whether the jail's medical operations are covered at all by HIPAA. In a jail's dealings with a county hospital, specialty clinic, or other external provider, the jail's need for the information trumps HIPAA confidentiality requirements. Jails should proactively work out a shared understanding with their outside medical care provider(s) at an administrative level.

Secondly, does the patient have a cause of action? At this point, two judicial circuits have said that inmates have a right to privacy in regards to medical information, but it's not absolute; the *Turner* test of legitimate penological interest applies. This does not necessarily allow loose practices such as calling up to the front of the unit "all inmates receiving HIV medications." In the Seventh Circuit, the court allowed an officer to accompany a secure custody inmate into a consultation with a doctor call; the officer was instructed not to pay attention.

What's a permissible course of action when a pretrial inmate has been in jail a few months, has requested halal meals, and is throwing food?

Give him less food.

What is a jail's potential liability for not releasing an inmate who is about to be retrieved by U.S. Immigration and Customs Enforcement (ICE) officials?

The court may say that a brief period of extended detention is *de minimis* (too small to matter); 48 hours is the standard threshold for liability to be established. On this basis, a stay of 6 extra hours, for example, should not create exposure for the jail. In the meantime, the jail has the ICE warrant to support its authority to hold the inmate. Some situations may depend on the nature of the documentation. For example, if the warrant says it is valid through a specific date, the jail may decide to release the inmate. Defining the period of custody as the sentence served plus a time-limited detainer may be helpful. The jail can consider letting inmates go at the end of the 48 hours, after which ICE may improve the promptness of its pick-ups.

Participants noted that initiating a new detainer is not an option in this circumstance. Art Wallenstein (Montgomery County, Maryland) stated that his agency observes the 48-hour standard "to the second." Out of 350 inmates released to ICE last year, ICE just missed one releasee. Collins noted that ICE personnel may not be as focused on letter of the law as jail staff, in part because if the jail holds an inmate beyond the specified time, it's the jail that's left "holding the bag." A warrant can't be renewed like a library book.

Do jails have any options in regulating staff tattoos?

Jail administrators will need to get used to tattoos. Participants discussed their different approaches to this. In some jurisdictions, staff tattoos must be concealed by clothing; other agencies are more permissive. (Another discussion of tattoos appears on page 39.)

What is the jail's legal responsibility in a situation where an inmate is held, perhaps for several weeks, while on a waiting list for a community-based program placement, such as a transitional home?

Jails that anticipate this as an issue can work with judges to develop flexible language for sentencing. For example, the document could state that an inmate will be sentenced to a given number of days and be released to community supervision "at the earliest opportunity" or "when a bed becomes available." If there is a substantial delay in space opening up, it may make sense for the jail to advise the court, in case the court wants to release the inmate based on time served.

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OPEN FORUM

"Hot topic" sessions for the meeting are an opportunity for participants to discuss emerging issues. These sessions were coordinated and presented by Donald Leach, Consultant.

TOPIC 1 — IN-CUSTODY DEATHS

Any pre-existing medical condition that detainees have can be exacerbated by the behaviors that bring people to jail or by specific events connected with arrest and detainment, increasing the chances of a medical collapse. For example, many arrestees have addictions and/or are intoxicated at the time of arrest. Some are in poor physical condition because of addictions or unhealthy living patterns. Physical and mechanical restraints and swarm tactics can also interfere with breathing when there are other medical factors involved.

It can be difficult to get a clear identification of an in-custody death as being caused by acute behavioral disturbance (ABD), also known as excited delirium. For example, though an elevated body temperature of 104 to 110 is indicative of death due to ABD, jails may not be collecting body temperature data. The University of Miami is heading research and data collection in this area.

Anecdotal evidence suggests that obesity, detoxification, and sleep apnea may be associated with in-custody deaths. Some jails report having higher populations of methamphetamine users, including detainees who arrive in such an attenuated condition, they do not respond to medical care.

Some detainees may refuse medical attention. In Tim Ryan's jail (Miami-Dade County, Florida), the jail will provide the medical attention it believes the inmate needs, but the inmate can refuse treatment after they are they are transported to a hospital. Pregnant detainees have two choices: go to the clinic for an examination or go to court.

Participants discussed their agencies' use of electro-muscular disruption devices (EMD devices, e.g., Tasers) and follow-up medical care. Some agencies ensure that bloodwork is done on persons who have been Tased during arrest and monitor their condition for 24 hours afterward. Within the jail setting, Tasers are most commonly deployed in cell extractions and other situations involving internal security teams. Supervisors rather than line deputies typically have access to them. One participant noted that his facility has deployed the Taser about seven or eight times in 5 years; usage is thought to be higher during arrest than in jails.

