

**PROCEEDINGS
OF THE
LARGE JAIL NETWORK
MEETING**

January 1992

The Jail Center Presents:

Proceedings of the

LARGE JAIL NETWORK MEETING

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INTRODUCTION

The Large Jail Network provides a forum for the exchange of ideas and information that are relevant to the operation of large jails. There are nearly seventy large jail systems in the United States, and they house approximately half the country's jail inmates.

This meeting featured a series of presentations on:

- The Fair Labor Standards Act;
- Writing and negotiating contracts for food service and medical care;
- Use of force;
- The National Pretrial Reporting Program; and
- The employee disciplinary process.

Panel presentations were followed by small group discussions on the general topics and the issues raised by the presenters.

LEGAL ISSUES:

THE FAIR LABOR STANDARDS ACT

William C. Collins, J.D.

The Fair Labor Standards Act (FLSA) is an extremely complicated, highly technical field of law. Passed initially in 1938, the FLSA established the federal minimum wage and addresses overtime pay, child labor, and equal pay requirements.

The fundamental principles and concepts in the lengthy statute passed by Congress are fleshed out in great detail by regulations adopted by the U.S. Department of Labor (DOL). The statute and regulations are both subject to published interpretations by the DOL. Federal courts are the ultimate interpreters of the law's meaning and requirements. While DOL interpretations of the law and regulations carry considerable weight with the courts, they are not binding. It is within the realm of possibility that a court can overturn a DOL interpretation of the law.

Interpretations of the law tend to be liberal. Exemptions from FLSA requirements are narrowly construed in favor of the employee (*Nichols v. Hurly* 921 F.2d 1101). In simplistic terms, the rule might be stated as: *"If in doubt, the employee wins."*

Understanding and correctly applying FLSA's many requirements is not done without careful study and analysis of the law. Understanding FLSA is not a matter of intuition or common sense. Specific facts in different situations may lead to different results under the law. Even a court decision on a particular topic, such as interpreting an exemption from the law, may be based on a unique set of facts which may make it impossible to rely on that court decision in similar but not factually identical situations. And even where the facts are identical, it is possible that two courts will interpret the law differently.

For correctional agencies, the law's overtime provisions are of primary importance. Avoiding FLSA problems generally requires having access to an FLSA specialist.

Overview of the FLSA's Overtime Provisions

The basic requirements of the FLSA are that employees (within certain limited exceptions) are to be paid overtime or given compensatory time for all hours worked in excess of 40 hours per week. Law enforcement (including correctional staff) and firefighters have a slightly different requirement, because of the shift work required of them. For these employees, Congress allows the employer to set a work period of from 7 to 28 days and sets a certain number of hours which may be worked within that work period before overtime pay must be granted. This is known as the 7k exemption. A sampling of the 7k exemption as illustrated in Table I follows;

TABLE I Overview of FLSA's Overtime Provisions:	
WORK PERIOD	TOTAL HOURS
28 days	171 hrs
27 days	165 hrs.
26 days	159 hrs.
25 days	153 hrs.
20 days	122 hrs.
15 days	92 hrs.
10 days	43 hrs.

While at first glance this general principle seems simple enough to follow, there are a number of complicating factors. For example, what is the employee's "regular" rate of pay on which overtime payments would be calculated? How many hours does the employee "work" given such things as travel time, training, time spent on stand-by or call-back status, attending pre-shift roll-calls, etc. And who is an "employee" for the purposes of FLSA protection?

FLSA remedies can be substantial and expensive. They may include: injunction, back pay, liquidated damages, attorneys' fees, and criminal liability.

The following is a question and answer format that outlines some of the provisions of the law that apply to correctional agencies.

The courts and the DOL, when interpreting the FLSA, will generally try to interpret it so as to:

1. *Save money for the government and the taxpayers by not expanding the protections of the law.*
2. *Liberally interpret the law so as to expand the protections and benefits it gives to workers.*

Number 2 is correct.

Rate the following in order of complexity:

- Inmate rights;
- FLSA;
- Federal Income Tax Laws;
- Americans with Disabilities Act of 1990.

There is no correct ranking; they are all extremely complex.

How does an employer receive a 7k exemption?

If there is no labor union, then it can be implemented simply by stating that a 7k is desired. Labor Department approval is not necessary. It is a good idea to maintain documentation, however.

True or false: All employees working for jails are governed by the 7k work period concept, so overtime is measured total hours worked on an extended work period, not the 40 hour work week.

False. The 7k exemption applies only to security personnel. Most jails also employ non-security personnel.

Who is exemption the FLSA?

Administrators and executives. An executive is someone who, most of the time, manages, directs, hires, fires, exercises discretion, and makes more than \$150/week (this exemption was written some time ago). Salary and duties determine who is exempt from the FLSA. Another category of exemptions is correctional teachers.

A group of employees wins an FLSA case against the jail. In the trial, the jail administrator testified 'I heard a lawyer at a training session say it was okay to do what we were doing.' What types of relief or remedies does the court have the power to order?

In some cases, "good faith defense" can help. If the employer can convince the court that he or she acted in good faith, then there will be no liquidated damages. There may well be other remedies to pay, however.

After the judge has awarded the employees \$290,000 in back pay and liquidated damages plus \$122,000 in attorney fees, the jail administrator thinks, "well, things could be worse, at least the county's insurance policy will pick up the tab and it won't come out of my budget".

