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MEETING HIGHLIGHTS

LARGE JAIL NETWORK MEETING

JANUARY 6-8, 2002

These proceedings summarize a meeting of NIC's Large Jail Network held in Longmont, Colorado, on January 6-8, 2002. Approximately 60 administrators of the nation's largest jails and jail systems attended the meeting; 17 of the attendees were first-time participants in a Large Jail Network meeting.

The meeting focused on several issues affecting the future of jail operations:

- Diversity recruitment
- Staff sexual misconduct
- Special needs inmates: the importance of ADA (Americans with Disability Act) issues
- The detention of foreign nationals and requirements for consular notification
- Special needs of female offenders

William Collins, Attorney at Law, provided an update on a number of legal issues affecting jail operations.

HIGHLIGHTS OF MEETING SESSIONS

- **Introduction to the Meeting.** The opening session of the Large Jail Network meeting gave participants the opportunity to raise issues of concern in their jurisdictions and to request assistance from other attendees. The following issues were discussed at this session: materials provided to candidates for promotion; potential terrorists in custody; the need to send attachments via the LJNI listserv; the U.S. Bureau of Justice Statistics work group on data; the Large Jail Network Construction Research Project, and a self-assessment of direct supervision facilities.
- **Diversity Recruitment.** Arthur Wallenstein, Montgomery County, Maryland, summarized that county's tools for recruiting and retaining a diverse staff, including outreach to community leaders of various ethnic groups. He also pointed out two basic principals: First, salary is not the underlying element in successful recruitment and retention; and secondly, retention is more important than recruitment.

- **Preventing Staff Sexual Misconduct.** Susan McCampbell, President of the Center for Innovative Public Policies and Director of NIC's Project on Staff Sexual Misconduct with Inmates, provided an overview of the issue of staff sexual misconduct. She discussed its implications for jails, summarized what has been learned through the project, and described resources, including training and publications, addressing the topic of staff sexual misconduct.
- **In-Custody ADA Issues.** Timothy Ryan, Santa Clara County, California, focused on the reasons that corrections professionals should be concerned with issues related to the Americans with Disabilities Act. He summarized provisions of the ADA and pointed to their impacts on corrections environments. Based on Alameda County's experience, especially two recent suits related to disabilities issues, he made a number of recommendations for how corrections facilities should be prepared to address ADA issues and avoid litigation.
- **Detention of Foreign Nationals: Consular Notification and Access.** Clyde Howard, Director of the U.S. Department of State's Consular Notification and Access Office, summarized the basic requirements for consular notification and access when a foreign national is detained in jail. He also defined the circumstances under which notification of a consulate is optional and when it is mandatory.
- **Special Needs of Female Inmates.** Several jail administrators summarized their jurisdictions' approaches to meeting the needs of female inmates. Richard Rouse, Sheriff, Suffolk County, Massachusetts, highlighted the services provided to female offenders by the Suffolk County Women's Resource Center. William Montague, Shelby County Division of Corrections, provided information on programs and services for women and reviewed the Division's future goals for programming for female offenders. Dennis Scheuller, Alameda County Sheriff's Office, pointed to the importance for male administrators to understand the perspectives of female inmates. Joe Schmitz, Hamilton County Sheriff's Department, summarized the results of the county's involvement in an NIC initiative, Intermediate Sanctions for Female Offenders. Bridget Gladwin, Westchester County Department of Correction, highlighted the importance of addressing the different needs of female offenders and pointed to the rewards of working with these offenders.
- **Legal Issues Update.** William Collins, Attorney at Law, provided summaries of recent legal cases affecting jails. Issues addressed included immediate release, use of stun belts in court, religious housing pods, strip searches of arrestees, and staff conduct toward inmates and visitors.
- **Topics for Next Meeting.** Richard Geather, NIC Jails Division, led a discussion of potential topics for the next meeting of the Large Jail Network. Topics selected for the July 2002 meeting were medical cost containment and mentoring and training for middle managers.

ISSUES IMPORTANT TO MEETING PARTICIPANTS

At the opening session on Sunday evening meeting participants had the opportunity to ask questions or raise issues of concern in their jurisdictions and to request assistance from other meeting participants in responding to these issues. Following is a summary of the issues introduced and discussed at this session.

MATERIALS PROVIDED TO CANDIDATES FOR PROMOTION

David Parrish, Hillsborough County, Florida, requested information and materials that other jurisdictions provide to candidates for promotion. He was interested in receiving copies of materials, handouts, or references related to correctional management that are given to candidates. On another issue, he noted that Hillsborough County has established a successful statewide listserv for Florida jail administrators, which is modeled on the Large Jail Network listserv.

POTENTIAL TERRORISTS IN CUSTODY

Tim Ryan, Santa Clara County, California, noted his concerns about information and communication from federal agencies related to potential terrorists in custody. Santa Clara County houses large numbers of aliens, and the current inmate population includes 25 persons from countries of potential relationship to terrorism. Ryan noted that they can't assume that all these people are terrorists, but that there might be a problem with one or more of these inmates. He expressed a concern that other inmates or officers might approach them with prejudice.

Santa Clara County has a Federal contract to hold prisoners, but the jail administration does not receive much relevant information from the U.S. Marshal's Office. Ryan was interested to learn if other jurisdictions have experience with housing potential terrorists or if someone could provide information on how to improve communications and information exchange with relevant federal agencies.

There was a general discussion of a potential role for NIC in encouraging Federal agencies to provide more information to local jails. Richard Geather, NIC Correctional Program Specialist, noted that NIC could perhaps facilitate a discussion of the issue, and he asked meeting participants to inform him of their thoughts on a possible NIC role.

LJN LISTSERV AND ATTACHMENTS

Art Wallenstein, Montgomery County Department of Corrections, expressed a concern that Large Jail Network members can no longer send attachments via the listserv. He commented that it is important for members to be able to attach information rather than fax it to other listserv members. Richard Geather will follow up with Connie Clem at the Information Center to find a solution, so that members can send all materials electronically. Geather will get back to members by the next Large Jail Network meeting.

BUREAU OF JUSTICE STATISTICS WORK GROUP

Richard Geaither asked if participants who had volunteered to be part of a work group on data for the Bureau of Justice Statistics had heard from the agency. Although BJS has not yet contacted participants, Geaither noted that they will do so in the near future. He also indicated that several agencies are interested in making a presentation to the Large Jail Network on the topic of new technology and its uses in the jail.

LARGE JAIL NETWORK CONSTRUCTION RESEARCH PROJECT

Michael O'Toole, consultant, described a survey he and Ray Nelson are currently conducting. The survey is designed to determine how NIC can strengthen its assistance related to large jails or jail systems involved in new jail planning and construction or major expansion.

The project has three phases. An initial survey, which is on the Large Jail Network Web page, asks jurisdictions to designate a contact person familiar with the jail construction process. A more detailed survey to be addressed to the identified contact persons will cover the 16 elements of the facility development process. The third phase will investigate further the types of assistance NIC could provide to large jails. The team is seeking at least 80 responses from the 153 large jail jurisdictions, and O'Toole is at the meeting to encourage participants to respond to the initial survey.