There is still inconsistency in what jail leaders are hearing from U.S. Immigration and Customs Enforcement (ICE) in terms of the jails' use of EMD devices. Some have been told that jails that use of the Taser will not be allowed to hold ICE detainees, others have been told that the jail must have a written policy on use of the Taser, and another jail gets a rejection letter every year from ICE because the jail continues to consider the Taser part of its spectrum of responses. Still another jail is dependent on ICE revenue; one-third of the jail population is ICE detainees, and the jail has been told they are favored by ICE because they have no Tasers in the facility.

TOPIC 2 — MENTAL HEALTH DIVERSION

Participants discussed issues and strategies related to diversion of mentally ill persons from jail custody. At least 10 agencies represented at the meeting operate in communities that have mental health courts. Grant proposals for the Justice and Mental Health Collaboration Program were due March 12, with planned awards in the range of $50,000 to $250,000.

- In Rhode Island, A.T. Wall is partnering with the state's largest mental health services provider to divert arrestees before they get to the jail.
- Jim Coleman (Shelby County, Tennessee) used grant funding to create a 42-bed special unit for his jail's mental health population.
- In a Texas location, a mental health public defender provides information to the court at arraignment to divert and remove detainees while connecting them with mental health care services in the community. Grant funding also covers treatment in the jail.
- King County, Washington, passed a 0.5% sales tax to fund a mental health crisis diversion program that handles misdemeanor and gross misdemeanor cases.

Don Leach pointed out that people with mental health concerns are held in jail three times longer than other inmates held on similar charges. One reason may be that they exhibit more behavioral problems on the unit. They tend to create more stress for the jail staff. Some agencies have mental health workers on the housing unit with the officer, which appears to be very beneficial.

Art Wallenstein (Montgomery County, Maryland) observed that it easily can cost a jail $7,000 to $8,000 just to write a grant proposal. Sharing a model grant application among LJN agencies could benefit all agencies and cut months of work.

Art Wallenstein encouraged his colleagues to vocally support the work of U.S. Senator Barbara Mikulski (D-MD) in developing stakeholder-focused and collaborative diversion programs for mentally ill detainees. Don Leach echoed this and pointed out that it is very effective when jail leaders personally contact their elected officials. Copies of letters can be provided to national organizations to give them added leverage in their communication efforts on Capitol Hill.

TOPIC 3 — CITIZENSHIP OF CORRECTIONAL OFFICERS

One participant was aware of a situation in which a state refused certification to a non-citizen correctional officer who had served honorably in the U.S. military.

A. T. Wall (Rhode Island Department of Corrections) will hire officers who lack a green card, certifying lawful permanent residency in the U.S. If these U.S. residents can serve in the military, on what basis would corrections agencies refuse to hire them? Other participants noted that naturalized citizens are performing with honor in the U.S. armed services.

Tim Ryan (Miami-Dade County, Florida) commented that hiring non-citizens can be an asset in ensuring staff cultural diversity. The important element is whether the applicant can work with other

inmates and with other staff. Other participants observed that the court of public opinion matters, if it is perceived that immigrants are taking American jobs.

Recruiting outside the U.S. for officers could be one strategy to acquire staff with needed language skills and cultural understanding. Art Wallenstein (Montgomery County, Maryland) noted that he pays his staff a $1,000 stipend for recruiting officer candidates, which led to his agency hiring 15 Nigerian officers. He suggested analyzing the populations in a county's jurisdiction and bringing one or two people onto the staff if needed to ensure representation of certain cultural groups. These hires can then be encouraged to bring others on. His agency has had 95% retention after completion of the probationary period for staff recruited in this manner. Other agencies offer smaller cash rewards and a day off to staff who help tangibly with recruitment. An article appearing in *Corrections Today* agreed that job referrals among friends and family are the most effective form of recruitment for corrections jobs.

Participants noted that there may be some training issues. For example, an officer from Nigeria continued to bow to his superiors as a show of respect.

Agencies should make sure that they are hiring within legal guidelines. If an applicant is in the U.S. on a student visa, hiring him or her for anything else is a violation of federal law. A student visa can be reclassified to a work visa, which could take a couple of months.

TOPIC 4 — LEADERSHIP/SUCCESSION PLANNING

Participants discussed whether the rank structure in a jail automatically provides for mentoring and career paths that result in leadership development and succession planning. One view is that staff need mentoring or they won't grow professionally. Another viewpoint is that, in some cases, a person who has been mentored for a leadership position may be passed over when someone is brought in from outside the jail. This may dissuade other staff from staying with the agency.