Generally wrong thinking. Typical municipal insurance policies or risk pool arrangements do not cover FLSA awards.

Which of the following are considered "hours of work" for FLSA purposes?

- Short breaks (15-20 minutes) - yes
- Training - if required by employer, yes; if required for certification, no
- Sleep during an extradition - generally no
- Volunteering for work with agency - no
- Automatic callback hours - only actively worked time
- Meal periods - depends on whether employees are subject to restrictions, and what type of restrictions, during this time
- Travel time - no
- Adjusting grievances (no union) - yes
- Moonlighting - no

- Required medical exams - yes

An employee enthusiastically volunteers to stay overtime to do work. Is there an FLSA problem with this arrangement?

Yes. This falls under the “suffer and permit” concept: work “not requested but suffered or permitted is work time.”

“We can’t afford to pay overtime because of the budget crunch. Can’t we just give comp time, and let the employees take it whenever it suits the Department’s needs?”

Compensatory time can be given in lieu of overtime pay, within a reasonable time of request. In general, however, FLSA favors paying cash overtime.

A jail administrator implemented a callback program. All staff were listed on a priority callback roster. The person on the top of the list could not leave the local area and could have a beeper. But all staff on the list were subject to being called unless they were on vacation. Once called, a staff member had to return the call within 15 minutes or face possible disciplinary action unless they responded to a ‘fair share’ of calls to them. This policy was in effect 7 days a week, 24 hours a day. What overtime liability, if any, exists under FLSA in this situation?

One federal judge ruled that all of the time on the beeper was compensable time to the tune of \$57 million.

There are no clear-cut answers in this case. It depends on how restrictive the callback is. Do the employees have to come into the jail, or can they just make a call? The issue is complex.

Does pre-shift roll call time, 15 minutes earlier than an 8-hour shift begins, require overtime Pay?

Yes.

Are deputy sheriffs covered by FLSA?

Yes and no. Different rulings have generated conflicting answers to this question.

Is time for dog care considered overtime?

Yes, but the overtime pay might be based on a different rate of pay than that of the person’s regular job.

As evidenced by these questions and answers, the FLSA is indeed a bit of a sticky wicket. For further information on *the* FLSA, consult the *Fair Labor Standards Handbook for States, Local Governments, and Schools* or the *FLSA User’s Guide*.

**PANEL AND GROUP
DISCUSSIONS:**

TOPIC SESSION 1:

Writing and Negotiating Contracts for Food Service and Medical Care

In some cases it is prudent to contract for food and medical services. If a facility is experiencing problems-be they service oriented or budget oriented-with the current provider of services, it might be a good time to assess the advantages and disadvantages of contracting for services. In developing contracts, there are a number of factors to consider, which are outlined in the information below. It is generally agreed that careful development of the Request for Proposal is critical, as it lays the foundation for the content and provisions of the contract itself.

Richard Boyce, Ventura County Sheriff s Department, Ventura County, California

Ventura County has contracted for medical care. The level of medical care that was previously provided was inconsistent and expensive. Additionally, there was a dis-incentive on the part of the county to save money on the medical service, because the more inmates that were referred to the county hospital, the more the jail had to pay to the county. This was rapidly depleting the jail’s resources. Not only was it costly, but a large number of inmates had to be transported to the hospital, and an officer had to be posted at the hospital on overtime pay, Also, approximately 30% of the hospital billings were incorrect, and the jail found it necessary to audit these bills.

Ventura County, after examining the options in provisions of medical care, decided to contract for medical services. The advantage was that the quality of service was as least as high as previously, and the cost was substantially less. The contract also allowed for an x-ray machine to be installed in the booking area of the jail (the medical service provided both the machine and the technicians). This installation greatly reduced the number of inmates who had to be transported outside of the jail for this service.

The following table lists the bids from the county hospital and four private bidders for 1985:

TABLE II	
County Hospital	2,007,140
Bidder B	1,831,020
Bidder C	1,747,048
Bidder D	1,322,800
Bidder E	1,000,123

Private providers have a built-in incentive to provide excellent service—they want satisfied customers so they get repeat business. Another advantage is that the jail can dictate the level of service provided. When the county provides the service, there may be budgetary conflicts. Also, when a private provider is contracted, problems can be resolved between the jail and the provider rather than between the jail and an elected official.

There is a down side to private providers: when a private contractor is employed, the money paid for services goes outside of the county rather than going back into the county coffers.

In determining whether outside services were needed, Ventura County found it important to evaluate their services to determine if there were problems. They determined whether the problems could be mitigated and looked at the provider to see if they had the capability to mitigate the problems. Before creating a contract, they considered hiring assistance in developing the Request for Proposal. They found it important to determine a method of cost containment that met their needs, and they examined the issues to be resolved. This included: who will pay off-site medical expenses? Will there be a cap on medical costs? Aggregate, per incident, or per inmate? Who will pay for pre-booking medical expenses? Who has the last say on acceptability of employees? Will existing employees be grandfathered into the new organization? Will psychiatric and dental services be included in the contract? Will accreditation be a requirement in the level of service?