SELF-ASSESSMENT OF DIRECT SUPERVISION FACILITIES

Ray Nelson, consultant, described a project designed to develop a self-assessment instrument for direct supervision facilities. Noting that there is a need for direct supervision facilities to serve as test sites, he requested that anyone whose facility might serve as a test site for piloting initial drafts of the instrument should contact him or Mike O'Toole.

DIVERSITY RECRUITMENT: TECHNIQUES AND COMMUNITY NETWORKING

**ARTHUR WALLENSTEIN, DIRECTOR, MONTGOMERY COUNTY (MARYLAND)
DEPARTMENT OF CORRECTION**

Most demographic data suggest that corrections agencies will be strongly affected by demographic changes in the U.S. Many corrections agencies stand to lose as much as 25% of their workforce over the next few years. In fact, there are currently large vacancies in most law enforcement agencies, and I would guess that few of you are fully staffed.

This issue came home to me when I first became Director in Montgomery County. I discovered that the Department had rotated shifts for many years, despite the fact that shift rotation had gone out of fashion in corrections many years ago. The next day I asked for data on overtime and found that, although the system was fully accredited, staff had worked over 200 hours of mandatory overtime. The use of overtime to staff existing posts is a sure sign of problems, so I was concerned. Staff turnover was also significant, as rotating shifts and required overtime had exacerbated difficult family situations.

I discovered that there was a one-person recruiting effort in place in the agency, which was an extraordinarily cumbersome approach. We were 30 positions down, so I brought together a group to meet every week until the problem was solved. We filled the 30 positions in five months. We have also filled 85% of positions for our new jail, which is not yet complete.

RETENTION IS THE REAL ISSUE

There are two underlying principles to keep in mind:

1. Salary is not the underlying element in recruitment and retention. Fifteen miles away from us is a jail that pays \$5,000 more a year to correctional officers, but our officers have not all gone to work in Fairfax County.
2. Retention is the real issue, not recruitment. We all find ingenious ways to diminish our responsibility for the reasons staff members leave our agencies. We must remember that if we're 20 staff down, it is because 20 people have left.

Exit interviews are important, but many agencies do not do them. In our department, a senior staff person does the exit interview, which is detailed and probes for why a person is leaving. This approach gives you a better idea of what things you can do better.

The job environment has changed significantly, and our staff members do not respond to the same things to which we responded 25 or 30 years ago. Any effort that does not acknowledge the primary nature of our employees will lead to staff turnover. We need to manage by involving and empowering the individual. Following is a list of management behaviors associated with empowering individuals:

- Delegate assignments to the lowest appropriate level.
- Give people latitude to manage their own responsibilities.
- Empower others with the authority necessary to accomplish their objectives.
- Be accessible to provide assistance/support, as necessary.
- Foster development of a common vision.
- Make the team mission and strategies clear to others.
- Accurately identify strengths and development needs in staff.
- Give specific and constructive feedback.
- Let people know they are performing well.
- Let people know when results are not up to expectations.
- Coach others in developing their skills.
- Provide challenging assignments to facilitate individual development.
- Convey trust in people's competence to do their jobs.
- Inspire people to excel.
- Create an environment that makes work enjoyable.
- Value the contribution of all team members.
- Involve others in shaping plans and decisions that affect them.
- Foster teamwork.
- Treat people with respect.
- Provide others with open access to information.¹

MONTGOMERY COUNTY'S RECRUITMENT AND RETENTION TOOLS

Following some recommendations for improving recruitment and retention, based on successful approaches used in Montgomery County:

¹ This list is based on information presented at a National Summit on Law Enforcement Recruitment and Retention Training Conference, September 12-14, 2000, Las Vegas, Nevada, which was attended by Montgomery administrators and staff. Copies of the conference summary are available through the NIC Information Center.

1. *Use roll calls productively for providing training that facilitates retention.* Don't waste the time you have during roll call.
2. *Improve internal hiring processes.* We are slow in government, and we pay for it. We found that if someone submitted an application and then had to wait for an extended period to be contacted, we would lose the person. Previously we tested only once a quarter, but now we test once a month. We also now have five people working on recruitment. Although the positions are not all funded, they pay for themselves because we do not have to pay overtime to fill regular positions.
3. *Include a human resources person in conferences and training sessions.* Take human resources staff to sessions, such as those at the American Jails Association, on correctional workforce issues.
4. *Reward current staff for recruiting new staff.* We pay our employees \$1,000 for recruiting new officers or nurses. They are given a check for \$500 when the new employee starts and another \$500 when he/she finishes the probationary period. We have brought in 17 people this way. The recruiting staff person is never permitted to ask how the person they brought in is doing, as we cannot allow intervention or conflict of interest.
5. *Use ValuePak advertising to recruit.* Booklets are sent to 500,000 homes, and we received more than 500 phone calls asking about open positions. This tool, which is also used for nurses, cost us only \$3500.
6. *Work closely with community leaders of diverse populations.* We publish job announcements in a variety of languages, including Spanish, Korean, Chinese, and Vietnamese. The county has large populations of African Americans, 10% are Asian, and 14% are Latino. We have targeted minority populations that were not well represented on our staff. I showed community leaders our inmate-related data and noted that we wanted staff to mirror the inmate population, and I pointed to the need for bilingual capability and cultural sensitivity. I asked for permission to use the names of the leaders in recruitment materials. Attractive posters have been placed on bus routes in the neighborhoods of different populations. We are now getting five times the applications from Asian and Latino communities as we did previously. There has been no change in requirements; we hire about one in ten of every applicant.
7. *Engage the external environment.* In an increasingly competitive environment, we must go out and recruit employees. For example, there are neighborhood job fairs in our area in the summer, and we have trained staff to run these events. Go to high school vocational programs, even if you don't intend to hire an 18-year-old right out of high school because these students have a wide range of contacts.
8. *Advertise widely.* Advertising on corrections.com has been useful. We also advertise in military brochures and publications.

DISCUSSION

Meeting participants cited other approaches being used by their jurisdictions to improve the recruitment and retention of staff:

- *A childcare center.* Hillsborough County, Florida, is building a 200 bed childcare center near the law enforcement complex. The county is providing the location and the building. Employees will pay for the care.
- *Choice of shift as a recruitment reward.* Maricopa County, Arizona, gives employees who recruit new staff the choice of shift for a year.
- *Bonus for foreign language competence.* A creative way to engage diverse communities is to pay an additional amount for new employees who pass a foreign language test.
- *Alternate work shifts.* Hudson County, New Jersey, has found that a 12-hour work shift is popular and works as a retention tool. Whatever the shift, determining it should be a joint administrator-staff process.
- *Personal counseling.* Hillsborough County's on-the-job training has recently emphasized more personal counseling of staff, but it has not been as successful as hoped.
- *Mentoring.* There is a need for a training package on how to mentor successfully.
- *Staff housing.* Some counties have purchased housing to make it possible for staff to stay over night, when many of them live far away from their jobs.
- *Repayment of training costs.* Some counties require employees who leave within a certain period to pay the entire cost of their training. However, Montgomery County lawyers indicated that this could not be done legally in that jurisdiction.