Leaders can come from outside the jail and be successful if they are open to learning from the perspectives of people who have worked there longer, if they involve themselves in the issues of the jail, and if they work to educate themselves. Moving from road patrol to the jail has a steep learning curve. Internal leadership development and the Certified Jail Manager program are valuable. Staff also need independent projects and responsibilities to grow their experience and ability to make decisions. Mistakes are part of learning process. In many senses, staff development is not achieved through training so much as working. The point is, who can get the job done?

TOPIC 5 — DNA COLLECTION

A former jail inmate has brought a lawsuit in connection with use of DNA evidence collected from a toothbrush he used in the jail. Regulations and practices in this area are changing rapidly. For example, Colorado state law requires jails to collect DNA for inmates convicted of sex offenses; a bill in committee at the time of the meeting would require DNA collection for everyone held on a felony charge. Kansas law requires collection of DNA samples in connection with felony charges, and the state provides the swab materials.

How the courts will rule on the legality of pretrial DNA collection remains to be seen. In Maryland, related guidelines were written without input from the jail and state that force can be used to obtain the sample, but jail staff refuse to pursue collection under such circumstances. Jim Coleman (Shelby County, Tennessee) observed that his jail won't release inmates from whom a DNA sample is required until they comply with collection. In Kansas, refusing to comply adds a misdemeanor charge. The long-term trend may be the end of fingerprinting as swab DNA identification technology continues to improve in convenience and speed.

TOPIC 6 — BUDGET STRATEGIES

Participants discussed some innovative strategies to raise revenue for the jail.

- Charging for visitation—Jails might offer basic visitation for free and charge for extra time, for skipping past the wait line, or for a private space. Or, video visitation could be free, and the jail could charge for face-to-face visitation.

- Charging for preferred housing—Jails could charge inmates for being housed in a better facility, or for having a single-bunked cell.

- Charging for wardrobe choice—Jails could collect a fee for the privilege of wearing personal clothing rather than a jail uniform.

To reduce staff costs associated with visitation, Spartanburg, South Carolina is providing video visitation, especially with lawyers; public defenders do all their visits by video. Miami-Dade County set up a simple, low-cost system that uses personal computers with a camera and microphone.

Staff reductions are another place to look for cost savings.

- Layoff decisions may be affected by seniority and civil service precedence, per union agreements.

- One jail represented at the meeting was preparing to open a new facility when new positions were eliminated.

- Strategies for operating with fewer staff include operating housing units with officers rotating through the units rather than being constantly present to manage the unit, but this may expose the jail to liability.

- Closing units is also effective, when possible.

TOPIC 7 — EMPLOYEE TATTOOS AND PERSONAL APPEARANCE

Whether jail officers can have visible tattoos is an evolving area of policy. Several meeting participants said that applicants with visible tattoos won't be hired, and others described tattoos as a non-issue. Staff with tattooed forearms must wear long sleeves in the summer in some locations, and women need to cover even a small tattoo on her ankle. Joe Schmitz (Hamilton County, Ohio) said that after the U.S. Marines changed their policy on tattoos, the jail changed its policy. Because tattoos have become more mainstream, especially among younger workers, jails need answers that will work.

Renaldo Myers (Richland County, South Carolina) commented that in his agency, tattoos that are not offensive or graphically violent can be allowed to show. A rule from a law enforcement setting specifies that if no more than 50% of the extremity is tattooed, it's permissible.

At issue are professional appearance and value structures. Local standards vary. Some jails do not allow dreadlocks or gold teeth and have terminated some staff who later returned to the jail ready to comply with these regulations. Other jails have disallowed unusual or "unnatural" hair colors or hair styles.

Accommodating religious preferences is a related question. One case currently under way relates to an officer seeking to wear a beard and yarmulke who was reassigned to an administrative post.

At its most basic, the answer will derive from whether the choice of appearance affects the staff's ability to do the job. Long fingernails and extreme overweight are two other factors that could be areas for focus in terms of safety and job performance. As the tattoo issue is litigated going forward, jails will lose if they're too rigid. Another factor is how the appearance of staff reflects community mores. Bill Lovingier (Denver, Colorado) commented that tattoos are not an issue for the jail's public—the community has not reacted to tattoos or piercings at all. Piercings that create a safety issue could be a different matter.

Roy Cherry (Hampton Roads Regional Jail, Virginia) was among those who expressed the value of a professional appearance and adherence to a higher standard, even if the public doesn't hold jail professionals to that standard. But, he said, there are more important issues facing jails. As jails struggle to meet their staffing needs, they may waver on some standards. Appearance is one thing; ethics are another.