Ventura County required bidders to provide a staffing plan and full budget. They found it critical to look closely at salary ranges of the proposed staff, because below market rates may result in inferior employees. Ventura County has found it important to stay involved with the private provider. Methods they have used to accomplish this include appointing a liaison officer to the medical program, establishing long-term assignments for security staff, requiring monthly statistics on services provided, creating a quality assurance committee, and scheduling regular meetings between security and medical staff.

John Mulry, Pinella County Corrections Division, Pinellas County, Florida

The Request for Proposal (RFP) for food service or medical care is the key to getting the kind of service or care desired. The contract will be only as strong as what the vendors are required to submit in the RFP.

The following are some of the issues to consider in contracting for medical services:

- alternative pricing
- third-party reimbursements
- what will the contractor be responsible for?
- what will be provided off-site?
- what are the contractor's limits of liability for off-site medical care?

The scope of work and a list of the inmate population should be clearly delineated in the RFP. The contractor should include in the bid a per diem charge for numbers of inmates in excess of the estimated dynamic population as defined by the 5:00 p.m. daily count of inmates. Required staffing and hours of staff coverage should be delineated. Build in provisions for liquidated damages (Pinellas County saved more than \$300,000 in liquidated damages).

In evaluating vendors, weights can be assigned to various factors to help in the selection process. The weights assigned by Pinellas County are as follows:

- 10% weight factor for approach and methodology,
- 30% weight factor for capability, and
- 60% weight factor for cost.

It takes a great deal of time and planning to write an effective and comprehensive RFP, but it is well worth the effort. RFP's need to be based on a jail's unique needs: there is no template that will work for every jail. Negotiating a contract should be done from a position of strength.

It is critical to have a corrections person who is familiar with your particular system and has an understanding of contracts to monitor the provision of services and meeting of contract requirements on a daily basis.

Donald Amboyer, Macomb County Jail, Macomb County, Michigan

Macomb County, Michigan charges inmates \$10 for medical services, dental service, pharmaceuticals, etc. Those who can pay, do so. This has resulted in not only the jail receiving money back, but also in a decreased number of people seeking services. The jail, therefore, does not require the level of contract services it did before instituting the payback program.

In contracting for services, whether it be medical care or food services, the RFP is critical. It dictates the precise level of services the jail will receive.

Before contracting for private services, Macomb County was paying \$1.03 per meal. A bid was developed that reduced the cost per meal to 83 cents. Initially, the idea of contracting for services was not well received, since Macomb County had not experienced any difficulty with their previous food service. However, the cost savings that contracting allowed them more than justified their switch. Their current service includes a USDA program as well as commissary.

The jail had been experiencing an inordinate number of lawsuits. The medical staff included a father and son physician team. They decided to contract with a local hospital for medical services. They now have only one outstanding lawsuit.

HIGHLIGHTS OF GROUP DISCUSSION

Topic Session 1: Contracting for Services

Following the panel presentation, the participants discussed and commented on the issues presented. Highlights of the feedback follow:

- One of the advantages of contracting for food services is that the jail doesn't have to answer to an auditor about stolen items.
- Other contract services to consider are contracting for library services, contracting with schools rather than hiring teachers on staff, and contracting for maintenance services. The cost of having plumbers and electricians on staff may well be higher than the cost of contracting for these services.
- In California, the money made from inmate telephone calls goes into the inmate welfare fund rather than into the general fund.
- In a unique turnabout situation, a jail in California bids on providing food services to homeless shelters and daycare centers. Fifty percent of the incoming money is profit.
- Be careful who is hired as the contract monitor. If someone gets the job only because he or she is politically connected, problems might result.
- When hiring medical staff, it is important to specify the qualifications of personnel needed.
- Build into the contract a formalized evaluation process of the quality of service provided.
- Sometimes private contractors have difficulty with compliance with city and county health departments.
- To make a medical contract more effective, be sure that the physicians have admitting privileges with a local hospital.
- Have a quality assurance program to make sure you can defend your position and quality of services before a board.
- Some contractors are clever and know how to counter bill. Beware.
- In writing contracts, make sure they are legitimate, binding, technically correct, and detailed.

TOPIC SESSION 2:

Use of Force

Use of force is a complicated issue. When is it appropriate and when is it inappropriate to use force? Whose perception of an incident is correct? There is consensus on one issue: the use of video can provide an objective assessment of incidents and is a helpful tool in their effective resolution.

Robert Kornegay, Maricopa County Detention Bureau, Maricopa County, Arizona

Video: "Use of Force"

This video was produced by the Maricopa County Detention Bureau in Phoenix, Arizona.

A group of seven detention officers in protective clothing identify themselves. The officers approach the inmate's cell, and the lead detention officer requests that the inmate exit the cell. His repeated requests are met with belligerence. The seven officers storm into the cell and pin the inmate against the wall with a shield. They then pin him on the ground and secure him in a body cuff.

Was this excessive use of force? No, because the detention officers were under the direct supervision of the first line sergeant and were under control. The manner in which the incident occurred prevented injury to both the inmate and detention officers. Furthermore, the officers' names and serial numbers were identified on the videotape, and their facial features were evident.

Video allows for the objective assessment of incidents and removes excessive use of force allegations from the subjective realm. Video cameras are also useful in other areas. Maricopa County has recently installed a system in the facility that shows dates and times, records location, records officers making their security walks, and records assaults.