For additional information, contact Arthur Wallenstein, Director, Montgomery County Department of Corrections; 51 Monroe Street, 11th Floor; Rockville, MD 20850-2320; 240/777-9976; arthur.wallenstein@co.mo.md.us

PREVENTING STAFF SEXUAL MISCONDUCT

SUSAN MCCAMPBELL, CENTER FOR INNOVATIVE PUBLIC POLICIES AND
PROJECT DIRECTOR, NIC PROJECT ON STAFF SEXUAL MISCONDUCT WITH
INMATES

OVERVIEW

NIC has a current initiative focused on the topic of staff sexual misconduct with inmates. Training in the field is currently being provided to jail administrators and staff. NIC became involved in the issue in 1994, when state directors of corrections identified sexual misconduct as a major issue.

Sexual misconduct has implications for jails in terms of their culture and operations, as sexual misconduct is related to legal issues, investigation, and prevention. How an agency responds seems to be directly correlated with whether sexual misconduct has been an issue in the local paper.

Sexual misconduct is defined as “any behavior or act of a sexual nature directed toward an inmate by an employee, volunteer, visitor, or agency representative. This includes acts or attempts to commit such acts including but not limited to sexual assault, sexual abuse, sexual harassment, sexual contact, conduct of a sexual nature or implication, obscenity and unreasonable invasion of privacy. Sexual misconduct also includes but is not limited to conversations or correspondence which suggests a romantic or sexual relationship between an inmate and person(s) mentioned above.”

There is increased public awareness and media attention on issues of abuse. There are very public examples of sexual misconduct, ranging from the presidency and Congress, to churches, educational institutions, and juvenile facilities. Amnesty International has focused recently on staff sexual misconduct in prisons and is now focusing on jails.

The following significant publications have highlighted the public’s awareness of the issue; all are available through the NIC Information Center:

- Amnesty International, *Not Part of My Sentence—Violations of Human Rights of Women in Custody*, 1999
- United Nations, 1999 *Report of the Special Rapporteur*
- Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons*, 1996
- USGAO, *Women in Prison: Issues and Challenges Confronting U.S. Correctional Systems*, 1999
- USGAO, *Women in Prison: Sexual Misconduct by Correctional Staff*, 1999

- NIC, *Fifty State Survey, 2001 Update*
- Amnesty International, *Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women, 2001*

There are now state criminal laws prohibiting sexual abuse of prisoners by correctional employers in all but three states (Alabama, Oregon, Vermont).

Myths of Staff Sexual Misconduct

Following are some current myths about staff sexual misconduct with inmates:

- No reports means no incidents.
- Cross-gender supervision is equal to sexual misconduct.
- Inmates give consent. (Most state statutes say specifically that consent is irrelevant, is not a defense. Your policy needs to make this clear.)
- The code of silence can't be overcome.
- Sexual misconduct implies male officers involved with female inmates. (In reality, this is not a women inmates' issue; sexual misconduct also involves male inmates and same sex misconduct.)
- Orienting inmates to the issue results in false reports and allegations.
- Rookie officers are responsible for incidents of staff sexual misconduct.
- Inmates set up staff, so the staff are the real victims.
- Little physical or other evidence only leads to "he said/she said."
- The prosecutor won't prosecute, so why investigate?
- Arrestees aren't in jail long enough for misconduct to occur.
- Officers are the only ones involved in sexual misconduct. In actuality, medical, food services, clergy, can all be involved. When writing policies, it is important to remember that they must not apply solely to officers.

Realities of Sexual Misconduct

- Leadership must come from the top. The culture of the organization is crucial.
- Zero tolerance and mandatory reporting are important ingredients in prevention.
- Required behaviors must be role-modeled.

- Sexual misconduct is associated with earlier breaches of professional boundaries.
- Policies must be explicit.
- Effective training is an essential part of the agency's response.
- Training must include contractors and volunteers.
- Staff fear and distrust internal investigations.
- Investigations must be professional, timely, and fair, and they must be conducted by trained and supervised investigators.
- There must be multiple reporting points for staff and inmates.

Why We Don't Know More About Staff Sexual Misconduct

- There is a lack of interface between human resources, investigations, and legal departments.
- We cut deals with employees and allow resignations.
- Contractor data is infrequently collected.
- Inmate information is not collected.
- The physical location of incidents is not recorded.
- Discipline is based on what can be proven rather than on the facts of the incident.
- There are no standard definitions.
- There is no standardized reporting. (Stop Prisoner Rape has introduced a bill addressing prisoner-prisoner assault. The group is lobbying for standardized definitions and reporting forms for all types of sexual misconduct.)
- Agencies are unwilling to report outcomes publicly.
- A number of agencies, including the U.S. Bureau of Prisons, the Hawaii DOC, Kansas DOC, Florida DOC, Michigan (on jails), Cook County, Illinois (jails), and the Florida DOC, have conducted studies of staff sexual misconduct. All are available through the NIC Information Center.

The Role of Organizational Culture

- A sexualized work environment contributes directly to sexual misconduct. Such an environment is characterized by:

- Undue familiarity between staff and inmates
- Unprofessional staff/staff relationships
- Staff/inmate relationships that cross boundaries
- Off-duty staff conduct that impacts the work environment
- Everything in the workplace goes back to sex
- There is often a code of silence about staff sexual misconduct, which develops in agencies in which employee bonds are strong. It also tends to be strongest where corruption is the most pervasive. Executives have often turned their backs on whistleblowers.

How to Address Organizational Culture

- Acknowledge the existence of staff sexual misconduct
- Education of staff
- Plans of action
- Policies and procedures
- Operations that match policies
- Role modeling behavior
- Zero tolerance for sexual misconduct
- Effective investigations
- No retaliation for disclosure
- The most important techniques for addressing organizational culture are a policy of zero tolerance for sexual misconduct, specific rules and policies, and mandatory reporting of incidents.

Prevention of Staff Sexual Misconduct

- Preventing staff sexual misconduct requires:
- Genuine commitment from leadership
- Role modeling behavior
- Policies and procedures that match each other

- Culture is assessed or addressed, if necessary
- Deterrence efforts
- Effective investigations
- Employee assistance
- Coordination with the prosecutor
- A media plan
- Inmate accountability
- Effective training of staff, inmates, volunteers, and contractors
- Protection of those who report staff sexual misconduct

INVESTIGATIONS AND WHY THEY FAIL

Agencies must establish policies and procedures related to investigations of staff sexual misconduct. The policies must define protocols for processing complaints, for identifying and securing physical evidence, and for providing mental health services. They need to establish authority for conducting investigations, keeping records, and conducting covert operations.

Important techniques include the need to move quickly, avoid deliberate indifference, be able to express outrage at the incident, and be thoughtful. Detailed reports must be collected from all involved. Other approaches to collecting information include taking the investigation to the community, establishing hot lines with access for the community and inmates to provide information, and establishing effective approaches to covert operations. It is important to be tenacious, review multiple options, and be aggressive to demonstrate the agency's commitment to all involved.