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ANNOUNCEMENTS

NIC Information Center Services

Sandy Schilling presented a briefing on the services of the NIC Information Center. A staff of four specialists helps clients access the library of more than 22,000 items. Sandy is a former jail captain at Larimer County, Colorado. She promised an answer to inquiries within 5 working days. All services are free of charge, except for return postage on any borrowed items.

The Information Center also manages the NIC web site and the private online community space for the Large Jail Network. Art Wallenstein suggested that the group needs training in how to swiftly share files such as policies and procedures.

American Correctional Association News

Jim Gondles, Executive Director of the American Correctional Association, stated that ACA is drafting another version of its core jail standards. The new standards will make it easier for jails to achieve accreditation and will help smaller jails improve their operations. He also made participants aware of new legislation authored by Jim Webb (D-VA), the National Criminal Justice Commission Act of 2009. The bill could get traction in the U.S. Congress and could benefit from the informed perspectives of LJN and other corrections professionals.

Regarding the new PREA standards, the Association of State Corrections Administrators and Harley Lappin of the Federal Bureau of Prisons have requested a meeting with U.S. Attorney General Eric Holder to review the DOJ's response to the standards.

American Jail Association News

Gwyn Smith-Ingley, Executive Director of the American Jail Association, encouraged participants to make their staff aware of a July 2009 broadcast hosted by AJA and NIC on mental illness in jails.

Also new is AJA's forthcoming website revision, which will be more interactive and feature member-posted content. An editorial board is being formed to advise on content for a revamped *American Jails* journal.

The National Jail Leadership Command Academy has been launched in cooperation with Sam Houston State University and has received an endorsement from the National Association of Counties.

The economic stimulus bill has allocated $2 million to the Bureau of Justice Assistance, meaning there are opportunities for jails to apply for funding and to participate on peer review boards for tribal construction projects for jails and multipurpose justice centers.

LARGE JAIL NETWORK BUSINESS

Future Meeting Topics

Topics selected for the September 2009 meeting of the Large Jail Network include:

- U.S. Department of Justice investigations related to the Constitutional Rights of Incarcerated Persons Act (CRIPA) and communications with limited English proficiency inmates.
- Population control: successful pretrial release programs, and collaborations across the local criminal justice system to expedite cases and case processing.
- Developing middle managers in jails.
- Legislative updates – Prison Rape Elimination Act and other current developments.

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Appendix A

Large Jail Network
March 2009 Final Meeting Agenda

U.S. Department of Justice
National Institute of Corrections 09J2401

LARGE JAIL NETWORK MEETING

March 29-31, 2009 Red Lion Denver Southeast Hotel
Aurora, CO

Final Agenda

Sunday, March 29

6:00 p.m. Introduction and Overview . . . . . Mike Jackson
Correctional Program Specialist

6:30 p.m. INFORMAL DINNER

8:00 p.m. ADJOURN

Monday, March 30

8:00 a.m. ***Open Forum: Hot Topics*** . . . . . Don Leach

10:00 a.m. ***Illegal Alien Programs*** . . . . . Tim Albin
Tulsa Co, OK
Monty Zimmerman
ICE Secure Communities

12:00 noon LUNCH

1:00 p.m. **Proactive Discipline: Part II** . . . . . Jim Coleman
Shelby Co, TN
Tim Ryan
Miami-Dade Co, FL