Most physical confrontations take place in the central intake area. Maricopa County has been using video cameras in central intake for several years. The cameras were not obvious, however. The county, operating on the belief that "prevention is better than the cure," reminded personnel in every precinct in the city of Phoenix that the cameras were in operation, and placed signs and flashing lights adjacent to the cameras. The cameras are a means of determining whether force has been used excessively. Their use is intended to be preventative rather than punitive. Maricopa County has found that more excessive use of force claims have been dismissed than have been sustained with the use of video cameras.

Art Wallenstein, King County Department of Adult Detention, King County, Washington

The King County Department of Adult Detention previously experienced considerable difficulty with use of force. In many cases it was uncontrolled; there were several incidents, some litigation, and a great deal of public criticism.

Recently, an administrative investigation of an assault was conducted. This was done prior to a criminal investigation. The incident had occurred in the central booking area and was witnessed by a 20-year veteran police detective sergeant who was standing six feet from the situation. The incident was as follows:

A correctional officer in a stressful situation in central booking dashed the head of an inmate onto a cement floor. The inmate bled profusely. The inmate had been difficult but had not lunged at the correctional officer, and was in a fetal position at the time of the incident. The witness, who found the actions of the correctional officer repugnant, reported the incident.

A county labor lawyer advised the Ring County Department of Adult Detention to turn the case over to law enforcement and await the outcome of criminal action before proceeding administratively. This tack was not followed. Trainer Lynn Lund has always stressed the importance of proceeding with an administrative investigation independently of a criminal investigation.

An administrative hearing was held and the go-ahead was given to terminate the officer. The criminal investigation yielded a different result. The officer was tried and found not guilty. Union attorneys successfully argued that the correctional officer believed he would be assaulted by the prisoner.

If Lund's advice had not been followed in this case, and the administrative investigation was dependent upon the criminal investigation, then the correctional officer involved in the above incident would still be on the job today. This incident underlines the importance of following the precepts outlined in training. Training modules do have direct application to the real world.

To prevent excessive use of force, Ring County has found it important to establish explicit procedures, hold corrections personnel accountable, follow basic progressive discipline, and let it be known that excessive use of force will not be tolerated. Since King County has instituted its "no tolerance" policy for excessive use of force, there has been a significant reduction in its occurrence.

Joseph McAtee, Marion County Sheriffs Department, Marion County, Indiana

Before 1987, Marion County, Indiana, experienced several physical abuse complaints from inmates, none of which was extremely serious. There were problems with correctional officers, including low morale and unfavorable jail assignments. To deal with this, the county instituted a psychological screening process. To further enhance the correctional officer position, training has been made comprehensive, and above-average wages are offered. A career path has been established for correctional officers, and their positions are viewed as respected and desirable. Because of these changes, instances of excessive use of force have become almost nonexistent.

In addition to making personnel policy changes, Marion County decided to **install** video cameras throughout the facility. The use of videos has enabled personnel to monitor the jail more closely and to spot disturbances before they become more serious.

Correctional officers in Marion County carry radio and handcuffs only. There are strict rules governing use of force, and two detectives are assigned to the jail to investigate complaints. Due to these measures, incidence of physical abuse complaints has dramatically declined.

Marion County has found that if inmates have access to telephones, entertainment, the library, and the opportunity for exercise, there tend to be fewer disturbances. In addition, an intercom system has been installed throughout the jail so inmates can summon help when they need it. Simply put, inmates who are well cared for tend to cause fewer problems there are fewer fights and fewer escape attempts. To further discourage disturbances, inmates are made aware of departmental policy. In addition, disruptive inmates who violate rules and are subject to force can be adjudicated in several ways, including the filing of criminal charges.

Important deterrents for avoiding excessive use of force include video cameras, and having clear, concise rules governing use of force. Marion County's use of force policy requires supervisory involvement and stresses a team effort in controlling inmates. Each employee is made aware of when and how force can be used. They know excessive use of force will not be tolerated; however, the administration will support them when they are acting within their rights.

HIGHLIGHTS OF GROUP DISCUSSION

Topic Session 2: Use of Force

Following the panel presentation, the participants discussed and commented on the issues presented. Highlights of the feedback follow:

- Documentation is critical. Have a policy and enforce it.
- In excessive use of force cases perception often becomes reality.
- It is not sufficient just to train officers. They must also be monitored. Let them know that if they are doing what is right, they will be backed.
- Ninety percent of the training provided to officers is applicable to approximately 10% of the situations that arise.
- Officer training is often militaristic in style. This can be dangerous if it carries over into treatment of inmates.
- Instill organizational values in employees so that the loyalty to the organization overrides loyalty to peers (in which case excessive use of force can go unreported).
- It is important to police ourselves in order to legitimize ourselves as professionals.
- In some jails, staff welcome cameras; in others, they find them threatening. Perhaps the organizational culture affects that perception.

- It is a good idea to check with the jail's medical department to see if an inmate has a condition that could be worsened by the use of a stun shield.
- In one system, up to 75% of inmate fights occur over use of the telephone. Use of cameras can have a calming effect on inmates.

TOPIC SESSION 3:

National Pretrial Reporting Program

Walter Smith, National Pretrial Reporting Program

The National Pretrial Reporting Program is a biannual data collection project sponsored by the Bureau of Justice Statistics (BJS). The report tracks felony defendants from the time they enter the local court system until they are adjudicated and sentenced. The program focuses on large counties.