Investigations tend to fail for the following reasons:

- Lack of support from the top
- Uncooperative staff
- Poor teamwork
- Weak policy
- Poorly trained investigators
- Poor record keeping

- Security breaches

RESOURCES AVAILABLE ON STAFF SEXUAL MISCONDUCT

- The NIC Information Center—copies of a videoconference, materials related to staff and inmates, and a curriculum on investigations.
- NIC Technical Assistance—Agency-specific assistance, including on-site training on basic issues and on investigations.
- American Jails Association (AJA) conference—May 1, 2002—A four-hour training program on investigations.
- National Sheriff's Association (NSA)—a block on investigations
- Publications from Amnesty International, the United Nations, Human Rights Watch, and the General Accounting Office.
- Inmate education publications—from Colorado and California
- Video from Arizona being sold by the American Correctional Association (ACA)

NIC TRAINING OPPORTUNITIES AND OTHER INITIATIVES

- Addressing Staff Sexual Misconduct with Inmates—March 10-15, 2002.
- Investigations of Staff Sexual Misconduct with Inmates—July 7-12, 2002
- Articles pending in publications by AJA, NSA, and ACA.
- The NIC project is currently developing a template to guide agencies through a review of their own policies and procedures
- Trainers/technical resource providers
- National Women's Law Center, An End to Silence. Available through the NIC Information Center

TO REQUEST NIC TECHNICAL ASSISTANCE

To request technical assistance on this topic from NIC, contact Dr. Allen Ault, National Institute of Corrections, 500 First Street, NW, Washington, DC 20531; 202/307-3361 fax; Aault@bop.gov

For additional information, contact Susan McCampbell, President, Center for Innovative Public Policies, Inc., 7913 N.W. 83rd Street, Tamarac, FL 33321; 954/726-5322; cippinc@aol.com

CONSULAR NOTIFICATION AND ACCESS

CLYDE HOWARD, DIRECTOR, U.S. DEPARTMENT OF STATE, CONSULAR NOTIFICATION AND ACCESS OFFICE

BACKGROUND

The way we treat a foreigner incarcerated in this country affects what happens to U.S. citizens arrested abroad. .

Today, I will summarize the basic requirements of consular notification and access, including when notification is an obligation. I would also like your help in getting out the word on these requirements to other law enforcement and corrections agencies.

REQUIREMENTS RELATED TO FOREIGN NATIONALS WHO ARE ARRESTED OR DETAINED

Essentially, there are two rules: 1) the Basic Rule, which *allows* a detained person to have his consul notified, and 2) a Mandatory Rule, which applies to citizens of those countries with which we have bilateral treaties. The consulates of these countries *must* be notified regardless of the detainee's wishes.

- *Detention Notification.* When a foreign national is arrested or detained, he *must* be asked if he wants his consulate notified.

If the person is from one of the 56 countries with which the United States has a bilateral agreement, the consulate *must* be notified whether the detainee wants notification or not. For a list of these countries, request a copy of "Consular Notification and Access Reference Card: Instructions for Arrests and Detentions of Foreign Nationals," a card summarizing basic consular notification proceedings. For a copy of the complete publication, *Consular Notification and Access*, see the Department of State's web site on the topic: http://www.state.gov/www/about_state/ca_prelim.html

- *Detainee Access.* Consular officers have the right to have access to their nationals detained in jail or prison, either in person or by phone.

LEGAL BASIS

- *The Vienna Convention on Consular Relations (VCCR).* This treaty sets out basic international law obligations on a variety of topics including notification and access rights of a consular official when a national of their country is detained or arrested. It does not specify a particular process, but provides guidelines. For example, it states that a detained foreign national should be told of his right to notify his consulate "without delay."

- *Bilateral treaties.* The U.S. also has bilateral treaties with more than 50 countries. These treaties contain more specific provisions. For example, several state that the detainee's consulate *must* be notified of his arrest within 72 hours. The detainee has no choice under such treaties, and a corrections facility's obligations are more clearly defined.

Both the Vienna Convention and the bilateral treaties state that notification is an obligation. The purpose of this requirement is to ensure that a government does not place an alien in a situation in which the person cannot receive assistance from his/her own government. An alien stopped for a traffic violation clearly does not need the kind of help his consul might provide, so notification is not needed in a situation of such short detention. Someone being held overnight may want consular assistance, however, so notification is needed in such a case. Cases falling between these extremes (about 4-6 hours) would require judgment calls, keeping in mind the purpose of this requirement. Any detainee asking to communicate with his consulate, no matter how briefly detained, should be allowed to do so.

WHY NOT NOTIFY THE CONSULATE IN ALL CASES?

Due to privacy concerns, it is inappropriate to notify the consulate for all detained foreign nationals. An example of why this is true is the case of an asylum seeker in INS custody. Mandatory notification applies only to countries with which we have bilateral treaties. These tend to be countries that we did not trust very much at the time the treaty was negotiated, and it was important for us to know when U.S. citizens were arrested or detained in those countries.

PRAGMATIC REASONS FOR COMPLYING

Investigation and litigation for lack of compliance are a hassle, and their outcomes are unpredictable.

- If the State Department gets a complaint from a foreign consulate, the agency will have to call you to determine whether the detainee was told of his right to notify his consulate and what follow-up was provided.
- Cases have recently gone to the International Court of Justice, which ruled that, in cases where consular notification was not provided, the U.S. must "allow review and reconsideration of the conviction and sentence." State Department legal experts are trying to determine what this ruling means for cases before our courts; there is a risk of having convictions overturned or evidence suppressed. A court in New York recently held that someone who did not receive consular notification might file for monetary damages under civil rights statutes. Providing notification will avoid creating grounds for challenging the conviction and sentence due to a lack of notification.
- In some cases, the consul can help you. They know the language and the culture, can contact relatives, and, in general, can be a helpful resource for you.

DISCUSSION

In the past, the notification process focused principally on police and sheriffs' departments, but we now realize that the arrested person is quickly out of the hands of the arresting agency and into the hands of the jail. As a practical matter, jails are in a much better position to assume this responsibility.

- *Timing.* It is permissible to wait until after a hearing to notify if the hearing will take place quickly. If the person will be held overnight, the agency should notify. If the person is released immediately, notification is unnecessary. However, if the arrested person asks for access to the consulate, then notification must take place immediately.
- *Record keeping.* It is important to keep a record of notification. Keep a note in the arrested person's file on the name of the person contacted.
- *Booking Prompts.* San Bernardino County, California, has included a series of prompt questions on the arrest/booking form, including questions on nationality and consular notification. Those at the booking counter assume the role of notification. For those on the mandatory list, they send immediate notification via fax, regardless of how long the person is likely to be in the jail.
- *Posters.* Some jails have created posters to be placed in the booking area to provide this information for anyone who can read it.
- *Recent influx of foreign nationals in jail.* The issue has come to the forefront in recent weeks, as a large number of foreign nationals have been taken into custody. The Justice Department has been reluctant to release information on who is being held, and the State Department has had to work to convince them of the importance of respecting the consular notification rights of those arrested, even if they are suspected of being terrorists.