3:00 p.m. ***PREA Update*** . . . . . Don Leach

5:00 p.m. ADJOURN

Tuesday, March 31

8:00 a..m. ***Transgender Issues*** . . . . . Don Leach
Alex Lee
Jeanne Nollman

12:00 noon LUNCH

1:00 p.m. ***Legal Update*** . . . . . Bill Collins

4:30 p.m. Future Meeting Issues . . . . . Mike Jackson

5:00 p.m. ADJOURN

Appendix B

Large Jail Network
March 2009 Participant List

National Institute of Corrections

Michael Jackson
Betsy Matten

FINAL PARTICIPANT LIST

09J2401

Large Jail Network Meeting

Aurora, Colorado

Sunday March 29 2009 - Wednesday April 01 2009

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Appendix C

Index of Past LJN Meeting Topics

LARGE JAIL NETWORK MEETING TOPICS
JUNE 1990 - JANUARY 2007

1990	June	System Approaches to Jail Crowding and Population Management
1991	January	Crowding Strategies and the Impact of Court Decisions
	July	Managing Jail Litigation Linking Jail and Community Programs
1992	January	Fair Labor Standards Act Writing and Negotiating Contracts
	July	Americans With Disabilities Act
1993	January	Blood-Born and Airborne Pathogens Health Care Costs in Jails
	July	Privatization Programs for Women Offenders
1994	January	Public Policy and Intergovernmental Dimensions of the Role of Jails, Professional Associations in Corrections: Their Influence on National Perspectives of the Role of Jails
	July	Using Data and the Resources of the Bureau of Justice Statistics Developing Resources to Provide Inmate Programs
1995	January	Gangs, Jails and Criminal Justice
	July	Trends in Employee Relations; Sexual Harassment
1996	January	The Dilemma of In-Custody Deaths The Crime Bill and It's Impact on Jails
	July	Juveniles in Adult Jails
1997	January	Meeting the Competition of Privatization
	July	21st Century Technology and it's Application to Local Jail Information and Operational Needs.
1998	January	The Future of Our Workforce: Pre-employment Testing, Recruiting, Hiring, Training and Evaluating 'New Age' Employees {Generation X} Legal Issues Update - Update of PLRA {Prison Litigation Reform Act}
	July	Taking A Pro-active Approach to the Prevention of Employee Lawsuits.
1999	January	Post-Traumatic Stress Syndrome and Critical Incidents: Preparation, Response, and Review . Legal Issues Update.
	July	Improving Opportunities for Successful Recruitment, Selection, and Retention of Staff.

LARGE JAIL NETWORK MEETING TOPICS
JUNE 1990 - JANUARY 2007
(continued)

2000	January	Criminal Justice System Coordination and Cooperation: How the Jail Benefits and the System is Improved. Legal Issues Update.
	July	Exploring Issues and Strategies for Marketing, Funding, and Auditing Large Jail Systems.
2001	January	The Use of Data for Planning, Decision Making, and Measuring Outcomes.
	July	Understanding and Using the Data & Resources of the Bureau of Justice Statistics Staff Issues in Large Jails: Staff Utilization, Relationships, Conduct & Misconduct
2002	January	The Future of Jails, Corrections and Criminal Justice Legal Issues Update
	July	Inmate Medical Care Cost Containment Succession Planning for Future Jail Leaders
2003	January	Addressing the Future of Jail Legislation, Resources and Improving Funding Legislation, Resources and Funding: A Perspective from our Professional Associations The Role and Use of Professional Standards and Internal Affairs Large Jail Network Listserv and Web Technology Legal Issues Update-Health Insurance Portability and Accountability Act of 1996 (HIPAA), Admission Screening
	July	Defining the Future & Exploring Organizational Strategies Impact of Jail Population Changes on Jail Management Jail Standards & Accreditation Use of Technology for Jail Administration & Operation
2004	February	Emergency Preparedness: Planning and Implementation Contagious Disease Identification and Prevention Legal Issues Update-Inmate Medical Confidentiality, Involuntary Mental Health Treatment, Contract Provider Litigation, Arrestee “Clothing Searches”
	July	Effectively Managing Inmate Gangs in Jails Identifying Problems/Managing Inmate Mental Health
2005	January	Preparing Leaders in Corrections for the Future-NIC’s Core Competency Project Training as a Strategic Management Tool Inmate Mental Health: Legal Issues, Management, Diversion Justice and the Revolving Door and Corrections Into the Next Decade
	July	Examining Federal and Local Benefits for Jail Detainees Ethics in the Administration of the Jail Human Resource Issues: Employee Recognition, Attendance, Restricted Duty

2006	January	Implementing PREA: The BJS Report Statistical Analysis: Crowding, Life Safety, Managing Staff Succession Planning The Question of TASERS Legal Issues Update
	July	Diagnosing, Analyzing and Improving the Jails Organizational Culture Planning for Catastrophes and Other Crises Prison Rape Elimination Act (PREA) and Jails Criminal Registration Unit: Hillsborough County, FL
2007	January	15th Anniversary Meeting Large Jail Systems Assessment Research Project Changing Organizational Culture Improving Collaboration Between Jails and Mental Health Systems Legal Issues Update
	September	Jail Inmate Re-Entry Programs: Public, Private, Non-Profit Involvement Jail Inmate Re-Entry Issues on a County Level Responding to Women Offenders in Large Jails Excited Delirium: A Problem to be Eliminated or Managed Recruiting, Hiring and Retention of Staff
2008	March	Immigration and Custom Enforcement 287 (g) Program Contract Services Media Relations Workforce Development Legal Issues Update
	September	Faith Based Programs Human Resource Management Emerging Technologies Proactive Discipline
2009	March	Illegal Alien Programs Transgender, Lesbian, Gay and Intersex Inmates Proactive Discipline Part 2 PREA Update Legal Issues Update