Data is collected by the Department of Corrections personnel based in jails. The survey sample is composed of felony defendants who are arrested in one particular month and tracked throughout an entire year. The project reveals information concerning:

- use of jails;
- who gets arrested;
- status at time of entering jail;
- who gets sentenced;
- probation;
- time served of sentence; and
- how long the process from arrest through disposition takes.

The following are some highlights of the information provided in the January 1990 National Report of the National Pretrial Reporting Program. A total of 11,063 felony defendants were included in the sample of 39 jurisdictions across the United States. (Several of the 39 jurisdictions presented in the 1990 National Report were in attendance at this Large Jail Network Conference. Those participants were:

- * *Maricopa County, Arizona;*
- * *Sacramento County, California;*
- * *San Bernardino County, California;*
- * *San Diego County, California;*
- * *Washington, D.C.;*
- * *Dade County, Florida;*

- * *Pinellas County, Florida;*
- * *Cook County, Illinois;*
- * *Hamilton County, Ohio;*
- * *Allegheny County, Pennsylvania;*
- * *Philadelphia, Pennsylvania;*
- * *Shelby County, Tennessee;*
- * *Harris County, Texas;*
- * *Fairfax County, Virginia; and*
- * *King County, Washington.*

Prior Record

Prior record information was obtained for **94%** of the sample. Of these, 71% had a record of at least one prior adult arrest.

Relationship to the Criminal Justice System at Time of Offense

One out of three defendants had some sort of relationship to the criminal justice system. 11% were on pretrial release, 13% on probation, 4% on parole, and 2% had some combination of the above.

Most Serious Charge

35% of the sample had drug charges as their most serious offense at the time of the filing. In **seven** of the counties, 50% or more of the sample had been arrested on drug charges.

Pretrial Release-Detention Decisions

66% of all defendants were released at some point pending the disposition of their case, and 34% were detained. The release rate ranged from 30%-90% for individual counties. Of those released, 53% were released on nonfinancial supervision. This ranged from 7%-86% for individual counties. 44% were released on their own recognizance or on citation release, and 9% were released on unsecured bail.

Time from Arrest to Pretrial Release

Two-thirds of the defendants who were released pretrial were released within 3 days of their arrest. 16% of the defendants were released between 4 and 10 days, 10% between 11 and 30

days, and 7% after 30 days detention. Defendants released on nonfinancial conditions were released more quickly than defendants released on financial conditions.

Time from Arrest to Adjudication

9% were adjudicated within 10 days of arrest. 21% were adjudicated between 11 and 31 days of arrest, 18% between 32 and 60 days, 13% between 61 and 90 days, 24% between 91 and 183 days, 15% between 184 days and one year.

Time from Adjudication to Sentencing

Of the defendants found guilty and sentenced, 55% were sentenced on the same day. 4% were sentenced between two and twenty days after adjudication, 22% between 21 and 40 days later, 10% between 41 and 60 days later, and 8% 61 or more days after adjudication.

Time from Arrest to Sentencing

The length of time from arrest to sentencing was longer than six months for 21% of sentenced defendants. 15% were sentenced in less than one month, 33% between one and three months, and 30% between three and six months.

Sentences Received (dismissals/acquittals removed)

In cases where there was a finding or plea of guilt, 32% of defendants were sentenced to prison, 32% to straight probation, 18% to jail and probation, 14% to jail, and 3% to a fine only.

Data for the next report, which is currently being processed, includes a sample size of 48,000 felony defendants, as opposed to the current report's sample size of approximately 11,000.

The address and phone number of the Pretrial Services Resource Center is:

1325 G Street, NW, Suite 620, Washington, D.C. 20005

Telephone: (202) 638-3080.

TOPIC SESSION 4:

Employee Disciplinary Process

The employee disciplinary process is intended to be corrective. In some facilities, employee counseling is the first step in the process, and more stringent measures are implemented if that fails. Other facilities follow different procedures. Whatever the process, it is necessary to have written policies and procedures, and employees must be fully aware of the expectations placed on them. It is also necessary to have due process of law safeguards in place.

*Lonnie Lawrence, Dade County Correction and Rehabilitation Department,
Dade County, Florida*

The Dade County Corrections and Rehabilitation Department has explicit, comprehensive, employee disciplinary standards and procedures. The three main components of these are:

- Counseling and discipline management;
- Complaints; and
- Counseling and disciplinary actions.

All supervisors are trained in the procedures and held accountable for following them. All employees are made aware of the complaint process, and the purpose and application of employee counseling and disciplinary procedures.

Counseling is typically the Department's first response to employee disciplinary problems. The Dade County Correction and Rehabilitation Department uses counseling techniques when possible to train or guide employees. Imposing discipline becomes necessary only when counseling fails to solve the problem or when an employee deviates substantially from the guidelines.

Some supervisors may have difficulty in performing their duties within the disciplinary process. Supervisors may find themselves in the position of having to discipline people who were formerly their peers, people with whom they rose through the ranks. In these cases, the supervisors may experience difficulty in changing roles and becoming disciplinarians rather than peers. Proper training can help supervisors to deal appropriately and objectively with their subordinates, and overcome the inclination to show favoritism.