For additional information, contact Clyde I. Howard, Jr., Chief, Consular Notification and Outreach Division, Bureau of Consular Affairs, Department of State, 2201 C St., NW, Room 4800, Washington, DC 20520; 202/647-4415; howardci@state.gov

WHY CORRECTIONS PROFESSIONALS SHOULD BE CONCERNED WITH IN-CUSTODY ADA ISSUES

TIMOTHY RYAN, CHIEF, SANTA CLARA (CALIFORNIA) DEPARTMENT OF CORRECTION

IMPORTANCE OF ISSUES RELATED TO ADA

Disabilities issues are important to all of us. The relevance of the Americans with Disabilities Act (ADA) was brought home to me when I was sued in *Padilla v. Ryan*, which became a Federal suit. The issue surfaced in 1993, about five years before *Padilla* as a consequence of a Mexican Mafia murder that resulted in 13 individuals being placed in our system. One of them was in a wheelchair. Our approach at that time was to take away the wheelchair, keep the individual from all activities, and ignore his ADA rights. When we called in an ADA consultant, who walked around the facility, he asked why the individual in a wheelchair was not in one of the three handicapped cells in the medical unit. He said that we either needed to put the offender there or get out our checkbook. This incident triggered the need to pay attention to disabilities issues.

There are several reasons why you should be concerned with in-custody ADA issues:

- It is good business.
- You can reduce the risk of personal liability.
- It is the right thing to do.

STATISTICS ON DISABILITIES

- There are 49 million disabled persons in America.
- 1 in 5 Americans are disabled.
- The number 1 cause of impairment is arthritis or rheumatism (7.2 million people).
- 1.1 million persons have a hearing impairment.
- 95% of all adaptations cost less than \$100.
- 60% of all disabilities are not visible.
- 61% of all disabled adults are unemployed.

IMPACTS OF ADA ON CORRECTIONAL ENVIRONMENTS

- *Architectural*—The ADA must be considered when undertaking new construction.
- *Financial*—You may need to set aside funds for litigation under the ADA.
- *Operational*—The ADA is changing jail operations in significant ways.
- *Training*—It is crucial to provide sensitivity training for staff.
- *Litigation*—We need to pay attention to the ADA because we are getting sued.

AMERICANS WITH DISABILITIES ACT OF 1990

The ADA was built on Title VII of the Civil Rights Act of 1964 and the Vocational Rehabilitation Act of 1973. It is not an Affirmative Action statute but an equal participation statute. Title II of the ADA covers all activities of state and local governments, regardless of the governmental entity's size or receipt of federal funding. ADA Cornerstones:

- *Access to Programs*—Title II provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.
- *Reasonable accommodations*—The ADA requires agencies to make reasonable modifications in their policies, practices and procedures that are necessary to ensure accessibility for individuals with disabilities, unless making such modifications would fundamentally alter the program or service involved.
- *Auxiliary aids*—Title II also requires a public entity to furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.
- *Consideration of the individual's request*—In determining what type of auxiliary aid or service is necessary, Title II requires that a public entity give primary consideration to the requests of the individual with a disability.
- *Effective communication*—Title II states that a public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

ADA Basics

Purpose

- To dispel negative stereotypes and assumptions about disability

- To assure equality of opportunity and full participation
- “Equal access” applies to both inmates and the public/visitors. We must document all our policies in this regard.

Principles of Mainstreaming

- Individuals with disabilities must be integrated to the maximum extent appropriate.
- Separate programs are permitted where necessary to ensure equal opportunity. A separate program must be appropriate to the individual.
- Individuals with disabilities cannot be excluded from the regular program or required to accept special services or benefits.
- Protections may extend to persons without disabilities. Inmates and visitors must be provided access to any program, service, or activity to which inmates and visitors without disabilities have access.
- Services, programs, or activities that segregate persons with disabilities should be avoided.
- Involuntary programs, as well as voluntary programs, are also protected.
- The fact that a public entity offers special programs does not affect the right of an individual with a disability to participate in regular programs.

Fundamental Alteration and Undue Burdens

- Providing program access is not required if it would fundamentally alter the nature of the program, service, or activity, or if it would cause undue financial and administrative burdens on the governmental entity. Be sure that if you deny someone access, there is a good reason for doing so. You must document your decision.
- A financial burden is not a good argument for denying access. For purposes of determining whether an undue burden would be caused, you must consider the resources of the entire government entity, not just the facility.
- When claiming an undue burden, the entity has an obligation to demonstrate that all resources available for the funding and operation of the service, activity, or program were taken into consideration. Claiming an undue or burden or fundamental alteration does not relieve an entity of all obligations to provide access to people with disabilities.

Defining Disability (Three Prong Test)

- A person with a disability is someone who: has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having one.
- Having a disability, in and of itself, is not enough. It must be a disability that substantially limits a major life activity. There are three criteria to consider: its nature and severity; how long it will last or is expected to last; and the permanent or long term impact or expected impact
- The individual must meet the essential eligibility requirements for the receipt of services or participation in programs or activities provided by the public entity.

How Inmates Can Be Identified as Disabled. *We need to plug the holes in the process of identifying inmates with disabilities. Some ways they can be identified include:*

- If the inmate self- identifies
- If the inmate submits an inmate grievance
- Through historical records
- Through staff or health care provider observation
- Through third party notification (If a relative calls and notifies you of an inmate's disability, pay attention to this.)

EXPERIENCE OF SANTA CLARA COUNTY

1. *Padilla v. Ryan* involved intervention by the U.S. Department of Justice. There were 17 items of injunctive relief. Although we had purchased TDD equipment, we had not used it. We were also required to provide a hearing aid and batteries. Now, when a hearing impaired person is brought in, we tell the court. In addition, there are now amplifying phones in our visiting area.
2. *Salazar v. Inham (1993)*. There were five items of injunctive relief in this case; we also paid court costs. We were required to install visual alarms in cells, notify inmates of rights both in writing and via a video, develop new evacuation procedures, and provide staff training on the issue of inmates with disabilities.

LESSONS LEARNED

1. Be proactive and seek aggressive resolution.
2. Seek sound advice; don't try to deal with the issue on your own. Public advocacy groups can become an advocate for your system.

3. Provide sensitivity training for staff. You need to help staff recognize the importance of the issue.
4. Focus on the benefit of access. Areas of concern include:
 - Security/safety
 - Initial identification of inmates with disabilities
 - Elimination of procedural barriers
 - Immediate review and processing of all accommodation requests
 - Effective communications—as effective with individuals with disabilities as with others.

WHAT SHOULD YOU HAVE IN PLACE?

- An ADA coordinator—24x7 availability of an expert on these issues
- A solid intake process, including specific screening questions to identify disabled persons
- A classification system that accounts for disabled persons, including a tracking system
- Program access
- Accessible information (to public and inmates)
- Training, including sensitivity training
- Housing areas for disabled persons at all security levels.
- A grievance procedure and review
- Process for requesting accommodation
- Annual audits and assessments

LITIGATION AVOIDANCE

- Be proactive.
- Establish an audit/evaluation process (annually or more often).
- Avoid segregating inmates based solely on their disability.

- Avoid clustering inmates with special needs, as this violates mainstreaming.
- Have accommodations in each classification level.
- Remove arbitrary barriers created by policy, procedure, or practice.
- Document everything.
- Develop a system for complaint resolution, which includes an immediate investigation, a risk assessment, and taking action.

THE FUTURE

The ADA issues are not going away, so we all need to pay attention to them. I hope each of you avoids the \$1 million suit that Santa Clara experienced.

For additional information, contact Timothy Ryan, Chief, Santa Clara County Department of Correction, 180 West Hedding St., San Jose, CA 95110-1772; 408/299-4005; Tim.ryan@doc.co.santa-clara.ca.us

SPECIAL NEEDS OF FEMALE INMATES

RICHARD ROUSE, SHERIFF, SUFFOLK COUNTY (MASSACHUSETTS) SHERIFF'S DEPARTMENT

CHANGES IN THE TREATMENT OF FEMALE INMATES

There has been a radical cultural change in our facilities in the past few years. The change was initially prompted when we discovered that female inmates were exchanging sex for cigarettes, and there was a sex scandal every day in the paper. At the time, this behavior wasn't against the law, but we have since changed the law.

We have learned a lot about how women were treated in our facilities, and we have made substantial changes. Working in the women's unit was anathema a few years ago, but at graduation time now, the inmates sometimes give standing ovations to officers.

We are now focusing on self-care. In establishing recovery units, we have tried to ensure that unit staff have been in recovery themselves. It is helpful to have people there who are sensitive to addiction issues. We must remember that human capital is our greatest resource.

FEMALE POPULATION CHARACTERISTICS

The rate of incarceration for women is rapidly increasing. Last year, Suffolk County housed 2599 women. Over 90% of our inmates live within five miles of the institution.

Female offenders have often sunk further than male inmates by the time they get to us, because judges hate to sentence mothers to jail. Approximately 80% are seriously addicted to heroin. Most female inmates do not get visitors; no one is there for them. They do not have a support system. These are people who have led very damaged lives.

WOMEN'S RESOURCE CENTER: COMMUNITY CORRECTIONS FOR WOMEN OFFENDERS

One of our most successful endeavors has been to increase our use of community corrections for female offenders. The Suffolk County Women's Resource Center provides an intermediate sanctions program that offers a continuum of services for female offenders. The Center is an ongoing collaborative effort involving a variety of law enforcement agencies and service providers. The 50-capacity day program involves rigorous protocols designed to ensure that women assigned to the Center take responsibility for their behavior. The sanctions for failing are very strict; after only one failure, a woman is out. Although it was difficult to get program-related people to accept this approach, the program has been successful.

All services are gender-specific and include:

- A comprehensive computer lab that provides instruction in computer and general education skills
- An educational program that teaches academic, vocational, and life skills, including parenting skills
- Counseling and case management to help offenders deal with issues affecting their success
- Drug and alcohol testing and counseling
- Community service

Health care is provided, and the women are helped in making the transition back into the community. We are trying to keep families together. This is a “right thing to do.”

For additional information, contact Richard Rouse, Sheriff, Suffolk County Sheriff's Department, 200 Nashua Street, Boston, MA 02114; 617/635-1000.

**WILLIAM MONTAGUE, ADMINISTRATOR OF OPERATIONS, SHELBY COUNTY
(TENNESSEE) DIVISION OF CORRECTIONS**

BACKGROUND

The female inmate capacity of the Shelby County Division of Corrections consists of 218 beds at the Main Compound Women's Building and 124 beds at the off-compound Adult Offender Center, a minimum-security community work program facility. A Classification Board sends offenders to the Adult Offender Center, where they are assigned to work release or to community work projects.

CURRENT PROGRAMS FOR WOMEN OFFENDERS

Programs and services for women at the Main Compound Women's Building include:

- *Residential Treatment*—This is an open entry, voluntary, and referred program that emphasizes self-awareness training, problem solving, substance abuse counseling, and conflict resolution.
- *Moral Reconciliation Therapy*—An integral part of rehabilitation and substance abuse counseling and treatment, moral reconnection therapy is a strategy designed to enhance self-image and personal growth by focusing on past beliefs, practices, and actions that have resulted in negative behavior and sanctions, including incarceration.
- *Anger Management*—This voluntary program facilitates an understanding of how and why anger occurs and suggests alternative behavioral responses.
- *Domestic Violence*—This class is designed for victims of domestic violence and those interested in acquiring a basic understanding of domestic violence.
- *Drug Education*—The program provides information to help substance abusers identify situations that cause them to relapse.
- *Parenting Class/Parent Child Visitation*—These classes provide opportunities for parents to develop clear roles and skills needed for effective parenting. The inmates' progress is evaluated during child/parent visitation.
- *Educational Programs*—These programs include GED; Time to Read, a literacy program; and Work Ethics, a community work program that is part of the substance abuse program.
- *Vocational Education*—These include Women in Construction and Culinary Arts.
- *Work Release*—Inmates with lower security levels are placed at the Adult Offender Center and go to and from work on a daily basis.
- *Mental Health Services*

- *General Counseling Services*
- *Library Services*
- *Volunteer Activities*

OUR FUTURE GOALS FOR WOMEN’S PROGRAMS

- Increasing the number of inmates in Adult Basic Education Programs
- Increasing the number of inmates in the Computer Literacy Program and the length of the program from two to three weeks
- Conducting quarterly program needs assessments
- Developing additional special needs programs to accommodate developmentally challenged inmates, physically impaired inmates, aging inmates, and English as a Second Language programs
- Developing a one-room Residential Construction Technology program and practical experience in electrical wiring, plumbing, carpentry, concrete finishing and masonry, basic heating, ventilation, and air conditioning
- Increasing the pre-release group sessions on pre-employment, job social skills, and interpersonal relationship skills
- Expanding the current Horticulture/Landscaping program to allow female inmates to participate
- Expanding the current Textile/Sewing program to allow female inmates to learn general manufacturing techniques for the garment production industry
- Expanding the Upholstery program to include female inmates
- Exploring the number of current institutional work areas that can become training areas under the U.S. Department of Labor Apprenticeship Program
- Exploring the incorporation of other vocational opportunities such as cosmetology, vocational office occupations, drafting, and hospitality training
- Providing more opportunities for inmates to participate in projects such as “Happy Hats,” a sewing program that produces comical hats for cancer patients

For more information, contact William Montague, Administrator of Operations, Shelby County Division of Corrections; 1045 Mullins Station Road, Memphis, TN 38134; 901/385-5120; Montague@co.shelby.tn.us

**DENNIS SCHEULLER, COMMANDER, ALAMEDA COUNTY
(CALIFORNIA)SHERIFF'S OFFICE**

UNDERSTANDING WOMEN'S ISSUES

When I first came to my job, I had a man's perspective about women's issues, but I now realize that women have many more issues than men. We have worked hard to develop programs that are specifically designed to address these issues.

We went to New York to look at programs for women and children, especially those in which women had their children in jail. However, with the short time women offenders are with us, we found that we do not have them long enough for a program involving in-custody care of children.

M.O.M.S PROGRAM

We are very proud of our M.O.M.S. program—Maximizing Opportunities for Mothers to Succeed. Many incarcerated mothers do not have the basic information on how to be mothers, and this program tries to build their self-confidence. When they are released, the women are assigned a counselor who stays with them for about a year to help them find jobs and services in the community. The program has been very successful.

ADVICE TO OTHER MALE ADMINISTRATORS

It is important for us, as male administrators, to listen to female inmates in our facilities and try and understand their problems. We must also try and get the women to understand that they are self-sustaining and that they can get through life alone if they have to.

We can make a real difference in people's lives. One thing we have learned is the importance of reading and writing; if we can teach someone to read while the person is in custody, we can have a positive effect on her/his life.