Discipline needn't be negative. Discipline can be used as a training process, and can be corrective in nature. Used properly, it effects necessary changes. It is important to teach the first line supervisors about the disciplinary process as well as the need for the process. Counseling is an key component of the process, as it gives the employee a chance to recognize and rectify problem behaviors without suffering severe consequences.

Thomas Costello, City of Philadelphia, Prison Systems, Philadelphia, Pennsylvania

In the Philadelphia municipal county prison system there are 1,900 employees, 1,500 of which are correctional officers and supervisors. All but three of these (commissioner, staff attorney, and paralegal) are civil servants. The system has two strong unions.

The basic procedure followed in the employee disciplinary process is:

- a verbal admonition to the employee;
- employee warning notice;
- employee violation report;
- preliminary hearing;
- notice of intended disciplinary action; and
- formal disciplinary hearing.

The recommendations are submitted to the Reviewing Authority and/or Appointing Authority for confirmation or amendment. If the penalty is invoked, and if when added to previous suspension days during the current calendar year, results in the employee's suspension and/or loss of pay for more than ten calendar days, the employee may appeal to the Civil Service Commission.

Philadelphia is perceived as having a corrupt prison system. The media has been instrumental in this public perception. To counteract this, the mayor mandated the formation of a formal Internal Affairs Division (IAD). Formed in 1989, the IAD is composed of three separate units under the administration of the Director of Internal Affairs: internal affairs unit, background investigation unit, and polygraph unit. The purpose of the IAD is to conduct fair, impartial, thorough, and timely investigations within the prison system. The objectives of the division are to protect the inmate population, protect the department, protect the prison employee, and conduct proper background investigations to ensure the hiring of qualified correctional officers. The IAD has been the most effective tool the Philadelphia prison system has had concerning employee discipline, inmate discipline, and corruption.

Wayne Tucker, Alameda County Sheriffs Department, Alameda County, California

Employee discipline is intended to be positive or negative recognition of behavior. It is important for all facilities to have a written discipline policy. At a minimum, the policy should include the purpose of discipline, how and by whom it is imposed, whether it is corrective and progressive, and it should describe the due process rights for the employee and remedies available upon notification of intended discipline.

All disciplinary policies should have a "nexus," which means they should be legitimately related to the work being performed. Rules, orders, and procedures should be written insofar as possible. When it is not possible or advisable to have these in writing, then there should be a

generic written rule that addresses the necessity of comporting oneself within conventional business practices or in a manner that maintains public confidence.

Employees should be given an orientation program which explains expectations and provides written material. They should also have the chance to discuss the expectations. From time to time, there should be updates or refreshers relative to continuing or changing expectations.

When it is believed that employee misfeasance or misconduct has taken place, an investigation should be conducted by a trained, qualified investigator. While many facilities do not have an employee's bill of rights, it is advisable to have some form of due process in place for the employee.

In administrative investigations, giving testimony is compulsory. In criminal investigations, the right to remain silent is inviolable. The safest way to proceed when there is both an administrative and a criminal investigation is to have the administrative investigation trail the criminal investigation and to seek legal counsel each step of the way.

In administrative investigations, the burden of the proof lies with the employer. It is advisable to attempt to prove facts using the "clear and convincing" standard. This standard frequently requires additional effort by the investigators and it may result in instances of no finding, but it goes a long way toward maintaining employee confidence and trust.

Appropriate sanctions are determined by a number of factors: the department's standards and traditions, statutory mandates, history of the employee, public confidence, and seriousness of the offense. It is advisable to take community standards into consideration when imposing discipline, because on some level, the public's perception of the department's character, integrity, and credibility is influenced by what steps are taken in dealing with findings of misconduct. Some departments have a very active public information office that routinely supplies information, except that which is confidential, to the media.

Sanctions should be corrective and progressive. This means that only enough punishment to guarantee that an offense is not repeated and a clear message is sent to others in the organization should be imposed. For additional offenses, the sanctions become more severe.

It is advisable (and in some states mandatory) to provide the employee with an opportunity to an administrative hearing or appeal prior to the imposition of discipline. At the very least, the employee should have a right to representation, an opportunity to confront the evidence against him or her, and a right to present evidence on his or her behalf.

In summary, it is necessary to create a philosophy or purpose for discipline that is in writing and widely circulated. Next, in order to withstand legal scrutiny, rules, procedures, and orders should have a bonafide relationship with the task or department interest-they should not be arbitrarily created. All rules, procedures, and orders should be in writing. The investigative process should be fair, results oriented, and should contain a number of due process safeguards. Finally, departments must realize that the public measures their success in many instances on how they "clean their house."

Alternatives to Discipline

The Wayne County Jail's progressive disciplinary procedure includes:

- counseling;
- oral reprimand,
- written reprimand;
- suspension;
- discharge; or
- punishment.

Disciplinary problems are typically the consequence of how employees feel and think about themselves, how management solves problems, and the unity of purpose (team-work) in the organization.

Staff members who have personal problems will have more disciplinary problems and absenteeism than staff members who feel good about themselves. On average, 20% of the Wayne County Jail staff members cause 80% of the disciplinary problems. Examined closely, this group has higher concentrations of problem drinking, suicide attempts, marital problems, and misuse of authority.

The Wayne County Jail has an employee assistance program (EAP) and a peer assistance program. The EAP is contracted with a service which provides professional therapists and psychiatrists. The EAP provides confidential treatment of a variety of problems.