For additional information, contact Dennis Scheuller, Commander, Alameda County Sheriff's Office, 1401 Lakeside Drive, Oakland, CA 94612-4305; 510/208-9812; dscheuller@co.alameda.ca.us

JOE SCHMITZ, DIRECTOR OF OPERATIONS, HAMILTON COUNTY (CINCINNATI, OHIO) SHERIFF'S DEPARTMENT

NIC INITIATIVE: INTERMEDIATE SANCTIONS FOR FEMALE OFFENDERS

I am here to talk not about a program but a process. Hamilton County became part of an NIC initiative called "Intermediate Sanctions for Female Offenders" in which we brought together representatives of all parts of the criminal justice system to look at how we treat female offenders. We also studied all female offenders in the jail, including those in minimum security, to determine what their issues are. Everyone talks about "female issues," but we had never really defined them clearly.

WHAT WE LEARNED

As part of this project, we started looking at our entire process, beginning with intake. We asked female offenders about their reaction to that process. We also talked to staff, who generally preferred not to deal with female inmates, about the kinds of issues females presented that made them harder to deal with. The process identified a number of issues specific to female offenders. They included:

Personal issues

- Over 70% of our female offenders reported psychological abuse; large proportions also reported sexual abuse.
- Many had drug habits, and 39% had significant mental health problems.
- A large number of female offenders who had children; 40% of those in our facilities had lost custody of their children. The others were concerned about who was taking care of them while they were in jail.
- Females do not get nearly as many visits as male inmates do; they tend to lack support systems. We received fewer complaints about our treatment of female inmates. In general, there is less social support for women in jail than for men.

Process issues

- Jail systems are commonly based on a male model of communication. The model is not necessarily relevant for women, however. Defined lines of communication, based on the military, do not suit women, who are more likely than men to depend on negotiation.
- We also found that women had more difficulty in making bond than men. Fewer women than men had someone able to post a \$100 bond. When we presented evidence to judges that women had more trouble making bond, the

judges agreed to increase the number of women released on their own recognizance.

- Our intake center was designed to process 45 inmates a day, but we are processing many more than that. Women were previously being patted down in front of male officers. We have now made some changes in intake, and all female offenders are patted down out of view of any males.
- We also moved all female inmates to the floor above the Mental Health and Medical unit, which has significantly reduced the amount of transportation of female offenders. In addition, we converted a barbershop to a female examining room. Women had complained that the original room was too small and made them feel uncomfortable. The larger room has resulted in fewer complaints.
- We are using the Basis 32 Assessment, which is self-reporting. It takes 10-15 minutes to complete and provides a good indicator of a female inmate's health and mental health needs.
- Finally, what we learned is that there are many things that can be done to reduce the problems related to "female issues" in a facility.

For additional information, contact Joseph M. Schmitz, Director of Operations, Hamilton County Sheriff's Department; 1000 Sycamore St., Room 110, Cincinnati, OH 45202; 513/946-6606; jschmitz@sheriff.hamilton.co.org

BRIDGET GLADWIN, DEPUTY COMMISSIONER, WESTCHESTER COUNTY (NEW YORK) DEPARTMENT OF CORRECTION

“SPECIAL NEEDS” OF FEMALE OFFENDERS

We should think of female offenders as having “different needs” rather than “special needs.” Working with females is challenging for some staff because women are more vocal and complain more than men. However, if you pay attention to meeting their needs, they generally respond better than men to treatment and programs. Working with women can therefore be very rewarding.

Although the female population is increasing, women are still a small proportion of the overall population. In the scheme of things, they simply don’t count as much as men. If there is no leader who is willing to put women’s issues on the front burner, the women are treated just like the men, which does not meet their needs.

JAIL DESIGN ISSUES

Women’s units are often an afterthought. More recently, however, states have designed units especially for women. The female offenders in Westchester County used to be housed in the top unit of a men’s facility. We now have a smaller unit especially for women. Jail design should be flexible to account for shifts in population.

PROGRAMS AND SERVICES FOR FEMALE OFFENDERS

Women have a strong need for community. Homosexual activity among female inmates is often only institution-based, evidence of the women’s need for a caring environment, friendship, and closeness. Those of us who manage jails or prisons need to be cognizant of that need. We must also help women reconnect with their children. If we can address female offenders’ need for loving relationships, we can make a difference.

We also need to focus more on transitional planning and linkages with community services to help ensure that women are not released into the same destructive environment they came from. Westchester County recognizes that many female inmates are drug dependent and have problems related to their family. We are working closely with faith-based organizations and community services to help women make the transition back to the community. This is the most important aspect of working with women.

Women are very resilient. We have seen women who have been through very difficult situations and been abused, yet they have come out of them effectively. Despite the odds, they can be successful. If you have a sensitive administration, you can nurture such successes.

For additional information, contact Bridget Gladwin, Deputy Commissioner, Westchester County Department of Correction; P.O. Box 389, Headquarters Bldg., Valhalla, NY 10595; 914/231-1362; bpgl@westchestergov.com

LEGAL ISSUES UPDATE

WILLIAM COLLINS, ATTORNEY AT LAW, OLYMPIA WASHINGTON

LEGAL ISSUES DISCUSSED

This session provided an update on the following legal issues affecting jails:

- *“Get out of Jail Free, But When?”* When a judge in court releases an inmate or detainee, how long can the facility delay in completing all related administrative processes?
- *The Stun Belt Goes to Court.* When may a stun belt be used in court?
- *“God Pods” and the First Amendment.* When do religious-based living units violate the Establishment Clause of the First Amendment?
- *Strip Searches of Arrestees.* What is the general rule governing strip searches? What loopholes are unconstitutional?
- *“Case of the Year.”* What lessons about staff conduct and attitude toward persons under their supervision can be drawn from the case?

WHAT CONSTITUTES “IMMEDIATE RELEASE?”

When a judge dismisses a case and tells a defendant he/she is free to go, how quickly does a facility actually release the person? We have a vision of an immediate release, but in reality, there is often a significant delay. There is only one Federal court decision [*Fowler v. Block 2F. Supp.2d, 1268 (C.D. Cal., 1999)*] that addresses the issue. This is a District Court decision and thus is not a strong precedent. However, the court case ruled that an administrative processing delay, even if it is over 24 hours, is reasonable, but that long delays for warrant checks are not. A facility must have convincing reasons for any delay.

Discussion

- The Los Angeles County Sheriff’s Office has revised its process in response to the Fowler v. Block decision. Some inmates are now released directly from court, and their personal effects are mailed to them later. Others are released in a few hours. Jake Katz of L.A. County made the point that facilities should assess their own processes and make the best adjustment possible.
- There is a case pending in Hawaii in which “reasonable time” has not yet been defined.
- Art Wallenstein commented that this is really a community public safety issue, not an issue of convenience to the jail. Some Montgomery County courts release inmates directly, often in their jumpsuits, which is inhumane. The jail

administration is asking judges to change this practice, giving the jail two hours from the time the inmate is returned to jail to release him.