The peer assistance approach is designed to reduce internal conflict, move decisions downward, and develop internal expertise in problem-resolution skills. Peers learn to identify symptoms of personal problems and offer referral assistance to fellow officers before disciplinary action is warranted. In this way, both union and management avoid costly, divisive conflicts.

In Wayne County, management is now going about problem solving differently than in the past. Instead of short-term thinking, they are moving toward more decentralized decision making, greater attention to continuous education and training, and more participatory management. This approach is achieving more commitment and teamwork.

Unity of purpose is perhaps the best alternative to disciplinary action. The rationale for basic decisions must be public and the result of an open process. Under these conditions, employees do not usually resist change. They do, however, resist being changed without input or an understanding of why change is necessary. Unity of purpose requires teamwork and, in turn, results in less internal conflict and fewer disciplinary problems.

HIGHLIGHTS OF GROUP DISCUSSION

Topic Session 4: Employee Disciplinary Process

Following the panel presentation, the participants discussed and commented on the issues presented. Highlights of the feedback follow:

- For fairness, it is advisable to have an independent review of the disciplinary process.
- It is a good idea to separate administrative investigations from criminal investigations.
- In Baltimore, state police conduct investigations; they determine whether to proceed with a criminal or an administrative investigation.
- In some systems, informants and undercover officers are used as an auditing tool. Some departments do not do this; they believe that it is the job for which supervisors are paid.
- In Philadelphia, the Internal Affairs Division, covert officers, and intelligence in the inmate population are used to uncover problems. Initially, this was met with paranoia, but wardens now see it as a benefit. It has improved discipline in the system.

RECAP AND CLOSEOUT:

Michael O'Toole, Chief, NIC Jails Division

The National Institute of Corrections is committed to its role as a facilitator of information and technology transfer. The Large Jail Network is designed to provide a context that helps jail administrators and sheriffs to exchange ideas on what works and what their needs are likely to be in the future.

Topics for each meeting are selected by the participants. To the degree possible, panels are primarily composed of peer presenters. Topic suggestions for future Large Jail Network meetings include:

- The Americans with Disabilities Act of 1990
- Budget Cuts
- Update on Fair Labor Standards Act
- Worker's Compensation
- HIV/AIDS
- Alternative Sources of Funding
- Boot Camp Update

The July meeting will focus entirely on the Americans with Disabilities Act and will consist of peer panels and panels with individuals who have legal and technical expertise.

NATIONAL INSTITUTE OF CORRECTIONS
JAIL CENTER

LARGE JAIL NETWORK MEETING

RED LION HOTEL
DENVER, COLORADO

JANUARY 12-14, 1992

AGENDA

SUNDAY

JANUARY 12, 1992

6:00 PM - 8:00 PM

INFORMAL DINNER

Welcome

M. Wayne Huggins

*introductions and
Program Overview*

Michael O'Toole

MONDAY

JANUARY 13, 1992

7:30 AM - 8:30 AM

BREAKFAST

8:30 AM - 10:15 AM

Fair Labor Standards Act

Bill Collins

Group Discussion

10:15 AM - 10:30 AM

BREAK

10:30 AM - 12:00

Fair Labor Standards Act (cont.)

Bill Collins

Group Discussion

12:00 PM - 1:15 PM

LUNCH

1:15 PM - 3:00 PM Writing and Negotiating Contracts for Food Service and Medical Care

- o *John Mulry*
- o *Richard Bryce*
- o *Donald Amboyer*

*Pinella County FL
Ventura County, CA
Macomb County, MI*

Group Discussion

3:00 PM - 3:15 PM BREAK

3:15 PM - 5:00 PM Use of Force

- o *Art Wallenstein*
- o *Robert Kornegay*
- o *Joseph McAtee*

*King County, WA
Maricopa County, AZ
Marion County, IN*

Group Discussion

6:00 PM - 7:00 PM DINNER

TUESDAY

JANUARY 14, 1992

7:30 AM - 8:30 AM BREAKFAST

8:30 AM - 9:15 AM National Pretrial Reporting Program *Walter Smith*

9:15 AM - 9:30 AM BREAK

9:30 AM - 11:15 AM Employee Disciplinary Process

- o *Lonnie Lawrence*
- o *Thomas J. Costello*
- o *Wayne Tucker*
- o *Peter Wilson*

*Dade County, FL
City of Philadelphia
Alameda County, CA
Wayne County, MI*

11:15 AM - 11:45 AM RECAP AND CLOSEOUT

Michael O'Toole

NATIONAL INSTITUTE OF CORRECTIONS
JAIL CENTER

Large Jail Network Meeting

Denver, Colorado

January 12-14, 1992

- PARTICIPANT LIST -

Wayne G. Tucker, Alameda County Sheriff's Department
5325 Broder Boulevard
Dublin, CA 94586 (510) 551-6940

Charles Kozakiewicz, Allegheny County Jail
440 Ross Street
Pittsburgh, PA 15219 (412) 255-0100

LaMont W. Flanagan, Division of Pretrial Detention & Services
401 East Eager Street
Baltimore, MD 21202 (301) 637-1319

Harold Wilber, Department of Detention
Broward County Sheriff's Dept.
555 Southeast 1st Avenue
Fort Lauderdale, FL 33301 (305) 357-5907