- Bill Collins commented that there are important issues, including weather, appropriate clothing, and the inmate's lack of money, surrounding an immediate release from court. He suggested that jail administrators try to convince the court to word the release order to give the jail a certain amount of time to process the release.
- Collins also noted that there is a Constitutional duty to provide medical assistance to those being discharged if they would be in jeopardy without it. David Owens commented that there is a New Jersey state mandate to ensure that all inmates are released with a 24-hour supply of medication.
- In Broward County, inmates wear jail uniforms unless they are going to trial, when they wear their own clothes. If, for some reason, they are released while in uniform, which doesn't happen often, they are transported to the jail in the front seat with the driver. Clayton Frank, Hawaii, indicated that DOC attorneys believe that if a free man is being transported, there are additional liability issues for the agency.
- It is clear that the immediate release issue is of emerging importance. Jails should assess their processes, including how they deal with clothing and health and safety issues, to see if they can be speeded up. They should be in as strong a position as possible to provide reasons for any delays in release.

STUN BELTS IN COURT

The Ninth Circuit Court overturned a federal district court's preliminary injunction barring the Los Angeles County Sheriff's Department from using a stun belt on any prisoner in court. The 9th Circuit Court found that a stun belt has no "chilling effect" on a defendant if it is used for clear security-related reasons. It may be used to protect against violence in the courtroom or the escape of the defendant. However, a stun belt cannot be used to silence or punish a verbally disruptive defendant

If you use stun belts in court, you must have a strong policy and procedure defining its use and who can use it. You must also provide training and close supervision of officers who use stun belts.

RELIGIOUS-BASED LIVING UNITS: "GOD PODS"

The Texas Supreme Court in *Williams v. Lara*, 2001WL 721067 (Tex.2001) found that a religious-based living unit in Harris County violated the Establishment Clause of the First Amendment because it insisted on only a single religious viewpoint. The two legal tests for such units are 1) whether the purpose of such units is legitimately secular and 2) whether the message endorses a single religious viewpoint. Religious units must be designed to

rehabilitate or reduce violence, and they cannot endorse a single religious view, but must be more generically religious.

If you are interested in establishing a religious unit, be sure that it has a non-religious purpose and that the message is general.

STRIP SEARCHES OF ARRESTEES

The general rule governing strip searches is that an arrestee may not be strip-searched without “reasonable suspicion” of hidden contraband or a weapon. Reasonable suspicion may be based on the arrestee’s behavior or a violent offense. Drug possession, criminal history, a felony charge, and a communicable disease may sometimes be grounds for a strip search. (It may make sense to refer a person with a communicable disease to the medical staff for examination.)

However, neither an arrest for a DUI nor an arrestee who is under the influence of drugs constitutes grounds for a strip search. Note that although state law may allow searches based on the reason for the arrest, the Constitution may not allow routine strip searches of all felons.

Policies that are related to the following “loopholes” are unconstitutional: placement in the general population; partial strip searches; “medical” searches; “clothing exchanges”; and any other tactic designed to name a strip search something else.

It is not the “strip search” label that is the problem. If your policy requires arrestees to get naked in front of an officer, you should look very carefully at your justification. It is probably unconstitutional if there is no reasonable suspicion to justify the strip search. If officers have discretion about the decision to strip-search, they need documentation and authority by a supervisor.

When does an “Arrestee” become an “Inmate”?

An arrestee becomes an inmate after the first court appearance. Once a person is in a permanent living unit, they become subject to search the same as any other person in that unit. However, this does not permit the facility to conduct a strip search when the person is placed in the general population.

There is virtually no case law saying when an inmate can be strip-searched. Grounds for strip-searching inmates include searches done as part of a general shakedown and when there is “reasonable suspicion” that there is contraband on the unit.

Liability Protection Re: Arrestee Strip Searches

- Be sure you have a legally sound policy and procedure governing strip searches of arrestees.
- Document all discretionary decisions to strip-search.
- Beware of policies instituted by a new sheriff. Highlight the legal sensitivity of the issue to discourage a quick change in the policy.

“CASE OF THE YEAR”

Following is a summary of the case, which Bill Collins selected “because of its bizarre facts and because of the questions it raises about staff interaction and attitude toward persons under their supervision.”

Glaspay v. Malicoat, 134 F. Supp.2d 890 (W. D. Mich., 2001)

An inmate’s 69-year-old father, visiting in prison, asks the visiting room officer for permission to go to the bathroom. The officer refuses, saying a count is being taken, and then leaves for lunch. The inmate makes the same request to a second officer and gets the same response. He says his father is in pain, but he is again denied.

The inmate asks the officer to call the supervisor. The sergeant, who doesn’t know it is an emergency, also denies the request until after the count. The visitor then urinates on himself. When the count clears seven minutes later, the visitor is allowed to go to the bathroom. The visitor and inmate testify that the second correctional officer was laughing at the father.

In a post-incident investigation, the sergeant says that if he had known of the urgency, he would have approved the request. There was no institution policy or rule prohibiting visitors from using the bathroom during a count.

The court held that the visitor’s substantive due process rights under the Fourteenth Amendment were violated. The court awarded \$5,000 compensatory and \$5,000 punitive damages—plus attorney’s fees—against the second corrections officer. Because the father, not the inmate, brought the lawsuit, the Prison Litigation Reform Act did not apply. Therefore, the attorney’s fee will be computed at the traditional formula, not the reduced one required by the PLRA.

The case has clear implications for staff conduct, including the treatment of inmate and visitors.

DISCUSSION: “STUMP THE CHUMP”

1. Can a jail use a disciplinary meal for inmates in disciplinary segregation?

Collins noted that if it provides adequate nutrition even if it is unappealing, it is okay. If it is incredibly unpalatable, however, it might be a problem.

2. Can a jail ask a judge to sign off on a fine for disciplinary violations even without statutory authorization? Without more research, Collins was unable to answer this question.

For additional information, contact William Collins, Attorney at Law, 4923 Lemon Road NE; Olympia, WA 98506; 360/754-9205; billcol@attbi.com Copies of the cases cited in this section are included in the Appendix to this report.

TOPICS FOR NEXT MEETING

RICHARD GEATHER, CORRECTIONAL PROGRAM SPECIALIST, NIC JAILS DIVISION

Richard Geather led a discussion among meeting participants of potential topics for the next meeting of the Large Jail Network, to be held in July 2002. The following topics were suggested:

- New technology
- Medical cost containment (including use of Medicare, Medicaid, and group purchases of pharmaceuticals)
- Jail management systems; the selection and implementation processes
- Crowding; alternatives to incarceration
- Psychological testing for new employees and special operations staff
- Mentoring and training middle managers; succession planning for jail leaders
- How to get the voice of the jail before Congress; jail advocacy
- Assessing the culture of the organization

Meeting participants selected the following principal topics for the next meeting:

1. Medical cost containment
2. Mentoring and training middle managers; succession planning for jail leaders

In addition, the group would like to have an address at the opening session on Sunday night by a spokesperson from Congress who could speak about advocacy for jails. They also expressed interest in having a brief update on activities of the American Jail Association.

For additional information, contact Richard Geather, Correctional Program Specialist, NIC Jails Division, 1960 Industrial Circle, Longmont, CO 80501; (800) 995-6429; rgeather@bop.gov

APPENDIX I: MEETING AGENDA

APPENDIX 2: MEETING PARTICIPANTS

**APPENDIX 3: SUPPLEMENTAL MATERIALS ON LEGAL CASES
CITED**