Thomas J. Pocock, City of Atlanta
Bureau of Corrections
236 Peachtree Street SW
Atlanta, GA 30303 (404) 658-7294

Thomas J. Costello, City of Philadelphia, Prison Systems
8301 State Road - PICC
Philadelphia, PA 19136 (215) 335-7102

- PARTICIPANT LIST -

Paul Conner, Clark County Detention Center
330 South Casino Center Blvd.
Las Vegas, NV 89101 (702) 455-3951

Thomas F. White, Connecticut Department of Corrections
340 Capitol Avenue
Hartford, CT 06106 (203) 566-3717

Larry Ard, Contra Costa County Sheriff's Dept.
1000 Ward Street
Martinez, CA 94553 (510) 646- 4497

J.W. Fairman, Jr., Cook County Sheriff's Office
704 Daley Center
Chicago, IL 60602 (312) 890-6876

Connie Lawrence, Dade County Correction & Rehab. Dept.
1500 Northwest 12th Avenue, Suite 722
Miami, FL 33130 (305) 547-7385

Drusilla L Martin, Davidson County Sheriff's Dept.
506 Second Avenue, North
Nashville, TN 37201 (615) 862-8238

David Roach, D.C. Detention Facilities
1901 D Street, SE
Washington, DC 20003 (202) 673-8000

Alma Cornish, Escambia County Corrections Division
P. O. Box 17789
Pensacola, FL 32522 (904) 436-9814

- PARTICIPANT LIST -

Thomas J. Dever, Fairfax County Sheriff's Office
10520 Judicial Drive
Fairfax, VA 22030 (703) 246-4432

Levi J. Dawson, Fuiton County Jail
901 Rice Street
Atlanta, GA 30318 (404) 853-2042

Joseph M. Schmitz, Hamilton County Justice Center
1000 Sycamore Street
Cincinnati, OH 45202 (513) 763-5152

Mark Kellar, Harris County Sheriff's Department
1301 Franklin Street
Houston, TX 77002 (713) 755-6067

Joseph Payne, Jr., Jefferson County Corrections
600 West Jefferson Street
Louisville, KY 40202 (502) 588-2167

Art Wallenstein, King County Department of Adult Detention
500 5th Avenue
Seattle, WA 98104 (206) 296-1269

Donald J. Amboyer, Macomb County Jail
43565 Elizabeth Road
Mt. Clements, MI 48043 (313) 469-5024

Robert G. Kornegay, Maricopa County Detention Bureau
225 West Madison Street
Phoenix, AZ 85003 (602) 973-6456

- PARTICIPANT LIST -

Joseph McAtee, Marion County Sheriff's Dept.
40 South Alabama Street
Indianapolis, IN 46204 (317) 231-8206

Rudolph Johnson, Middlesex County Dept. of Corrections
P.O. Box 266
North Brunswick, NJ 08902 (201) 297-3636

Michael Cart, Milwaukee County
House of Corrections
P.O. Box 32010
Franklin, WI 53132 (414) 425-6337

John Schweitzer, Multnomah County Sheriff's Department
1120 Southwest 3rd Avenue, Room 307
Portland, OR 97204 (503) 248-5088

Henry Wallace, Oakland County Sheriff's Office
1201 No. Telegraph Road
Pontiac, MI 48053 (313) 858-4997

Edward A. Royal, Jr., Orange County Corrections Division
P. O. Box 4970
Orlando, FL 32802 (407) 836-3265

Jerry Krans, Orange County Sheriff's Dept.
550 North Flower Street
Santa Ana, CA 92702 (714) 647-7000

John J. Mulry, Pinellas County Corrections Bureau
P.O. Drawer 2500
Largo, FL 35622 (813) 587-6360

~~PARTICIPANT LIST~~

David Bosman, Pima County Sheriff's Department
P. O. Box 910
Tucson, AZ 85702 (602) 740-2848

Milton M. Crump, Prince Georges County
Department of Corrections
13400 Dille Drive
Upper Marlboro, MD 20772 (301) 952-7014

Oliver M. Thompson, Riverside County Sheriff's Dept.
4050 Main Street
Riverside, CA 92501 (714) 275-2416

Val Kobza, Sacramento County Sheriff's Dept.
711 9th Street
Sacramento, CA 95814 (916) 440-5686

Leonard Johnson, San Bernardino County Sheriff's Dept.
655 E. Third St., 2nd Floor
San Bernardino, CA 92415-0061 (714) 387-3685

James W. Painter, San Diego County Sheriff's Department
222 West "C" Street
San Diego, CA 92101 (619) 531-3320

Leland H. Derner, San Mateo County Sheriff's Dept.
401 Marshall Street
Redwood City, CA 94063 (415) 363-4056

Ronald L Bishop, Shelby County Division of Correction
1045 Mullins Station Road
Memphis, TN 38134 (901) 377-4502

- PARTICIPANT LIST -

Richard Bryce. Ventura County Sheriff's Department
800 South Victoria Avenue
Ventura, CA 93009 (805) 654-2383

Peter R. Wilson, Wayne County Sheriff's Dept.
570 Clinton St.
Detroit, MI 48226 (313) 224-0116

Gerard Burckhard, Westchester County DOC
P.O. Box 10
Valhalla, NY 10595 (914) 347-6041

